

# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 15,881

Agenda No. 10.Z.19

Approved: DEC 16 2015

TITLE: **RESOLUTION AUTHORIZING THE SETTLEMENT OF  
THE SUIT OF ROSE DAVIS V. CITY OF JERSEY CITY, ET AL.**



**COUNCIL** offered and moved adoption of the  
following resolution:

**WHEREAS**, Rose Davis ("Davis" or "Plaintiff") having filed suit against the City of Jersey City, et al. in Superior Court of New Jersey, Hudson County, entitled Davis v. City of Jersey City, et al., bearing Docket No. HUD-L-2380-14 (the "Lawsuit"); and

**WHEREAS**, the Complaint alleges that the City of Jersey City and Jersey City Police Department (the "City") discriminated against and harassed Plaintiff on the basis of her race and gender; and

**WHEREAS**, because of the litigation risk involved, the Corporation Counsel has recommended a settlement of \$100,000;

**WHEREAS**, Plaintiff has agreed to this settlement and will sign all required releases; and

**WHEREAS**, the necessary funds for this settlement are available in the City of Jersey City Insurance Fund Commission Accounts.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel is authorized to settle this lawsuit for \$100,000 inclusive of all attorneys' fees and costs.

2. The Jersey City Insurance Fund Commission is authorized to pay to or on behalf of Davis the sum of one hundred thousand dollars and zero cents (\$100,000) (the "Settlement Payment"), inclusive of any and all costs and attorneys' fees incurred. The first check will be made payable to "Rose Davis" in the amount of fifty-four thousand, five hundred and eighty-nine dollars and nineteen cents (\$54,589.19) (no deductions or withholdings). The second check will be made payable to "Costello & Mains, P.C." in the amount of forty-five thousand, four hundred and ten dollars and eighty-one cents (\$45,410.81) (no tax deductions or withholdings) in full and complete satisfaction of Davis' claim for attorneys' fees, costs, and other legal expenses.

I hereby certify that funds for this expenditure are available in the City of Jersey City Insurance Fund Commission Accounts.

\_\_\_\_\_  
Insurance Fund Commissioner

MLM/dc  
12/8/15

APPROVED: \_\_\_\_\_

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

Business Administrator

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 7-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 12.16.15											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			AHMAD	ABS ENT		
DONNELLY	✓			FULOP	ABS ENT			VELAZQUEZ	✓		
LOPEZ	✓			RICHARDSON	✓			BRENNAN, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

\_\_\_\_\_  
Peter V. Brennan, President of Council

\_\_\_\_\_  
Robert Byrne, City Clerk

# Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 15.898

Agenda No. 10.Z.36

Approved: DEC 16 2015

TITLE:



**RESOLUTION AUTHORIZING A CLOSED CAUCUS OF THE MUNICIPAL COUNCIL ON WEDNESDAY, DECEMBER 16, 2015, TO DISCUSS SETTLEMENT AND/OR MATTERS WITHIN THE ATTORNEY-CLIENT PRIVILEGE RELATING TO DAVIS v. CITY OF JERSEY CITY, ET AL., DOC. NO: HUD-L-2380-14.**

**COUNCIL** offered and moved adoption of the following Resolution:

**WHEREAS**, the Open Public Meetings Act, N.J.S.A. 10:5-1 et seq. (Act), authorizes a governmental body to hold closed sessions to discuss pending litigation and/or matters within the attorney-client privilege; and

**WHEREAS**, the Act requires that a closed session be authorized by Resolution, which shall indicate when the minutes of the closed session shall be released to the public; and

**WHEREAS**, the Corporation Counsel and Council wish to discuss settlement and/or matters within the attorney-client privilege relating to Davis. v. City of Jersey City, et al., Doc No. Hud-L-2380-14.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Jersey City that:

1. a closed caucus of the Council be held during the regular Council Meeting scheduled for Wednesday, December 16, 2015, to discuss settlement and/or matters within the attorney-client privilege relating to Davis. v. City of Jersey City, et al., Doc No. Hud-L-2380-14.
2. that the minutes of this closed caucus be released to the public when the Corporation Counsel deems that the legal interest of the City of Jersey City will not be affected by such release.

