

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into as of July ____, 2021 ("Executed Date") and between City of Santa Clara ("City") and Santa Clara Chamber of Commerce dba Silicon Valley Central Chamber of Commerce (the "Chamber"). Jointly referred to as the "Party" or "Parties."

RECITALS

WHEREAS, the City contracted with the Chamber for the operation and management of the Conventions and Visitors Bureau ("CVB") in 1975.

WHEREAS, the City contracted with the Chamber for the operation and management of the Santa Clara Convention Center ("SCCC") in 1984.

WHEREAS, the City retained the services of TAP International, Inc. ("TAP") to perform an audit of the Chamber's operation and management of the CVB and SCCC.

WHEREAS, a dispute has arisen between the Parties regarding the rights and obligations of the Parties relating to the Chamber's operation and management of the CVB, the SCCC, and the funds relating thereto (including but not limited to the SCCC management fees, Tourism Improvement District ("TID") funds, Santa Clara Store, CVB funds, SCCC funds, operating costs, credit card charges, reimbursements, employee salaries, and employee termination related costs), and findings of the audit performed by TAP (collectively referred to hereinafter as "Dispute").

WHEREAS, the Parties now desire to fully compromise and settle their outstanding differences, disputes, all claims and counterclaims arising out of, relating to, or with respect to the Dispute, and:

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which each of the Parties acknowledges, City and Chamber hereby agree as follows:

1. Settlement Payment.

(a) Payment. Subject to the terms and conditions of this Agreement and consideration for the Recitals and promises made herein, Chamber agrees to pay City, and City agrees to accept, the total sum of Three Hundred Thirty Thousand Dollars (\$330,000.00) (the "Settlement Payment"), in full and final settlement and satisfaction of all claims relating to the Dispute. The Settlement Payment shall be paid in installments according to the payment plan ("Payment Plan") as more thoroughly provided herein:

(i) All payments made by Chamber to City shall be made via check to the City.

(ii) Chamber shall make four (4) equal payments of Eighty-Two Thousand Five Hundred Dollars (\$82,500.00) to City. There shall be no penalties for early payments by Chamber.

(iii) Payments shall be paid quarterly, with the first payment due within ten (10) days of the Executed Date of this Agreement.

(iv) Each subsequent payment shall be due within ten (10) days from the beginning of each quarter as follows:

- 1) Second Payment of \$82,500.00 due on or before: October 10, 2021
- 2) Third Payment of \$82,500.00 due on or before: January 10, 2022
- 3) Fourth Payment of \$82,500.00 due on or before: April 10, 2022

(c) **Attorneys' Fees and Costs.** The Parties acknowledge and agree that they are solely responsible for paying any attorneys' fees and costs they incurred in connection with the Dispute, including, but not limited to, attorneys' fees and costs incurred in connection with the negotiation of this Agreement. Neither Party nor its attorneys will seek any award of attorneys' fees or costs from the other Party.

2. **Release of All Claims.**

(a) **Mutual Release.** For and in consideration of Recitals, promises and covenants in this Agreement by City and Chamber as set forth above, each Party to this Agreement (the "Mutual Releasers") completely releases and forever discharges each other Party and its respective predecessors, successors, successors-in-interest, subsidiaries, affiliated or related legal entities, elective and appointive council members, council boards, commissions, commissioners, shareholders, officers, directors, principals, agents, employees, servants, representatives, and all persons, firms, associations, and corporations connected with them, including without limitation their insurers, sureties, and attorneys (the "Mutual Releasees"), of and from any and all claims, demands, warranties, causes of action, obligations, liens, damages, losses, costs, attorneys' fees, and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, including without limitation any claims for alleged breach of the implied covenant of good faith and fair dealing relative to the Dispute including any amounts claimed by either Party to be due and owing by the other Party, any and all credits, offsets, duplicate payment claims, lack of record claims, defenses, and claims of either Party relating to the said services performed by the Parties on behalf of the other, which the Mutual Releasers may have or may hereafter have against the Mutual Releasees by reason of any matter, cause, or thing arising out of, or in any manner connected with the Dispute, or for any other service, or related service and/or charge related to the Dispute in any way whatsoever.

