

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

Kiedi Dever,

Charging Party,

v.

City of Cottonwood and City of Cottonwood
Police Department

Respondent.

CRD No. CRD-2022-0550

EEOC No. 35A- 2022-00415

CONCILIATION AGREEMENT
(Post-Finding)

1. BACKGROUND

1.1. On May 25, 2022, Kiedi Dever (“Dever”) filed a Charge of Discrimination (“Charge”) with the Division of Civil Rights Section of the Arizona Attorney General’s Office (the “Division”) against the City of Cottonwood and Cottonwood Police Department (“CPD”) (collectively “Cottonwood” or “Respondent”). Dever’s Charge alleged that Cottonwood subjected Dever to sex-based discrimination and harassment and discriminated against her, because of her sex in violation of the Arizona Civil Rights Act (“ACRA”). Dever amended her Charge during the Division’s investigation to include allegations that Cottonwood discriminated against her on the basis of her disability and Cottonwood retaliated against her for engaging in protected activity under the ACRA. Dever’s Charge was dual filed with the Equal Employment Opportunity Commission (“EEOC”) under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”) and under Title I of the Americans with Disabilities Act, as amended (“ADA”).

1.2. The Division investigated Dever’s Charge under the authority granted by the ACRA, A.R.S. § 41-1401 et seq.

1.3. The ACRA prohibits employers from discriminating against individuals on the basis of sex or disability and makes it unlawful for an employer to discharge any individual or otherwise discriminate against any individual in the terms and conditions of employment because of the individual’s sex or disability. A.R.S. § 41-1463(B)(1).

1.4. The ACRA prohibits retaliation against an employee that has filed a charge of discrimination with the Division. A.R.S. § 41-1464(A).

1.5. Upon completion of its investigation into Dever's charge, the Division determined there was reasonable cause to believe Cottonwood discriminated against Dever based on her sex and disability and retaliated against her for filing a Charge with the Division, in violation of the ACRA. A.R.S. §§ 41-1463(B)(1), 41-1464(A).

1.6. The Division issued a Reasonable Cause Determination dated April 25, 2023.

1.7. This Post-Finding Conciliation Agreement ("Agreement") does not constitute an admission by Cottonwood that any act, omission, policy, or practice made unlawful by A.R.S. § 41-1461 et seq. occurred, nor should any such inference be drawn.

2. AGREEMENT

2.1. This Agreement is made between the Division, Dever, and Cottonwood (collectively, the "Parties"). A Charge of unlawful discrimination having been filed by Dever against Cottonwood pursuant to A.R.S. § 41-1481, and the Division having found reasonable cause to believe the discrimination occurred, the Parties have conferred and hereby voluntarily agree to and do resolve the issues in the Charge on the following terms:

2.2. Subject to the fulfillment by Cottonwood of all of the obligations set forth in this Agreement, the Division agrees to waive its right to file a civil lawsuit against Cottonwood based on the matters alleged in Charge No. CRD-2022-0550 and will close Charge No. CRD-2022-0550. However, the Division retains its right to bring, investigate, and/or litigate any other charge against Cottonwood including a Divisional charge against Cottonwood pertaining to any matters except for the matters specifically relating to Dever and alleged in CRD-2022-0550. The Division reserves its right to file an enforcement action should it believe that Cottonwood has not complied with the terms of this Agreement.

2.3. The Division does not waive or in any manner limit its right to process any other charge of discrimination against Cottonwood or to seek relief from Cottonwood with regard to any other charges or investigations that are currently pending or may arise in the future. Further, the Division does not waive any future claims or complaints against Cottonwood for any violation of this Agreement or any violation of the ACRA. By entering into this Agreement, the Parties do not intend to resolve any charges of discrimination currently pending before the Division other than Charge No. CRD-2022-0550.

2.4. The Division has the right to make reasonable inquiry and investigation regarding compliance with this Agreement, including, but not limited to, unannounced on-site inspections and record reviews. The Division further has the right to enforce the Agreement through all available means including, but not limited to, litigation in any court with jurisdiction should Cottonwood fail to comply with any of the terms of this Agreement.

