

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into as of _____, 2014, by and between **TAREK CONSUL, AN INDIVIDUAL DOING BUSINESS AS PARK N TRAVEL** ("Owner") and **CITY OF SAN JOSE**, a California municipal corporation ("City").

RECITALS

- A. On September 15, 2003, City's predecessor in interest, FMC CORPORATION, entered into a Lease of certain real property owned by FMC CORPORATION and located at 1125 Coleman Avenue in the City of San Jose, County of Santa Clara ("Property") to Owner for an initial term of one year and thereafter on a month to month basis ("Lease").
- B. At all times during the term of the Lease, Owner has operated an off-airport parking business on the Property under the name of Park N Travel (the "Business").
- C. City subsequently purchased the Property from FMC CORPORATION, and City amended the terms of the Lease by notices to Owner dated March 17, 2005 and May 20, 2005.
- D. City issued a Decision Regarding Relocation Assistance to Owner on April 1, 2010, in the amount of \$42,500, pursuant to the provisions of the City Policy and Guidelines for Relocation Assistance under State and Federal Laws for Persons Displaced by City's Capital Improvement Projects (City of San Jose Council Policy 7-4, Resolution No. 74138).
- E. To date, Owner has not paid the increased rent amounts due to the City for annual consumer price index ("CPI") adjustments as provided under Section 3.2 of the amended Lease in the total amount of \$73,826.61 for the period of July 2010 through December 2013 (the "Unpaid CPI Rent"). Pursuant to the terms of the amended Lease, the CPI adjusted monthly rent for the period of January 1, 2014 through June 30, 2014 is \$36,629.94. City acknowledges that Owner is paid current on the rent and all other sums due under the Lease through April of 2014 except for the Unpaid CPI Rent.
- F. City is currently holding a Lease security deposit of \$67,022.85.
- G. City intends to assign the Lease to San Jose Earthquakes Management, LLC, and the parties wish to settle and resolve the City's obligation to pay relocation assistance and any other obligations between the parties arising under the Lease, including but not limited to the Unpaid CPI Rent and the security deposit currently held by City, prior to City's assignment of the Lease.

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Council Agenda: June 17, 2014
Item No. 2.14a

DRAFT—Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

H. This Agreement is made with respect to any and all claims arising from, or related to any claims relating to the Business, which claims could have been made or asserted by Owner as a result of the City's termination of the Lease, including but not limited to, any claims for relocation assistance, furniture, fixtures and equipment, inventory, moving costs, severance damages, leasehold bonus value, statutory interest, lost rents, litigation expenses and/or attorneys' fees, appraisal fees, statutory costs, litigation expenses on appeal, and for damages of every other kind and nature suffered or to be suffered by Owner or by reason of the City's acquisition of the Property.

AGREEMENT AND RELEASE

1. Subject to the terms and conditions contained herein, the parties agree that City shall: (a) forego any further claims to the Unpaid CPI Rent; and (b) not collect from Owner and credit as paid the May 2014 rent otherwise due under the terms of the Lease as an offset (the "Settlement Offset") for any further claim by Owner for: (a) Relocation Assistance otherwise due to Owner; and (b) the Lease security deposit currently held by City. For the sake of clarity, the Settlement Offset will result in an increase in the Relocation Assistance from City credited to Owner from \$42,500 to \$43,433.70, based upon the following calculations: Security Deposit + Relocation Assistance - Unpaid CPI Rent = amount due to Owner or $(\$67,022.85 + \$43,433.70) - \$73,826.61 = \$36,629.94$ (the May 2014 rent otherwise due from Owner).

2. Each party hereby acknowledges that the Settlement Offset as provided under this Agreement constitutes the full and complete settlement of any and all Claims against the other party, by reason of City's acquisition of the Property, Owner's occupancy and use of the Property, and any subsequent relocation of Owner from the Property, specifically including, but not limited to, lost income, interest, the value of improvements pertaining to the Property, and any and all relocation benefits to which Owner may be entitled, and any and all other claims that Owner or City may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition of the Property by City and Owner's occupancy and use of the Property. Owner acknowledges that he has been advised of the nature and extent of relocation benefits available to him and that he has had the opportunity to seek legal counsel. Owner, his agents, representatives, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby and forever release City from any and all claims for relocation payments or benefits arising out of, or in any way relating to City's acquisition of the Property. By this release, each party expressly waives its' rights, if any, under California Civil Code Section 1542, which provides: "A General Release does not extend to 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 the debtor.

3. Upon execution of this Agreement: (a) City shall have no further obligation to Owner under any Relocation Assistance and Real Property Acquisition statutes or guidelines; (b) Owner shall have no further obligation to pay the Unpaid CPI Rent or the monthly rent otherwise due for May 2014.

4. Upon full execution of this Agreement, City shall promptly complete the assignment of the Lease to San Jose Earthquakes Management, LLC.

5. Owner expressly represents and warrants that he is the sole owner of the Business; that he has not sold, assigned, encumbered or transferred to any third party any portion of his ownership interest in the Business; that he has not leased any portion of the Property; that he has the exclusive authority to bind the Business by entering into this Agreement; and that no other person or entity is entitled to any portion of any Relocation Assistance otherwise due to Owner.

6. By his signature below, Owner agrees to indemnify and hold City harmless from and against all claims, demands, actions damages, losses, costs, expenses (including attorneys' fees) or liability due to, or based upon, the assertion by any persons or entities not a party to this Agreement that such third parties are entitled to any portion of any Relocation Assistance otherwise due to Owner.

7. Each of the Parties is entering into this Agreement to compromise a potential dispute as to the amount of compensation to be paid by the City to Owner arising from or due to the City's acquisition of the Property for a public purpose, and this Agreement is made in good faith.

8. In effecting this Agreement, each signatory hereto certifies that he or she has read all of this Agreement and fully understands it. This Agreement has been fully negotiated between City and Owner.

9. Each of the parties will execute and deliver to the other additional documents or instruments, and will take such additional actions as are required to implement the terms and conditions of this Agreement.

10. Except as may be set forth herein, the rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assignees of the respective parties hereto, and each of them.

11. This Agreement is made, executed and entered into and is intended to be performed in the State of California, County of Santa Clara, and is to be construed under California law.

12. The parties acknowledge that each has had the opportunity to seek counsel to review the contents of this Agreement and that, for the purposes of this Agreement, neither party shall be deemed the drafter. This Agreement shall be interpreted and construed only by the contents thereof, and there shall be no presumption or standard of construction in favor of or against either party.

13. Each party to this Agreement will bear its own attorneys' fees and costs incurred.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE

By: _____
Kevin Fisher
Sr. Deputy City Attorney

By: _____
Toni Taber
City Clerk

"OWNER"

TAREK CONSUL, an individual d/b/a
PARK N TRAVEL