The releases set forth herein shall extend to every type of claim, whether based on a statute, tort, contract, express warranty, implied warranty, or other theory of recovery that the Mutual Releasers now have, or that may hereafter accrue or otherwise be acquired, on account of, or in any way arising out of the facts giving rise to the Dispute, including, without limitation, any and all known or unknown claims.

The Mutual Releasers acknowledge and agree that the releases and discharges set forth herein constitute a general release. The Mutual Releasers expressly waive and assume the risk of any and all claims for damages that exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their respective decisions to enter into this Agreement. The Mutual Releasers further agree that they have accepted the consideration herein as a complete compromise of matters involving disputed issues of law and fact. The Mutual Releasers assume the risk that the law or facts may be other than what they believe. The Mutual Releasers understand and agree that this Agreement is a compromise of a disputed claim, and the payments

are not to be construed as an admission of liability on the part of the Mutual Releasees, which expressly deny liability.

The Parties certify that they have read the provisions of California Civil Code Section 1542 and have consulted their own counsel regarding that section. The Parties hereby waive any and all rights under California Civil Code Section 1542, which states:

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

Parties agree and acknowledge that the released claims extend to and include unknown and unsuspected claims.

Specifically, the Parties have made an investigation of the facts pertaining to this Agreement and to the released claims as they deem necessary. Parties are aware that they may hereafter discover facts in addition to, contrary to, or different from those they now know or believe to be true with respect to the matters set forth herein. Nevertheless, it is the intention of the Parties to settle and release all claims of any kind or nature whatsoever that were in existence as of the date of this Agreement fully, finally, and forever. In furtherance of the Parties' intent, the release in this Agreement shall remain in full and complete effect notwithstanding the discovery or existence of any additional, contrary, or different facts.

3. Representations and Warranties.

(a) **No Outstanding or Known Future Claims or Causes of Action.** Each Party represents and warrants that it has not filed with any governmental agency or court any type of action or report against the other Party, other than the Dispute, and currently knows of no existing act or omission by the other Party that may constitute a claim or liability excluded from the released claims set out in Section 2, above.

(b) **No Assignment or Transfer of Claims.** Each Party represents and warrants that it is the rightful owner of and has not encumbered, assigned, or transferred, nor will it in the future attempt to encumber, assign, or transfer, any claim for relief or cause of action released herein.

(c) **Parties' Authority to Settle.** Each Party represents and warrants that it has full authority to enter into, deliver, and perform under this Agreement, and that all acts and actions have been taken to grant such authority, and that no third-party consent, which has not already been obtained, is required.

(d) **Signatories' Authority to Execute Agreement.** Each signatory to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the Party for which he or she has executed this Agreement.

(e) **No Violation of Bylaws, Covenants, or Restrictions.** Each Party warrants and represents that the Party's execution of this Agreement is not in violation of any Bylaws,

Covenants, Municipal Code, Government Code, City Charter, and/or other restrictions placed upon them by their respective entities.

4. **Cooperation.**

Each Party agrees to take all actions and to make, deliver, sign, and file any other documents and instruments necessary to carry out the terms, provisions, purpose, and intent of this Agreement.

5. **No Admission of Liability.**

The Parties acknowledge that this Agreement represents a compromise and final settlement of disputed claims and agree that the performance of the conditions and provisions of this Agreement, including the payment and acceptance of the Settlement Payment, is not to be construed as an admission of any liability or wrongdoing whatsoever by any Party to this Agreement.

6. **Agreement is Legally Binding.**

The Parties intend this Agreement to be legally binding upon and shall inure to the benefit of each of them and their respective parents, subsidiaries, affiliates, predecessors, successors, and assigns/successors, assigns, executors, administrators, heirs, and estates.

7. **Covenant Not to Sue.**

Each Party hereby covenants not to sue the other Party or any of the Mutual Releasees for any claims related to the Dispute. Each Party warrants that they have not filed any complaint, claim or charge against the other Party or any of the Mutual Releasees with any local, state or federal agency or court. Each Party agrees that, if any such agency or court assumes the prosecution or jurisdiction of any complaint or charge against the other Party or any of the Mutual Releasees to this Agreement, the prosecuting Party will immediately dismiss the complaint or charge and/or will immediately request such agency or court to dismiss and withdraw from the matter, and the Parties will not support the effort of anyone else or any entity that might file an action based on this Dispute. Parties agree and acknowledge that each Party has not assigned or otherwise transferred any interest in any claims released in this Agreement. Parties shall not commence, join in, or in any manner seek relief through any suit arising out of, based upon, or relating to any claims releases pursuant to this Agreement.

