

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- (✓) Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other - Grant Funds Available

[Signature]
General Edith

Date: 10-13, 2020

City Controller of the City of Houston, Texas

mg
De
FUND REF: 1004-9000-521945

AMOUNT: 275,000.00

FR 35282
ENCUMB. NO.:

City of Houston, Texas, Ordinance No. 2020-890

[Signature]
AN ORDINANCE APPROVING AND AUTHORIZING A SETTLEMENT AND RELEASE AGREEMENT BETWEEN THE CITY OF HOUSTON, UNITED STATES OF AMERICA AND ENA JANE DRAYCOTT (USDC CIVIL ACTION 4:18-CV-0644) TO SETTLE A LAWSUIT; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the United States of America ("United States") filed a lawsuit entitled *United States of America v. City of Houston*, under the cause number 4:18-cv-00644 in the United States District Court for the Southern District of Texas, Houston Division alleging that Ena Jane Draycott, while stationed at Houston Fire Department ("HFD") Station 54, was discriminated against based on her sex, subjected to a hostile work environment based on her sex, retaliated against for engaging in protected activity, and constructively discharged from her employment with the City of Houston Fire Department in violation of Title VII of the Civil Rights Act of 1964, as amended; and

WHEREAS, Plaintiff-Intervenor Ena Jane Draycott ("Draycott") filed her Complaint in Intervention and intervened in the lawsuit pursuing claims on behalf of herself; and

WHEREAS, the City of Houston ("City") denies that Ms. Draycott was subjected to a hostile work environment, retaliation, and/or constructive discharged as alleged in the lawsuit; and

WHEREAS, notwithstanding the parties' contentions, the parties have negotiated a Consent Decree and Compromise, Settlement, Release and Indemnity Agreement to resolve the lawsuit and to memorialize the terms of their agreements; and

WHEREAS, the Consent Decree requires, among other things, the City will develop for and provide training to HFD Airport Rescue Fire Fighting-certified firefighters and requires payment of \$275,000.00 to Draycott; and

WHEREAS, the proposed Consent Decree will be presented to the United States District Court for the Southern District of Texas for approval and entry; and

WHEREAS, the parties believe that the proposed Consent Decree and payment to Draycott is in the interests of justice; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the Consent Decree and the Compromise, Settlement, Release and Indemnity Agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving the Settlement and Release Agreement, or other undertaking described in the title of this Ordinance, in the event of changed circumstances.

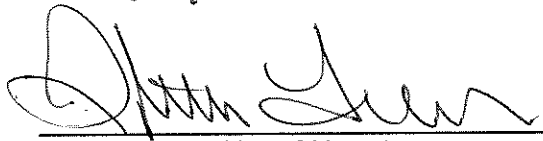
Section 3. The City Secretary is hereby authorized to attest to the Mayor's signature as it shall appear on the Settlement and Release Agreement and to affix the seal of the City of Houston to this agreement.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under the Settlement and Release Agreement without further authorization from Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 14th day of October, 2020.

APPROVED this 14th day of October, 2020.



Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

DocuSigned by:
Deidra Norris Sullivan
E665D58303AF478...
Prepared by Legal Dept. _____
9/29/2020
Requested by
L.D. File No. (0351800066001)
Sr. Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

COMPROMISE, SETTLEMENT, RELEASE, AND INDEMNITY AGREEMENT

This Compromise, Settlement, Release, and Indemnity Agreement ("Agreement") between the City of Houston ("Houston") and Ena Jane Draycott ("Draycott"), is effective on the date of countersignature by the City Controller of the City of Houston upon the terms and conditions described herein.

THAT WHEREAS Plaintiff, United States of America and Draycott alleged causes of action, at law and/or in equity, for the alleged violations of Draycott's rights guaranteed by Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000 and the Equal Pay Act, 29 U.S.C. § 206(d) (the "Incident"); and,

WHEREAS Draycott filed a Charge of Discrimination with the Equal Employment Opportunity Commission with subsequent amendments that alleged discrimination and harassment based on her sex and retaliation in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000 and certain claims under the Equal Pay Act, 29 U.S.C. § 206(d) (the "Claim"); and,

WHEREAS Houston disputes the Claim (the "Dispute"); and,

WHEREAS on February 28, 2018, the United States of America filed a Complaint in *United States of America v. City of Houston*, Civil Action No. 4:18-cv-00644, on behalf of Draycott based on the Incident and Claim, and Draycott filed a Complaint in Intervention, individually, also based on the Incident and Claim (the "Lawsuit"); and,

