

**SETTLEMENT AGREEMENT
AND
RELEASE OF ALL CLAIMS**

This Settlement Agreement and Mutual Release of All Claims (“**AGREEMENT**”) is made between **NICHOLAS EMMERLING** (“**EMMERLING**”) and **CITY OF MOUNTAIN VIEW** (“**CITY**”), collectively referred to herein as the “**PARTIES**,” with respect to the following facts:

RECITALS

A. **EMMERLING** was employed as a probationary police officer for the **CITY** until May 23, 2014;

B. On or about May 20, 2015, **EMMERLING** initiated an action against the **CITY** in the Superior Court of the State of California, County of Santa Clara, Case No. 115CV280920 (“**ACTION**”), alleging causes of action in violation of the California Fair Employment and Housing Act for Discrimination and Retaliation based on Military Status and for taking Military Leave, and for violation of the California Family Rights Act for taking family leave and for violation of the Military and Veterans Code and;

C. On February 7, 2017, the Court granted summary judgment to the City on all causes of action;

D. On March 1, 2017, **EMMERLING** filed a Notice of Appeal appealing the grant of summary judgment to the **CITY**;

E. On February 21, 2019, the Court of Appeal reversed the summary judgment and vacated the trial court’s order, entering a new order granting summary adjudication of the third cause of action to the **CITY** and denying summary adjudication of the first, second and fourth causes of action alleged by **EMMERLING**, finding triable issues existed and remanding the case to Superior Court for further proceedings;

F. The **CITY** denies and disputes all of **EMMERLING**’s claims and allegations;

G. In order to avoid the substantial expense and inconvenience of further litigation, the **PARTIES** now desire to finally settle all claims asserted in, as well as all issues that were raised or could have been raised in the **ACTION**, on the terms set forth in this **AGREEMENT**.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

1. Payment. In exchange for the promises and warranties of **EMMERLING**, as set forth below, the **CITY** shall pay the total sum of three hundred and twenty-five thousand dollars (\$325,000) jointly to **EMMERLING** and **EMMERLING'S** attorneys, Wagstaffe, von Loewenfeldt, Busch & Radwick LLP. Payment shall be made by check to the Wagstaffe, von Loewenfeldt, Busch & Radwick LLP Client Trust Account within ten (10) business days after full execution of this Agreement.

2. Mutual Release of All Claims. The **PARTIES** unconditionally, irrevocably and absolutely release and discharge each other as well as any other present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives of the **PARTIES** (collectively, "**RELEASED PARTIES**"), from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that the **PARTIES** may now or hereafter have against the **RELEASED PARTIES** arising from incidents or events occurring on or before the **EFFECTIVE DATE** of this **AGREEMENT**, and these claims shall collectively be referred to hereafter as "**RELEASED CLAIMS.**" To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences among the **RELEASED PARTIES**, including but not limited to any and all claims related to **EMMERLING'S** employment with **CITY**, including the employment conditions with the **CITY**, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the **ACTION** and/or these transactions or occurrences. **RELEASED CLAIMS** include, without limitation, any claims under the laws of contract or tort, the common law, the state or federal Constitution, any state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the California Civil Code, the California Government Code, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act), any policy of **DEFENDANTS**, or any collective bargaining agreement. **RELEASED CLAIMS** include all claims for physical injuries, illness, damage or death, and all claims for attorneys' fees, costs, and expenses. Notwithstanding the foregoing, **RELEASED CLAIMS** shall not include any other claims that cannot lawfully be waived or released by private agreement, including but not limited to claims for workers' compensation, unemployment benefits, wage claims, and claims under Labor Code Section 2802.

3. Unknown or Different Facts or Law. The **PARTIES** acknowledge that they may discover facts or law different from, or in addition to, the facts or law the **PARTIES** know or believe to exist with respect to the **RELEASED CLAIMS**. The **PARTIES** agree, nonetheless, that this **AGREEMENT** and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

4. California Civil Code Section 1542 Waiver. The **PARTIES** expressly acknowledge and agree that the releases contained in this **AGREEMENT** include a waiver of all rights under Section 1542 of the California Civil Code. This statute 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.

The **PARTIES** acknowledge that they have read all of this **AGREEMENT**, including the above Civil Code section, and that the **PARTIES** fully understand both the **AGREEMENT** and the Civil Code section. The **PARTIES** waive any unknown, unsuspected, and unanticipated claims, liabilities, causes of action, against the **RELEASED PARTIES** pursuant to Civil Code section 1542, which have arisen, occurred, or existed at any time prior to and including the Effective Date of this **AGREEMENT**.

5. Dismissal of the ACTION. Within two (2) business days after full execution of this **AGREEMENT**, **EMMERLING** will provide counsel for the **CITY** with a signed Judicial Council Form CIV-110 request for dismissal with prejudice of the entire action of all parties and all causes of action. Counsel for the **CITY** shall hold that signed form in escrow until being informed that the settlement payment has been received, after which the **CITY** will file the dismissal. **EMMERLING** agrees to take any further actions that may be required by the Court to effectuate the dismissal.

6. No Prior Assignments or Liens. **EMMERLING** represents and warrants that **EMMERLING** has not assigned to any other person or entity any of the **RELEASED CLAIMS**. **EMMERLING** further represents and warrants that **EMMERLING** has not, directly or indirectly, caused any liens or claims to be placed on any of the amounts being paid by the **CITY** as provided in this **AGREEMENT** and further represents and warrants that **EMMERLING** is not aware of the existence of any such liens. **EMMERLING** agrees to defend, indemnify and hold the **CITY** harmless from any liability, losses, claims, damages, costs or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

7. No Admissions. By entering into this **AGREEMENT**, neither the **CITY** nor any of the other **RELEASED PARTIES** admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this **AGREEMENT** is not an admission of liability, and that the **CITY** and the other **RELEASED PARTIES** specifically deny liability in the **ACTION** and intend merely to avoid further litigation and expense by entering into this **AGREEMENT**. The parties agree that it is their mutual intention that neither this **AGREEMENT** nor any

terms hereof shall be admissible in any other or future proceedings against the **CITY** or any of the other **RELEASED PARTIES**, except a proceeding to enforce this **AGREEMENT**.

8. Covenant Not to Sue. **EMMERLING** agrees, to the fullest extent permitted by law, that **EMMERLING** will not initiate or file a lawsuit or internal **CITY** proceeding to assert any **RELEASED CLAIMS**. If any such action is brought, this **AGREEMENT** will constitute an Affirmative Defense thereto, and the **CITY** and any other **RELEASED PARTIES** named in such action shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any **RELEASED CLAIMS**.

9. Acknowledgment of Payment of Compensation/Benefits: **EMMERLING** acknowledges and affirms that **EMMERLING** has been paid and/or has received any and all wages, benefits and compensation to which **EMMERLING** is entitled as a result of **EMMERLING'S** employment with the **CITY**, including but not limited to, accrued but unused vacation time.

10. Attorneys' Fees and Costs. **EMMERLING** and the **CITY** and any other **RELEASED PARTIES** agree to bear their own attorneys' fees and expenses incurred in connection with the **ACTION** and/or any **RELEASED CLAIMS**, except as otherwise set forth herein.

11. No Future Employment or Affiliation with the CITY. **EMMERLING** agrees, warrants and represents that **EMMERLING** will not apply for and, if offered, will not accept any employment with or by the **CITY** at any time, or any other entity in which **EMMERLING'S** wages, salary or benefits are paid, in part or in full, by the **CITY**. **EMMERLING** understands and agrees that a violation of this **AGREEMENT** shall constitute good cause for the **CITY** to reject **EMMERLING'S** application for employment or terminate **EMMERLING'S** employment status. **EMMERLING** further understands and agrees that should **EMMERLING** accept **CITY** employment, the acceptance shall constitute misconduct and **EMMERLING** may be terminated immediately without cause or notice and without recourse to any **CITY** policy or any complaint resolution or contractual grievance process. In consideration for the promises contained in this **AGREEMENT**, **EMMERLING** expressly waives any right **EMMERLING** may have to any **CITY** complaint or contractual grievance process, including any rights **EMMERLING** might otherwise have to any notice or opportunity to be heard.

12. Tax Consequences. The **CITY** has made no representations about and takes no position on the tax consequences of this **AGREEMENT** and the payments hereunder. **EMMERLING** agrees and acknowledges that any and all amounts of money owed by or assessed against **EMMERLING** related to any taxes, delinquent taxes, penalties and/or assessments with respect to the proceeds paid in the settlement shall be his sole and exclusive responsibility to satisfy in full. A dispute regarding the tax status of this **AGREEMENT** shall not affect the validity of this **AGREEMENT**. **EMMERLING**

has had an opportunity to discuss the potential tax consequences of this **AGREEMENT** with **EMMERLING'S** own counsel.

In signing this **AGREEMENT**, **EMMERLING** acknowledges that neither the **CITY** nor any of its agents or employees has served as a tax attorney or tax advisor to any party. **EMMERLING** further acknowledges that he has the right to seek tax advice, and to review this **AGREEMENT** with a tax attorney or tax consultant, prior to signing.

13. The Applicability of California Public Records Act. The **PARTIES** acknowledge that the **CITY** is subject to the California Public Records Act ("CPRA") and that this Agreement and other documents, or portions thereof, underlying the Action may constitute public records of a type that is generally required to be disclosed upon request, to the extent such disclosure is also consistent with the **CITY'S** obligations under the law.

14. Confidentiality Provision. Except as required under the applicable law pursuant to the California Public Records Act ("CPRA"), the parties and their attorneys agree this **AGREEMENT** and its terms and conditions are strictly confidential. Nothing in this provision shall preclude the parties from sharing a copy of this **AGREEMENT** or disclosing its contents to (a) their accountants or attorneys, (b) in the case of the **CITY**, its officers, agents or employees with a need to know in order to perform their duties, and (c) in the case of **EMMERLING**, **EMMERLING'S** domestic partner or spouse, (d) governmental taxing authority, and (e) in connection with any confidential security clearance or background investigation by or on behalf of any governmental entity or government contractor.

