

CITY OF SANTA CLARA  
2021 APR 21 PM 2:20

Filing fee Exempt  
Per Gov. Code § 6103

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5 *Attorneys for Defendant City of Santa Clara*

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF SANTA CLARA

9 LADONNA YUMORI KAKU, WESLEY KAZUO  
MUKOYAMA, UMAR KAMAL, MICHAEL  
10 KAKU, and HERMINIO HERNANDO,

11 Plaintiffs,

12 vs.

13 CITY OF SANTA CLARA; and DOES 1 to 50,  
14 inclusive,

15 Defendants.

Case No. 17-CV-319862

**STIPULATION FOR ENTRY OF SECOND  
AMENDED JUDGMENT AND  
[PROPOSED] SECOND AMENDED  
JUDGMENT**

Assigned to: Department 5  
Hon. Patricia M. Lucas



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Dated: April 20, 2021

LAW OFFICE OF ROBERT RUBIN



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Robert Rubin

Attorneys for Plaintiffs

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**EXHIBIT 1**

**SETTLEMENT AGREEMENT & RELEASE**

This Settlement Agreement & Release (“Agreement”) is made and entered into in Santa Clara County, California, on April 21, 2021, by and between LADONNA YUMORI-KAKU, WESLEY KAZUO MUKOYAMA, UMAR KAMAL, MICHAEL KAKU and HERMINO HERNANDO (collectively, the “Plaintiffs”), on the one hand, and the CITY OF SANTA CLARA (“City”), on the other hand (all collectively, the “PARTIES”).

**RECITALS**

WHEREAS, on December 5, 2017, the Plaintiffs filed a Complaint against the City in the Santa Clara County Superior Court (the “Complaint”);

WHEREAS, on December 27, 2017, the Plaintiffs filed an Amended Complaint against the City in the Santa Clara County Superior Court (the “Amended Complaint”);

WHEREAS, the Amended Complaint alleged, among other things, that the City’s method of electing Councilmembers violated the California Voting Rights Act (“CVRA”);

WHEREAS, the Liability Phase of the trial was held between April 23, 2018, and April 26, 2018, and the Superior Court, Hon. Thomas E. Kuhnle, presiding, issued a decision dated June 6, 2018, finding the City’s election system in violation of the CVRA;

WHEREAS, the Remedies Phase of the trial was held between July 18, 2018, and July 20, 2018, after which Judgment was entered on July 24, 2018 in favor of the Plaintiffs;

WHEREAS, the Judgment enjoined the City and the Registrar of Voters from holding at-large elections for any City Council members, other than the position of Mayor;

WHEREAS, the Court retained jurisdiction over the parties and the action pursuant to California Code of Civil Procedure section 664.6;

WHEREAS, the City filed a Notice of Appeal on August 15, 2018;

WHEREAS, Plaintiffs moved for attorneys’ fees and costs for trial;

WHEREAS, Defendant then filed a Motion to Tax Costs;

1 WHEREAS, following briefing and a hearing, the Superior Court issued an Amended  
2 Judgment on January 22, 2019, awarding \$3,164,955.61 in attorneys' fees and \$174,549.90 in costs to  
3 Plaintiffs;

4 WHEREAS, the City filed a notice of appeal from the Amended Judgment on February 27,  
5 2019;

6 WHEREAS, following briefing and oral argument the Court of Appeal rendered its decision on  
7 December 30, 2020, affirming the Amended Judgment of the Superior Court, and the Remittitur issued  
8 on March 2, 2021;

9 WHEREAS, the City paid to Plaintiffs the sum of \$3,830,090.21 on February 12, 2021, in full  
10 satisfaction of the attorneys' fees and costs awarded to them in the First Amended Judgment entered on  
11 January 22, 2019, as well as interest accrued thereon in the amount of \$490,584.70;

12 WHEREAS, the Parties acknowledge that the 2018 and 2020 City Council elections were  
13 conducted in accordance with the provisions of the Judgment.

