

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (hereinafter, the "Agreement") is made and entered into as of February 10, 2020 (the "Effective Date") by and between St. Louis County, Missouri (hereafter, the "County") and Keith W. Wildhaber (hereafter, "Wildhaber"). The County and Wildhaber are sometimes referred to individually as a "party" or collectively as the "parties" in this Agreement. The Effective Date is the date on which both parties have executed this Agreement, and that date shall be inserted above. The following recitals are incorporated into, and form an integral part of, this Agreement.

RECITALS:

A. On January 30, 2020, the Parties executed a Confidential Mediation/Memorandum of Material Settlement Terms, a copy of which is attached hereto as Exhibit A, which contemplated the further negotiation, drafting, and execution of a comprehensive, written settlement agreement, *i.e.*, this Agreement. Notwithstanding the language in Exhibit A regarding confidentiality, and though Exhibit A was previously confidential as part of the mediation, the parties agree that once this Agreement is fully executed by the parties, neither the parties nor their counsel shall have any obligation to keep this Agreement, including its existence and terms, or Exhibit A, including its existence and terms, confidential, and the parties may publicly disclose the same, if they so choose. Upon this Agreement being fully executed by the parties, this Agreement and Exhibit A will be open records under Missouri's Sunshine Law, Section 610.010, *et seq.*

B. Without any admission of fault, wrongdoing or liability by any of the County Parties (defined below) or Wildhaber, the parties desire to forever resolve and compromise all causes of action, claims and demands, judgments, damages, costs, losses, expenses, and compensation on account of or in any way growing out of claims that Wildhaber may have against any of the County Parties (defined below) prior to the Effective Date of this Agreement, including without limitation any claims that Wildhaber alleged or could have alleged in the lawsuit styled *Keith W. Wildhaber v. St. Louis County, Missouri*, Cause No. 17SL-CC00133, pending in the Circuit Court for St. Louis County, Missouri (the "Lawsuit"), and to avoid any future or further lawsuits or litigation between the parties, and upon and subject to the terms and conditions set forth below.

C. Wildhaber acknowledges and understands that the County's intention is to pursue, through litigation or otherwise, the maximum amounts that are recoverable from the County's insurers, the County's third party administrators, or other third parties. Wildhaber further acknowledges and understands that the County may pursue the maximum available coverage from each of the County's insurers from the years 2014 through 2019, including Starr Indemnity & Liability Company, Scottsdale Insurance Company (a subsidiary of Nationwide Insurance Company), Allied World Insurance Company, and/or other persons or entities (hereafter, together, the "Insurance Claims"). Wildhaber further acknowledges and understands that any such amounts recovered from third parties, including, without limitation, the County's insurers, may satisfy and/or repay some or all of the County's obligations regarding payment of the Settlement Sum (defined below) and defense of the Lawsuit and subsequent proceedings. Wildhaber acknowledges that he shall have no claim or interest in any recovery from such pursuit(s) regardless of the recovery that may be obtained by the County.

D. Wildhaber represents that he is not now, and that he has not been, a Medicare beneficiary.

NOW, THEREFORE, in consideration of the foregoing recitals, the agreements, promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Upon the complete execution of the Agreement, the County and Wildhaber shall perform or permit the following acts:

A. Within sixty (60) days of the Effective Date, the County shall pay Wildhaber and his attorneys the total sum of Seven Million Dollars (\$7,000,000.00), broken into separate checks as follows: (1) Four Million Four Hundred Nineteen Thousand Six Hundred Three Dollars and Thirty-Three Cents (\$4,419,603.33) payable to Wildhaber; (2) Two Million Three Hundred Thirty-Five Thousand Three Hundred Ninety Six Dollars and Sixty-Seven Cents (\$2,335,396.67) payable to Riggan Law Firm, LLC; and (3) Two Hundred Forty-Five Thousand Dollars (\$245,000.00) payable to Bartimus Frickleton Robertson Rader P.C. Each of the payments shall be via 1099 and not subject to any deductions or withholdings.

B. On or before January 31, 2021, the County shall pay Wildhaber and his attorneys the total sum of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) broken into separate checks as follows: (1) Two Million Fifty-Five Thousand Six Hundred Twenty-Five Dollars (\$2,055,625.00) payable to Wildhaber; (2) One Million Eighty Thousand Six Hundred Twenty-Five Dollars (\$1,080,625.00) payable to Riggan Law Firm, LLC; and (3) One Hundred Thirteen Thousand Seven Hundred and Fifty Dollars (\$113,750.00) payable to Bartimus Frickleton Robertson Rader P.C. Each of the payments shall be made via 1099 and not subject to any deductions or withholdings.