2.5. Cottonwood and its managers, supervisors, and human resources personnel agree to abide by the ACRA.

2.6. The Parties agree to be bound by this Agreement and to not contest whether it was validly entered into in any subsequent proceeding to implement or enforce its terms.

2.7. The Parties agree that venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17) for any Division enforcement action of this Agreement.

2.8. Nothing in this Agreement shall be construed to preclude the Division from bringing a lawsuit to enforce this Agreement in the event that Cottonwood fails to perform promises contained herein.

2.9. Nothing in this Agreement shall be construed to limit or reduce Cottonwood's obligation to comply with the ACRA, Title VII, or the ADA.

2.10. This Agreement does not affect the Division's right to bring, investigate, or litigation any other charges of discrimination that may be in existence or arise against Respondent in accordance with the statutes enforced by the Division.

3. RELIEF FOR DEVER

3.1. **Payment to Dever.** Cottonwood shall pay Dever the total sum of \$67,142.92 (sixty-seven thousand one hundred and forty-two dollars and ninety-two cents). The form of payment shall be three checks, payable as follows:

a. The first check shall be made payable to "Kiedi Dever" for the sum of \$2,142.92 (two thousand one hundred and forty-two dollars and ninety-two cents), less applicable state and federal withholding taxes. Cottonwood agrees to make all required contributions to the Public Safety Personnel Retirement System based on this amount.

b. The first check shall be made payable to "Kiedi Dever" for the sum of \$57,000.00 (fifty-seven thousand dollars). Cottonwood will not withhold monies from this payment for federal or state income or withholding taxes, because this payment is not in the nature of wages.

c. The second check shall be made payable to "Jacobson Law Firm" for the sum of \$8,000.00 (eight thousand dollars). Cottonwood will not withhold monies from this payment for federal or state income or withholding taxes, because this payment is for attorneys' fees and, therefore, not in the nature of wages.

d. The checks shall be delivered to Dever's counsel, Jacobson Law Firm, not more than fifteen (15) business days after the effective date of this agreement. Within five (5) business days of the issuance of payments, Cottonwood will email documentation showing

the payments and related correspondence to the Attorney General's Office, Civil Rights Division, c/o Maura Hilser, maura.hilser@gmail.com.

e. Cottonwood and Dever acknowledge that the Division makes no representation to either party concerning the consequences to taxes and/or benefits, if any, of the payment described in Section 3.1. Cottonwood and Dever agree that they had the opportunity to consult an advisor about the consequences of the payment if they wished to do so.

3.2. **Reassignment to Detective.** Within ten (10) business days of the effective date of this Agreement, Cottonwood shall assign Dever to be a Detective. Cottonwood shall permit Dever to remain in this assignment for a minimum of two years, unless Dever voluntarily agrees to transfer to a different assignment or position. Cottonwood further agrees that for the first two years of Dever's assignment as a Detective, Dever shall not be directly supervised by Sergeant Chad Sinn.

4. **EQUITABLE RELIEF**

4.1. **Anti-Retaliation.** Cottonwood agrees that it and its agents will not engage in any discrimination or retaliation of any kind against Dever or against any other person because he/she has opposed any practice reasonably believed by him/her to be unlawful under A.R.S. § 41-1461 et seq., or because he/she has filed a complaint, grievance, or charge with any state or federal agency, given testimony or assistance, or participated in any manner in any investigation or proceeding under the ACRA, Title VII, or the ADA.

4.2. **Nondiscrimination Policies.** Within forty-five (45) days of the effective date of this Agreement, Respondent will modify its existing nondiscrimination policies to the extent necessary for compliance with this agreement, including ensuring its policies: (i) prohibit discrimination based upon sex, race, national origin, color, religion, genetic testing, disability, or age; (ii) prohibit harassment based on sex, race, national origin, color, religion, genetic testing, disability, or age; (iii) prohibit retaliation against any employee or applicant for engaging in protected activity under any applicable federal, state, or local law, including but not limited to, filing a charge of discrimination with a federal or state agency and participating in an investigation or proceeding; and (iv) affirm Respondent's commitment to provide a work environment free of discrimination based on sex or disability.

