

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement, Release and Waiver Agreement ("Agreement") is made and entered into by and between the City of San José (hereafter "City") and those individuals named in Exhibit "A" (collectively referred to "Plaintiffs"). Plaintiffs and City are collectively referred to as "Parties" in this Agreement.

RECITALS

WHEREAS, Plaintiffs filed an "omnibus" complaint on March 15, 2019 in the Superior Court of California, County of Santa Clara, case numbers, 18CV321600 (Lead), 18CV321601, 18CV321602, 18CV321603, 18CV321604, 18CV321613, 18CV321781, 18CV322210, 18CV323345, 8CV324263, 18CV324794, 18CV325153, 18CV325282, 18CV325283, 18CV325285, 18CV325287, 18CV325289, 18CV325346, and on February 18, 2020 filed case number 20CV363712, which was consolidated with the omnibus complaint on February 13, 2020 (hereafter the "Lawsuit");

WHEREAS, Plaintiffs alleged in causes of action for inverse condemnation, nuisance, and dangerous condition of public property that the City caused Plaintiffs to sustain property losses and emotional and physical injuries, more particularly described in Plaintiffs' Lawsuit;

WHEREAS, the Parties to this Agreement desire to settle the Lawsuit in its entirety as to the City, and release and extinguish on a final basis any and all claims alleged or which could have been alleged arising from, or in any way connected with, the occurrences described in Plaintiffs' omnibus complaint;

NOW THEREFORE, the Parties agree as follows:

1. **Scope of Settlement.** This Agreement will settle, compromise, and forever discharge all claims by Plaintiffs of any and every kind, nature and character, arising from or based on any act or omission by the City of San Jose related to claims identified in the Lawsuit, and all City of San Jose employees who could have been named in the Lawsuit. Each of the parties hereto executes this Release with the full knowledge of its significance and with express intention of effecting its legal consequences.

2. **Consideration.** In consideration for Plaintiffs' agreements, promises, covenants, releases and waivers stated in this Agreement, the City of San Jose shall pay the sum of seven hundred and fifty thousand dollars (\$750,000.00) in the form of a check payable to Needham Kepner & Fish Trust. Said payment shall compensate Plaintiffs for any and all damages claimed against the City, or which they could have claimed arising from or related in any way to the matters alleged in the Lawsuit as to the City. In consideration of said payment, Plaintiffs shall dismiss the Lawsuit as to the City with prejudice and withdraw, waive and release any and

all claims for other damages, including any and all claims and/or rights to recover costs and attorney's fees incurred in the Lawsuit.

3. **Dismissal of Claims.** Plaintiffs and their attorneys shall dismiss the Lawsuit as to the City with prejudice within five (5) business days after receiving payment of the settlement amount. This Agreement is contingent upon the signature of plaintiffs' counsel, their dismissal of the Lawsuit, or an order dismissing the case as to these plaintiffs.

4. **Release.** Plaintiffs, and each of them severally and collectively, for himself/herself and his/her successors, assigns, attorneys and agents, hereby generally release and forever discharge the City of San Jose and all individuals named, or who could have been named in the Lawsuit as to the City (collectively, the "Releasees"). The City of San Jose includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed City officials, and City employees. The release includes, without limitation, any and all actions, causes of action for physical injury, emotional distress, or property damages, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged as to the City in the Lawsuit, or that could have been alleged as to the City in the Lawsuit, whether or not such claims were actually asserted as to the City in the Lawsuit.

5. **Release of Unknown Claims.** Plaintiffs represent that they understand and agree that this Agreement shall be effective as a full and final settlement of all disputes and matters arising out of any subject matter identified in this Agreement, including but not limited to all claims and causes of action asserted, or that could have been asserted, in the Lawsuit (the "Released Matters") as to the City. Plaintiffs acknowledge that they understand section 1542 of the California Civil Code, which 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.

As to the Released Matters as to the City, Plaintiffs expressly waive and relinquish any and all rights they may have under, or that may be conferred on them by, the provisions of California Civil Code section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Matters as to the City. In connection with such waiver Plaintiffs also acknowledges that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they know or believe exist with respect to the Released Matters as to the City. Plaintiffs understand by signing this Agreement that they will

SETTLEMENT RELEASE AND WAIVER AGREEMENT 2

White v. Santa Clara Valley Water District, et al.

