

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made by and between NABIL HAIDAR ("Plaintiff" or "HAIDAR"), and the CITY OF SAN JOSE (hereafter "CITY"). HAIDAR and CITY are collectively referred to as "Parties" in this Agreement.

WHEREAS, Plaintiff filed a lawsuit on September 24, 2018 entitled *Nabil Haidar v. City of San Jose*, et al. in the Superior Court for the State of California, County of Santa Clara, case number 18CV335617 (the "Lawsuit") against the City of San Jose, San Jose Police Department, Does 1-50, and Individual Defendants Edgardo Garcia, Johnson Fong, Robert Labarbera, Anthony Mata, Stewart Davies, and Thomas Barnard;

WHEREAS, Plaintiff dismissed his claims against Individual Defendants Garcia, Fong, and Davies;

WHEREAS, CITY and the Individual Defendants have denied, and continue to deny, all allegations by HAIDAR of illegal, discriminatory or otherwise actionable conduct. CITY strives to maintain a workplace free of discrimination and toward that end, has a policy governing all CITY employees (including those in the Police Department), which includes a prohibition on any and all discrimination in the workplace;

WHEREAS, HAIDAR retired from CITY employment effective December 24, 2022;

WHEREAS, the Parties desire to resolve fully and finally any and all claims and disputes, including, but not limited to, the claims raised in the Lawsuit, workers' compensation claims, and any and all known and unknown claims related to HAIDAR's employment with CITY; and

WHEREAS, Plaintiff desires to dismiss the Action with prejudice,

NOW THEREFORE, the Parties agree as follows:

1. **Release.** HAIDAR hereby releases and forever discharges CITY and all of its divisions, affiliates, related entities, its past and present elected officials, appointed officials, officers, directors, agents, attorneys, insurers, representatives, employees, successors and assigns (hereinafter "Releasees"), from any and all claims, of any and every kind, nature and character, known or unknown, foreseen or unforeseen, based on any act or omission related to his employment with CITY, including, but not limited to, any claims arising out of his offer of employment, employment, or termination of his employment with CITY. The matters released include, but are not limited to, any claims under federal, state or local laws, including claims arising under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the California

Family Rights Act, the Age Discrimination in Employment Act of 1967 ("ADEA") as amended, including but not limited to, the Older Workers' Benefit Protection Act ("OWBPA"), other than claims relating to the validity of this Agreement under the ADEA as amended by the OWBPA, the Public Safety Officers Procedural Bill of Rights Act under California Government Code section 3300 et seq., workers' compensation law, any common law, tort or contract or statutory claims, and any claims for attorneys' fees and costs.

2. Waiver of Unknown Claims. It is further understood and agreed by the Parties that as a condition of this Agreement, HAIDAR hereby expressly waives and relinquishes any and all claims, rights or benefits that he may have under California Civil Code section 1542. This waiver does not apply to or affect any benefits or compensation HAIDAR has a right to receive as part of an established City of San Jose retirement plan, including disability retirement, if any. Civil Code section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or his favor at the time of executing the release which if known by him or his must have materially affected his or his settlement with the debtor."

Initials: _____

3. No Further Legal Action. Upon receipt of all payments provided to HAIDAR and his attorneys, the Parties agree to not take any further legal action in this matter, except as necessary to enforce this Agreement. The Parties agree to request that trial of this matter be postponed pending completion of terms of this Agreement. However, the Parties agree that the Santa Clara Superior Court may maintain jurisdiction of this matter pending completion of terms of this Agreement so that, if not all terms are completed, this Agreement will not be in effect, and the Lawsuit may proceed. Each party shall be responsible for bearing its own costs, expenses, and attorneys' fees incurred in connection with the Lawsuit and the completion of this settlement.

4. Non-Admission of Liability. The Parties acknowledge that they and the Individual Defendants each deny any wrongdoing whatsoever in connection with one another and that the settlement agreement made pursuant to this Agreement is made solely for the purpose of compromising disputed claims and avoiding the time, expense, and uncertainty of further litigation. It is expressly understood and agreed that nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of CITY or any Individual Defendant.

5. Release of Workers' Compensation Claims. HAIDAR has agreed to, and the Parties are in the process of executing, a Compromise and Release, which will be filed in relation to Workers' Compensation Appeals Board Case Numbers ADJ12156967 and ADJ12156943 ("Compromise and Release"). The Compromise

and Release will release any and all claims that HAIDAR may have for workers' compensation benefits as a result of injuries allegedly arising out of his employment with CITY. The Parties acknowledge that the Compromise and Release of such claims must be approved by the Workers' Compensation Appeals Board to be effective. This Agreement is contingent upon that approval and the effective release of HAIDAR's claims for workers' compensation benefits. If the Compromise and Release is not approved by the Workers' Compensation Appeals Board, the CITY will not execute this Agreement, and it shall have no effect.

6. San Jose City Council Approval. This Agreement requires San Jose City Council approval in open session before it can be executed on behalf of CITY. The Parties acknowledge that San Jose City Council will consider this Agreement only following approval of the Compromise and Release by the Workers' Compensation Appeals Board, if approval is given.

