

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into by and between Julie LaBlanc, for herself or her heirs, successors and assigns (hereinafter "LaBlanc") on the one hand, and the City of San Jose ("CSJ"), on the other hand, (collectively, the "Parties"), effective on this 28th day of October 2009, with reference to the following facts:

WHEREAS

A. On or about (April 24, 2008), LaBlanc filed a Complaint against CSJ, in the State of California, Santa Clara County Superior Court, Case No. 1-08-CV-111250.

B. CSJ, has denied, and continues to deny, all allegations by LaBlanc of illegal, discriminatory or otherwise actionable conduct. CSJ contends that the CITY strives to maintain a workplace free of discrimination and harassment and toward that end, has a policy governing all CITY employees (including those in the fire department), which includes a prohibition on sexually explicit materials in the workplace.

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 and any claims related to LaBlanc's employment with CSJ.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereto agree as follows:

1. Release.

LaBlanc hereby releases and forever discharges CSJ and all of its divisions, affiliates, related entities, and past and present officers, directors, agents, attorneys, insurers, representatives, and employees (hereinafter "Releases"), from any and all claims of whatever nature, whether known or unknown, which exist or may exist on LaBlanc's behalf against Releases as of the date of this Agreement related to LaBlanc's employment with CSJ, including but not limited to any and all claims relating to her departure from and/or return to Station 6, tort claims, contract claims, equitable claims, breach of fiduciary duty claims, public policy claims, retaliation claims, statutory claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance covering the claims brought in the Lawsuit, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers Benefits Protection Act ("OWBPA"), except as it relates to validity of this Agreement under the ADEA, as amended by the OWBPA, and the California Fair Employment and Housing Act, covering discrimination in employment including race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, harassment, or retaliation.

Dismissal With Prejudice. LaBlanc agrees to dismiss with prejudice the Lawsuit referenced above, upon the receipt of the payments noted in this agreement. By signing this Agreement, LaBlanc hereby authorizes her attorneys to execute a Request for Dismissal, with

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prejudice, and authorizes her attorneys deliver an executed dismissal to Defendants counsel. Each party shall be responsible for bearing their own costs, expenses and attorneys' fees incurred in connection with the above-referenced Lawsuit and the completion of this settlement.

2. **Waiver Of Unknown Claims.** It is further understood and agreed by the Parties that as a condition of this Agreement, LaBlanc hereby expressly waives and relinquishes any and all claims, rights or benefits that she may have under California Civil Code Section 1542, which provides as follows:

“A general release does not extend 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.”

3. **Non-Admission of Liability.** The Parties acknowledge that they 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 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 CSJ.

4. **San Jose City Council Approval.** This Agreement requires San Jose City Council approval before it can be executed on behalf of the City. The San Jose City Council will consider this Agreement in public session on October 20, 2009 on the 1:30 pm Agenda. LaBlanc must have signed the Agreement before the public session on October 20th. If approval is obtained, the Agreement will be signed by the City on October 20, 2009. Given the provisions of Section 8(f) below, the effective date of this Agreement will be October 28, 2009.

5. **Payments Due to LaBlanc.** By January 15, 2010, CSJ shall pay to LaBlanc the sum of \$200,000 as follows:

(a) A check in the amount of Two Hundred Thousand Dollars (\$200,000) to the “Angela Alioto Professional Law Corporation Client Trust Account” representing compensation for all damages and claims relating to the Lawsuit. CSJ will issue applicable 1099 Forms(s) to the Angela Alioto Professional Law Corporation (Tax Id No. 94-3258260) for this payment.

6. **Acknowledgement of No Other Amounts Due.** LaBlanc acknowledges that, except as expressly provided for in this Agreement, she has been paid any and all salary, bonuses, commissions or other amounts due from Releasees, and that no other amounts are due to LaBlanc from Releasees.

7. **Non-Disparagement.** The Parties agree that they shall not make any negative or disparaging statements or comments about the other.

8. **Right to Revoke.**

LaBlanc understands and agrees that she:

- (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 she 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) Should the City Council of CSJ approve this Agreement, LaBlanc has seven (7) days after CSJ signs this Agreement (October 20, 2009) within which she may revoke this Agreement. In order to revoke this Agreement, LaBlanc must deliver to Michael R. Groves, Office of the City Attorney, 200 East Santa Clara Street, San Jose, CA 95113, a letter stating that she is revoking this Agreement no later than seven (7) days after she executes it;
- (g) That, because of this revocation period, this Agreement shall not become effective or enforceable until the eighth (8th) day following the date LaBlanc executes this Agreement (the "Effective Date"). As noted above, LaBlanc will execute the Agreement on or before October 20, 2009 before the City Council afternoon session begins at 1:30 pm and, if the City Council of CSJ approves the Agreement, an authorized representative of CSJ will also sign the Agreement on October 20, 2009 such that the Effective Date will be October 28, 2009 should no revocation occur in the previous seven days;
- (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 CSJ good and sufficient consideration in addition to anything of value to which she is already entitled.

9. Ownership of Claims. The Parties represent and warrant that they are the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands referred to herein. The Parties further represent and warrant that there has been no assignment or other transfer of any interest in any such matters, claims or demands that the Parties may have against one another.

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

11. **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 Parties' representatives, heirs, executors, administrators, successors and assigns.

12. **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.

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

14. **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. LaBlanc acknowledges that she has been specifically advised by counsel of the consequences of the Release she has signed.

15. **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.

16. **Integration.** This Agreement constitutes a single, integrated, written contract, expressing the entire agreement between the Parties. It supercedes all prior agreements between the Parties. The Parties represent and warrant that they are not relying on any promises or representations that do not appear written herein. 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. **Voluntary Agreement.** LaBlanc understands and agrees that she may be 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.

20. **Authority to Enter Into Agreement.** Each party represents and warrants that, as of the date of the execution of this Agreement, she, he or it has the right and authority to execute this Agreement, and she, 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 she, 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 her, his or its signatory represents that the signatory is either a party or a business representative or assignee of, and is fully authorized to execute this Agreement on behalf of, the party for whom he or she signs.

21. **Enforceability.** The parties agree that this Agreement is subject to the provisions of Code of Civil Procedure §664.6.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release on the dates indicated below.

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

DATED: _____

CITY OF SAN JOSE

By: _____

Its: _____

DATED: _____

Julie LaBlanc

APPROVED AS TO FORM ONLY:

LAW OFFICES OF MAYOR JOSEPH L. ALIOTO
AND ANGELA ALIOTO

DATED: _____

By: _____

JOE ALIOTO VERONESE, ESQ.

Initials: _____