Case No. 18CV321800 (LEAD)

1846223

fully, finally, and forever settle and release all of the disputes and differences, known or unknown, suspected or unsuspected, that now exist, may exist in future, or heretofore existed arising out of or in connection with the Released Matters.

6. Covenant Not to Challenge Enforceability. As further consideration for this Agreement, Plaintiffs do hereby covenant, promise and agree that they will not at any time challenge the enforceability of this Agreement, or any provision thereof, or assert that this Agreement, or any provision thereof, is invalid on any constitutional grounds, including, but not limited to, assertions that this Agreement violates the First Amendment, Due Process Clause, Equal Protection Clause or is void as against public policy.

7. Parties Affected and Choice of Law. This Agreement shall bind and benefit the Parties hereto, and their legal successors, heirs, assigns, agents, legal advisors, and predecessors. This Agreement shall be governed by California law.

8. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs of suit, attorneys' fees and other expenses incurred in connection with the Action. Neither party shall be entitled to recover any fees, costs or expenses from the other.

9. Liability Not Admitted. The Parties acknowledge and agree the City's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission by the City of liability or responsibility of any kind, or a concession by the City that assertions or allegations regarding the claims alleged in the Lawsuit are valid. Each party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than it believes them to be. The City explicitly denies all claims, allegations, and assertions that it had, or has, any obligation to maintain Coyote Creek; that its actions or omissions resulted in a taking of any Plaintiff's property; that it created, maintained, or contributed to any dangerous condition of public property or any nuisance that caused or contributed to the flooding alleged in the Lawsuit.

10. Cooperation in the Litigation. The City claims no liability or responsibility in the matters which are the subject of this litigation, and that the City has documents and witnesses that may support this position; in consideration of the settlement of this action the City, in good faith, will cooperate in the litigation and trial needs for Plaintiffs, including, but not limited to, providing requested documents, witnesses and information, other than that protected by the attorney-work product doctrine or the attorney-client privilege.

11. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants,

SETTLEMENT RELEASE AND WAIVER AGREEMENT 3

White v. Santa Clara Valley Water District, et al.

Case No. 18CV321600 (LEAD)

1846223

understandings, representations or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

12. Representation of Authority. By signing this agreement, Plaintiffs' counsel represents and warrants that he/she is authorized, pursuant to CCP 664.6, to execute this agreement on behalf of those Plaintiffs he/she represents, as identified in Exhibit A. Each Plaintiff represents and warrants that he/she has not assigned any claim or claims that are the subject of this Agreement; that he/she is the sole and rightful owner of said claims.

13. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions, and the court shall enforce the remaining provisions to the extent permitted by law.

14. Voluntary Agreement. Each Plaintiff understands and agrees that he/she is waiving significant legal rights by signing this Agreement, and represents that he/she has entered into this Agreement voluntarily, after consulting with his/her attorneys, with a full understanding of and in agreement with all of its terms.

15. Headings. The headings in each paragraph herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

16. Drafting. The Parties agree that this Agreement shall be interpreted without regard to the drafter of the same and shall be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.

17. Consultation with Counsel. The Parties and each of them acknowledge that they have had the opportunity to consult with legal counsel of their choice prior to execution and delivery of this Agreement, and that they have in fact done so. Plaintiffs acknowledge they have received advice from their counsel.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

19. Binding Force and Effect. This Agreement shall be binding and inure to the benefit of all parties hereto and their respective heirs, executors,

administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

20. Condition Precedent. This Agreement shall become effective upon approval by the San Jose City Council in open session and is contingent upon a finding of "good faith" under California Code of Civil Procedure sections 877 and 877.6.

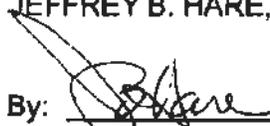
21. Effective Date. This Agreement shall become effective upon approval by the San Jose City Council in open session.

