

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

The City of Fullerton ("Employer"), including its current and former employees, officers, directors and agents hereof (collectively referred to throughout this Agreement as "Employer") and Trung Phan, his heirs, executors, administrators, successors, and assigns (collectively referred to throughout this Agreement as "Employee"), agree that:

I. Consideration

In consideration for signing this Agreement and Mutual General Release and compliance with the promises made herein, Employer agrees:

- A. To hold in abeyance the current administrative investigation.
- B. To retain employee on payroll until September 15, 2017 by exhausting the employee's 124 hours of banked Discretionary Paid Leave effective August 21, 2017 and placing him on Paid Administrative Leave for the balance of his time on payroll.

In consideration for signing this Agreement and Mutual General Release and compliance with the promises made herein, Employee agrees:

- A. To submit a resignation effective September 15, 2017. The resignation will be accepted by the Employer and will be deemed irrevocable. The aforesaid Resignation/Separation Form shall be placed within Employee's official personnel file. The documents produced in the course of investigating the matters contained therein (as well as this Agreement and Mutual General Release) shall be placed within a sealed envelope within Employee's official personnel file, with the file bearing a "CONFIDENTIAL" designation. The contents and/or substance of the "CONFIDENTIAL" file shall only be divulged in the following circumstances (representation that the "CONFIDENTIAL" file exists is not barred or governed by this Agreement):
 - 1. Pursuant to subpoena or other process served in the course of administrative, civil or criminal proceedings (the Employer shall have no duty to quash or otherwise oppose any such discovery demand, but shall promptly advise Employee of such demand should he desire to institute action to oppose such a demand at his own expense and through counsel of his own selection).
 - 2. In the course of defense by the Employer of a proceeding (whether administrative, quasi-civil, civil or criminal), to which the Employer is a real party in interest, said file shall be subject to use by the Employer in such circumstances, without the necessity of the undertaking by the Employer of any discovery related proceedings.
 - 3. To any other persons or entities that provide the Employer with a written release executed by Employee, directing or authorizing the Employer to provide said person or entity with access to the contents and/or substance of said "CONFIDENTIAL" file.
 - 4. Inquiries from prospective employers seeking references or performing background investigation shall only be responded to with information of the

background investigation shall only be responded to with information of the dates of Employee's employment, his job title, salary information and that he resigned. Any inquiry beyond the dates of employment, salary information and job title shall be referred to and responded directly by the Employer's Human Resources Manager or his/her designee within the limitations set forth herein.

B. Employee will separately enter into a Compromise and Release of his pending Worker's Compensation claims in the amount of \$5,000.00.

C. To not file for unemployment benefits.

II. No Consideration Absent Execution of this Agreement

Employee understands and agrees that he would not receive the benefits specified in Section I above, except for his execution of this Agreement and Mutual General Release and the fulfillment of the promises contained herein.

III. Mutual General Release of Claims

Employee knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, Employer, its current and former employees, officers, directors and agents thereof from any and all claims, known and unknown, asserted and unasserted, Employee has or may have against Employer as of the date of execution of this Agreement and Mutual General Release, including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964, as amended
- The Civil Rights Act of 1991
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended
- The Employee Retirement Income Security Act of 1974, as amended
- The Immigration Reform and Control Act, as amended
- The Americans with Disabilities Act of 1990, as amended
- The Workers Adjustment and Retraining Notification Act, as amended
- The Occupational Safety and Health Act, as amended
- The Sarbanes-Oxley Act of 2002
- California Family Rights Act - California Government Code Section 12945.2 et seq.
- California Fair Employment and Housing Act - California Government Code Section 12900 et seq.
- Statutory Provision Regarding Retaliation/Discrimination for Filing a Workers Compensation Claim - California Labor Code Section 1132a(1) to (4)
- California Unruh Civil Rights Act - Civil Code Section 51 et seq.
- California Parental Leave Law - California Labor Code Section 230.7 et seq.
- California Family and Medical Leave - California Labor Code Section 233

- California Parental Leave for School Visits Law - California Labor Code Section 230.7 et seq.
- Any other federal, state, or local civil or human rights law or any other local, state or federal law, regulation or ordinance
- Any public policy, contract, tort, or common law or
- Any claim for costs, fees, or other expenses including attorneys' fees incurred in these matters

Furthermore, on behalf of himself, his relatives, heirs, estate, executors, administrators, successors and assigns, Employee does fully release and discharge the Employer, its officers, agents, employees, accountants, attorneys, subsidiaries, affiliated entities, successors and assigns from all actions, causes of action, claims, judgments, obligations, damages, and liabilities of whatsoever kinds and character including, but not limited to, any actions, causes of action, claims, judgments, obligations, damages, or liabilities relating to his employment with the Employer, and the causes, procedures and circumstances surrounding the separation of his employment with the Employer (including, but not limited to EEOC, DFEH, disability retirement, short-term disability, and long-term disability claims).

