

SETTLEMENT AGREEMENT, GENERAL RELEASE AND  
COVENANT NOT TO SUE

THIS SETTLEMENT AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE (hereafter "Agreement") relating to claims against the City and County of San Francisco (hereafter "the City"), Theresa Sparks and Micki Callahan is made between Thomas Willis (hereafter "Plaintiff") and the City.

WHEREAS, Plaintiff was employed by the City as 0931 Manager III with the San Francisco Human Rights Commission; and

WHEREAS, Plaintiff claims that during and as a result of Plaintiff's employment with the City Plaintiff suffered damages on account of wrongful conduct by the City, Theresa Sparks and Micki Callahan, including, without limitation, race discrimination, sexual orientation discrimination and retaliation in violation of the California Fair Employment and Housing Act; race discrimination under 42 U.S.C. §§ 1981 and 2000 et seq.; and defamation and intentional interference with contract; and

WHEREAS, Plaintiff filed charges of discrimination with the California Department of Fair Employment and Housing (hereafter "DFEH") and the Equal Employment Opportunity Commission (hereafter "EEOC") (the "Proceedings"); and

WHEREAS, Plaintiff filed the following complaint in the United States District Court, Northern District of California: Thomas Willis v. City and County of San Francisco, Theresa Sparks and Micki Callahan, Case No. 12-0231 JSW (the "Action"); and

WHEREAS, the parties have settled the grievance filed by Plaintiff's Union (ERD No. 34-11-2447) (hereinafter "Grievance"); 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 Plaintiff's claims, as well as the Action, the Proceeding, and any and all lawsuits and claims brought by Plaintiff against the City, fully and forever in consideration of the promises contained herein,

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NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In exchange for the promises by Plaintiff in this Agreement and complete settlement of the Action and the Proceedings the City will pay the total amount of Two Hundred Ten Thousand Dollars (\$210,000.00) (the "Settlement Amount") by means of two checks as described herein. The Settlement Amount will be allocated as follows: (a) \$123,500.00 of the Settlement Amount will be paid in a check made payable to "Thomas Willis" and 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. In the event the appropriate taxing authorities should finally determine, contrary to the intention of the parties, that the city should have withheld amounts for tax purposes, Plaintiff agrees to indemnify the City for any and all tax liability which may result from such failure to withhold; and (b) \$86,500.00 of the Settlement Amount is attorneys' fees payable to Plaintiff's attorney. These checks will be deemed received upon delivery to the office of Plaintiff's counsel at Law Offices of Smith/Patten, 353 Sacramento Street, San Francisco, California.

2. (a) In consideration of the foregoing promises and for other good and sufficient consideration Plaintiff, for Plaintiff, Plaintiff's heirs, executors, administrators, assigns and successors, fully and forever releases and discharges the City, its constituent departments (including the San Francisco Human Rights Commission and the Department of Human Resources), commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers, directors, trustees, agents, employees and assigns, including but not limited to Theresa Sparks and Micki Callahan (collectively "Releasees") from any and all liabilities, claims, demands, contracts, debts, damages, acts or 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 in any way to Plaintiff's employment with the City, the Action, the Proceedings, the negotiation or execution of this Agreement, up to and including the date that Plaintiff signs this Agreement (the "Signature Date"). The release in this paragraph includes but

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is not limited to release of any matter, cause or thing arising out of, relating to, or connected with the Action referred to above, and any and all lawsuits and claims, charges and grievances brought by Plaintiff against any Releasee not set forth herein, and all past, pending or contemplated EEOC, DFEH or other administrative charges relating to or arising from Plaintiff's employment with the City through the Signature Date.

