

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement Release and Waiver Agreement ("Agreement") is made and entered into by and between Yanira Hernandez, individually as Plaintiff, and the City of San Jose on behalf of itself and its present and former employees whether acting in their official or individual capacities (hereafter collectively, the "City"). Yanira Hernandez 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.

RECITALS

WHEREAS, Yanira Hernandez is the Plaintiff in a lawsuit pending in the Superior Court of California, County of Santa Clara, case number 114CV270467, entitled *Yanira Hernandez v. City of San Jose, Geoffrey Evatt Graves, Marriott International, Inc. dba Towneplace Suites San Jose/Cupertino and Does One through Fifty, inclusive.* (hereafter, the "Action"); and,

WHEREAS, the Parties now undertake through this Agreement to settle the Action in its entirety, pursuant to which Yanira Hernandez will release and extinguish on a final basis any and all claims against the City and all individuals and entities described in Paragraph 1 below, arising out of or in any way connected with the matters and claims which are the subject of the Action as more fully described and alleged in the First Amended Complaint filed on March 19, 2015 in case number 114CV270467, (the "Incident");

NOW, THEREFORE, in consideration of the promises, undertakings and covenants herein, and for good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope of Settlement. This Agreement will settle, compromise, and forever discharge all claims by Yanira Hernandez of any and every kind, nature and character, arising from or based on any act or omission by the City of San Jose, the San Jose Police Department, and all City present and former employees who could have been named in the Action. Each of the parties has obtained the advice of legal counsel prior to entering into this Release. 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 Yanira Hernandez' agreements, promises, covenants, releases and waivers stated in this Agreement, the City of San Jose shall pay the sum of [] in the form of a check payable to Yanira Hernandez and Farling, Hecht & Davis, LLP. Said payment shall compensate Yanira Hernandez for any and all damages claimed, or which she could have claimed arising from or related in any way to the matters alleged in the Action. In consideration of said payment, Yanira Hernandez shall dismiss the Action with prejudice and withdraw, waive and release any and all

Two Hundred TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00)
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claims for other damages, including any and all claims and/or rights to recover costs and attorney's fees incurred in the Action.

3. Dismissal of Claims. Yanira Hernandez and her attorneys shall dismiss the Action with prejudice within three (3) business days after receiving payment of the settlement amount.

4. Release. Yanira Hernandez, for herself and her successors, assigns, attorneys and agents, hereby generally releases and forever discharges the City of San Jose and all individuals named, or who could have been named in the Action (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 officials, City employees, and any person or entity to which the City may owe an obligation of contractual or implied indemnity relating to a released claim. 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. Yanira Hernandez represents she understands and agrees 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 which could have been asserted, in the Action (the "Released Matters"). Yanira Hernandez acknowledges that she has read and reviewed with counsel and understands section 1542 of the California Civil Code, which provides as follows:

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

As to the Released Matters, Yanira Hernandez expressly waives and relinquishes any and all rights which she may have under, or which may be conferred on her 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 she may lawfully waive such rights or benefits pertaining to the Released Matters. In connection with such waiver Yanira Hernandez also acknowledges that she or her attorneys may hereafter discover claims or facts in addition to or different from those which she knows or believes exist with respect to the Released Matters. Yanira Hernandez understands by signing this Agreement that she will fully, finally, and forever settle and release all of the disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist in future, or heretofore existed arising out of or in connection with the Released Matters.

asserted by or on behalf of Medicare or Medi-Cal, for Yanira Hernandez' medical or psychological treatment or counseling and/or all expenses, past or future, that she may have incurred or will incur arising from or related in any way to the matters alleged in the Action. Yanira Hernandez and her attorneys jointly and severally agree to indemnify and hold the City harmless with regard to any liens or claims made against, or as a result of, this settlement.

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. Yanira Hernandez understands and agrees that she is waiving significant legal rights by signing this Agreement and represents that she has entered into this Agreement voluntarily, after consulting with her attorneys, with a full understanding of and in agreement with all of its terms.

15. Native Language Translation. Due to Yanira Hernandez' limited use and understanding of English, Yanira Hernandez and her attorneys acknowledge that it is solely her responsibility and the responsibility of her attorneys to take all actions necessary, including but not limited to obtaining a translation of this Agreement in her native language, for Yanira Hernandez to have a full and complete understanding of all of the terms and provisions in this Agreement. By signing this Agreement Yanira Hernandez acknowledges that she has obtained a full and complete understanding in her native language of all terms and provisions in the Agreement.

16. 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.

17. 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.

18. Consultation with Counsel. The Parties and each of them acknowledge 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. Yanira Hernandez acknowledges she has received advice from her counsel.

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6. Covenant Not to Challenge Enforceability. Yanira Hernandez does hereby covenant, promise and agree that she 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 attorney's 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, or any other party, of liability or responsibility of any kind, or a concession by any party that assertions or allegations regarding the claims alleged in the Action 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 that party believes them to be.

10. 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.

11. Representations. Yanira Hernandez represents and warrants that she has not assigned any claim or claims that are the subject of this Agreement; that no liens on the settlement proceeds have been asserted or exist; that she is the sole and rightful owner of said claims; and, that she is authorized to execute this Agreement.

12. Responsibility for Liens. As of the date of this Agreement, the parties have no notice of any liens arising from the matters that are the subject of the Action. If any liens are asserted, Yanira Hernandez and her attorneys shall pay or otherwise satisfy or resolve any outstanding liens or claims, including without limitation, liens or claims

19. 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.

20. 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.

AGREED AND ACCEPTED:

Dated: November 19, 2019



Yanira Hernandez

RICHARD DOYLE, City Attorney

Dated: _____, 2019

By: _____
Attorney for CITY OF SAN JOSE

Approved as to Form:

Dated: November 19, 2019

ROGER D. HECHT


FARLING, HECHT & DAVIS, LLP
Attorney for Yanira Hernandez

Dated: 12.12, 2019

RICHARD DOYLE, City Attorney

By: 

ARDELL JOHNSON
Chief Deputy City Attorney
for CITY OF SAN JOSE