WHEREAS the parties are aware of the hazards, expense, and uncertainties associated with the Lawsuit and both parties desire to compromise and settle any and all claims which Draycott may have against Houston arising out of, relating to, or touching upon the Incident, the Claim, the Dispute, and the Lawsuit;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by all parties to this Agreement, Houston and Draycott hereby agree as follows:

1. **Houston's Agreements and Representations:**

- (a) Subject to paragraph 1(b) below, Houston agrees to pay to Draycott and her attorneys Ahmad, Zavitsanos, Anapagos, Alavi, and Mensing P.C. the total sum of **TWO HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$275,000.00)** in full and final settlement of any and all claims that Draycott had, has, or may have in the future, at law and in equity, whether known or unknown, against Houston arising out of, touching upon or in any way related to the Incident,

the Claim, the Dispute, or the Lawsuit, except a claim for breach of this Agreement. The payment is intended to cover any and all damages sought by or on behalf of Draycott in the Lawsuit, which include any and all expenses, costs, court costs, attorneys' fees and disbursements incurred by Draycott's attorneys.

(b) This agreement is expressly conditioned upon the approval by Houston, which requires completion of all of the following:

1. Approval by the City Attorney and the Mayor of the terms;
2. Placement of an ordinance on a City Council agenda by the Mayor to enable Council action on this agreement;
3. Approval of the proposed agreement by City Council;
4. Execution of the Agreement by the Mayor, whose signature must be attested by the City Secretary; and
5. Countersignature on the Agreement by the Houston City Controller.

Nothing herein requires Houston to complete any of the five steps described above and if any of the steps is not completed in the sole discretion of the City, this agreement shall not be binding on any party.

(c) Upon completion of all the steps listed in 1(b) above, and execution of this Agreement by Plaintiff, Houston agrees to:

1. instruct its attorneys to approve, sign and file with the trial court the "Joint Motion for Dismissal with Prejudice" in the form of the document attached hereto and incorporated herein by reference, marked as Exhibit "A";
2. instruct its attorneys to approve, sign and file with the trial Court the "Agreed Order of Dismissal with Prejudice" in the form of the document attached hereto and incorporated herein by reference, marked as Exhibit "B"; and,
3. authorize its attorneys to approve and execute all necessary motions and notices as required by the District Court and Houston City Council to obtain approval of this settlement by the District Court and to finalize the Lawsuit.

(d) Houston represents that the persons signing this Agreement on its behalf are fully authorized to bind it to all the terms thereof, after completion of the steps listed in 1(b) above.

2. **Agreements, Warranties, Representations, Release, Indemnity and Covenant Not to Sue of Draycott:**

- (a) Draycott agrees to accept from Houston the total sum of **TWO HUNDRED AND SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$275,00.00)** in full and final settlement and satisfaction of any and all claims Draycott had, has, or may have in the future, at law and in equity, whether known or unknown, against Houston arising out of, touching upon or in any way related to the Incident, the Claim, the Dispute, and the Lawsuit, except a claim for breach of this Agreement.
- (b) **CONDITIONED ONLY UPON THE PAYMENT BY HOUSTON OF THE AMOUNT CONTEMPLATED BY PARAGRAPH 1(a) ABOVE, DRAYCOTT DOES, FOR AND ON BEHALF OF HERSELF, AND HER AGENTS, HEIRS, EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, HEREBY RELEASES, RELINQUISHES, ACQUITS, AND FOREVER DISCHARGES HOUSTON, ITS PAST, PRESENT, AND FUTURE ELECTED AND APPOINTED OFFICIALS, ITS PAST, PRESENT, AND FUTURE AGENTS, SERVANTS, EMPLOYEES, ATTORNEYS, SUCCESSORS, AND ASSIGNS, AND ALL AFFILIATED PERSONS AND ENTITIES, OF AND FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION, AT LAW AND IN EQUITY, KNOWN AND UNKNOWN, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS THE CITY'S SOLE OR CONCURRENT NEGLIGENCE, WHICH DRAYCOTT HAS OR MAY HAVE AGAINST HOUSTON, IN ANY WAY ARISING OUT OF, RELATING TO, OR TOUCHING UPON THE INCIDENT, THE CLAIM, THE DISPUTE, AND THE LAWSUIT, AS A RESULT OF ANY ACT, OMISSION, EVENT OR OCCURRENCE RELATED TO THE CLAIM FROM THE BEGINNING OF THE WORLD TO THE EFFECTIVE DATE OF THIS AGREEMENT, EXCEPT WHERE PROHIBITED BY LAW. DRAYCOTT DOES HEREBY COVENANT AND AGREE NOT TO SUE HOUSTON FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED ARISING OUT OF, RELATING TO, OR TOUCHING UPON THE INCIDENT, THE CLAIM, THE DISPUTE, AND THE LAWSUIT. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**
- (c) **In consideration for the payments and other consideration, Draycott, on behalf of herself, her beneficiaries, heirs, successors and assigns, has agreed to and does hereby agree to DEFEND, INDEMNIFY AND HOLD HARMLESS Houston, its elected and appointed officials, its agents, servants, employees, attorneys, successors, and assigns, and all affiliated**