7. Payment to HAIDAR. Within 30 days of the Effective Date of this Agreement, CITY shall pay to HAIDAR a check in the amount of \$400,000 issued to Nabil Haidar. The check shall be delivered to Randall Strauss, Gwilliam Ivary Chiosso Cavalli & Brewer, APC, 1999 Harrison Street, Suite 1600, Oakland, CA 94612. CITY will issue applicable 1099 Form(s) to HAIDAR for this payment.

8. Acknowledgement of No Other Amounts Due. HAIDAR acknowledges that, except as expressly provided for in this Agreement, he has been paid any and all salary, bonuses, commissions or other amounts and damages, costs, expenses, and attorneys' fees incurred in connection with the Lawsuit and the completion of this settlement he claims are due from Releasees, and that no other amounts are due to HAIDAR from Releasees as of the date of this Agreement. This Agreement does not apply to or affect any benefits or compensation HAIDAR has a right to receive as part of an established City of San Jose retirement plan, including disability retirement, if any.

9. Dismissal of Claims. HAIDAR and his attorneys shall dismiss the Lawsuit with prejudice within seven (7) business days after receiving payment of the settlement amount.

10. HAIDAR'S Right to Revoke Release of ADEA Claims.

HAIDAR understands and agrees that he:

- (a) Has a full twenty-one (21) days after receipt of this Agreement within which to review and consider the Agreement;
- (b) Is advised to consult with an attorney which he may freely choose prior to executing this Agreement;
- (c) Has carefully read and fully understands the provisions of this Agreement;

- (d) Is, through and in accordance with the terms set forth in this Agreement, releasing Releasees from any and all claims he has or may come to have against the Releasees;
- (e) Is knowingly and voluntarily agreeing to all the terms set forth in this Agreement;
- (f) Has seven (7) days within which he may revoke his release of claims under the ADEA by delivering to Maren Clouse, Office of the City Attorney, 200 East Santa Clara Street, San Jose, CA 95113, written notice of revocation of release of ADEA claims no later than seven (7) days after this Agreement's execution by both HAIDAR and CITY;
- (g) That, because of this revocation period, this Agreement shall not become effective or enforceable until the eighth (8th) day following the date on which this agreement has been executed by both HAIDAR and CITY ("Effective Date");
- (h) Is not waiving any rights or claims under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.) that may arise after the date this Agreement is executed; and
- (i) Is, by reason of this Agreement and the release of claims herein, receiving from CITY good and sufficient consideration in addition to anything of value to which he is already entitled.

Initials: _____

11. California Law Applies. This Agreement, in all respects, shall be interpreted, enforced and governed by and under the laws of the State of California.

12. Successors and Assigns. It is expressly understood and agreed by the Parties that this Agreement and all of its terms shall be binding upon each Party's representatives, heirs, executors, administrators, successors and assigns.

13. Drafting. The Parties agree that this Agreement shall be construed 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.

14. Execution of Additional Documents. The Parties agree to execute such other, further, and different documents as reasonably may be required to effectuate this Agreement.

15. 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.

HAIDAR acknowledges that he has been specifically advised by counsel of the consequences of the Release he has executed.

16. Integration. This Agreement constitutes a single, integrated, written contract, expressing the entire agreement between the Parties as to settlement of the Lawsuit. It supersedes all prior agreements between the Parties on that matter. The Parties represent and warrant that they are not relying on any promises or representations that do not appear written herein, except those contained in the Compromise and Release. The Parties further understand and agree that this Agreement can be amended or modified only by a written agreement, signed by all of the Parties hereto.

17. 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.

18. Counterparts. This Agreement may be executed in separate counterparts and each such counterpart shall be deemed an original with the same effect as if all Parties had signed the same document.

19. Authority to Enter Into Agreement. Each Party represents and warrants that, as of the date of the execution of this Agreement, he or it has the right and authority to execute this Agreement, and he or it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims or demands relating to any right surrendered by virtue of this Agreement. Each Party further represents and warrants that he or it has had the opportunity to consult and has consulted legal counsel in connection with the negotiation and execution of this Agreement. Each of the Parties and his or its signatory represents that the signatory is either a Party or a business representative or assignee of a Party, and is fully authorized to execute this Agreement on behalf of the party for whom he or she signs.


20. Enforceability. The parties agree that this Agreement is subject to the provisions of Code of Civil Procedure section 664.6.

21. Facsimile Signature. Facsimile signatures on this Agreement shall be treated as original signatures.

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

PLEASE READ THIS SETTLEMENT AGREEMENT CAREFULLY. IT INCLUDES A
RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

Dated: 8-22-23



NABIL HAIDAR
Plaintiff

Dated: _____

CITY OF SAN JOSE

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

APPROVED AS TO FORM:

Dated: 8/24/2023

GWILLIAM IVARY CHIOSSO CAVALLI &
BREWER, APC

By: 

RANDALL STRAUSS
Attorney for Plaintiff
NABIL HAIDAR

Dated: _____

CITY OF SAN JOSE

By: _____
MAREN J. CLOUSE
Chief Deputy City Attorney
Attorney for CITY OF SAN JOSE