

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. PARTIES TO THE AGREEMENT

This Settlement Agreement and Release of all Claims ("Agreement") is entered into between the City of Portland, Oregon ("City") and Jon Bates, ("Bates"). "City" includes the City of Portland and each of its former, current and future elected officials, officers, agents, employees, bureaus, divisions, commissions, boards, affiliates, related corporations and entities, insurers and each of their successors and assigns, individually and in their representative capacities.

2. BACKGROUND

- 2.1 Bates was previously employed with the City in the Bureau of Transportation. He was terminated from his employment with the City on or about February 22, 2017.
- 2.2 Bates and his Union DCTU/IBEW have asserted certain claims and potential claims and a grievance against the City based upon or related to his employment and/or the termination of his employment with the City. The City denies the validity of any and all claims and potential claims and the grievance asserted by Bates and DCTU/IBEW against the City.
- 2.3 The City, Bates and DCTU/IBEW desire to fully and finally resolve all claims, potential claims, grievances and disputes that Bates and/or DCTU/IBEW has asserted or potentially could assert against the City. The City, Bates and DCTU/IBEW consider it appropriate to settle and compromise any and all claims arising prior to the effective date of this Agreement that Bates or DCTU/IBEW has made or could make in the future concerning or related to his employment with the City.

3. EFFECTIVE DATE

Except for claims related to age discrimination in employment as provided in Paragraph 6.2 of this Agreement, this Agreement shall be effective upon Bates' execution of this Agreement and any and all claims or potential claims or grievances Bates or DCTU/IBEW has or might have against the City that precede his execution of this Agreement shall be waived. With regard to any claims related to age discrimination in employment, as provided in Paragraph 6.2 of this Agreement, unless revoked by Bates during the seven (7) day period following Bates's execution of this Agreement, Bates' waiver of claims related to age discrimination in employment shall be effective and shall become enforceable on the eighth (8th) day following Bates's execution of this Agreement. If Bates does not revoke this Agreement within the seven (7) day period following his execution of this Agreement as provided in Paragraph 6.2 of this Agreement, he may not revoke his waiver of any claims he has or might have related to age discrimination in employment.

4. CONSIDERATION

In consideration of Bates' full release of any and all claims and potential claims and grievances against the City he or DCTU/IBEW has or might have, and in further is consideration of the promises, concessions and agreements of Bates as provided in this Agreement, the City agrees as follows:

- 4.1 The City will pay Bates the sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000), made payable to Bates, to be delivered to Bates' attorney after Council approval, withdrawal of the DCTU/IBEW Grievance with Prejudice, and upon the effective date of Bates' waiver of age discrimination in employment claims as provided in Paragraph 2 of this Agreement. Payment of this sum to Bates is for general, non-economic damages. Bates understands and agrees, however, that if any state or federal taxing authority should ever determine that the money received by Bates under this Agreement constitutes taxable wages in whole or in part, Bates will pay and fully satisfy any and all related tax and other liabilities, including, but not limited to, any and all contributions, penalties, fees and interest. Bates further agrees that he shall hold the City free and harmless from and, upon written demand by City, defend and indemnify the City for any and all such tax and other liabilities.
- 4.2 Should Bates be granted unemployment insurance benefits, City will not contest or appeal any such award of benefits. The parties acknowledge that City will comply with applicable Statutes and Rules of the State of Oregon Employment Department pertaining to Bates' application for unemployment insurance benefits and agree that any submission of documents and information by City does not violate this provision of this Agreement. The award of benefits is at the sole discretion of the State of Oregon.
- 4.3 City shall re-characterize Bates's termination from employment as a voluntary resignation, effective as of the date of his termination. Bates' proposed and final letters related to his termination shall be removed from Bates' personnel file. These records shall be retained by and kept in the City Attorney's office subject to public records laws.
- 4.4 City shall provide a letter on Bureau of Human Resources letterhead confirming the dates of Bates' employment with the City. This letter shall be delivered to Bates' attorney upon the effective date of Bates's waiver of age discrimination in employment claims as provided in Paragraph 2 of this Agreement.

