

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made this 5th day of May 2022 by and among The Seattle Times (the “**Times**”) and the City of Seattle (the “**City**”). The Times and the City are sometimes referenced collectively as the “**Parties**.”

BACKGROUND

A. On or about January 16, 2020, Times reporter Sydney Brownstone submitted a public records request to the City, which processed it as Request No. C053158-011620 (the “Brownstone Request”). On or about June 9, 2020, Times reporter David Gutman submitted a public records request to the City, which processed it as Request No. C059114-060920 (the “Gutman Request”). On or about July 13, 2020, then-Times reporter Lewis Kamb submitted a public records request to the City, which processed it as Request No. P060752-071320 (the “Kamb July Request”). On or about July 15, 2020, Times Reporter Daniel Beekman submitted a public records request to the City, which processed it as Request No. C060951-071520 (the “Beekman Request”). On or about August 10, 2020, Mr. Kamb submitted a public records request to the City, which processed it as Request No. P062212-081020 (the “Kamb August Request”).

B. On June 3, 2021, the Times filed a complaint against the City in King County Superior Court, which was assigned Cause No. 21-2-07268-9 SEA (the “Complaint”). In the Lawsuit, the Times alleges that the City violated the Public Records Act, ch. 42.56 RCW, in connection with its responses to the Brownstone Request, the Gutman Request, the Beekman Request, the Kamb July Request, and the Kamb August Request (together, the “Requests at Issue”). The Complaint’s allegations include, but are not limited to, claims that, in connection with the Requests at Issue, the City: failed to promptly disclose records upon request; unlawfully withheld responsive records in the absence of an applicable exemption; failed to provide the fullest assistance and most timely possible action; failed to justify the withholding of requested records; violated the Times’ right to receive adequate responses; failed to provide reasonable time estimates for producing requested records; failed to adequately search for responsive records; and unlawfully destroyed responsive records. The Times’ lawsuit remains pending.

C. On or about October 18, 2021, the City closed the Brownstone Request because it had not received payment for the latest installment of records for more than 30 days. After Ms. Brownstone indicated that she had not intended to abandon the request, on or about November 12, 2021, the City opened a new request identical to the original Brownstone Request, processing it as Request No. C083144-111021. On or about September 27, 2021, the City closed the Kamb July Request because it had not received payment for the latest installment of records for more than 30 days. After Mr. Kamb indicated that he had not intended to abandon the request, on or about October 15, 2021, the City opened a new request identical to the original Kamb July Request, processing it as Request No. P081835-101521. The Parties dispute whether the Brownstone Request and the Kamb July Request was abandoned for failure to pay and properly closed. Upon Mr. Kamb’s departure from Times employment in April 2022, at the request of the

Times, the City transferred Request P081835-101521 to investigative editor Jonathan Martin and began processing it as Request No. P090270-040822.

D. It is understood and agreed to by the Parties that this Agreement is a compromise of all the Times' claims to provide a speedy and efficient resolution of the Complaint.

E. The Parties desire to enter into this Settlement Agreement in order to fully settle and discharge all claims which are, or might have been, asserted in the Complaint (including any amendment thereof), upon the terms and conditions set forth below.

AGREEMENT

WHEREFORE, in consideration of the releases, promises, and benefits covered under this Agreement, the Parties agree as follows:

1. Settlement Amount. In consideration of the Times promises under this Agreement, the City agrees to provide the Times the sum of One Hundred Ninety-Nine Thousand, Eight Hundred Fifty-Five Dollars and Zero Cents (\$199,855.00) (the "**Settlement Amount**"). The Settlement Amount is inclusive of all attorney's fees and litigation costs incurred by the Times in connection with this lawsuit. The Settlement Amount shall be paid by check(s) payable to Johnston George LLP and shall be delivered to the Times' counsel within thirty (30) days of execution of the settlement.