14 WHEREAS, the PARTIES' claims, denials, and disagreements arising from, described in, or  
15 related to, the various legal actions described above and based on actions by the City up to and  
16 including the date of this Agreement and facts related to such actions, shall be referred to as the  
17 "Dispute";

18 WHEREAS, the Parties intend by this Settlement Agreement to resolve any and all of  
19 Plaintiffs' claims, demands, losses, damages, costs, attorney's fees, actions, causes of action, and  
20 liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, investigated  
21 or not investigated, which arise from the Dispute (except for disputes arising from performance under  
22 this Agreement, as set forth below) in order to preclude any potential future litigation by Plaintiffs, and  
23 each of them, as against City, based on actions of the City at any time up to and including the date of  
24 this Agreement, relating in any respect to the claims and defenses in and regarding the Dispute. All  
25 terms of this Agreement are to be construed so that their meaning will effectuate this intent;

26 WHEREAS, this Agreement is being entered into after arms-length negotiations by and  
27 between the Parties, in good faith and in order to avoid in the burden and expense of continuing  
28 litigation, the costs associated with litigation, and the desire of the Parties, to reasonably settle this

1 Litigation, as between themselves, on the terms and conditions set forth in this Agreement. All of the  
2 negotiations related to this Agreement shall be subject to Evidence Code Section 1152;

3 WHEREAS, the Parties jointly desire and request that the Santa Clara Superior Court shall  
4 enter the Second Amended Judgment attached as Exhibit A hereto; and

5 WHEREAS, the Parties acknowledge that this Agreement itself is and shall be a public record  
6 subject to public review and inspection pursuant to California law.

7 THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is  
8 hereby acknowledged, and in consideration of the mutual covenants contained herein, the PARTIES  
9 agree as follows:

10 **ARTICLE I**

11 1.1 Settlement Agreement & Release Void if Second Amended Judgment Not Entered. If  
12 for any reason the Second Amended Judgment shall not be submitted to and entered by the Superior  
13 Court this Settlement Agreement & Release shall be null and void, and the Parties returned to their  
14 respective positions with respect to the Dispute as of the date of this Agreement.

15 **ARTICLE II**

16 2.1 Payment. Within five calendar days of the Court's issuance of the Second Amended  
17 Judgment, CITY shall pay the amounts remaining to be paid on the Second Amended Judgment (which  
18 the Parties agree shall be \$712,500.00) to the Plaintiffs, payable to the firm of Goldstein, Borgen,  
19 Dardarian & Ho as Plaintiffs' designated representative for receipt of such payment. The Plaintiffs  
20 shall provide the CITY with an executed IRS Form W9 prior to the expiration of the five calendar day  
21 period to facilitate tax reporting of any reportable amount. The CITY shall not be obligated to make  
22 any payment until it has received a properly completed and signed W9 as provided herein. Payment of  
23 \$712,500.00 shall be considered full, total, and complete settlement of all claims including, but not  
24 limited to, legal fees, costs, expenses, and damage claims arising from or related to the Complaint,  
25 Dispute, and this Agreement. The Plaintiffs expressly acknowledge and agree that any tax arising  
26 from CITY's payment of any sums paid pursuant to this paragraph or previously paid by the City to  
27 Plaintiffs in satisfaction of the First Amended Judgment shall be the full responsibility of the Plaintiffs.

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1 and reasons relating to its having been held in violation of the California Voting Rights Act by this  
2 Court's Amended Judgment entered January 22, 2019; and shall describe the reasons for which the  
3 voters might wish to permanently adopt a by-district election system of the kind ordered by the Court  
4 in that Amended Judgment and used in the 2018 and 2020 City Council elections.

5 3.4 Should the voters not approve the proposed Charter Amendment presented to them, or  
6 should no such amendment be presented for approval in an election, for any reason, the City will not  
7 oppose any injunctive relief under the court's retained jurisdiction sought by plaintiffs to require the  
8 election of all City Council members, except the Mayor, from at least six single-member districts with  
9 a requirement that candidates reside within their respective districts.