C. The payments in Section 1. A. and B. above together shall be hereafter collectively referred to as the "Settlement Sum," and the Settlement Sum is inclusive of any and all claims for attorneys' fees, costs or expenses. No additional monies shall be paid to Wildhaber as a result of the Lawsuit, though this shall not be construed to impact any normal salary or benefits Wildhaber receives or is to receive as an active, current employee of the County.

D. Unless otherwise agreed in writing, payment of the Settlement Sum shall be payable and mailed or otherwise delivered to Wildhaber and his attorneys, care of Russell C. Riggan, Riggan Law Firm, LLC. Forms 1099 shall be provided to Wildhaber and his counsel in connection with Settlement Sum payments. Prior to any payments under this Section, Wildhaber and his counsel agree to provide any necessary tax documents, e.g., completed Forms W-9.

E. The County shall pay the full cost of the court-ordered mediation in connection with the Lawsuit to Hon. Glenn Norton/Alaris, said cost being Twenty Thousand One Hundred Eighty-Five Dollars (\$20,185.00).

2. For purposes of this Agreement, the term "County Parties" means:

A. St. Louis County, Missouri, inclusive of its departments, offices, agencies, boards, commissions, and related or affiliated parties (together, the "County");

B. the County's past and present officers, elected officials, appointed officials, employees, volunteers, attorneys, agents, and administrators; and

C. the heirs, personal representatives, successors and assigns of each person or entity described in Section 2. A. or B. above.

3. Wildhaber understands and agrees that his right to receive the Settlement Sum is conditioned upon his agreement to and compliance with the terms and conditions of this Agreement. Wildhaber represents that, if any entity, trustee, agency, attorney or law firm, including, but not limited to, his lawyers or their firms, should claim an interest in the Settlement Sum, Wildhaber shall be solely responsible for satisfying any such claim, shall defend and indemnify the County in connection with any such claim, and the County will not have any liability for any such claim. Wildhaber further represents that no other entity, agency, law firm or attorney(s) has any lien(s), or is entitled to any money from the Settlement Sum as a result of the payment of the Settlement Sum described herein, and that Wildhaber and his counsel are entitled to receive the payments.

Finally, Wildhaber shall be solely responsible for any taxes upon the Settlement Sum, and Wildhaber agrees to indemnify, release and hold the County Parties harmless from any responsibility for such taxes, penalties or interest. Wildhaber further agrees that the County is not making any representations as to the tax consequences of the payment of the Settlement Sum.

4. The parties agree that, within three (3) days of execution of this Agreement, they shall file a joint motion to vacate any and all Judgments (and any amendments thereto, including any Amended Judgment and Order) entered in the Lawsuit to effectuate this Agreement, and the Circuit Court for St. Louis County, Missouri shall retain jurisdiction only to the extent permitted by law to enforce all the terms of this Agreement, including without limitation Wildhaber's right to receive the Settlement Sum in full. Upon receipt of the Settlement Sum, the Lawsuit shall be immediately dismissed with prejudice, with each party to bear his/its own costs, attorneys' fees and expenses.

5. This Agreement is being entered into following a jury trial in the Lawsuit in which the jury rendered a verdict for Wildhaber on his sex discrimination claim and awarded \$1,980,000 in actual damages and \$10,000,000 in punitive damages, and rendered a verdict for Wildhaber on his retaliation claim and awarded \$990,000 in actual damages and \$7,000,000 in punitive damages. Following the verdicts, the trial court entered judgment, and thereafter an amended judgment awarding Wildhaber an additional \$673,530.00 in attorneys' fees, \$7,896.67 in costs and expenses, and post-judgment interest at the rate of 6.5%, in favor of Wildhaber in the Lawsuit. The parties acknowledge that as of the effective date of this Agreement, the County has a right to seek further

trial court review and appellate review of the jury's verdicts (and the resulting trial court amended judgment), and that the County is expressly agreeing to forego and waive its right to such review (at every level) in connection with this Agreement. The parties entered into mediation following the jury's verdicts, and the settlement reached by the parties in this case is a compromise of the jury's verdicts and the trial court's amended judgment. The settlement is to resolve Wildhaber's claims for unlawful discrimination and retaliation that he asserted in the Lawsuit, and to avoid any further litigation. The parties acknowledge that had they not reached this settlement, and had the County's post-trial and appellate arguments and request(s) for further review been unsuccessful, the final result would have obligated the County to pay the full amount of the verdicts/amended judgment. The parties acknowledge that part of the consideration given by Wildhaber to enter into this Agreement is the willingness to forego the possibility of the full recovery of the verdicts/amended judgment and to forego the ability to obtain a "punitive damages final judgment," and that decision by Wildhaber is part of the compromise. Finally, the parties acknowledge and agree that there is not—and never will be—a "punitive damages final judgment" (as that term is defined in Section 537.675 of the Revised Missouri Statutes) in this case as a result of this compromise, and that this compromise has been reached before a "judgment final for purposes of appeal" (as that term is defined in Section 537.675 of the Revised Missouri Statutes) exists. *See, e.g., Kim v. State*, No. SD 35857, ___ S.W.3d. ___, 2019 WL 5883654 (Mo. App. S.D. Nov. 12, 2019).