2. No Admission of Liability. This Agreement and its terms shall not constitute or serve as evidence of an admission on the part of any party of the validity or accuracy of any issue or allegation, whether asserted or not. The City has denied and continues to deny liability for the claims asserted in the Complaint.

3. Release and Discharge.

3.1. In consideration of the Settlement Amount and other terms set forth in this Agreement, the Times hereby completely releases and forever discharges any demands, obligations, actions, causes of action, rights, damages, costs (including payment of attorney's fees), losses of services, expenses, and compensation of any nature whatsoever, whether based on the Public Records Act, tort, contract, or any other theory of liability or recovery, which the Times might bring against the City in connection with the requests processed as Request Nos. C053158-011620, C059114-060920, P060752-071320, C060951-071520, P062212-081020, C053158-011620, P081835-101521 and P090270-040822 (together, the "Times' Requests").

3.2. This release and discharge shall also apply to the City's past, present, and future officers, attorneys, agents, servants, employees, and assigns in connection with the Complaint and the Times' Requests.

3.3. The Times expressly waives any and all claims related to the Times' Requests which exist as of this date, but which the Times does not know or

suspect to exist, and which, if known, would materially affect its decision to enter this Agreement.

3.4. The Times further agrees that the Brownstone Request will be considered withdrawn and closed upon execution of this agreement. The Times will not resubmit, in whole or in part, a new public records request seeking substantially the same information or records sought in any of the Times' Requests, nor will any Times reporter or other agent or assign do so on the Times' behalf, this matter being considered complete except as stated in 3.5 below.

3.5. The City agrees to complete its response to Request No. P090270-040822 by May 16, 2022, subject to paragraphs 3.1–3.3 above. The Times reserves the right to make a new request for public records related to the June 29, 2020 fatal shooting within the Capitol Hill Organized Protest (CHOP) zone once a suspect is identified or the investigation is otherwise closed.

4. *City Public Records Policies, Practices, and Procedures.* The Parties agree and understand that the City will undertake the below steps in connection with its policies, practices, or procedures for collecting or preserving public records or responding to requests therefor.

4.1. Software for data archiving and/or retrieval has already been implemented for all elected officials. The City further agrees that at least sixty-percent (60%) of all City-issued mobile phones will be enrolled in, or otherwise equipped with, data archiving and/or retrieval software by December 31, 2022; with the City Council, Mayor's Office and the City Attorney's Office being prioritized for deployment, and full deployment to be completed by July 1, 2023. Data archiving and/or data retrieval software on City-issued mobile phones will be used to retain mobile communications, such as text messages, consistent with the Washington State Archives Local Government Retention Schedules.

4.2. By December 31, 2022, the City shall provide updated training to all City employees addressing the Public Records Act, retention practices, and the use of personal devices for City communications, including text messages. This training will include specific directives not to use personal devices for City communications, including text messages. By September 1, 2023, the City shall provide updated training to all City elected officials addressing PRA requirements for prompt disclosure and fullest assistance, and retention of public records including text messages.

4.3. Consistent with the Washington State Archives Local Government Retention Schedules, City-issued mobile phones will be initially programmed to retain text messages permanently.

4.4. Production of records to requesters will not be unreasonably delayed because of internal review processes, including but not limited to third-party notices, subject matter review or legal review.

4.5. By December 1, 2022, the City will add a “Commonly Requested Records” tab to its existing webpage¹ for submitting public records requests. Through that tab, the City will provide links or electronic access to commonly requested public records including, but not limited to, City Auditor reports, land use permits, zoning maps, current and archived City budgets, City Council agendas and minutes, lobbyist disclosure reports, Seattle Police Department data maps, crime and computer-aided dispatch dashboards, Significant Incident Reports, the Municipal Code, hearing examiner decisions, Office of Inspector General reports, Municipal Archives collections, services/consulting and construction contract documents, Seattle Channel videos, the Traveler’s Information Map, Department of Transportation capital projects dashboard, the Open Data Portal, and annual pay and wage databases.

