

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between SARAH ANDERSON, JOANA CRUZ, URBAN HABITAT PROGRAM, and HOUSING CALIFORNIA (“Petitioners”) and the CITY OF SAN JOSE on behalf of itself and all City employees named, or who could have been named, in their official and individual capacities (hereafter collectively, the “City”). Petitioners and the City are collectively referred to as “Parties” in this Agreement. The Effective Date of this Agreement shall be the date of execution by the City San Jose after approval by the City Council in open session.

WHEREAS, Petitioners filed an action against the City on or about July 21, 2016 in Superior Court for the County of Santa Clara, case number 16CV297950, entitled Sarah Anderson, Joana Cruz, Urban Habitat Program, and Housing California v. City of San Jose, San Jose City Council, and Does 1-50 (“Action”);

WHEREAS, Petitioners’ action sought a writ of mandate requiring the City to fully comply with Government Code section 54220 et seq. (the “Surplus Land Act”) and section 65008; declaratory relief that the City is required to comply with Government Code section 54220 et seq.; and a declaration that the City violated the Fair Employment and Housing Act;

WHEREAS, on December 21, 2016, the Superior Court sustained the City’s demurrer to Petitioners’ causes of action under the Surplus Land Act and subsequently denied Petitioners’ Motion for Reconsideration of that decision;

WHEREAS, on April 4, 2017, the City answered the Petition’s two causes of action remaining following the Superior Court’s decision on the City’s demurrer;

WHEREAS, on July 31, 2017 Petitioners dismissed their Petition, pursuant to the Parties' stipulation, to obtain a final judgment;

WHEREAS, the Superior Court entered judgment in the City's favor on September 5, 2017;

WHEREAS, Petitioners filed a Notice of Appeal on October 25, 2017;

WHEREAS, following briefing and oral argument, on November 26, 2019 the Court of Appeal reversed the judgment of the Superior Court;

WHEREAS, the Supreme Court on March 11, 2020 denied the City's Petition for Review;

WHEREAS, on June 22, 2020 Petitioners filed their Memorandum of Costs on Appeal;

WHEREAS, the Superior Court on August 28, 2020, entered Judgment Granting Petition for Writ of Mandate, pursuant to the Parties' stipulation;

WHEREAS, pursuant to stipulations filed September 21, 2020 and November 25, 2020, the Parties agreed to extend the time for Petitioners to move for attorneys' fees until March 8, 2021;

AND WHEREAS, the Parties now agree to settle the issues of attorneys' fees and costs incurred in the Superior Court, the Court of Appeal, and the Supreme Court in connection with the above-entitled Action;

NOW THEREFORE, the Parties agree:

1. Petitioners hereby agree to settle all claims they have arising from attorneys' fees and costs incurred related in any way to the Action by accepting the amount of \$590,000.00 (five hundred ninety thousand dollars) and costs in the amount

of \$1598.42 (one thousand five hundred ninety-eight dollars and forty-two cents), payment of which shall resolve any and all such claims.

2. The City shall pay these amounts within 30 days of the effective date of this Settlement Agreement. The payment shall be made payable to Bay Area Legal Aid, attention Meiyi Wu, 1735 Telegraph Ave, Oakland, CA 94612.

3. In consideration for this payment, Petitioners will withdraw their Memorandum of Costs on Appeal within ten days after service of the signed Agreement and will not file a motion for attorneys' fees or memorandum of costs in the Superior Court.

4. Petitioners acknowledge that they or their attorneys might hereafter discover facts different from or in addition to those which they or their attorneys now know or believe to be true with respect to any of the matters herein released and agree that this instrument shall remain in effect and be binding upon the parties notwithstanding any such different or additional facts. 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, reviewed, 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 relating to, arising out of, or any way connected to the matter based on facts found to be different from the facts believed to be true at the time this Agreement was executed.

5. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of, or in any way connected with attorneys' fees and costs related to the Action.

6. Apart from the payment identified in paragraph 1, the Parties shall bear their own costs related to the Action, including attorneys' fees, and any other fees and expenses incurred in connection with this Agreement.

7. 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 Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of Petitioners' claims for attorneys' fees and costs in this Action.


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

9. Each person executing this Agreement on behalf of any other person or persons hereby warrants that he or she has full authority to do so.

10. The Agreement may be signed electronically and in counterparts.


PUBLIC INTEREST LAW PROJECT

Dated: January 21, 2021

By:   
VALERIE FELDMAN

BAY AREA LEGAL AID

Dated: January 21, 2021

By:   
LISA NEWSTROM

PUBLIC ADVOCATES, INC.

Dated: January 21, 2021

By:   
SAMUEL TEPPERMAN-GELFANT

WEIL, GOTSHAL & MANGES, LLP.

Dated: January 21, 2021

By:   
ADRIAN PERCER

CITY OF SAN JOSE

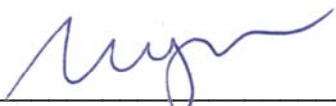
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
NORA FRIMANN  
City Attorney

APPROVED AS TO FORM:

CITY OF SAN JOSE

Dated: Jan. 21, 2021

By:   
MAREN J. CLOUSE  
Chief Deputy City Attorney