III.1 Employee agrees that this General Release will cover all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, past or present, which Employee may have against Employer, despite the fact that California Civil Code Section 1542 may provide otherwise. Employee expressly waives any right or benefit available to him in any capacity under the provisions of Section 1542, which provides as follows:

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

III.2. Employer knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, Employee of and from any and all claims, known and unknown, asserted and unasserted, Employer has or may have against Employee as of the date of execution of this Agreement and Mutual General Release. Employer agrees that this General Release will cover all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Employer may have against Employee, despite the fact that California Civil Code Section 1542 may provide otherwise. Employer expressly waives any right or benefit available to it in any capacity under the provisions of Section 1542, which provides as follows:

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

III.3 The Parties represent and warrant that they have not assigned or subrogated any claim concerning this action or authorized any other person or entity to assert such a claim or claims on their behalf. The Parties further represent and warrant there are no liens against any claim concerning this Action. The Parties will take all steps necessary to obtain dismissal of any claim asserted by any other individual or entity on his behalf and will not accept relief or recovery from any Action that is not dismissed.

IV. Affirmations

Employee affirms that he has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against Employer in any forum or form, except the Actions identified herein. Employee further affirms that he has been paid and/or has received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which he may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to him, except as provided in this Agreement and Mutual General Release. Employee furthermore affirms that he has no known work-related injuries or occupational diseases and has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act. Employee understands that Employer has relied upon Employee's representations herein.

V. Waiver of Right to Employment, Reinstatement as Independent Contractor, or Future Business Relationship with Employer

Employee acknowledges that because of circumstances unique to him including, but not limited to, irreconcilable differences with Employer, he is not qualified to hold any position with Employer now or in the future and, therefore, shall not apply in the future for employment, an independent contractor position, or position of any kind with Employer. Employee further agrees that Employer shall not be liable for any damages now or in the future because of Employer's refusal to retain, hire or employ Employee for any reason whatsoever.

VI. Non-Disparagement

Employee agrees not to defame, disparage or demean Employer in any manner whatsoever. Employer agrees not to defame, disparage or demean Employee for anything he did or may have done in the course and scope of his relationship with Employer.

VII. Confidentiality

This is a confidential Settlement Agreement. Neither the parties nor their representatives may disclose this Settlement Agreement to any third parties other than their respective financial/tax advisors unless otherwise required by law.

VIII. Governing Law and Interpretation

This Agreement and Mutual General Release shall be governed and conformed in accordance with the California law without regard to its conflict of laws rules; except that parol evidence shall not be considered to alter, vary, modify or amend the terms of this Agreement. In the Event the Employee or Employer breaches any provision of this Agreement and Mutual General Release, Employee and Employer affirm that either may institute an action to specifically enforce any term or terms of this Agreement and Mutual General Release. Should any provision of this Agreement and Mutual General Release be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement and Mutual General Release in full force and effect.

IX. Nonadmission of Wrongdoing

The parties agree that neither this Agreement and Mutual General Release nor the furnishing of the consideration for this Release shall be deemed or construed at any time for any purpose as any admission by Employer of any liability or unlawful conduct of any kind.

X. Amendment

This Agreement and Mutual General Release may not be modified, altered or changed except upon express written consent of both parties wherein specific reference is made to this Agreement and Mutual General Release.

XI. Severability

Should any provisions of this Release be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Release.

XII. Miscellaneous

XII.1. Employee and Employer represent that they are currently unaware of any claim, right, demand, debt, action, obligation, liability or cause of action that they may have against each other which have not been released in this Release.

XII.2. Employee and Employer represent that they have had the opportunity to consult with an attorney of their own choosing in the negotiations leading to the preparation of this Release, that they have read this Release, that they are fully aware of its contents and legal effect, and that they have freely and voluntarily entered into it without coercion, intimidation or threat of retaliation.

XII.3. In the event it shall be necessary for any Party to institute legal action to enforce any of the terms and conditions or provisions in this Settlement Agreement and Mutual General Release, or for any breach thereof, the prevailing Party in such action shall be entitled to costs and reasonable attorneys' fees.

XII.4. Any dispute concerning the interpretation, breach, or enforcement of this agreement shall be submitted to final and binding arbitration. Such arbitration shall be conducted under the AAA Employment Dispute Rules, which are incorporated herein by reference.

XIII. Entire Agreement

This Agreement and Mutual General Release sets forth the entire Agreement between the parties hereto, and fully supersedes any prior obligation of Employer to Employee. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to accept this Agreement and Mutual General Release, except for those set forth in this Agreement and Mutual General Release.

XIII. Execution

This Agreement may be signed in counterparts on separate signature pages. These separate signature pages will become part of the integrated Agreement.

XV. Summary Enforcement

Any provisions of Evidence Code Sections 1115-1128 notwithstanding, this agreement may be enforced by any party hereto by a motion under Code of Civil Procedure Section 664.6 or by any other procedure permitted by law in the American Arbitration Association.

HAVING ELECTED TO EXECUTE THIS AGREEMENT AND MUTUAL GENERAL RELEASE, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH "I" ABOVE, EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT AND MUTUAL GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST EMPLOYER.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Agreement and Mutual General Release as of the date set forth below:

Date:

Trung Phan

Date:

Gretchen Beatty
Director of Human Resources