5. *Entry of Stipulation Resolving Remedies and for Dismissal.* The Parties agree that this Agreement is a fully binding and complete settlement of all claims and allegations in the Complaint or in connection with the Times’ Requests. As a consequence, the Parties agree to inform the Court about the expected settlement no later than May 12, 2022, and to jointly file the Stipulation and Proposed Order for Dismissal, attached as Exhibit A to this Agreement, within three court days of the City’s payment of the Settlement Amount.

6. *Voluntary and Informed Consent to Agreement.* Each party declares that it knows and understands the contents of this Agreement, that such party reviewed the Agreement with legal counsel and that this Agreement has been executed voluntarily and after full opportunity to review the import of its provisions with legal counsel.

7. *Taxability of Settlement.* The City takes no position as to any taxes which may be due and has advised the Times that it may be responsible for making tax payments on all or part of the settlement amount. The City has advised the Times that the City will report the settlement in its entirety to the Internal Revenue Service by issuance of a 1099 form. The Times must submit a W-9 form to receive any non-wage compensation as part of this settlement. The Times agrees that it is solely responsible for any tax payments which may be owed as a result of this Agreement, including but not limited to indemnifying the City for any tax liabilities or penalties assessed or incurred.

8. *Execution of Other Documents.* The Parties shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

9. *Washington Law.* This Agreement shall be interpreted in accordance with and governed by the laws of the State of Washington, without regard to any choice of law provisions.

¹ The City’s existing webpage is located at: [https://city-seattle.mycusthelp.com/webapp/rs/\(S\(sgy1q3yqovfd0a5254dhkfiq\)\)/support/home.aspx?sSessionID=1567425015ZERMJFTWJIZMWKPPUYSVJRKIRQTLW](https://city-seattle.mycusthelp.com/webapp/rs/(S(sgy1q3yqovfd0a5254dhkfiq))/support/home.aspx?sSessionID=1567425015ZERMJFTWJIZMWKPPUYSVJRKIRQTLW) (last visited April 22, 2022).

10. *Entire Agreement.* This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and all prior negotiations, agreements, and understandings, whether written or oral, are superseded. No provision of this Agreement may be changed, waived, or modified except in writing signed by the party to be bound.

11. *Authority to Enter Agreement.* Each person entering this Agreement represents that he or she has the right and authority to execute this Agreement on behalf of the party for whom he or she signs.

12. *Counterparts.* This Agreement shall be executed in counterparts, on the attached “Counterpart Signature Pages” and copies of the fully executed Counterpart Signature Pages shall be sent via email or facsimile and the originals delivered to the City’s counsel for assembly. Together the pages shall be deemed a single document.

13. *Severability.* It is further understood and agreed that if any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable. Notwithstanding the foregoing, if the release and discharge contained in Paragraph 3 above is declared unenforceable or invalid, the City shall have the option of rescinding this Agreement. If such a rescission occurs, the Times shall repay to the City all sums paid to the Times pursuant to this Agreement.

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**COUNTERPART SIGNATURE PAGE
TO SETTLEMENT AGREEMENT**

I, Ghazal Sharifi, hereby represent and warrant that I have read and reviewed the above and foregoing Agreement, and that I have executed this Agreement and am authorized to execute this Agreement for the City of Seattle, and acknowledge it to be the free and voluntary act of such party for the uses and purposes stated therein.

CITY OF SEATTLE



Director of Constitutional and Complex Litigation Section
Civil Division
Seattle City Attorney's Office

Dated: May 5, 2022

COUNTERPART SIGNATURE PAGE
TO SETTLEMENT AGREEMENT

Michele

I, Matassa Flores, hereby represent and warrant that I have read and reviewed the above and foregoing Settlement Agreement, and that I have executed this Agreement and am authorized to execute this Agreement, individually and as the Exec. Editor of the Seattle Times, and acknowledge this to be my free and voluntary act for the uses and purposes mentioned in the Agreement.

THE SEATTLE TIMES

Michele Matassa Flores

Dated: 5-4-22