8. **Entire Agreement.**

This Agreement, including the recitals, constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Each Party acknowledges that in entering into this Agreement, it has not relied on any promise, representation, or warranty not contained in this Agreement.

9. **Modification.**

No modification of this Agreement shall be binding unless in writing and signed by each of the Parties hereto.

10. **New or Different Facts: No Effect.**

Except as provided herein, this Agreement shall be, and remain, in effect despite any alleged breach of this Agreement or the discovery or existence of any new or additional fact, or any fact different from that which either Party now knows or believes to be true.

11. Interpretation, Severability, and Enforcement.

(a) **Interpretation.** The Parties agree that they participated equally in drafting and negotiating the terms of this Agreement and that this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

(b) **Severability.** Should any provision of this Agreement be declared or be determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

(c) **Enforcement.** Nothing in this Agreement shall be construed as, or constitute, a release of any Party's right to enforce the terms of this Agreement.

12. Choice of Law and Forum.

(a) **Choice of Law.** This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of State of California, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.

(b) **Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the state or federal courts of located in Santa Clara County, California. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

13. Notice.

Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section. The Parties shall deliver any Notice at least seven (7) days before the event addressed by the Notice unless it is impossible to do so or a longer period is required by other terms of this Agreement.

If to City of Santa Clara:

Brian Doyle

City Attorney, City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Email: bdoyle@santaclaraca.gov

If to Santa Clara Chamber of Commerce: Silicon Valley Central Chamber of Commerce
Attention: Christian D. Malesic
3350 Scott Blvd., Building 54
Santa Clara, CA 95054-3124
Email: president.ceo@svcentralchamber.com
Phone (408) 244-8244

with a copy to: Soby M. Mathews
Mathews & Peddibhotla Law Group, PC
39899 Balentine Drive, Suite 380
Newark, CA 9456
Phone: 510-498-1949
Email: soby@mplg.us

14. Reliance on Own Counsel.

In entering into this Agreement, each Party acknowledges that:

(a) It has had the opportunity to seek and rely upon the legal advice of attorneys of its own choosing.

(b) It fully understands and voluntarily accepts the Agreement's terms based on the consideration set forth in this Agreement and not on any other promises or representations by the other Party or any attorney or other agent or representative of the other Party.

(c) In deciding to sign this Agreement, each Party did not rely and has not relied on any oral or written representation or statement by the other Party or any attorney, or other agent or representative of the other Party, including but not limited to any representation or statement about the subject matter, basis, or effect of this Agreement.

15. Counterparts and Copies.

This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signature pages sent by email shall be binding as though they are originals.

16. Effective Date.

The terms of the Agreement will be effective when a fully executed copy of this Agreement is delivered to counsel for Plaintiffs as described in the Notice section of this Agreement as of the date set out in the introductory paragraph of this Agreement (the "Executed Date").

EACH OF THE PARTIES CERTIFIES THAT IT HAS READ ALL OF THIS AGREEMENT AND FULLY UNDERSTANDS AND AGREES TO EACH OF THE ABOVE TERMS, CONDITIONS, AND PROVISIONS.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

CITY OF SANTA CLARA

**Deanna J.
Santana** Digitally signed by
Deanna J. Santana
Date: 2021.07.09
09:27:02 -07'00'

Name: Deanna J. Santana

Title: City Manager

Dated:

SANTA CLARA CHAMBER OF COMMERCE

**Christian D.
Malesic** Digitally signed by
Christian D. Malesic
Date: 2021.07.12
18:22:38 -07'00'

Christian D. Malesic
President/CEO
Silicon Valley Central Chamber

Dated:

APPROVED AS TO FORM:

MATHEWS & PEDDIBHOTLA LAW GROUP, PC

**Soby
Mathews** Digitally signed by Soby
Mathews
Date: 2021.07.13
14:38:25 -07'00'

SOBY M. MATHEWS

Dated:

CITY ATTORNEY, CITY OF SANTA CLARA

Sujata Reuter Digitally signed by Sujata
Reuter
Date: 2021.07.07 21:08:48
-07'00'

BRIAN DOYLE

Dated: