

SETTLEMENT AGREEMENT, GENERAL RELEASE AND

COVENANT NOT TO SUE

THIS SETTLEMENT AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE (“Agreement”) relating to claims against the City and County of San Francisco Municipal Transportation Agency (“SFMTA” or “Agency”) and the City and County of San Francisco (“City”), is made by and between [REDACTED] (“Complainant”) and the City.

WHEREAS, Complainant is employed by the City as a Classification [REDACTED]

[REDACTED], with the SFMTA; and

WHEREAS, Complainant claims that during and as a result of the Complainant’s employment with the City, Complainant suffered damages on account of wrongful conduct by the SFMTA and the City, including without limitation, employment discrimination in violation of Government Code section 12940(a) *et seq.*, and retaliation in violation of Government Code section 12940(m)(2) and 12940(h); and

WHEREAS, Complainant filed Charge No. [REDACTED] with the United States Equal Employment Opportunity Commission (“EEOC”) (the “Proceeding”); and WHEREAS, Complainant filed the following in San Francisco Superior Court: [REDACTED] *v. City and County of San Francisco, Metropolitan Transit Authority*, Case No. [REDACTED] (the “Action”); and

WHEREAS, the parties now desire to avoid the expense, burden and delay of litigation and without admitting or acknowledging any liability, to resolve all of the Complainant’s claims, as well as the Action, the Proceeding, and any and all lawsuits and claims brought by Complainant against the City, fully and forever in consideration of the promises contained herein;

[REDACTED] *v. CCSF; SFMTA*, Case No. [REDACTED]

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In exchange for the promises by plaintiff in this Agreement, including but not limited to the releases in Paragraph 2, and complete settlement of Complainant's claims, the Action and the Proceeding, and subject to the condition in precedent paragraph 4, the City will pay the total amount of five hundred and two thousand two hundred and forty-eight dollars (\$502,248.00) (the "Settlement Amount") allocated as follows:

a. Four Hundred and Seventy-Nine Thousand Seven Hundred Dollars and Fifty-Two Cents (\$479,700.52) of the Settlement Amount will be considered and treated as general damages for personal injury, including allegations of emotional injury. This amount will not be considered or treated as back wages. No taxes, deductions or withholdings will be deducted from this amount. In the event the appropriate taxing authorities should determine contrary to the intention of the parties, that the City should have withheld the amounts for tax purposes, Complainant agrees to indemnify the City for any and all tax liabilities which may result from such failure to withhold. This amount shall be paid by check and made payable to "[REDACTED]" and delivered to Complainant at [REDACTED] CA [REDACTED];

b. Twenty-Two Thousand Five Hundred Forty-Eight Dollars and Fifteen Cents (\$22,548.15) of the Settlement is payment for compensatory time accrued during the relevant time of the claims. This amount will not be considered or treated as back wages. No taxes, deductions or withholdings will be deducted from this amount. In the event the appropriate taxing authorities should determine contrary to the intention of the parties, that the City should have withheld the amounts for tax purposes, Complainant agrees to indemnify the City for any and all tax liabilities which may result from such failure to withhold. This amount shall be paid

by check and made payable to "[REDACTED]" and delivered to Complainant [REDACTED]

[REDACTED], CA [REDACTED];

2. In addition to paying the Settlement Amount, and subject to current and future operational needs of the SFMTA, the City agrees to appoint Complainant to the following position: [REDACTED], permanent civil service (PCS) [REDACTED], or to a similarly situated position within the SFMTA. The City agrees to make the appointment within one month of the date this Agreement is fully executed. The appointment is subject to future vacancies and may include appointment to an exempt position, should position [REDACTED] [REDACTED] be eliminated as a part of the Mayor's approved Fiscal Year 2020/2021 budget. The City agrees to offer the right of first refusal to Complainant.

3. a. In consideration of the Settlement Amount and for other promises in this Agreement, and for other good and sufficient consideration, Complainant, for Complainant, Complainant's heirs, executors, administrators, assigns and successors, fully and forever releases and discharges the City, its constituent departments (including the Agency), commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers, directors, trustees, agents, employees and assigns (collectively "Releasees") from any and all liabilities, claims, demands, contracts, debts, damages, acts of omissions, obligations and causes of action of every nature, kind and description, in law, equity or otherwise, whether or not now known or unknown, which heretofore do or may exist, in any way arising out of, connected with or related to Complainant's employment with the City, the Proceeding, the Action, and the negotiation, terms and execution of this Agreement up to and including the date Complainant signs this Agreement (the "Signature Date"). The release in this Paragraph 3 includes, but is not limited to, release of any matter, cause or thing in any way arising out of, connected with or

related to the Action and the Proceeding, and any and all past, pending or contemplated lawsuits; claims; EEOC, DFEH or other administrative charges; and grievances brought by or on behalf of Complainant against any Releasee not set forth herein, in any way arising out of, connected with or relating to Plaintiff's employment within the City through the Signature Date.

b. The release contained in this Paragraph 3 is a complete and general release that will forever bar Complainant from pursuing any released claims or rights against any Releasee. Complainant covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings against any Releasee. However, this Agreement does not prevent Complainant from responding as required by law to any court order, subpoena, or government investigation (such as by the EEOC or similar agency) or providing other disclosures as required by law in any action against Releasees, or from initiating or participating in proceedings about matters other than the Released Claims. Complainant understands and agrees that Complainant is waiving any rights Complainant may have had, now has, or in the future may have to pursue any and all remedies available to Complainant under any cause of action or in any way arising out of, connected with or related to the Released Claims. Such causes of action shall include without limitation claims of wrongful discharge, defamation, invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, violation of the provisions of the California Labor Code, the City's Charter, Administrative Code, ordinances, Civil Service Commission Rules and other City enactments, the Meyers-Milias-Brown Act, violation of any memoranda of understanding covering Complainant, and claims under Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with

Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the California and United States Constitution, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Civil Rights Acts of 1866, and any other laws and regulations relating to employment or to discrimination.

c. Complainant understands and expressly agrees that the release contained in this Paragraph 3 extends to all release claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

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

4. In further consideration of the foregoing, Complainant hereby agrees, acknowledges, and recognizes that this Agreement is a “no fault” settlement in light of disputed claims, and that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by the Complainant or the City, which liability or wrongdoing is expressly denied by both parties.

5. Complainant represents that either (a) there are no existing liens or partial liens in existence, including without limitation any attorney’s fees, medical reimbursement, unemployment or disability compensation liens, which attach to the Action, the Proceeding, the amounts specified in this Agreement, or to any recovery paid to Complainant in connection with the settlement of the Action or the Proceeding, nor is any person or entity entitled to establish a

lien for any payment or payments they have made or will make to Complainant or on behalf of Plaintiff as a consequence of any of the matters arising out of, connected with or relating to Complainant's employment with the City, the Action of the Proceeding, or (b) to the extent there are any such liens, Complainant will pay and retire all such liens. Complainant agrees to defend, indemnify and hold harmless the City against any and all claims by any person or entity purporting to hold any lien, interest, or other claim, whether for medical care, unemployment and/or disability compensation, attorney's fees, or otherwise, involving Complainant in any way arising from, or connected with or related to Complainant's employment with the City, the Action or the Proceeding.

6. Complainant represents and warrants that Complainant has full power to make the releases and agreements contained herein. Complainant expressly represents and warrants that Complainant has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Complainant acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement. Complainant agrees to indemnify the affected Releasee for any claims brought against any Releasee by purported assignees of Complainant, including costs of judgment and reasonable attorney's fees.

7. Complainant agrees that within three (3) court days of receiving the Settlement Amount, Complainant will dismiss the Action in its entirety and with prejudice by filing a "Dismissal with Prejudice." Complainant agrees to serve an endorsed filed copy of the dismissal on City's counsel. In addition, Complainant represents that either (a) there are no outstanding DFEH, EEOC, or other administrative charges that are or may be pending relating to Complainant's employment with the City through the Signature Date, or (b) to the extent any

such charges have been or are filed by the Complainant or on the Complainant's behalf, Complainant agrees to dismiss or withdraw any such charges, with prejudice. Complainant expressly acknowledges that the list of outstanding matters may not be exhaustive, but the Complainant nevertheless agrees to dismiss with prejudice all litigation, claims, grievances, and administrative charges of any nature, kind and description against and Releasee that arise out of any right or claim released in this Agreement, whether or not listed in this Agreement.

8. All parties shall bear their own attorney's fees, legal expenses and costs.

9. Complainant acknowledges that this Agreement is contingent upon approval by the SFMTA Board of Directors and that this Agreement will not become effective absent such approval. The City agrees to recommend the SFMTA Board of Directors approve the Agreement, and if approved, to make good faith efforts to pay the Settlement Amount by September 1, 2020.

10. The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supersedes any prior oral or written agreements, and that it may be modified only by a writing signed by all parties to this Agreement, and approved by the SFMTA Board of Directors.

11. If any provision of this Agreement is found unenforceable, then the remaining provisions shall be valid and enforceable.

12. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of laws. The parties agree that the San Francisco Superior Court shall have jurisdiction to enforce this Agreement. All disputes arising out of this Agreement shall be resolved by the San Francisco Superior Court.

13. Complainant acknowledges that Complainant has the right to consult with any attorney concerning this Agreement, including any releases contained herein.

14. Complainant acknowledges that Complainant has read and understands this Agreement and that Complainant agrees to its terms and signs this Agreement voluntarily and without coercion. Complainant further acknowledges that the release and waivers Complainant has made herein are knowing, conscious and with full appreciation that Complainant is forever foreclosed from pursuing any of the rights or claims so released or waived.

15. Complainant acknowledges the following: (a) that this Agreement is written in a manner calculated to be understood by Complainant and Complainant in fact understands the Agreement; (b) that this Agreement specifically refers to and waives rights or claims arising under the FEHA; (c) that this Agreement applies only to claims arising up to and including the date that the Complainant signs this Agreement; (d) that in exchange for this Agreement, Complainant received value beyond that to which Complainant is already entitled; (e) that the City has advised Complainant in writing that Complainant may consult with an attorney; and (f) that Complainant has been provided with an adequate period of time to review this Agreement. Complainant is entitled to consider this Agreement for twenty-one (21) days before signing and that Complainant has made a knowing and voluntary decision to sign this Agreement before the expiration of the twenty-one (21) day period. Complainant may revoke this Agreement for a period of seven days after executing the Agreement. This Agreement shall not become effective or enforceable until the revocation period has expired.

16. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall constitute one single instrument.

DATED: _____

Complainant

DATED: 8/18/20

JEFFREY TUMLIN
Director of Transportation

By: [Signature]
RAFAL OBIERSKI
Deputy City Attorney

DATED: 8/18/20

By: [Signature]
KATHARINE PORTER
Chief Labor Attorney

DATED: 8/18/20

Attorneys for Defendant
City and County of San Francisco

Cosigned

By: _____
BEN ROSENFELD
Controller

DATED: _____


DATED: _____

Complainant


DATED: 8/18/20



JEFFREY TUMLIN
Director of Transportation

By: 
RAFAL OFIERSKI
Deputy City Attorney

DATED: 8/18/20

By: 
KATHARINE PORTER
Chief Labor Attorney

DATED: 8/18/20

Attorneys for Defendant
City and County of San Francisco

Cosigned

By: _____
BEN ROSENFELD
Controller

DATED: _____