MM/dc  
12/14/15

APPROVED: \_\_\_\_\_

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

Business Administrator

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 7-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 12.16.15											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI	✓			YUN	✓			RIVERA	ABS ENT		
RAMCHAL	✓			OSBORNE	ABS ENT			WATTERMANN	✓		
BOGGIANO	✓			COLEMAN	✓			LAVARRO, PRES	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

\_\_\_\_\_  
Rolando R. Lavarro, Jr., President of Council

\_\_\_\_\_  
Robert Byrne, City Clerk

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is a Settlement Agreement and General Release ("Agreement") by and between: (1) Rose Davis ("Davis") and (2) the City of Jersey City and the Jersey City Police Department (collectively, "Jersey City"). Jersey City includes its current and past subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors. Jersey City and the Davis will sometimes collectively be referred to herein as "the Parties."

WHEREAS, Davis filed a Complaint against Jersey City in the Superior Court of New Jersey, Hudson County, entitled Rose Davis v. City of Jersey City, et al., bearing Docket No. HUD-L-2380-14 (the "Lawsuit"); and

WHEREAS, Jersey City denies the allegations in the Lawsuit, and denies that it, or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors are liable for any claims raised by Davis; and

WHEREAS, the Parties mutually desire to resolve all of their disputes,

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants herein contained, the parties agree as follows:

1. **SETTLEMENT PAYMENT** - In consideration for Davis' agreement to all of the terms, conditions and promises in this Agreement, Jersey City and Davis agree that: (1) Jersey City will pay to or on behalf of Davis the sum of one hundred thousand dollars and zero cents (\$100,000) (the "Settlement Payment"), inclusive of any and all costs and attorneys' fees incurred. All payments shall be delivered to Costello & Mains, P.C., 18000 Horizon Way, Suite 800, Mt. Laurel, NJ 08054. The first check will be made payable to "Rose Davis" in the amount of Fifty Four Thousand Five Hundred Eight Nine Dollars and Nineteen Cents (\$54,589.19) (no deductions or withholdings) and will be reported as income on IRS Form 1099. The second check will be made payable to "Costello & Mains, P.C." in the amount of Forty Five Thousand Four Hundred Ten Dollars and Eight One Cents (\$45,410.81) (no tax deductions or withholdings) in full and complete satisfaction of Davis' claim for attorneys' fees, costs, and other legal expenses, and shall be reported as income on IRS Form 1099. Jersey City agrees to deliver the aforementioned checks to Davis' attorney within 90 days following the delivery to Jersey City's counsel of (a) this Agreement, executed with Davis' original signatures and the date of execution; and (b) a Stipulation of Dismissal With Prejudice being signed by Plaintiff's counsel, which shall be held in escrow by Jersey City's counsel and not filed with the Court until all payments under this agreement have been tendered, deposited and cleared. No payment, however, shall be due until after the Effective Date of this Agreement, i.e., after the expiration of the seven-day revocation period described in Paragraph 13 below. The parties agree that no part of any payments by Jersey City pursuant to this Agreement constitutes (i) a fine or penalty under any law or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

2. **TAX LIABILITY** - Davis represents and warrants that neither Jersey City nor any of its employees provided any advice regarding the taxability of the settlement amount to be paid pursuant to Paragraph 1. Davis agrees that she shall be liable for the payment of all federal, state and local taxes which may be due as the result of the consideration received in the Settlement Payment described above, and that such Settlement Payment is made for the settlement of disputed claims as set forth herein. Davis represents that she shall pay such taxes at the time and in the amount required by law. In addition, Davis agrees fully to defend, indemnify and hold Jersey City, and each of its divisions, affiliates, parents, subsidiaries and operating companies, and the respective officers, directors, employees, agents and affiliates of each of them, harmless from any liability for payment of taxes, penalties, withholding obligations and interest that are required of her by any government agency at any time as the result of the payment of the consideration set forth herein. Davis further acknowledges and agrees to hold harmless the counsel to the Parties in the event that any federal, state or local taxing authority asserts any claim for unpaid taxes, failure to withhold taxes, or interest based upon Jersey City's payment of these sums to her.

3. **SUFFICIENCY OF CONSIDERATION** - Davis recognizes that Jersey City disputes her claims and has asserted defenses to her claims, and that the consideration provided in this Agreement accordingly confers upon her a benefit to which she is otherwise not entitled. Therefore, Davis acknowledges and agrees that the consideration provided by Jersey City to her pursuant to this Agreement (including but not limited to Paragraph 1) constitutes good and valuable consideration for the general release and the other promises and terms in this Agreement. Davis understands and agrees that she is not eligible for or entitled to any other benefit or consideration from Jersey City except as provided in this Agreement.

4. **DISMISSAL OF LAWSUIT** - Davis represents that, other than the Lawsuit, she is not a party in any pending administrative charge, lawsuit, civil action, collective action, class action, or claim of any kind against Jersey City or any of its current and past subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors. Davis agrees to promptly dismiss the Lawsuit with prejudice, without costs, and waiving all rights of appeal, and further agrees to take all steps reasonably necessary to facilitate the dismissal with prejudice of the Lawsuit. If there is any administrative charge pending, Davis shall take all steps necessary to dismiss it with prejudice.

5. **GENERAL RELEASE** - In exchange for the Settlement Payment set forth above in Paragraph 1, Davis agrees, intending to be legally bound, to the maximum extent permitted by law, to release and forever discharge Jersey City and its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors (collectively, the "Released Parties") individually and collectively, from any and all claims, causes of action, complaints, lawsuits or liabilities of any kind (collectively "Claims"), which Davis, her heirs, agents, administrators or executors may have against Jersey City or any of the other Released Parties that exist as of the date this Agreement is signed.

A. **RELEASED CLAIMS** - By agreeing to this General Release, Davis is waiving, to the maximum extent permitted by law, any and all Claims (the "Released Claims") which she has or may have against Jersey City or any of the other Released Parties arising out of or relating to any conduct,

matter, event or omission existing or occurring prior to her signing of this Agreement, including but not limited to the following:

any Claims in the Lawsuit;

any Claims relating to or arising out of Davis' employment with Jersey City and/or any of its departments, agencies and/or affiliated entities;

any Claims for unpaid or withheld wages, severance, benefits, bonuses, commissions and/or other compensation of any kind;

any Claims for reimbursement of expenses of any kind;

any Claims arising under the Employee Retirement Income Security Act;

any Claims for attorneys' fees, costs or expenses;

any Claims of discrimination and/or harassment based on age, sex, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, political affiliation, political association or any other factor protected by Federal, State or Local law such as the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. (ADEA), Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Equal Pay Act, the New Jersey Law Against Discrimination, the New Jersey Civil Rights Act, 42 U.S. Code § 1983, and any Claims for retaliation under any of the foregoing laws;

any Claims regarding leaves of absence under federal, state or local law [including any Claims under the Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)];

any Claims under the National Labor Relations Act;

any Claims under the Sarbanes-Oxley Act;

any Claims for violation of public policy;

any Claims for retaliation and/or any whistleblower Claims [including any Claims under the Conscientious Employee Protection Act];

any Claims of political retaliation;

any Claims for emotional distress or pain and suffering; and/or

any other statutory or common law Claims, now existing or hereinafter recognized, known or unknown, asserted or unasserted, including, but not

limited to, breach of contract, libel, slander, fraud, wrongful discharge, promissory estoppel, equitable estoppel and misrepresentation.

B. **NON-RELEASED CLAIMS** - It is important that Davis understand that this General Release includes all Claims known or unknown to her, including those that she may have asserted or raised previously as well as those that she has not raised or asserted previously. The General Release in Paragraph 5A above does not apply to:

Any Claims for vested benefits under any City retirement and/or 401(k) plan;

Any Claims to require Jersey City to honor its commitments set forth in this Agreement;

Any Claims to interpret or to determine the scope, meaning or effect of this Agreement;

Any Claims relating to any conduct, matter, event or omission occurring after they signed this Agreement;

Any past, pending or future claims for Worker's Compensation benefits and awards; and/or

Any Claim which cannot be waived as a matter of law.

6. **COVENANT NOT TO SUE** - Davis agrees not to file or initiate a lawsuit in any court, initiate an arbitration proceeding, or opt into any collective action or class action, asserting any of the Released Claims against any of the Released Parties. Davis further agrees that she will not permit herself to be a member of any class in any court or in any arbitration proceeding seeking relief against the Released Parties based on claims released by this Agreement, and that even if a court, arbitrator, or government agency rules that she may not waive a claim released by this Agreement, she will not accept or be entitled to any money damages or other relief in connection with any other action or proceeding asserting any of the Released Claims against any of the Released Parties. Davis agrees to reimburse the Released Parties for any legal fees that they incur as a result of any breach of this paragraph by Davis.