(a) At a minimum, Cottonwood's nondiscrimination policies and procedures (collectively "Policies and Procedures") shall contain: (i) information stating an employee and applicant's right to protections from unlawful discrimination and retaliation under applicable federal, state, and local EEO laws; (ii) examples of discriminatory workplace conduct that is inappropriate; (iii) an expressly stated commitment by Cottonwood to the Policies and Procedures; (iv) a statement that unlawful discrimination, harassment, and retaliation violates the federal, state, and local equal opportunity laws; (v) a designated process by which an employee or applicant can report unlawful discrimination, harassment, hostile work environment or retaliation that does not require contact with the alleged perpetrator; (vi) a

designated process through which an employee or applicant can internally file a complaint through Cottonwood Human Resources, management, or a website and hotline as described in 4.5; (vii) a requirement that any employee who witnesses discrimination, harassment, hostile work environment, and/or retaliation must report such conduct to Cottonwood Human Resources, management, or a website and hotline as described in 4.5; (viii) instructions on how to file a complaint of discrimination, harassment, and/or retaliation in accordance with Paragraph 4.5 of this Agreement.

(b) Within sixty (60) days of the effective date of this Agreement, Cottonwood agrees to provide its Policies and Procedures to the Arizona Attorney General's Office, Division of Civil Rights Section, c/o Maura Hilser or her successor, 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov for review consistent with this Agreement.

(c) Within thirty (30) days of receiving approval of the Policies and Procedures by the Division, Cottonwood agrees to notify all of its current CPD employees about the Policies and Procedures in writing. Cottonwood shall obtain written acknowledgement of each CPD employee's receipt of the Policies and Procedures. Cottonwood shall provide a copy of the Policies and Procedures (in either electronic or hard copy format) to all new employees within the first thirty (30) days of hire. During the term of the Agreement, Cottonwood shall retain copies of the executed employee acknowledgement forms in the employees' personnel files, and shall submit the same to Maura Hilser or her successor at the Arizona Civil Rights Division, 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov.

4.3. Training. Within ninety (90) days of the effective date of this Agreement, Cottonwood shall conduct an interactive training by a qualified trainer for CPD's employees, supervisors, managers, and staff.

(a) The training shall include, at a minimum, the following topics: (1) the provisions of the ACRA, Title VII, and the ADA that prohibit discrimination based on sex and disability and prohibit retaliation; (2) an affirmative statement that sexual harassment and hostile work environment are unlawful under Arizona and federal law and are strictly prohibited by Cottonwood; (3) how to recognize and appropriately respond to sexual harassment in the workplace; (4) Cottonwood's Policies and Procedures as defined in this Agreement; (5) the dissemination of the Division's anti-discrimination Frequently Asked Questions to each attendee; (6) a detailed description of internal and external mechanisms for employees to complain about workplace discrimination and retaliation; (7) information about myths and stereotypes regarding mental health based disabilities; (8) information about how workplace statements or actions that perpetuate myths and stereotypes about individuals with disabilities or perceived disabilities can create a hostile work environment and trigger an internal and external investigation; (9) information about how workplace statements or actions that perpetuate gender based myths and stereotypes can create a hostile work environment and trigger an internal and external investigation; and (10) directions on how to file charges of

discrimination with the Division or EEOC, including the Division and EEOC's contact information.

(b) For purposes of this Agreement, a qualified trainer is an agency or individual approved by the Division and knowledgeable about sex and disability discrimination prohibited by the ACRA, Title VII, and the ADA. The qualified trainer must also be knowledgeable about the anti-retaliation provisions of the ACRA, Title VII, and the ADA.

(c) The training may be conducted in one or more training sessions to accommodate the scheduling demands of Cottonwood. The training for CPD employees and staff shall discuss all policies and procedures discussed herein, all topics included in Paragraph 4.3(a), and consist of at least two (2) hours of instruction, including a question and answer period.

(d) The training for CPD supervisors and managers and Cottonwood HR personnel shall discuss all policies and procedures discussed herein, all topics included in Paragraph 4.3(a), and shall consist of at least four (4) hours of instruction, including a question and answer period.

(e) The training for Chief of Police Stephen Gesell, Sergeant Chad Sinn, Sergeant Aaron Scott, and Commander Gareth Braxton-Johnson shall consist of the training for supervisors and managers as described in section 4.3(d) and an additional two (2) hours of individualized training on preventing sex discrimination, disability discrimination, and retaliation in the workplace.