6. Wildhaber waives, releases, relinquishes and gives up (and agrees not to directly or indirectly file, participate in, or pursue) any and all claims, rights, judgments, suits, actions, causes of action, rights, debts, liabilities, accounts, agreements, covenants, contracts, promises, warranties, demands, damages, costs, and expenses, whether known or unknown at this time, of any kind or nature, absolute or contingent, liquidated or unliquidated, derivative or not, continuing or not, disputed or otherwise, at law or in equity, on account of any issue, action, conduct, matter, cause or thing whatsoever that has happened, developed, accrued, or occurred prior to the execution of this Agreement, including but not limited to the claims alleged or that could have been alleged against any of the County Parties. Without limiting the generality of the foregoing, this waiver includes all matters in any way arising out of or relating to:

A. any custom, practice, policy, decision, or conduct of any of the County Parties prior to the Effective Date of this Agreement;

B. any facts, matters, or claims alleged in the Lawsuit or which could be alleged in any suits, action and causes of action, related to the County Parties; or

C. any conduct by any of the County Parties occurring prior to the Effective Date of this Agreement.

This is a general release which includes, without limitation, a release of any right Wildhaber, his successors, heirs or assigns may have to sue, enforce a judgment or claim, file a lawsuit, institute legal proceedings, make a claim or demand with respect to matters described above pursuant to:

A. 42 U.S.C. Section 1983;

B. 42 U.S.C. Section 1985;

C. any Missouri statutory or common-law tort;

D. any and all claims for damages of any kind, including, but not limited to, damages for personal, emotional, or economic injury, or damage to reputation;

E. any and all claims for personal injury, slander, libel, assault, battery, defamation, fraud, misrepresentation, intentional tort, economic loss, tortious interference, invasion of privacy, intentional or negligent infliction of emotional distress, intentional or negligent failure to supervise, costs, damages, or punitive damages;

F. any claim for breach of contract;

G. a violation of Missouri or Federal constitutional rights;

H. The Missouri Human Rights Act, Section 213.010, *et seq.*;

I. The Missouri Whistleblower Protection Act, Section 285.575;

J. Title VII of the Civil Rights Act of 1964, as amended;

K. The Family and Medical Leave Act, 29 U.S.C. Section 2601, *et seq.*

L. the ordinances of St. Louis County, Missouri, or any rule, order or regulation promulgated thereunder;

M. a breach or violation of any policy, rule, ordinance, Charter or agreement of any of the County Parties; and

N. Executive Order 11246 or any other state, federal, or local law or regulation dealing with any form of discrimination or violation of any civil or constitutional right.

Wildhaber expressly covenants not to sue the County Parties for any cause or thing based upon any act, conduct, or omission that occurred from the beginning of time up to the Effective Date of this Agreement. Nothing in this Agreement is intended to: (1) constitute an unlawful waiver of any of Wildhaber's rights under any laws, though he waives his right to monetary recovery to the fullest extent permitted by law; or (2) release any claim to benefits Wildhaber may have as a result of participation in any retirement plan as a result of this employment with the County.

7. Wildhaber represents and warrants that he is the sole owner of all claims he has released in this Agreement, and that he has not assigned or transferred any such claim (or any interest in any such claim) to any other person, and he will indemnify, defend and hold the County Parties harmless from any damages, costs or expenses which they may incur if these representations and warranties, and any such others in this Agreement, are incorrect in any respect.

8. The parties acknowledge and agree that nothing herein shall be construed to impair or impact the County's ability to pursue the Insurance Claims. Further, Wildhaber represents that he has not asserted any claims against the County Parties in any forum that were not addressed in (or that are unrelated to the allegations in) the Lawsuit, that he has not asserted any claim for age discrimination, and that he is not aware of any facts at this time to support any such claim. Further, Wildhaber agrees he shall not try to pursue hereafter, and has irrevocably forfeited, any claim for equitable relief as dismissed in the Lawsuit without prejudice.