persons and entities against all claims, demands, losses, damages, causes of action, judgments, fines, penalties, liabilities, damages, fees, costs and expenses, of any nature or character, including, but not limited to, claims based on Houston's sole negligence, partial negligence, negligence per se, gross negligence, strict liability, statutory liability, breach of contract, breach of warranty, deceptive act, intentional act, contribution, or indemnity, which have been or may be asserted by any person or entity claiming by, through, or under Draycott by way of subrogation, assignment, lien, or in any other manner recognized by law, on account of the Incident or any damage or injury suffered on account of the alleged conduct of Houston, all as more fully set forth in the pleadings in the Lawsuit, which are incorporated herein by reference. The obligation to DEFEND, INDEMNIFY AND HOLD HARMLESS shall be valid and binding against Draycott regardless of any negligence, whether alleged or found, against Houston and regardless of the degree of fault or culpable conduct attributed to Houston, even if such culpable conduct is 100 percent.

- (d) Draycott agrees to file the "Joint Motion for Dismissal with Prejudice" and order in the form of the document attached hereto and incorporated herein by reference, marked as Exhibits "A" and "B" within 10 business days of the receipt by Draycott of the payment referenced in Paragraph 1(a).
- (e) Draycott represents that she has not assigned to any other person, corporation or entity any claims or causes of action, at law or in equity, known and unknown, which she has or may have had against Houston in any way arising out of, relating to or touching upon the Incident, the Claim, the Dispute, or the Lawsuit.
- (f) Draycott represents that the person signing this Agreement on her behalf is legally and mentally competent and fully authorized to bind to all the terms thereof.
- (g) ***All claims released.*** It is the intent of the City and Draycott that this Agreement settles all current and future claims that Draycott was subjected to a hostile work environment, unlawful retaliation, or other unlawful discrimination as alleged in the Incident, the Claim, the Dispute, and the Lawsuit.

3. **Disclaimer:**

It is expressly understood and agreed by and between the parties to this Agreement that this Agreement includes a compromise and settlement of disputed claims, and that the execution of this Agreement does not in any way constitute an admission of liability on the part of any party to this Agreement, but that Houston

expressly disclaims any liability concerning the claims being compromised and settled herein.

4. **Headings:**

The headings, captions, and arrangements used in this Agreement, unless specified otherwise, are for convenience only and shall not be deemed to limit, amplify, or modify the terms of this Agreement, nor to affect the meaning thereof.

5. **Governing Law and Venue:**

This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

6. **Severability:**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

7. **Entire Agreement:**

This Agreement embodies the entire Agreement between the parties, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by a duly authorized officer or agent of each of the parties. The terms of this instrument are contractual and are not mere recitals, and the undersigned specifically represents that the contents and effects hereof are fully and completely agreed to and understood.

8. **Multiple Counterparts:**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement; but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

subject matter hereof, and may be amended only by an instrument in writing executed jointly by a duly authorized officer or agent of each of the parties. The terms of this instrument are contractual and are not mere recitals, and the undersigned specifically represents that the contents and effects hereof are fully and completely agreed to and understood.

8. **Multiple Counterparts:**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement; but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

9. **Copies:**

A copy of this Agreement may be used and enforced as the original Agreement.

10. **Interpretation:**

This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

11. **Disclaimer of Reliance:**

Each party to this Agreement expressly warrants and represents that no promise or agreement which is not herein expressed has been made to it in executing this Agreement and that no party is relying upon any statement or representation of any agent of the party being released hereby. Each party is relying upon her or its judgment and each party has been represented by counsel of her or its choosing. Each party's counsel has read and explained to it the entire contents of the Agreement in full, as well as the legal consequences of executing this Agreement. Each party acknowledges that neither party or their representatives have provided the other party with any advice regarding the tax consequences, if any, of the payments and settlements set forth in this Agreement.