5. NO ADMISSION OF LIABILITY

The payment and the other concessions and commitments by the City provided in this Agreement and the City's execution of this Agreement are to compromise doubtful and disputed claims and

shall not operate or be interpreted as an admission of liability as to any claim, past, present or future, known or unknown, suspected or unsuspected, that Bates and/or DCTU/IBEW has or might have asserted against the City, by whom liability is expressly denied, arising out of conduct that occurred prior to the effective date of this Agreement.

6. **RELEASE**

6.1 **General Release**

In consideration of the promises made in this document, Bates, by signing this Agreement, accepts this settlement as a complete and final resolution and settlement of any and all liabilities and claims, direct or indirect, under any state or federal authority, and voluntarily releases and forever discharges the City from any and all claims arising from or in any way related to Bates' employment with the City of Portland, up to and including the effective date of this Agreement. This release and discharge includes, but is not limited to, any and all claims Bates has or might have asserted as grievances under a collective bargaining agreement or as claims in other actions, suits or proceedings that have or could have been brought under any labor agreement, the Charter and Code of the City of Portland, Oregon, any local, state or federal statutes and regulations, or common law, including, but not limited to the City of Portland Civil Service Rules, Human Resources Administrative Rules, the Oregon Employer Liability Law pursuant to Chapter 654 of the Oregon Revised Statutes, Oregon Fair Employment Practices Act (ORS Chapters 659A and 659), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Federal Rehabilitation Act of 1973, all federal and state wage and hour statutes and the Federal Fair Labor Standards Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Age Discrimination in Employment Act, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 USC Sections 4301-4333), 42 USC Sections 1981-1988, the Equal Pay Act of 1963, the Oregon Constitution and the Constitution of the United States, and all claims for attorney fees and costs.

6.2 **ADEA Release**

- a. Bates specifically waives any and all claims alleging discrimination in employment on the basis of age under state law, ORS 659A.030, as well as claims under the federal Age Discrimination in Employment Act of 1967 (ADEA).
- b. For purposes of the ADEA, Bates acknowledges that he has had twenty-one (21) days to consider the release of all claims under the federal ADEA.

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- c. Bates understands and agrees that he has seven (7) days following the date he signs this agreement to revoke his waiver of claims under the ADEA and that this portion of this Agreement waiving claims of age discrimination will not become effective until the revocation period has expired.
- d. By signing this document, Bates knowingly and voluntarily waives any and all claims under the ADEA as of the date that the Agreement is last signed by the parties and the 7-day revocation period has expired. Neither Bates nor anyone on his behalf may sue the City of Portland, any of its bureaus, board, commissions, elected officials, officers, employees or agents, insurers or any of their successors or assigns for any claim of discrimination based on age arising out of his employment prior to the effective date of this Agreement.

6.3 Reservation of Rights

Nothing in this Agreement shall affect or apply to, waive or release any claim or benefit related to Bates' participation, if any, in the Public Retirement System, 457 deferred compensation program, or rights granted by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

7. COVENANTS

7.1 Covenant Not to Sue

- a. In exchange for the Settlement considerations, payment, undertakings and covenants by the City described in this Agreement, Bates covenants not to prosecute or hereafter maintain or institute any action at law, suit or proceeding in equity, administrative or any proceeding of any kind or nature whatsoever against City for any reason related in any way to the dispute or to any other claim released herein. Bates further covenants and agrees that he will not raise any claim against City by way of defense, counterclaim or crossclaim or in any other manner, on any alleged claim, demand, liability or cause of action released herein. At the time of his execution of this Settlement Agreement and Release of All Claims, Bates represents that there are no other claims, complaints or charges pending against City in which he is a party or complainant.
- b. Bates understands and expressly agrees that if he ever asserts any claim, action or suit against the City or against any of the City's elected officials, officers, employees, agents, bureaus, divisions, commissions or insurers, or any of their respective successors or assigns, individually or collectively, arising out of or in any way related to Bates' employment with the City as

provided by this Agreement, the City may plead this Agreement as an absolute defense to any such claim, action or suit. Furthermore, in the event any such claim, action, or suit is asserted by or on behalf of Bates, this Agreement shall be construed to allow the City to use in its defense any and all matters, evidence, testimony, documentation, and records that exist or existed prior to the execution of this Agreement, including, but not limited to, Bates' disciplinary records that will be removed from his personnel file as provided in Paragraph 4.3 of this Agreement.

