

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Petitioners San Jose Spotlight and First Amendment Coalition (hereafter collectively “Petitioners”) and Respondents City of San José and Samuel Liccardo (hereafter collectively “the City), collectively referred to as the “Parties.”

WHEREAS, Petitioners filed an action against Respondents on or about February 3, 2022 in the Superior Court of California, County of Santa Clara, case number 22CV394443, entitled *San Jose Spotlight and First Amendment Coalition v. City of San Jose and Mayor Samuel Theodore Liccardo* (“Action”);

WHEREAS, on July 3, 2023, the Court issued its Order Granting Writ of Mandate, directing Respondents to produce certain documents and denying Petitioners’ request for declaratory and injunctive relief;

WHEREAS, on August 29, 2023, the Court issued its Amendment to Order Granting Writ of Mandate, which amended the Court’s July 3, 2023 order to strike its prior order denying Petitioners’ request for declaratory relief;

WHEREAS, on or about October 2, 2023, the Court entered Judgment Granting Petition for Writ of Mandate and Declaratory Relief;

WHEREAS, Petitioners seek attorneys’ fees and costs;

WHEREAS, the Parties now undertake to settle the matter of attorneys’ fees and costs in this Action in its entirety, and Petitioners and Respondents now undertake to release and extinguish on a final basis any and all claims for attorneys’ fees and costs in the Action against Respondents, arising out of the matters alleged in the Action;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of a payment of five hundred thousand dollars to Petitioners by the City (\$500,000.00), Petitioners San Jose Spotlight and First Amendment Coalition, on behalf of themselves, their past and present assigns, heirs, executors, and administrators, hereby release and forever discharge Respondents, their past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with any claim for attorneys' fees and costs in this action. A draft in the amount of five hundred thousand dollars (\$500,000.00) shall be made payable to the trust account of Cannata, O'Toole and Olson LLP and shall be delivered to the office of Cannata, O'Toole and Olson LLP for allocation between counsel for Petitioners, on or before January 8, 2024.

2. In consideration for the above-referenced payment, and once said payment is received, Petitioners agree not to file a motion for attorneys' fees and costs arising from time or work incurred in the Action before the execution of this agreement. If Respondents appeal or otherwise seek review or reconsideration of the judgment entered against them, Petitioners reserve the right to seek attorneys' fees and costs incurred in opposing any such appeal or effort to seek review or reconsideration.

3. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement.

4. This is a full and final release of all claims for attorneys' fees and costs arising out of the Action, and including those claims for attorneys' fees or costs that are unknown or unanticipated, except this agreement does not release any claims for attorneys' fees or costs arising from any attempt by Respondents to appeal or otherwise seek review or reconsideration of the judgment entered against them. Section 1542 of the Civil Code of the State of California provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Petitioners represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that they hereby waive any and all present and future rights and benefits under Section 1542 to the extent it would permit claims for attorneys' fees or costs relating to, arising out of, or any way connected to the Action based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed, other than claims expressly reserved in this Agreement. Nothing in this Settlement Agreement, however, shall affect or impair the rights of Petitioners to make future requests to Respondents under the California Public Records Act or take any legal action arising from such requests or the responses thereto.

5. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims for attorneys' fees and costs relating to, arising out of or any way connected with the Action. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the

truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

6. This Settlement includes the payment of attorneys' fees and costs. Otherwise, the Parties shall bear their own costs and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement, except for the payment of the \$500,000.00 by the City to Petitioners' counsel as set forth in Paragraph 1 above, and except for any attorneys' fees or costs Petitioners might seek to recover in the event that Respondents appeal or otherwise seek review or reconsideration of the judgment against them.

7. The Parties acknowledge and agree that the City's payment represents a compromise and release of attorneys' fees and costs and that neither the payment nor anything stated in this Settlement Agreement constitutes or represents an admission by Respondents of any liability or responsibility of any kind, or a concession by any party that the claims for attorneys' fees or costs are valid. The Parties acknowledge that the settlement reached pursuant to this Settlement Agreement is made solely for the purpose of compromising disputed claims concerning attorneys' fees and costs related to this Action and avoiding the time, expense and uncertainty of further litigation.

8. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

9. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of attorneys' fees and costs. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

10. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

11. To the extent state law informs any dispute that may arise between the Parties, such dispute, and this Settlement Agreement, shall be governed by the laws of the State of California.

12. This Settlement Agreement may be executed in any number of counterparts and signature pages and by different parties on separate counterparts and signature pages, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument. Signatures may be exchanged or obtained electronically.

13. Should any provision of this Settlement Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall not be deemed to be part of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

SAN JOSE SPOTLIGHT

Dated: November 13, 2023

By: 

RAMONA GIWARGIS
Chief Executive Officer
SAN JOSE SPOTLIGHT

CANNATA, O'TOOLE & OLSON LLP


Dated: _____

By: _____
KARL OLSON

Attorney for Petitioner SAN JOSE
SPOTLIGHT

FIRST AMENDMENT COALITION

Dated: November 14, 2023

By: 

DAVID SNYDER
Executive Director
FIRST AMENDMENT COALITION

Dated: November 14, 2023


By: 

DAVID LOY

Attorney for Petitioner FIRST
AMENDMENT COALITION

SAN JOSE SPOTLIGHT

Dated: _____

By: 
RAMONA GIWARGIS
Chief Executive Officer
SAN JOSE SPOTLIGHT

CANNATA, O'TOOLE & OLSON LLP

Dated: November 14, 2023

By: 
KARL OLSON

Attorney for Petitioner SAN JOSE
SPOTLIGHT

FIRST AMENDMENT COALITION

Dated: _____

By: _____
DAVID SNYDER
Executive Director
FIRST AMENDMENT COALITION

Dated: _____

By: _____
DAVID LOY

Attorney for Petitioner FIRST
AMENDMENT COALITION

CITY OF SAN JOSE

Dated: _____

By: _____
NORA FRIMANN
City Attorney as Authorized Agent
for the CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____

By: _____
ELISA TOLENTINO
Chief Deputy City Attorney

Attorney for Respondents