12. **Effective Date:**

The Agreement shall be effective upon the date of the countersignature by the City Controller of the City of Houston.

EXECUTED on this the 14th day of September, 2020.

By:

Ena Jane Draycott
Ena Jane Draycott

Attorney's Certificate

I certify that I am one of the attorneys of record for Plaintiff-Intervenor Ena Jane Draycott in the above-captioned matter and that I have explained the foregoing Compromise, Settlement, Release, and Indemnity Agreement to Draycott and have explained the legal effects thereof. I acknowledge that the attorneys' fees and expenses will be satisfied out of the consideration set forth in the above Agreement. Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing PC hereby releases its claim against Houston, its elected and appointed officials, its agents, servants, employees, attorneys, successors, and assigns, and all affiliated persons and entities relating to attorneys' fees and expenses for the Incident, the Claims, and the Lawsuit. I further represent that I am an attorney with and have full authorization to sign this certificate releasing all claims of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing PC regarding the Incident, the Claims, and the Lawsuit.

Ahmad, Zavitsanos, Anaipakos, Alavi &
Mensing PC

By:

[Signature]

Joseph Y. Ahmad

Date: _____

Attorney's Certificate

I certify that I am one of the attorneys of record for Draycott in the above-captioned matter and that I have explained the foregoing Compromise, Settlement, Release, and Indemnity Agreement to Draycott and have explained the legal effects thereof. I acknowledge that the attorneys' fees and expenses will be satisfied out of the consideration set forth in the above Agreement. Nasim Ahmad and Dwain Ahmad formerly of Ahmad & Capodice, PLLC hereby release their claims against Houston, its elected and appointed officials, its agents, servants, employees, attorneys, successors, and assigns, and all affiliated persons and entities relating to attorneys' fees and expenses for the Incident, the Claims, and the Lawsuit. I further represent that I have full authorization to sign this certificate releasing all claims of Ahmad & Capodice, PLLC, Nasim Ahmad and/or Dwain Capodice regarding the Incident, the Claims, and the Lawsuit.

Nasim Ahmad

By: _____
Nasim Ahmad

Date: _____

Dwain Capodice

By: _____
Dwain Capodice

Date: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

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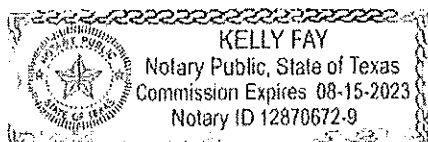
KNOWN ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

§

BEFORE ME on this day, Ena Jane Draycott, known to me to be the person whose name is subscribed to the foregoing instrument, and signed in my presence and swore upon oath that this Compromise, Settlement, Release, and Indemnity Agreement was executed by her as her free act and deed and for the purposes and consideration therein expressed.

14th of September, 2020 to certify which witness my hand and seal of office.



Kelly Fay
Notary Public in and for
The State of TEXAS

EXECUTED on this the 14th day of September, 2020.

By: Ena Jane Draycott
Ena Jane Draycott

Attorney's Certificate

I certify that I am one of the attorneys of record for Draycott in the above-captioned matter and that I have explained the foregoing Compromise, Settlement, Release, and Indemnity Agreement to Draycott and have explained the legal effects thereof. I acknowledge that the attorneys' fees and expenses will be satisfied out of the consideration set forth in the above Agreement. Nasim Ahmad and Dwain Ahmad formerly of Ahmad & Capodice, PLLC hereby release their claims against Houston, its elected and appointed officials, its agents, servants, employees, attorneys, successors, and assigns, and all affiliated persons and entities relating to attorneys' fees and expenses for the Incident, the Claims, and the Lawsuit. I further represent that I have full authorization to sign this certificate releasing all claims of Ahmad & Capodice, PLLC, Nasim Ahmad and/or Dwain Capodice regarding the Incident, the Claims, and the Lawsuit.

Nasim Ahmad

By:

Nasim Ahmad

Date:

9/15/20

Dwain Capodice

By:

Dwain Capodice

Date:

9/15/20

THE CITY OF HOUSTON, TEXAS

Mayor

Date signed: _____, 20____

ATTEST/SEAL

City Secretary

APPROVED:

- DocuSigned by:

Samuel Pena

932934704018

Samuel Peña, Fire Chief
Houston Fire Department

DocuSigned by:

Ronald C. Lewis

01B8EE0AC120491

Ronald C. Lewis
City Attorney

APPROVED AS TO FORM:

- DocuSigned by:

Deidra Norris Sullivan

-E665D58393AF478

Deidra Norris Sullivan
Senior Assistant City Attorney

COUNTERSIGNED BY:

City Controller

Date countersigned: _____

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA
Plaintiff,

and

**JANE DRAYCOTT and
PAULA KEYES,**
Plaintiffs-Intervenors,

V.

