

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

BETWEEN: City of Portland, Oregon on behalf of the Bureau of Development Services (“BDS”)

AND: American Federation of State, County, and Municipal Employees (“AFSCME”),
Local 189

AND: Edward Marihart (“Employee” or “Marihart”)

The parties agree that this settlement agreement and release of all claims (“Settlement or “Agreement”) represents mutual promises in exchange for valuable consideration:

1. Parties

- a. The parties to this Settlement are the City of Portland (“City”), on behalf of the Bureau of Development Services (“BDS”), AFSCME Local 189 (“AFSCME” or “Union”) and Edward Marihart (“Employee” or “Marihart”).
- b. The term “City” means the City of Portland, the Mayor, City Council, their predecessors, successors, assigns, bureaus, divisions, commissions, boards, affiliates and related employees, representatives, insurers, and agents of such entities (all and each in their individual and representative capacities).

2. Effective Date

This Agreement will not be effective against the City of Portland unless and until the City Council adopts the Agreement by ordinance. Other than City Council’s failure to adopt this Agreement, the City will not revoke the Agreement, and the parties acting as signatories to the Agreement on behalf of the City will support adoption of this Agreement by ordinance to City Council.

3. Background and Purpose

- a. The City and the Union are parties to a collective bargaining agreement effective January 1, 2021 to December 31, 2024 (“CBA”).
- b. The Union is the sole collective bargaining representative on behalf of employees working in classifications listed in Schedule A of the CBA.
- c. The City discharged Employee on January 25, 2021 from his position as a Senior Housing Inspector with the City of Portland Bureau of Development Services.
- d. The Union filed a grievance on January 25, 2021 alleging that the City violated Article 35 of the labor agreement.
- e. The parties desire to settle and completely resolve any Union grievance, Unfair Labor

Practice complaints, or any other complaints as well as such claims that Employee has made or could make in the future concerning or related to his employment with the City.

4. Agreement

- a. The effective date of this Agreement will begin after all the parties have signed and the City Council has approved.
- b. The City will pay Employee \$37,307.60 on or around November 17, 2022 provided that the Employee has not exercised his right to revoke as provided in section 5. The payment will be a lump sum subject to mandatory tax deductions.
- c. The City will make the appropriate contributions to the Public Employees Retirement System.
- d. Employee will provide the City a letter of resignation with the effective date of January 25, 2021. This resignation will be in lieu of termination. After receiving the Employee's letter, the City will change Employee's termination to a resignation on or around December 17, 2022.
- e. The Employee will direct all reference requests to the Bureau of Human Resources (BHR). If BHR receives a reference check from a prospective employer, BHR will provide the requester the Employee's date of hire, date of resignation, positions worked and duration he worked those positions, and salary at time of resignation.
- f. Should the Employee apply for Unemployment Insurance Benefits, the City will provide the Oregon Employment Department with all requested information, including that the Employee resigned in lieu of termination. The City will not voluntarily appear at any hearing related to Employee's Unemployment Insurance benefits. If the Employment Department awards the Employee benefits, the City will not contest that award.
- g. As a condition for the City's payment and other undertakings, Employee forever severs his past and future employment rights with the City. Employee agrees and promises that he is barred from applying for, accepting or otherwise seeking employment or reinstatement with the City and that any hiring or application will be deemed null and void.
- h. Employee and Union agree that, if employee should seek employment with the City, whether knowingly or unknowingly, at any time in the future, Employee and Union expressly waive the right to grieve, file an Unfair Labor Practice complaint or sue under federal or state law if he is denied employment in any matter.
- i. Employee accepts that this Agreement is a complete and final resolution and settlement of any and all liabilities and claims, direct or indirect, under any state or federal authority. Employee also voluntarily releases and forever discharges the City from any and all claims

arising from Employee's employment with the City. This release and discharge includes, but is not limited to, any and all claims Employee 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.

- j. Union agrees that immediately upon the effective date of this Agreement any and all grievances concerning employee are withdrawn with prejudice. Union agrees that it will also notify Arbitrator Bob Oberstein prior to November 8, 2022 that the parties have resolved this matter. Union further waives its rights regarding any pending or future ULP complaints, grievances or other claims related to Employee and his employment with the City.

5. ADEA Release

- a. Employee specifically waives any and all claims alleging discrimination in employment based on age under state law, ORS 659.030, as well as claims under the federal Age Discrimination in Employment Act of 1967 (ADEA).
- b. For purposes of the ADEA, Employee acknowledges that he has had twenty-one (21) days to consider the release of all claims under the federal ADEA.
- c. Employee understands that he has seven (7) days following the date he signs this agreement to revoke his waiver of ADEA claims 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, Employee knowingly and voluntarily waives any and all claims under the ADEA as of the date that the settlement agreement is last signed by the parties and the 7-day revocation period has expired.

6. No Admission of Liability

The commitments by the City provided by this Settlement Agreement and Release of All Claims and the City's execution of this Settlement Agreement and Release of All Claims is 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 EDWARD MARIHART has or might have asserted against the City, arising out of conduct that occurred prior to the date of this Settlement Agreement and Release of All Claims, by whom liability is expressly denied.

7. Voluntary Agreement and Opportunity to confer with Counsel

- a. This Agreement is contractual and not a mere recital. The parties acknowledge that they have carefully reviewed this document, that they sign this agreement of their own free will and accord and have had the opportunity to consult with counsel prior to executing this Agreement.
- b. Employee expressly acknowledges that this Agreement is voluntary and that he has had the opportunity to confer with an attorney of his own choice and/or with the Union regarding this settlement.
- c. Employee acknowledges that he has been fairly and satisfactorily represented by the Union.

8. Acknowledgements

- a. This Agreement is not an admission of wrongdoing by any party.
- b. This Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises.
- c. The parties acknowledge that the facts regarding this matter are unique, and that this Agreement will not establish any precedent.

EMPLOYEE:

Edward Marihart, Employee

Date

AFSCME, Local 189

Authorized Union Representative

Date

CITY OF PORTLAND

Elshad Hajiyev, Deputy Director
Bureau of Development Services

Date

Cathy Bless, Director
Bureau of Human Resources

Date

APPROVED AS TO FORM:

Alan D. Yoder, Deputy City Attorney

Date