(f) For the term of the Agreement, Cottonwood shall require all new CPD employees, supervisors, managers, and Cottonwood HR personnel hired or promoted after the date of the initial trainings to view an interactive video of the respective training and receive all written materials from this training within thirty (30) days of hire or promotion.

(g) If there are costs associated with the trainings, Cottonwood shall be responsible for those costs.

(h) Thirty (30) days prior to the initial trainings in 4.3(c), (d) and (e), Cottonwood shall submit a copy of the training materials to Arizona Attorney General's Office, Division of Civil Rights Section, c/o Maura Hilser or her successor, 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov for review by the Division. The Division shall ensure the training includes the minimum obligations under this Agreement. Within ten (10) business days of receipt, the Division shall confirm whether the training meets the minimum requirements for compliance with this Agreement or submit necessary modifications for compliance. Any modifications proposed by the Division shall be incorporated into the training.

(i) Cottonwood shall maintain attendance logs for the trainings. Such logs shall contain at a minimum: (1) the date, time, and location of the training; (2) a list of names and positions of all attendees; (3) the name of the agency or individual presenting the training.

(j) Within thirty (30) calendar days of the completion of each training, Cottonwood shall provide a copy of the training materials and attendance log to Arizona Attorney General's Office, Division of Civil Rights Section, c/o Maura Hilser or her successor, 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov.

4.4. **Poster.** Cottonwood agrees to keep posted at all times in a conspicuous, well-lit place frequented by its employees and applicants for employment, in all locations it maintains and operates within the State of Arizona, a poster which states that discrimination and harassment in employment based on race, color, religion, sex, age (40 and older), national origin, genetic information, or disability is prohibited. Cottonwood shall ensure that a copy of the poster is located in each locker room at any CPD facility. Cottonwood agrees to provide the Attorney General's Office, Division of Civil Rights Section, c/o Maura Hilser or her successor 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov a photograph confirming the posters are posted within sixty (60) days of the effective date of this Agreement. Respondent shall include in its email a written description of the location of each poster.

4.5. **Anonymous Reporting.** Within thirty (30) days of the effective date of this Agreement Cottonwood shall make a hotline and website available for employees to make reports of discrimination, harassment, or retaliation. Complaints received through the hotline/website will be automatically directed to the Cottonwood City Manager and Cottonwood Human Resources Director. In addition, Cottonwood agrees to notify Pierce Coleman PLLC or other outside employment counsel of any complaints received through the hotline and/or website alleging discrimination, harassment, or retaliation within fourteen (14) business days of receipt of the complaint.

5. Enforcement of the Agreement.

5.1. The Parties agree that the Division reserves the right to review compliance with this Agreement at any time. The Division has the right to enforce the Agreement through all available means, including but not limited to, litigation in any court with jurisdiction should Respondent fail to comply with any of the terms of this Agreement. If the Division believes that this Agreement or any portion of it has been violated, it shall notify Cottonwood through counsel, Steve Coleman, steve@piercecoleman.com, Pierce Coleman, PLLC, c/o Steve Coleman, 7730 E. Greenway Rd, Suite 105, Scottsdale, AZ 85260.

5.2. The Division and Cottonwood shall attempt to resolve those concerns about any alleged violation of this Agreement in good faith. If the Division believes that Cottonwood has failed to comply with any portion of this Agreement, the Division shall notify Cottonwood's attorney of record in writing of Cottonwood's purported failure ("Deficiency Notice"). Cottonwood shall have fourteen (14) business days from the mailing date of Deficiency Notice to cure all deficiencies and to come into compliance with this Agreement. The Division may initiate an enforcement action if Cottonwood: (1) fails to timely respond to the Division's

Deficiency Notice; or (2) fails to cure all deficiencies and come into compliance with this Conciliation Agreement.