CITY OF HOUSTON, TEXAS,
Defendant.

www.pearsoned.com

Civil Action No.: 4:18-cv-00644

JOINT MOTION FOR DISMISSAL WITH PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff-Intervenor Ena Jane Draycott (hereinafter referred to as "Draycott") and Defendant the City of Houston, by and through their attorneys of record, file this Joint Motion to Dismiss with Prejudice all claims and causes of action brought by Draycott against the City of Houston in this Lawsuit. Draycott and the City of Houston have finalized the terms of a compromise, settlement, release, and indemnity agreement that resolves all disputed matters between Draycott and the City of Houston. Therefore, Plaintiff-Intervenor Ena Jane Draycott and Defendant the City of Houston, respectfully request that the Court sign and enter the attached proposed order dismissing with prejudice all remaining claims brought by Plaintiff-Intervenor Ena Jane Draycott against the City of Houston.

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI &
MENSING P.C.

By: _____
JOSEPH Y. AHMAD
State Bar No.:
1221 McKinney St
Suite 2500
Houston, Texas 77010-2009
Telephone: 713.600.4900
Facsimile: 713.655.0062
joeahamd@azalaw.com

Attorneys for Plaintiff-Intervenor Draycott

RONALD C. LEWIS
City Attorney

DONALD FLEMING
Chief, Labor, Employment, & Civil Service

By: _____
DEIDRA NORRIS SULLIVAN
Senior Assistant City Attorney
State Bar No. 24080648
Federal Bar No. 1338580
Telephone: 832.393.6299
Email: Deidra.Sullivan@houstontx.gov

MARJORIE L. COHEN
Senior Assistant City Attorney
State Bar No. 24031960
Federal Bar No. 34303
Telephone: 832.393.6457
Email: Marjorie.Cohen@houstontx.gov

City of Houston Legal Department
900 Bagby, 4th Floor
Houston, Texas 77002
Facsimile: 832.393.6259
Attorneys for City of Houston

Certificate of Service

I certify that on [date], 2020, in accordance with the Federal Rules of Civil Procedure, a copy of the foregoing document was served on all attorneys of record through the Court's CM/ECF system, which notifies all counsel through email.

Keith Edward Wyatt
Elizabeth Karpati
Assistant United States Attorney
Southern District of Texas
1000 Louisiana St., Suite 2300
Houston, Texas 77002
Keith.Wyatt@usdoj.gov
Elizabeth.Karpati@usdoj.gov
ATTORNEYS FOR PLAINTIFF USA

Jeremy P. Monteiro
Hector Ruiz
Hillary K. Valderrama
UNITED STATES DEPARTMENT OF JUSTICE
Civil Rights Division
Employment Litigation Section
601 D Street, NW, PHB 4030
Washington, DC 20579
Jeremy.Monteiro@usdoj.gov
Hector.Ruiz@usdoj.gov
Hillary.Valderrama@usdoj.gov
ATTORNEYS FOR PLAINTIFF USA

Joseph Y Ahmad
AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI &
MENSING P.C.
1221 McKinney St
Suite 2500
Houston, TX 77010-2009
713-600-4900
7136550062 (fax)
joeahmad@azalaw.com
**ATTORNEY FOR PLAINTIFFS
INTERVENORS**

S Nasim Ahmad
Dwain Capodice
AHMAD CAPODICE PLLC
24900 Pitkin Rd
Suite 300
The Woodlands, TX 77386
832-767-3207
nahmad@ahmad-capodice.com
dcapodice@ahmad-capodice.com
**ATTORNEY FOR PLAINTIFFS
INTERVENORS**

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA
Plaintiff,

and

JANE DRAYCOTT and
PAULA KEYES,
Plaintiffs-Intervenors,

v.

CITY OF HOUSTON, TEXAS,
Defendant.

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Civil Action No.: 4:18-cv-00644

AGREED ORDER OF DISMISSAL WITH PREJUDICE

On this day, the Court considered the Joint Motion for Dismissal with Prejudice by the Plaintiff-Intervenor Ena Jane Draycott (hereinafter referred to as "Draycott") and Defendant the City of Houston with regard to Draycott's claims against the City of Houston in the above-styled and numbered cause.