(b) The release contained in this Paragraph 2 is a complete and general release that will forever bar Plaintiff from pursuing any released claims or rights against any Releasee. Plaintiff 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. Plaintiff understands and agrees that Plaintiff is waiving any rights Plaintiff may have had, now has, or in the future may have to pursue any and all remedies available to Plaintiff under any cause of action arising out of, connected with or in any way related to Plaintiff's employment with the City, and which arose at any time through the Signature Date. 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, intentional interference with contract, 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 Plaintiff, 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 Family Rights Act, the California and United States Constitutions, 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, any other laws and regulations relating to employment or to discrimination.

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(c) Plaintiff understands and expressly agrees that the release contained in this Paragraph 2 extends to all 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. Said Section 1542 of the Civil Code of the State of California, reads 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.

(d) The parties understand and agree that the release and relinquishment of rights by Plaintiff contained in this Paragraph 2 will not be effective until the City has delivered the payments described in Paragraph 1. above, and the payment required by the Settlement of the Grievance.

3. Plaintiff agrees never to seek or accept employment in any capacity in the future with the City, including but not limited to the San Francisco Human Rights Commission. Plaintiff expressly consents and requests that the City take all necessary action to prohibit Plaintiff's future employability with the City, including but not limited to placing Plaintiff's name on the Department of Human Resources' Register of Employment Restriction. Plaintiff expressly agrees not to appeal any such future employability restrictions, including any appeal to the Civil Service Commission. Plaintiff also agrees to relinquish any and all rights he may have under the City's Civil Service Commission Rules, including, but not limited to, holdover and reappointment rights under the San Francisco Civil Service Commission Rules 112 and 114.

4. Plaintiff agrees to direct inquiries from his prospective employers only to Naomi Kelly, currently City Administrator of the City, in response to any such inquiries from a prospective employer of Plaintiff outside of the City employment system regarding Plaintiff's employment with the City. The City agrees that the only information that will be authorized to

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be provided by Naomi Kelly is as follows: Plaintiff's employment with the City, the dates of Plaintiff's employment, the position held by Plaintiff, Plaintiff's last rate of compensation, and other information which is subject to disclosure by federal, state, or local law.

5. In further consideration of the foregoing, Plaintiff hereby agrees, acknowledges and recognizes that this Agreement is a "no fault" settlement in light of disputed claims, and that nothing contained in this Release shall constitute or be treated as an admission of liability or wrongdoing by the Plaintiff, Theresa Sparks, Micki Callahan or the City, which liability or wrongdoing is expressly denied by all parties.

6. Plaintiff 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 amounts specified in this Agreement, or to any recovery paid to Plaintiff in connection with the settlement of the Action or the Proceedings, nor is any person or entity entitled to establish a lien for any payment or payments they have made or will make to Plaintiff on behalf of Plaintiff as a consequence of any of the matters arising out of or connected with Plaintiff's employment with the City, the Action or the Proceedings, or (b) to the extent there are any such liens, Plaintiff will pay and retire all such liens out of the Settlement Amount. Plaintiff 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, attorneys' fees, or otherwise, involving Plaintiff and arising from or connected with Plaintiff's employment with the City, the Action or the Proceedings.

7. Plaintiff represents and warrants that Plaintiff has full power to make the releases and agreements contained herein. Plaintiff expressly represents and warrants that Plaintiff has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Plaintiff acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement. Plaintiff agrees

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to indemnify the affected Releasee for any claims brought against any Releasee by purported assignees of Plaintiff, including costs of judgment and reasonable attorneys' fees.

8. Plaintiff agrees that after receiving a fully executed copy of this Agreement and receipt of payment set forth in Paragraph 1, and being notified that this Agreement has been approved by the San Francisco Board of Supervisors, Plaintiff will dismiss the Action in its entirety and with prejudice by filing a Stipulation for Dismissal with Prejudice pursuant to Federal Rules of Civil Procedure, Rule 41(a). In addition, Plaintiff represents that there are no outstanding DFEH, EEOC or other administrative charges which are or may be pending relating to Plaintiff's employment with the City through the Signature Date. To the extent any such charges have been or are filed on Plaintiff's behalf, Plaintiff agrees to dismiss or withdraw any such charges, with prejudice. Plaintiff expressly acknowledges that the list of outstanding litigation may not be exhaustive, but Plaintiff nevertheless agrees to dismiss with prejudice all litigation, claims, grievances, and administrative charges of any nature, kind and description against any Releasee which arise out of any right or claim released in this Agreement, whether or not listed in this Agreement.