10 **ARTICLE IV**

11 4.1 Except for claims arising directly as a result of a breach of the contractual obligations  
12 set forth in this Agreement, and as a material inducement to the CITY to enter into this Agreement, the  
13 Plaintiffs, and each of them, on behalf of themselves and their beneficiaries, heirs, agents, assigns, and  
14 successors-in-interest, do hereby irrevocably and unconditionally release, acquit and forever discharge  
15 the CITY, and its officials, council members, members, directors, officers, agents, assigns, attorneys,  
16 insurers, representatives, and employees from any and all claims, actions, charges, complaints, causes  
17 of action, rights, demands, and damages, at law and equity, which the Plaintiffs have or could have,  
18 whether now or in the future known, against CITY, which arise from, or are directly or indirectly  
19 related to, or are connected with, or caused by, actions of the City that existed in the past or exist at the  
20 time of this Agreement which are the subject matter of the Dispute.

21 4.2 The Plaintiffs acknowledge and agree that they will not sue or initiate against the CITY  
22 any action or proceeding pertaining in any manner whatsoever to the claims released by the Plaintiffs  
23 in the preceding paragraph. The Plaintiffs agree that they shall not seek, demand, or request in any  
24 manner any additional compensation or payment arising from or in connection with the Dispute and/or  
25 this Agreement other than and/or in addition to the payments made by the City under this Agreement,  
26 except that, as provided for in the following paragraph Plaintiffs reserve the right to, and may, seek  
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1 additional compensation in the form of litigation costs including attorneys' fees in connection with any  
2 proceeding to enforce the provisions of this Agreement or the Second Amended Judgment.

3 4.3 For the purpose of implementing full and complete releases to the extent stated herein,  
4 Plaintiffs expressly acknowledge that the releases provided in this Agreement are intended to include  
5 in their effect, without limitation, any and all claims, complaints, charges or suits within the scope of  
6 such releases, including those claims, complaints, charges or suits which they do not know or suspect  
7 to exist in their favor at the time of execution hereof, which if known or suspected, could materially  
8 affect Plaintiffs' decision to execute this Agreement. This Agreement contemplates the  
9 extinguishment of any such claims, complaints, charges or suits within the scope of the stated releases  
10 and therefore all rights under Section 1542 of the California Civil Code are hereby expressly waived.  
11 Section 1542 of the Civil Code provides:

12 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
13 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
14 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
15 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
16 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
17 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

18 Plaintiffs, and each of them, represent that they have read and understood the provisions of  
19 California Civil Code Section 1542. Further, each acknowledges that he/she is represented by counsel  
20 and has been specifically advised by its counsel of the consequences of the above waiver, as well as  
21 with respect to this Agreement generally, and hereby assumes full responsibility for any damage, loss  
22 or liability which the undersigned hereinafter incurs by reason of such waiver.

23 4.4 The CITY, on behalf of itself, its elected officials, employees and agents, insurers,  
24 representatives and assigns, and their successors in interest, does hereby irrevocably and  
25 unconditionally release, acquit and forever discharge the Plaintiffs, individually and collectively, and  
26 their attorneys or the attorneys' employers, insurers, agents, and assigns, from any and all claims,  
27 actions, charges, complaints, causes of action, rights, demands, and damages, at law and equity, which  
28 the CITY has or could have, whether now or in the future known, against the Plaintiffs, which arise  
from, or are directly or indirectly related to, or are connected with, or caused by, actions of the

1 Plaintiffs that existed in the past or exist at the time of this Agreement which are the subject matter of  
2 the Dispute.

3 4.5 Plaintiffs may bring an action to compel enforcement of the provisions of this  
4 Agreement.

## 5 ARTICLE V

6 5.1 Recitals. The aforementioned Recitals are incorporated into this Agreement.