15. Nondisparagement. Excluding the **CITY'S** obligation to disclose **EMMERLING'S** records upon receipt of an express waiver from **EMMERLING** in connection with confidential security clearances, background checks and background investigations and excluding any representation by the **PARTIES** during such a confidential security clearance, background check or investigation, neither the **CITY** nor **EMMERLING** shall make any oral or written statement about the other party which is intended or reasonably likely to disparage the other party, or otherwise degrade the other party's reputation in the community or in the law enforcement arena.

16. Neutral References. The **CITY** will provide a neutral reference for **EMMERLING** consisting of the dates of **EMMERLING'S** employment, the job titles held and **EMMERLING'S** last salary.

17. California Law. This **AGREEMENT** is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law, without regard to conflicts of laws provisions. The parties agree that any action to enforce any term of this **AGREEMENT** shall be filed in the Superior Court of California, County of Santa Clara. Accordingly, the parties also agree to submit to the jurisdiction of the State of California for any action to enforce any term of this **AGREEMENT**.

18. Severability. Should it be determined by a court that any term of this **AGREEMENT** is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

19. Modifications. This **AGREEMENT** may be amended only by a written instrument executed by all parties hereto.

20. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this **AGREEMENT**.

21. Interpretation; Construction. The headings set forth in this **AGREEMENT** are for convenience only and shall not be used in interpreting this **AGREEMENT**. This **AGREEMENT** has been drafted by legal counsel representing the **CITY**, but **EMMERLING** and **EMMERLING'S** counsel have fully participated in the negotiation of its terms. **EMMERLING** acknowledges that **EMMERLING** has had an opportunity to review and discuss each term of this **AGREEMENT** with legal counsel and, therefore, the normal rule of construction, which is that any ambiguities in the document are resolved against the drafting party, shall not be employed in the interpretation of this **AGREEMENT**.

22. Entire Agreement. The parties to this **AGREEMENT** declare and represent that no promise, inducement or agreement not herein discussed has been made between the parties and that this **AGREEMENT** contains the entire expression of agreement between the parties on the subjects addressed herein.

23. Binding Effect. This **AGREEMENT** shall bind the heirs, personal representatives, successors, and assigns of each party, and it shall inure to the benefit of each party and their respective heirs, successors, and assigns.

24. Counterparts. This **AGREEMENT** may be executed in counterparts. The execution of a signature page of this **AGREEMENT** shall constitute the execution of the **AGREEMENT**, and the **AGREEMENT** shall be binding on each party upon that party's signing of such a counterpart. The signing of a facsimile or .pdf copy shall have the same force and effect as the signing of an original, and a facsimile or .pdf signature shall be deemed an original and valid signature.

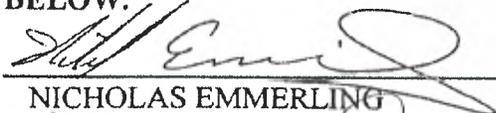
25. Advice of Counsel. The **PARTIES** declare and represent that they are executing this **AGREEMENT** with full advice from their respective legal counsel, that they intend that this **AGREEMENT** shall be complete and shall not be subject to any claim of mistake, that the releases herein express a full and complete release and that, regardless of the adequacy or inadequacy of the consideration, each intends the releases

herein to be final and complete. Each party executes this release with the full knowledge that this release covers all possible claims to the fullest extent permitted by law.

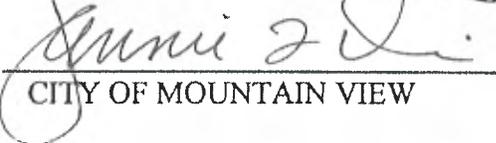
PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE WHICH INCLUDES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: April 10, 2019

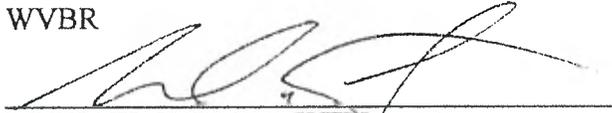
By: 
NICHOLAS EMMERLING

Dated: April 11, 2019

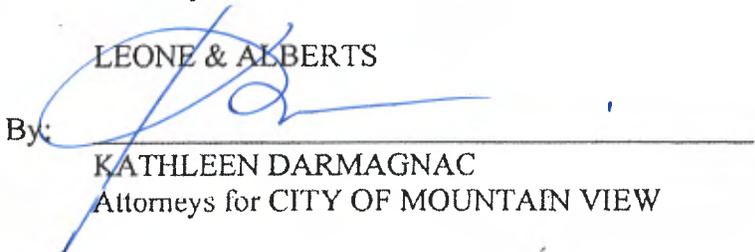
By: 
CITY OF MOUNTAIN VIEW

APPROVED AS TO FORM AND SUBSTANCE:

By: WVBR


MICHAEL VON LOEWENFELDT
Attorneys for NICHOLAS EMMERLING

LEONE & ALBERTS

By: 
KATHLEEN DARMAGNAC
Attorneys for CITY OF MOUNTAIN VIEW