AGREED AND ACCEPTED:

[Signatures continue on succeeding pages]

Dated: 9/22/2021

JEFFREY B. HARE, APC

By: 
Jeffrey B. Hare, Esq.
Attorney for Plaintiffs

LAW OFFICES OF CHI N. DINH

Dated: _____

By: _____
Chi Dinh, Esq.
Attorney for Plaintiffs

FARSAD LAW OFFICE, PC

Dated: _____

By: _____
Arasto Farsad, Esq.
Attorney for Plaintiffs

LAW OFFICES OF JOHN K. CROWLEY

Dated: _____

By: _____
John K. Crowley, Esq.

administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

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AGREED AND ACCEPTED:

[Signatures continue on succeeding pages]

JEFFREY B. HARE, APC

Dated: _____

By: _____
Jeffrey B. Hare, Esq.
Attorney for Plaintiffs

LAW OFFICES OF CHI N. DINH

Dated: September 23, 2021

By:  _____
Chi Dinh, Esq.
Attorney for Plaintiffs

FARSAD LAW OFFICE, PC

Dated: 9-22-21

By: Arasto Farsad _____
Arasto Farsad, Esq.
Attorney for Plaintiffs

LAW OFFICES OF JOHN K. CROWLEY

Dated: _____

By: _____
John K. Crowley, Esq.

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AGREED AND ACCEPTED:

[Signatures continue on succeeding pages]

JEFFREY B. HARE, APC

Dated: _____

By: _____
Jeffrey B. Hare, Esq.
Attorney for Plaintiffs

LAW OFFICES OF CHI N. DINH

Dated: _____

By: _____
Chi Dinh, Esq.
Attorney for Plaintiffs

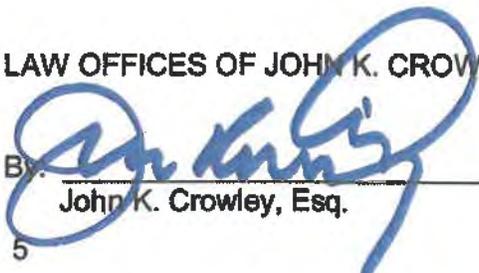
FARSAD LAW OFFICE, PC

Dated: _____

By: _____
Arasto Farsad, Esq.
Attorney for Plaintiffs

LAW OFFICES OF JOHN K. CROWLEY

Dated: 9.23.21

By: 
John K. Crowley, Esq.

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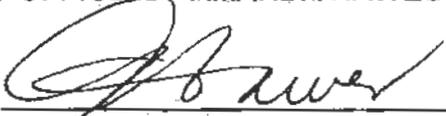
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Attorney for Plaintiffs

LAW OFFICE OF AMANDA HAWES

Dated: 9/22/21

By: 
Amanda Hawes, Esq.
Attorney for Plaintiffs

NEEDHAM, KEPNER & FISH, LLP

Dated: 9/22/21

By: 
Anne J. Kepner, Esq.
Attorney for Plaintiffs

EXHIBIT A

<p>Plaintiffs represented by Farsad Law Office, PC: Bich Loan Nguyen Danny Huynh Edward Barr Huynh Properties Jeffrey Kolb Juliann Sachs Lamson Bui Ninh Quan Phuong Luu Steven Luu Valeriy Kazimirov Van T. Hoang</p>	<p>Plaintiffs represented by Law Offices of John K. Crowley: Bryan N. Rodriguez Charles Lewis Powell Gary Johnson Jean Marie White Jolene Powell Michelle C. Hernandez Predrag Miskin Richard Stuart Holden Sandra Ellen Moll Ulrika Teresa Caballero</p>
<p>Plaintiffs represented by Jeffrey B. Hare, APC and Needham Kepner & Fish LLP: Anna Heckman Barbara McCreight Donald Lieberman Eric Heckman Jorge Gonzalez Laura Chin Luis Juarez Norwita Powell Patricia Long Preston Powell Rosa Gonzalez</p>	<p>Plaintiff represented by Needham Kepner & Fish LLP: Mary Hegland</p>

Plaintiffs represented by Law Office of Amanda Hawes and Needham Kepner & Fish LLP:

A. Thi Nguyen
Aaron Madrigal
Adrian Olivera
Adriana Luz Buenrostro
Anahi Garcia
Andre Griffin
Andy Nguyen
Angel Lopez
Angelha Huynh
Anh Thi Huynh
Anna Daisy Vasquez
AnnaLisa Wilson
Anne Loera
Anthony Do
Antonio Meza
Armando Lopez
Baltazar Serrato
Bang Hai Nguyen
Bao Le
Beatriz Avilez
Ben Cambare
Blanca Lopez
Blanca Montano
Brenda Bronze
Brendan Lavelle
Brian Vann
Caitlin McElligott
Carlos Angel-Cervantes
Carmen Grota
Carol Segura
Cary Gould
Catherine Lavelle
Chanh La
Chau Van Dang
Cheryl Johnson
Christina Olivo
Chrystie Mariano
Claudia Regalado
Claudia Zepeda