7 5.2 Investigation. Each of the PARTIES has made such investigation of the facts pertaining  
8 to the Complaint, Dispute, and this Agreement as it deems necessary. The PARTIES hereto understand  
9 that if any fact with respect to any matter covered by this Agreement and/or the Dispute is found  
10 hereafter to be other than, or different from, the facts now believed by the PARTIES to be true, each  
11 party hereto expressly accepts and assumes the risk of such possible difference in facts and agree that  
12 this Agreement shall become and remain effective notwithstanding such different facts.

13 5.3 Integration Clause. This Agreement contains the entire agreement of the PARTIES  
14 with respect to the subject matter of this Agreement and supersedes any and all prior, written or oral,  
15 agreements among them concerning the subject matter of this Agreement. There are no  
16 representations, agreements, arrangements or understandings, oral or written, among the PARTIES,  
17 relating to the subject matter of this Agreement that are not fully expressed herein. This is a fully  
18 integrated document.

19 5.4 Other and Further Documents. The PARTIES, and each of them, shall take such  
20 actions and shall execute, deliver and file or record any such document as may be reasonable or  
21 necessary to effectuate the purposes and contents of this Agreement.

22 5.5 Consultation with Counsel. The PARTIES represent and warrant that they have  
23 presented their respective counsel with this Agreement, that their respective counsel has had the  
24 opportunity to review this Agreement and that they are executing this Agreement of their own free will  
25 after having received advice from their respective counsel regarding the execution of this Agreement.

26 5.6 Choice of Law, Jurisdiction and Venue. This Agreement shall be governed by and  
27 construed in accordance with California law. Any action or proceeding arising under this Agreement  
28 shall be brought exclusively in the Santa Clara County Superior Court.

1           5.7    No Waiver. The failure of any party to insist upon compliance with any of the  
2 provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general  
3 waiver or relinquishment by such party of any other provision of this Agreement.

4           5.8    Amendment. This Agreement may not be amended except by an instrument in writing,  
5 executed by the PARTIES, or the authorized representatives of each of them.

6           5.9    Agreement Obligates, Extends and Inures. The provisions of this Agreement shall be  
7 binding upon each of the PARTIES and others to the extent stated herein. The provisions of this  
8 Agreement shall be binding upon those who may succeed to, or assume, the capacities of the PARTIES  
9 and such others subsequent to the execution and effective date of this Agreement.

10          5.10   No Reliance. Each of the PARTIES represents and warrants that, except for the  
11 representations and warranties specifically set forth in this Agreement, in executing this Agreement, it  
12 does not rely, and has not relied, on any representation or statement made by any other Party to this  
13 Agreement, or any representation or statement made by any person acting or purporting to act on  
14 behalf of any other Party to this Agreement.

15          5.11   No Assignment. Each of the PARTIES represents and warrants that it owns the claims  
16 released hereby; that no other person or entity has any interest in such claims; that it has not sold,  
17 assigned, conveyed or otherwise transferred any such claim, or any other claim or demand against any  
18 person released hereby; and, that it has the sole right to settle and release such claims. The undersigned  
19 represent and warrant that to the best of their information and belief, they have no knowledge of any  
20 claims held by one against the other that are not released hereby.

21          5.12   No Pending Action. The PARTIES represent and warrant that, other than the Actions  
22 previously brought in this Dispute, they have not filed any presently pending claim, complaint, charge  
23 or suit against any other party or any other party's predecessors, subsidiaries, affiliates, members,  
24 directors, officers, shareholders, trustees, partners, successors, agents, assigns, joint venturers,  
25 attorneys, insurers, representatives, employees, heirs and executors, with any federal, state or other  
26 agency, court, board, office or other forum or entity, without limitation.

27          5.13   Multiple Counterparts. This Agreement may be executed in multiple counterparts that  
28 shall become effective to the same extent as the original only when every party has signed and

1 delivered a signed counter-part. For purposes of the execution of this Agreement, signature pages  
2 transmitted by facsimile or electronic mail shall be given the same weight and effect as, and treated as,  
3 original signatures.