9. All parties shall bear their own attorneys' fees, legal expenses and costs.

10. Plaintiff acknowledges that this Agreement is contingent upon approval by the San Francisco Board of Supervisors, and that this Agreement will not become effective absent such approval. The San Francisco City Attorney's Office will make all reasonable efforts to facilitate the expeditious submission of this Agreement for approval by the San Francisco Board of Supervisors.

11. The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supercedes 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 San Francisco Board of Supervisors.

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

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13. The parties agree that the United States District Court, Northern District of California will have jurisdiction to enforce this Agreement. All disputes arising out of this Agreement shall be resolved by the United States District Court, Northern District of California.

14. Plaintiff acknowledges that Plaintiff has the right to consult with an attorney concerning this Agreement, including the releases contained herein.

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

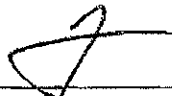
16. This Agreement has been reviewed by the parties and their respective attorneys, and each have had full opportunity to negotiate the contents of this Agreement. The parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

17. In connection with the Age Discrimination in Employment Act ("ADEA"), Plaintiff acknowledges that the City has advised Plaintiff to consult with an attorney prior to signing this Agreement. As set forth in the ADEA, 29 U.S.C. Section 626(f)(1), Plaintiff hereby acknowledges the following: (1) that this Agreement is written in a manner calculated to be understood by Plaintiff and that Plaintiff in fact understands the Agreement; (2) that this Agreement specifically refers to and waives rights or claims arising under the ADEA; (3) that this Agreement applies only to claims arising up to and including the date that Plaintiff signs this Agreement; (4) that in exchange for this Agreement, Plaintiff received value beyond that to which Plaintiff is already entitled; (5) that the City has advised Plaintiff in writing to consult with an attorney before executing the Agreement; and (6) that Plaintiff has been provided with an adequate period of time to review this Agreement. Plaintiff further acknowledges that Plaintiff is entitled to consider this Agreement for twenty-one (21) days before signing and that


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Plaintiff has made a knowing and voluntary decision to sign this Agreement before expiration of the twenty-one (21) day period. Plaintiff may revoke this Agreement for a period of seven (7) days after executing the Agreement. Any such revocation must be communicated in writing to Deputy City Attorney, Terence J. Howzell, 1390 Market Street, 7<sup>th</sup> Floor, San Francisco, California, 94102, within the seven-day revocation period. This Agreement shall not become effective or enforceable until the revocation period has expired.

DATED: 3/14/2013


  
\_\_\_\_\_  
THOMAS WILLIS  
Plaintiff

DATED: 3/29/13

  
\_\_\_\_\_  
MICKI CALLAHAN  
Human Resources Director  
THE CITY & COUNTY OF  
SAN FRANCISCO

APPROVED AS TO FORM AND SUBSTANCE:

LAW OFFICES OF SMITH & PATTEN

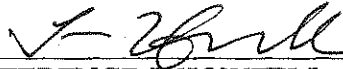
By:   
DOUG W. PATTER  
SPENCER SMITH, ESQ.  
Attorneys for THOMAS WILLIS

DATED: 03/14/13



**ORIGINAL**

DENNIS J. HERRERA  
City Attorney

By   
TERENCE J. HOWZELL  
Deputy City Attorney

DATED: 3/19/13

By   
ELIZABETH S. SALVESON  
Chief Labor Attorney

DATED: 3.19.13

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
THERESA SPARKS AND  
MICKI CALLAHAN