7.2 Covenant Not to Use Prior Events for any Purpose

Bates understands that in any future proceeding involving the City, Bates cannot use for any purpose any evidence of events which occurred prior to the effective date of this Agreement related to Bates' employment with the City that are the subject of this Agreement.

7.3 Covenant as to Grievances

Pursuant to the full settlement, satisfaction and release of any and all actual and potential claims provided in this Agreement, Bates covenants not to file any grievance of any kind or nature whatsoever against the City for any reason related in any way to the dispute or to any other claim released herein.

7.4 Covenant of Understanding as to Disclosure of Terms

- a. The Parties understand, stipulate and agree that since the City is a public body under Oregon law, this Agreement and the terms of this Agreement are disclosable and discoverable under the Public Records Law of the State of Oregon pursuant to Chapter 192 of the Oregon Revised Statutes, and that no promise, guarantee or provision can be made with respect to the confidentiality, publicity, or reporting of the terms of this Agreement.
- b. This Agreement shall be placed in the appropriate personnel files.

7.5 Covenant on Future City Employment/No Recall or Reinstatement Rights

Bates agrees that his employment relationship with the City is severed and he shall remain separated from City employment with no right to reemployment, rehire, reinstatement, recall or bumping. Bates shall not be eligible for hire or employment with the City at any time on or after the effective date of this Agreement. Should Bates apply for City employment, the City shall have the right to reject Bates' application without other reason or consideration. Three years from the date of this agreement, and upon written request, the BHR Director may consider, at her sole discretion, waiving this prohibition. If given, a waiver must reference this agreement and contain the BHR Director's signature.

8. ACKNOWLEDGMENTS

8.1 Acknowledgment as to Acceptance.

Bates acknowledges that he accepted this settlement offer on the date of his signature on this document.

8.2 Acknowledgment as to Known and Unknown Losses

- a. This Settlement Agreement and Release of All Claims is intended to, and does, cover not only all known losses and damages, and all claims asserted or that could have been claimed or asserted, but any further losses and damages resulting from Bates' employment which are not now known or anticipated which may later develop or be discovered, including all effects and consequences thereof. This includes but is not limited to any tort or breach of contract, breach of express or implied employment agreement, wrongful discharge, constructive discharge, intentional infliction of emotional distress, discrimination, defamation, loss of consortium or tortious interference with contractual relations. This also includes any damage that may result from disclosure of information made as a result of any order issued pursuant to the State of Oregon Public Records Law (Chapter 192 of the Oregon Revised Statutes).
- b. Bates acknowledges that he is aware that he or his attorney may discover facts different from or in addition to the facts that they now know or believe to be true with respect to Bates' employment with the City or any of the claims he has asserted or could assert or any other claim that is in any way related to Bates' employment with City or the voluntary termination of that employment, or with respect to the subject matter of the dispute or disputes underlying this Agreement, but that it is Bates' intention to and he hereby does fully, finally absolutely and forever settle any and all claims, disputes and differences with City as described herein.

8.3 Acknowledgment as to Cooperation in Implementing Settlement.

Bates and City agree to execute, acknowledge and/or deliver any and all documents reasonably necessary to carry out and perform their respective obligations under this Settlement Agreement and Release of All Claims.

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8.4 Acknowledgment as to Settlement Agreement and Release of All Claims Made With Advice of Counsel.

The Parties acknowledge and agree that they have been represented and advised by legal counsel of their own choice throughout all negotiations and mediation sessions, if any, that preceded the execution of this Settlement Agreement and Release of All Claims, and with respect to the execution of this Settlement Agreement and Release of All Claims. The parties acknowledge and agree that the City advised Bates to take this Agreement and Release to an attorney of his own choosing for review and explanation.