4 5.14 Authority. The undersigned natural persons executing this Agreement warrant and  
5 represent that they are duly authorized to do so and to bind the person or entity for which they sign.

6 5.15 Construction. Each Party hereto has cooperated in the drafting and preparation of this  
7 Agreement. In any construction to be made of this Agreement, the same shall not be construed against  
8 any Party on the ground that said Party drafted this Agreement. This Agreement shall be deemed to  
9 have been executed and delivered within the State of California, and the rights and obligations of the  
10 PARTIES hereunder shall be construed and enforced in accordance with, and governed by, the laws of  
11 the State of California, in effect as of the date hereof.

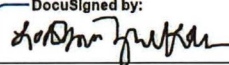
12 5.16 No Third Party Beneficiary. The terms and provisions of this Agreement shall be  
13 binding upon and inure to the benefit of the PARTIES, and their respective successors and assigns, and  
14 is made solely and specifically for their benefit. No other person shall have any rights, interest or  
15 claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party  
16 beneficiary or otherwise.

17 IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the dates  
18 written below.

19 **READ CAREFULLY BEFORE SIGNING:**

20 **FOR THE PLAINTIFFS:**

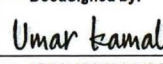
21 Dated: April 20 2021

DocuSigned by:  
  
Ladonna Tumori Kaku, Plaintiff

22  
23 Dated: April \_\_, 2021

Wesley Kazuo Mukoyama, Plaintiff

24  
25 Dated: April 20, 2021

DocuSigned by:  
  
Umar Kamal, Plaintiff

26  
27 Dated: April 20, 2021

DocuSigned by:  
  
Michael Kaku, Plaintiff

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1 delivered a signed counter-part. For purposes of the execution of this Agreement, signature pages  
2 transmitted by facsimile or electronic mail shall be given the same weight and effect as, and treated as,  
3 original signatures.

4 5.14 Authority. The undersigned natural persons executing this Agreement warrant and  
5 represent that they are duly authorized to do so and to bind the person or entity for which they sign.

6 5.15 Construction. Each Party hereto has cooperated in the drafting and preparation of this  
7 Agreement. In any construction to be made of this Agreement, the same shall not be construed against  
8 any Party on the ground that said Party drafted this Agreement. This Agreement shall be deemed to  
9 have been executed and delivered within the State of California, and the rights and obligations of the  
10 PARTIES hereunder shall be construed and enforced in accordance with, and governed by, the laws of  
11 the State of California, in effect as of the date hereof.

12 5.16 No Third Party Beneficiary. The terms and provisions of this Agreement shall be  
13 binding upon and inure to the benefit of the PARTIES, and their respective successors and assigns, and  
14 is made solely and specifically for their benefit. No other person shall have any rights, interest or  
15 claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party  
16 beneficiary or otherwise.

17 IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the dates  
18 written below.

19 **READ CAREFULLY BEFORE SIGNING:**

20 **FOR THE PLAINTIFFS:**

21 Dated: April \_\_, 2021

\_\_\_\_\_  
Ladonna Yumori Kaku, Plaintiff

23 Dated: April \_\_, 2021

  
\_\_\_\_\_  
Wesley Kazuo Mukoyama, Plaintiff

25 Dated: April \_\_, 2021

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Umar Kamal, Plaintiff

27 Dated: April \_\_, 2021

\_\_\_\_\_  
Michael Kaku, Plaintiff



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Dated: April 20, 2021

DocuSigned by:  
Hermino Hernandez  
Hermino Hernandez, Plaintiff

APPROVED AS TO FORM:

Dated: April \_\_, 2021

GOLDSTEIN, BORGEN, DARDARIAN & HO

\_\_\_\_\_  
Morris J. Baller, Of Counsel  
Attorneys for Plaintiffs

Dated: April \_\_, 2021

LAW OFFICE OF ROBERT RUBIN  
\_\_\_\_\_  
Robert Rubin  
Attorneys for Plaintiffs