9. This Agreement represents a compromise and settlement of any and all current or possible future claims or causes of action. The foregoing agreements are made without any admission as to fault, liability, wrongdoing or the validity of any other party's position by Wildhaber or any of the County Parties, all of whom expressly deny any and all fault, liability and wrongdoing. Neither this Agreement nor the settlement hereunder shall be construed as or deemed to be evidence of any admission by any party of any fault, liability or wrongdoing.

10. Wildhaber acknowledges that he has carefully read this Agreement and understands all its terms, and that he has signed it voluntarily with full knowledge of its significance after having a reasonable and adequate period of time to consider this Agreement and consult with his attorneys and advisors concerning it. Wildhaber represents that no payments or other consideration has been promised to him for executing and delivering this Agreement other than those described in this Agreement, and such agreements are adequate and sufficient consideration for the claims released and the other agreements outlined in this Agreement. This Agreement may be executed in multiple counterparts, which together shall constitute an original.

11. This Agreement contains the entire agreement between the parties concerning the subject matter and supersedes any and all prior oral and/or written communications between the parties concerning such subject matter. The Agreement may not be assigned or transferred in whole or in part by Wildhaber. Each party shall bear his or its own costs and attorneys' fees in connection with this Agreement or its negotiation, the claims released, and any matters occurring prior to the date of this Agreement. Neither this Agreement, nor any of its terms, may be waived, added to, changed or altered except in a writing signed by Wildhaber and the County Counselor of St. Louis County, Missouri. A pdf or facsimile signature on this Agreement shall be valid as an original, and this Agreement may be executed in multiple counterparts, which together shall constitute an original.

12. This Agreement shall be governed by and construed and interpreted according to the laws of the State of Missouri. Venue for any lawsuit or cause of action for the breach, enforcement, interpretation or other matter related to this Agreement shall be the Circuit Court of St. Louis County, Missouri.

13. In addition to and not in lieu of any other rights and remedies to which County may be entitled, the prevailing party in any action to enforce this Agreement shall be entitled to recover his/its costs and reasonable attorneys' fees.

14. Russell C. Riggan and Samuel W. Moore, on behalf of themselves and Riggan Law Firm, LLC, hereby waive any claim to attorneys' fees to be paid by County, beyond the payment of the Settlement Sum. Likewise, Edward D. Robertson, Jr., on behalf of himself and Bartimus Frickleton Robertson Rader P.C., hereby waives any claim to attorneys' fees to be paid by the County, beyond the payment of the Settlement Sum.

15. Each of the parties represents that he/it has authority to enter into this Agreement.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE FOLLOWS]

**THIS RELEASE ENDS ALL CLAIMS.
READ CAREFULLY BEFORE SIGNING.**

WHEREFORE, the parties have executed this Agreement as of the day and year written below.

KEITH W. WILDHABER:

By: _____

Keith W. Wildhaber

Date: _____

ST. LOUIS COUNTY, MISSOURI:

By: _____ Date: _____

Beth Orwick, County Counselor

Reviewed and approved:

By:  _____

Russell C. Riggan, Riggan Law Firm, LLC

By:  _____

Samuel W. Moore, Riggan Law Firm, LLC

By: _____

Edward D. Robertson, Jr., Bartimus
Frickleton Robertson Rader, P.C.

The County Accounting Officer hereby certifies that an unencumbered balance, sufficient to pay the total contract amount as above stated, remains in the appropriation account against which such obligation is to be charged.

ACCOUNTING OFFICER

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READ CAREFULLY BEFORE SIGNING.**

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KEITH W. WILDHABER:

By: _____
Keith W. Wildhaber

Date: _____

ST. LOUIS COUNTY, MISSOURI:


By: _____
Beth Orwick, County Counselor

Date: _____

Reviewed and approved:

By: _____
Russell C. Riggan, Riggan Law Firm, LLC

By: _____
Samuel W. Moore, Riggan Law Firm, LLC

By: 
Edward D. Robertson, III, Bartimus
Frickleton Robertson Rader, P.C.

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KEITH W. WILDHABER:

By: 

Keith W. Wildhaber

Date: 2/10/2020

ST. LOUIS COUNTY, MISSOURI:

By: 

Beth Orwick, County Counselor

Date: 2/10/2020

Reviewed and approved:

By: _____

Russell C. Riggan, Riggan Law Firm, LLC

By: _____

Samuel W. Moore, Riggan Law Firm, LLC

By: _____

Edward D. Robertson, Jr., Bartimus
Frickleton Robertson Rader, P.C.

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