8.5 Acknowledgment as to Severability of Terms.

- a. Except as provided in this paragraph, every provision contained in this Settlement Agreement and Release of All Claims is intended to be severable. In the event a court or agency of competent jurisdiction determines any term or provision contained in this Settlement Agreement and Release of All Claims to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other terms and provisions in this Settlement Agreement and Release of All Claims and the remainder of the Settlement Agreement and Release of All Claims shall continue in full force and effect, except as provided below.
- b. Notwithstanding the above, in the event a court or agency of competent jurisdiction determines that any of the provisions comprising paragraphs 6.1, 7.1, 7.2 or 7.3 are held to be illegal, this entire Settlement Agreement and Release of All Claims shall be null, void and unenforceable.

8.6 Acknowledgment as to Time for Consideration of Offer and Agreement.

Bates acknowledges that he has had a reasonable period of time in which to consider, negotiate and sign this Settlement Agreement and Release of All Claims.

8.7 Acknowledgement That Wages Not at Issue

Bates and City agree that payment of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) constitutes part of the settlement of any claims that Bates now has or might have but has not asserted or any other claims that he may have for compensatory or general damages, pecuniary loss or damages of any type including punitive damages, costs and attorney's fees, and does not represent the payment of wages from City to Bates. The City has not withheld any taxes and any tax obligations resulting from this payment or otherwise under this Agreement is

the sole responsibility of Bates. Bates acknowledges and agrees that he has sought or will seek his own advice for federal and state tax purposes.

8.8 Acknowledgement as to Resolution of Ambiguous Terms

Both Parties acknowledge and agree that they have had an opportunity to provide, edit and alter language of this Agreement, and that they have had an opportunity to review it with their own legal counsel. Therefore, the Parties stipulate and agree that this Agreement shall not be automatically construed for or against either party in order to resolve any ambiguity in the terms of this Agreement.

9. PRIOR AGREEMENTS SUPERSEDED

This Settlement Agreement and Release of All Claims contains the entire agreement of the City and Bates and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises, and is intended fully to integrate the agreement between Bates and City with respect to settlement of the matters described herein.

10. ATTORNEY FEES AND COSTS

The Parties agree that each party is solely responsible for the payment of any attorney fees, costs or expenses incurred by that party and neither party is liable or responsible in any way for any portion of the other party's attorneys' fees, costs or expenses incurred in connection with the resolution of the dispute or preparation or execution of this Settlement Agreement and Release of All Claims. The Parties agree and expressly represent that any and all claims for attorney fees, costs or expenses arising out of their respective claims are expressly discharged by this Agreement.

11. CHOICE OF LAW

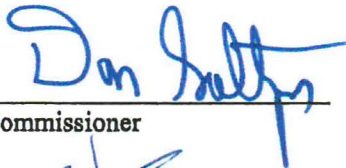
This settlement document shall be construed in accordance with and governed by the statutes of common law of the State of Oregon (without regard to choice of law rules). Any disputes now or hereafter arising in connection with the execution or operation of these documents, regardless of whether such disputes arise in contract, tort or otherwise, shall be governed and determined by the applicable laws of the State of Oregon.

12. SIGNATURES AND CERTIFICATIONS


I, JON BATES, FURTHER AGREE AND CERTIFY THAT [initial each]:

JCB I HAVE CAREFULLY READ THIS ENTIRE DOCUMENT

JCB I HAD AT LEAST 21 DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT BEFORE SIGNING IT


Commissioner

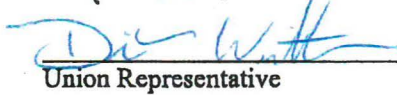
Date: 12/29/17


Director,
Bureau of Human Resources

Date: 12/17/17


Director,
Bureau of Transportation

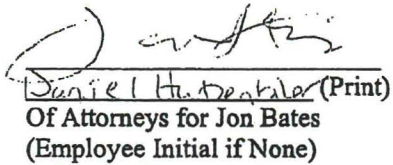
Date: 12-13-17


Union Representative

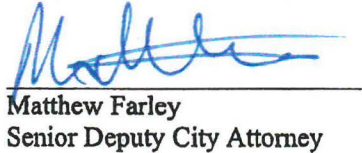
Date: 12/11/17

Diana Winther

APPROVED AS TO FORM:


Daniel H. Dentler (Print)
Of Attorneys for Jon Bates
(Employee Initial if None)

Date: 12/11/17


Matthew Farley
Senior Deputy City Attorney

Date: 1-3-18