

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Gradetech Inc. ("Plaintiff") and the City of San José ("CITY") (collectively referred to as the "Parties"). This Agreement is to be effective as of the date it is approved by the San José City Council in open session ("**Effective Date**").

WHEREAS Plaintiff filed an action against the City of San José, on or about March 21, 2018, in the Superior Court, County of Santa Clara, case no. 18CV325319 entitled *Gradetech Inc. v. City of San Jose* ("Action");

AND WHEREAS City filed a cross-complaint against Gradetech Inc. entitled *City of San Jose v. Gradetech Inc.* ("Cross-Action") on or about June 29, 2020;

AND WHEREAS the City of San José has denied the allegations and the Causes of Action asserted against it, and Gradetech has denied the allegations and the Causes of Action asserted against it;

AND WHEREAS, the Parties now mutually desire to resolve the Action without further litigation and, therefore, undertake to settle the Action in its entirety by entering into this Agreement pursuant to which the Parties release and extinguish on a final basis all claims and potential claims arising out of, or in any way connected with all matters alleged, or which could have been alleged, in the pleadings comprising the Action; and

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which the Parties alleged, or could have alleged, in the Action and Cross-Action arising from or based on any act or omission by the CITY, CITY Departments, CITY elected officials, and all current and former CITY employees, and any act or omission by Plaintiff or its employees or agents, whether acting in their official or individual capacities arising out the construction of the Lake Cunningham Bike Park.

2. Consideration. In consideration for Plaintiff's agreements, promises, covenants, releases, waivers, and dismissal of the Action, stated herein CITY shall pay the sum of six hundred and seventy-five thousand dollars (\$675,000) in the form of a check, payable as instructed by Plaintiff, who shall provide a W-9 prior to issuance of payment.

3. Dismissal of Claims. Plaintiff shall dismiss the Complaint with prejudice within ten (10) days after receipt of the settlement payment and City shall file a

dismissal with prejudice of its cross-complaint within ten (10) days of the entry of dismissal of the Complaint.

4. Release. Plaintiff and Plaintiff's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all past and present employees of CITY, whether or not the employee was named individually in the Action. For purposes of this Agreement, CITY includes, without limitation, all CITY Departments and Agencies, the CITY Council, all past and present elected and appointed officials, CITY employees, and any person or entity to which CITY may owe an obligation of contractual or implied indemnity relating to a released claim. Plaintiff, on the one hand, and City, on the other, for themselves and their respective past and present assigns, heirs, executors, and administrators, including but not limited to the City of San José and its past and present employees, agents, predecessors, successors, consultants, attorneys, and assigns acting on its behalf with respect to the Incidents, all of whom expressly deny any liability, hereby release and forever discharge each other from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. The release includes, without limitation, any and all actions, causes of action, 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 in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action.

5. Release of Unknown Claims. The Parties understand this Agreement is 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 which could have been asserted in the Action, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Action (the "Released Matters"). The Parties acknowledge and understand 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.**

Initials SR

The Parties represent that they have read, reviewed with counsel, and understood Civil Code Section 1542, and that each Party hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Action based on facts found to be different from the facts believed to be true at the time this Settlement

Agreement was executed.

6. Liability Not Admitted. The Parties acknowledge and agree that 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 of wrongful conduct, or liability, or responsibility of any kind, or a concession by any person, that any allegation asserted in the claims alleged in the Action is valid.

7. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

8. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Action.

9. Representations. Each person executing this Settlement Agreement hereby warrants that they have full authority to do so. Plaintiff further represents and warrants that Gradetech, Inc. is the sole and rightful owner of the claims asserted in the Action; that it has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no Liens on the settlement proceeds have been asserted or exist.

10. Responsibility for Liens. Plaintiff agrees to hold the Defendants harmless with regard to third-party claims or liens arising from Plaintiff's claims.

11. 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.

12. 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.


13. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

14. 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, 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.

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

GRADETECH INC.

Dated: 04/07/2026

By:   
Sam Rivinius

Authorized Agent on behalf of Gradetech Inc.

CITY OF SAN JOSE

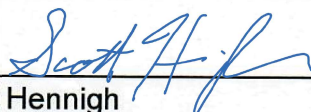
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
SUSANA ALCALA WOOD  
City Attorney as Authorized Agent for  
the City of San José

APPROVED AS TO FORM:

HENNIGH LAW

Dated: 04/07/2026

By:   
Scott Hennigh

Attorney for Plaintiff

CITY OF SAN JOSE

Dated: 15/04/2026

By: *Brian Kreger*

Brian S. Kreger  
Sr. Deputy City Attorney

Attorney for City of San José