**FOR THE DEFENDANT CITY:**

Dated: April 20, 2021

Brian Doyle  
\_\_\_\_\_  
Brian Doyle  
City Attorney

Dated: April 20, 2021

Deanna J. Santana  
\_\_\_\_\_  
Deanna J. Santana  
City Manager

APPROVED AS TO FORM:

Dated: April \_\_, 2021

BUCHALTER, APC  
\_\_\_\_\_  
Steven G. Churchwell  
Attorneys for Defendant

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Dated: April \_\_, 2021

\_\_\_\_\_  
Herminio Hernando, Plaintiff

APPROVED AS TO FORM:

Dated: April 20, 2021

GOLDSTEIN, BORGEN, DARDARIAN & HO

  
\_\_\_\_\_  
Morris J. Baller, Of Counsel

Attorneys for Plaintiffs

Dated: April 20, 2021

LAW OFFICE OF ROBERT RUBIN

  
\_\_\_\_\_  
Robert Rubin

Attorneys for Plaintiffs

**FOR THE DEFENDANT CITY:**

Dated: April \_\_, 2021

\_\_\_\_\_  
Brian Doyle  
City Attorney


Dated: April \_\_, 2021

\_\_\_\_\_  
Deanna J. Santana  
City Manager

APPROVED AS TO FORM:

Dated: April 21, 2021

BUCHALTER, APC

  
\_\_\_\_\_  
Steven G. Churchwell

Attorneys for Defendant



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Filing fee Exempt  
Per Gov. Code § 6103

5 *Attorneys for Defendant City of Santa Clara*

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF SANTA CLARA

9 LADONNA YUMORI KAKU, WESLEY KAZUO  
MUKOYAMA, UMAR KAMAL, MICHAEL  
10 KAKU, and HERMINIO HERNANDO,

11 Plaintiffs,

12 vs.

13 CITY OF SANTA CLARA; and DOES 1 to 50,  
14 inclusive,

15 Defendants.

Case No. 17-CV-319862

**EXHIBIT A**

**[PROPOSED] SECOND AMENDED  
JUDGMENT**

Assigned to: Department 5  
Hon. Patricia M. Lucas

16  
17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that a Second Amended  
18 Judgment shall be entered for Plaintiffs Ladonna Yumori Kaku, Wesley Kazuo Mukoyama, Umar  
19 Kamal, Michael Kaku, and Herminio Hernando and against Defendant the City of Santa Clara  
20 (“CITY”), incorporating the first Amended Judgment issued by this Court on January 22, 2019, and in  
21 accordance with the decision of the Sixth District Court of Appeal issued on December 30, 2020, as  
22 follows:

23 1. Plaintiffs shall be entitled to recover from the CITY attorneys’ fees of \$3,164,955.61  
24 and costs of \$174,549.90, the amounts previously awarded by this court in its First Amended  
25 Judgment, plus \$490,584.70 in accrued interest on such amounts. Plaintiffs shall in addition be  
26 entitled to recover from the CITY costs including attorneys’ fees for the appeal and subsequent  
27 proceedings in this case in the amount of \$712,500.00. Upon payment of those amounts, Defendant  
28

1 shall be deemed to have fully satisfied their obligations for Plaintiffs' recoveries as provided for in the  
2 Parties' Settlement Agreement & Release ("Agreement"), which is attached to their Stipulation for  
3 entry of this Second Amended Judgment.

4           2.       In accordance with the first Amended Judgment, the Court shall retain jurisdiction over  
5 the parties and this action, pursuant to Code of Civil Procedure section 664.6. However, the parties  
6 may stipulate to dismissal of the action, or Defendant may move for such dismissal for good cause  
7 shown if and when the Defendant City's future use of a by-district election system as provided for in  
8 the parties' Agreement is assured by adoption of a Charter Amendment.

9 Dated: April \_\_, 2021

10 \_\_\_\_\_  
11 JUDGE OF THE SUPERIOR COURT