Concepcion Romero
Consuelo Frias
Consuelo Nelson
Crystal Hernandez
Cuc Truong
Danh Cong Truong
Daniel Monroy
Daniel Quan
Danny Huynh
Dau Vu
David Goode
Delfina Munoz
Dieu Le
Du Thi Nguyen
Dulce Mata
Duong Thi Thuy Bui
Duy Ngoc Nguyen
Eang Lor
Edward Speck
Edwin Madrigal
Elizabeth Quintana
Elizabeth Sevilla
Elvie Cleodoro
Elyana Yanes
Erik Loera
Erika Robles
Erin Benavides
Esaul Perez
Florentino Hernandez
Francisco Romero
Gabriel Bravo
Gabriel Jennings
German Rocha
Giong Truong
Gordon Smith
Griselda Madrigal
Heng Chhun
Heriinda Espitia
Hien Nguyen

Hoang Huy Pham
Hong Mai
Hot HUU Nguyen
Hung Phi Nguyen
Jepte de Alba
Jessica Aguilera
Jill Case
Joe Prum
Joe Ramirez
John Flores
John Garcia
John Soares
Jolene Noel
Jorge Casteneda
Jose Amargo
Jose Perez
Jose Villalobos
Josiah Benavides
Juanita Wilson
Julie Vu
Justin Madrigal
Kalvin Truong
Kea Prum
Kevin Madrigal
Lang Tang
Laura Peralta
Le Thi Nguyen
Leticia de la Cruz
Linda Rocha
Lorena Ramirez
Luis Castaneda-Pelayo
Luis Ruiz
Magdalena Martinez
Manon Demers
Manuel Grota
Manuel Ramirez
Maria Amargo
Maria Bravo
Maria Bravo

Plaintiffs represented by Law Office of Amanda Hawes and Needham Kepner & Fish LLP, cont'd:

Maria de la Cruz
Maria Elena Romero
Maria Hernandez
Maria Ponce
Maria Ramirez
Marie Casteneda
Mark McClure
Mary Fernandez
Mary Hang Dao
Mima Alcantara
Misael Vela
Mitzi McElligott
Mong Van Fousek
Nam Thanh Nguyen
Nang Van Tran
Nathaniel Alcantara
Nen Van Ho
Ngoc Anh Thi Vu
Ngoc Anh Tran
Nhung Truong
Nhut Nguyen
Olga Perez
Olívn Zelaya
Patricia Gummo
Patricia Mendoza
Patricia Reguerin
Patrick Falconio
Paulino Madrigal
Pearl Monroy
Pedro Najjar
Phung Nguyen
Phuong Lan Phu

Quanh Thi Le
Ramon Machuca
Raymond Behvand
Raymond Fiddler
Ren Srey
Renay Falconio

Renee Souza
Reyna Carrillo
Richard Sawatzky
Robert Souza
Roberto Araujo
Roma Smith
Rosa Mora
Rosario Solis
Ruben de la Cruz
Ruben Morales
Samantha Benavides
Samantha Lopez
Samuel Gummo
Sandi Taylor
Sandra Lopez
Sang Trang
Sau Lan Ng
Saul Guzman
Sean McElligott
Shannon George
Silvia Barragan
Sinia Ellis
Sokho-Kea Prum
Sosinat Outry
Sue Evanicky
Sue Frey
Suonh Ly
Sylvia Rios-Ibarra
Tai Huynh
Tam Thi Le
Teresa Martinez
Teresa Pedrizco
Teresa Sanchez
Tereso Martinez
Thanh Ho
Thanh Nguyen
The Ngoc Vu
Theany Lun
Thi Paul Yos

Thiep Pham
Thoa Kim Tran
Thuy Duong
Tien Thi Thuy Hoang
Tinh Pham
Tommy Nguyen
Tracy Le
Tracy Oyuela
Trang Vu
Tri Huu Le
Trung Duc Tran
Trung Thanh Nguyen
Tuan Huynh
Tuan Ngoc Mai
Tuan Quoc Huynh
Tuyet Ngoc Nguyen
Ulrika Caballero
Uon In
Van Thu Tran
Vickie Vann
Wilson Abrego
Xuan Mai Quan
Yadira Yolanda Garcia
Yemi Montiel
Yolanada Reynoso
Yolanda Najjar
Yulia Sawatzky