7. **CONFIDENTIALITY** - To the extent permitted by law, Davis agrees to keep all of the terms and conditions of this Agreement (including but not limited to the amount of the Settlement Payments) strictly confidential, subject to all applicable laws. Davis represents that she has not disclosed and agrees that she will not disclose the existence of this Agreement or any of the terms or conditions of this Agreement to anyone other than a current spouse, attorney, tax or financial advisor, medical provider, any taxing authority, any court of competent jurisdiction in order to enforce the terms of this Agreement, or as may be required pursuant to law or legal process. Davis further agrees to take reasonable steps to ensure that any information concerning this Agreement which is disclosed to a spouse, attorney or tax or financial advisor will not be disclosed to any other third party, including but not limited to informing such persons that the terms and conditions of this Agreement are strictly confidential and that they may not be



disclosed or discussed with anyone else. If Davis is asked about the status of this case by anyone else, she shall respond that "The case was resolved confidentially" and will not say anything further. Davis acknowledges that this Confidentiality provision constitutes a material inducement to Jersey City agreeing to settle this matter, and that Jersey City would not have settled this matter *but for* Davis agreeing to the terms and conditions of this Paragraph 8.

8. **NON-ADMISSION OF WRONGDOING** - The Parties agree that this Agreement does not constitute an admission by Jersey City or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Jersey City or any of its subsidiaries, affiliates, divisions, agents, servants, officers, directors, employees, insurers, benefit plan fiduciaries, agents, or successors. This Agreement may be introduced, however, in any proceeding to enforce this Agreement.

9. **WAIVER OF DAMAGES** - Nothing herein is intended to or shall interfere with the Davis' right and/or obligations to participate in a proceeding with any appropriate federal, state or local government agency enforcing federal or state discrimination and/or retaliation laws and/or cooperating with said agency in its investigation. Davis, however, shall not be entitled to receive any relief, recovery or monies in connection with any complaint or charge brought against any of the Released Parties, without regard as to who brought any such complaint or charge for any claim released herein.

10. **GOVERNING LAW** - This Agreement shall be governed by and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions. Any proceedings to enforce this Agreement shall be venued in New Jersey Superior Court, Hudson County.

11. **COUNTERPARTS** - This Agreement may be executed in counterparts and each counterpart will be deemed an original. All of such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart. A facsimile or electronic transmission shall be as valid and enforceable as an original.

12. **EMPLOYEE RIGHTS UNDER THE OLDER WORKERS BENEFIT PROTECTION ACT** - Davis acknowledges that she has been afforded 21 days to consider this Agreement. If Davis signs this Agreement before the expiration of such 21 days, Davis is representing that she has elected to waive her rights with respect to the entire 21 days to consider this Agreement; she acknowledges that she has done so voluntarily and with the full understanding that she is waiving her statutory right to do so. If Davis chooses to execute this Agreement, Davis has the right to revoke her acceptance at any time within seven (7) days of the date on which she signed the Agreement. Any revocation within the applicable seven (7) day period must be signed and submitted in writing to Jersey City's attorney, Megan L. Morey, Esq. and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release." If Davis decides to revoke the Agreement, the revocation shall make this Agreement and its terms and conditions null and void. This

Agreement shall not become effective and enforceable until the seven-day revocation period has expired ("Effective Date"). Davis advises Davis to consult with her attorney prior to executing this Agreement.

13. REPRESENTATION BY COUNSEL; UNDERSTANDING OF AGREEMENT - Davis agrees and represent that:

- A. She has read carefully the terms of this Agreement, including the General Release;
- B. She has had an opportunity to and have been encouraged to review this Agreement, including the General Release, with an attorney;
- C. She understands the meaning and effect of the terms of this Agreement, including the General Release;
- D. Her decision to sign this Agreement, including the General Release, is of her own free and voluntary act without compulsion of any kind;
- E. No promise or inducement not expressed herein has been made to her; and
- F. She has adequate information to make a knowing and voluntary waiver.

14. SECTION HEADINGS - Section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning of any provision herein.

15. SEVERABILITY - Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by any court of competent jurisdiction and if such provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

16. ENTIRE AGREEMENT - This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the parties concerning the subject matter of this Agreement. Davis acknowledges that she has not relied on any representations, promises or agreements of any kind made to her in connection with her decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Davis and Jersey City's Corporation Counsel and Business Administrator.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Settlement Agreement and General Release as of the date set forth below.

## PLAINTIFFS

BY: Rose Davis  
Rose Davis

DATE: 12-16-15

## WITNESS

BY: Sanavia Bina

DATE: 12/16/15

## CITY OF JERSEY CITY

BY: Megan L. Morey

Megan L. Morey, Esq.  
Assistant Corporation Counsel  
Jeremy Farrell  
Corporation Counsel  
City of Jersey City

BY: Robert Kukolesski  
Robert Kukolesski  
Business Administrator  
City of Jersey City

DATE: 12/21/15