6. Monitoring

6.1. Within one hundred and twenty (120) days of the date of this Agreement, Cottonwood shall make a written report to the Division outlining its compliance with the Agreement, including supplying documentation that demonstrates compliance, such as training records, payroll documents, copies of check(s), and copies of relevant personnel action forms. After the initial report, Cottonwood shall report every year thereafter for the duration of the Agreement. The Report shall include, for the period covered by the Report:

(a) A specific acknowledgment that Cottonwood has, for the instant reporting period, complied with the requirements of the Agreement;

(b) Copies of the attendance logs maintained for the training(s) required in this Agreement;

(c) A copy of any updates to the anti-harassment, anti-discrimination, and/or anti-retaliation provisions of the Policies and Procedures;

(d) A copy of the Employee Acknowledgement Forms for receiving the Policies and Procedures referenced in this Agreement and a specific acknowledgment that the forms have been returned from all the current employees (in the first report) and have been returned by new hires (in subsequent reports); and

(e) Notification regarding any grievances, complaints (in any form), charges, and/or lawsuits alleging that any employee of the Cottonwood Police Department engaged in any form of discrimination, harassment, or retaliation. Such notice shall include, at a minimum, a description of the nature of the allegations, the names of the individuals bringing the allegations, Cottonwood's determination after investigation as to whether the allegations were substantiated; a description of the resolution; and a copy of the complaints, lawsuits, charges, and grievances.

6.2 All letters or reports, copies of checks, notices, revised Policies and Procedures, and other such documents required by this Agreement shall be delivered via mail, electronic transmission, or fax (with original letters or reports) to Maura Hilser or her successor, 400 W. Congress St., South Bldg., Suite S-315, Tucson, Arizona 85701 or maura.hilser@azag.gov.

7. General Provisions

7.1. This Agreement may be signed in counterparts, including facsimile or .pdf copies, and when so signed, each counterpart shall be deemed an original, and together will constitute one instrument. The Parties agree to also execute original documents and promptly send them to the Division so that it may have an entire set of original documents.

7.2. This Agreement is final and binding on the present and future directors, officers, managers, agents, heirs, assigns, successors, successors-in-interest, receivers, trustees in bankruptcy, and personal representatives of Cottonwood. Cottonwood has a duty to inform any successor in interest of the obligations of this Agreement.

7.3. Nothing in this Agreement shall be construed to limit the Division from bringing a lawsuit to enforce this Agreement in the event that Cottonwood fails to perform any promises contained herein.

7.4. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

7.5. Failure by any party to seek enforcement of this Agreement pursuant to its terms with respect to any provision or instance shall not be construed as a waiver of such enforcement.

7.6. The Parties have read this Agreement in its entirety, have had an opportunity to consult with counsel of their own choice, are satisfied that they understand and agree to all of its provisions, and have freely signed this Agreement without coercion.

7.7. A signatory to this document in a representative capacity for each party represents that he or she is authorized to bind that party to this Agreement.

7.8. This Agreement constitutes the entire agreement between the Division, Dever, and Cottonwood.

7.9. This Agreement is not intended to remedy any other potential violations of the ACRA or any other law that is not specifically addressed in this Agreement.

7.10. This Agreement shall not be read to limit Cottonwood's continuing responsibility to comply with all aspects of the ACRA.

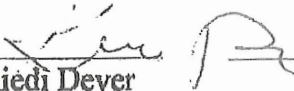
7.11. The effective date of this Agreement is the date the Agreement has been reviewed and signed by a Division representative. The Division representative shall be the last party to sign the Agreement.

7.12. Each party agrees to pay its own attorneys' fees and costs, if any.


7.13. Provided that Cottonwood has timely complied with all obligations set forth in this Agreement, the term of this Agreement shall be five (5) years from the effective date. All warranties, representations, and obligations that by their nature survive the term of this Agreement shall survive.

7.14. The Agreement may be made public if the Attorney General determines disclosure is required to further the purposes of the ACRA.

5/24/23
Date

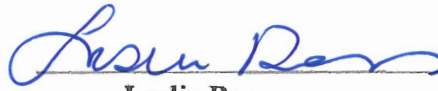
By 
Kiedi Dever
Charging Party

5-24-2023
Date

By 
Name: Tim Elinski
Title: Mayor
Cottonwood

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

5/25/23
Date


Leslie Ross
Section Chief Counsel

Executed copy emailed
this 25th day of May, 2023, to:

Attorney for Charging Party

Attorney for Respondent

By Frankie Hensley