The parties have advised the Court that they have agreed to a settlement of the claims brought by Draycott against the City of Houston and have requested the Court to dismiss the claims brought by Draycott against the City of Houston with prejudice to the refiling of same.

After having considered the representations and agreement of the parties, the Court is of the opinion that the Joint Motion for Dismissal with Prejudice should be GRANTED. IT IS, THEREFORE,

ORDERED that all remaining claims of Plaintiff Intervenor against Defendant the City of Houston, are hereby **DISMISSED WITH PREJUDICE** to their refiling. IT IS FURTHER,

ORDERED that each party shall bear its own attorneys' fees and costs.

SIGNED on this the ____ day of _____, 2020.

PRESIDING JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING P.C.

By: _____
JOSEPH Y. AHMAD
State Bar No.:
joeahamd@azalaw.com

Attorneys for Plaintiff Ena Jane Draycott

By: _____
DEIDRA NORRIS SULLIVAN
Senior Assistant City Attorney
State Bar No. 24080648
Federal Bar No. 1338580
Telephone: 832.393.6299
Email: Deidra.Sullivan@houstontx.gov

MARJORIE L. COHEN
Senior Assistant City Attorney
State Bar No. 24031960
Federal Bar No. 34303
Telephone: 832.393.6457
Email: Marjorie.Cohen@houstontx.gov

Attorneys for City of Houston

Draycott Settlement Agreement
Page 15

Initial



Fund Reservation Request Form

RCA #

Outline Agreement #

Budget Document #

- ☒ New
☐ Amend
☐ Supplemental Allocation Letter

(If Applicable, enter SAP - FMBB document # for Capital or Non-Capital Budgets)

Fund Reservation: Header Data

Document Type **11**

Reference Document

(Used only to reference an existing Fund Reservation #)

Document Date **10/1/2020**Company Code **COH1 - City of Houston**

Grant Total

Currency/rate **USD - United States Dollars**Document Text **United States of America v. City of Houston**

(maximum of 50 characters)

Fund Reservation: Detail Data

Ln	Original Amount	Text	Fund	G/L Account	Cost Center	Internal Order (Required for GRANTS)	WBS Element (Required for Capital Projects)
1	275,000.00	CA 4:18-cv-00844	1004	521945	9000120001		
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Authorizations

Prepared by: **Thy Ruiz**Date: **1-Oct-20**Requested by: **Labor, Employment & Civil Rights (LECR)**Date: **1-Oct-20**Department
AuthorizationDate: **1-Oct-20**Controller's Office
AuthorizationDate: **1-Oct-20**

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF HOUSTON,

Defendant.

JANE DRAYCOTT AND PAULA KEYES,

Plaintiffs-Intervenors,

v.

CITY OF HOUSTON,

Defendant.

Civil Action No. 4:18-cv-00644

CONSENT DECREE

I. INTRODUCTION

This action was brought by Plaintiff United States of America (“United States”) against the City of Houston (“City” or “Defendant”) to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*, as amended, (“Title VII”), following the United States’ receipt from the Equal Employment Opportunity Commission (“EEOC”) of charges of discrimination timely filed by Plaintiff-Intervenors Jane Draycott (“Draycott”) and Paula Keyes against the City. Ms. Draycott and Ms. Keyes, whose claims arose during their employment with the Houston Fire Department (“HFD”), intervened in the action, alleging violations of Title VII arising from the same nucleus of facts as those alleged by the United States. In March 2020, the United States and Ms. Keyes resolved all disputed factual and legal issues with the City through a separate settlement. The instant Consent Decree is an agreement to resolve all

remaining factual and legal disputes relevant to this lawsuit between the United States, the City, and Jane Draycott, the remaining plaintiff in intervention. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1345.

In its Complaint, the United States alleges that the City discriminated against Ms. Draycott on the basis of sex by subjecting her to a hostile work environment in violation of Title VII. The United States further alleges that Ms. Draycott was subjected to retaliation and constructive discharge. Ms. Draycott alleges similar violations of Title VII in her Complaint in Intervention.

The City denies that Ms. Draycott was subjected to a hostile work environment, retaliation, and/or constructive discharged. Nevertheless, the United States, Ms. Draycott, and the Defendant (also referred to collectively as the “Parties” and singularly as “Party”), desiring that this action be settled by this Consent Decree (“Decree”) without the burdens and risks of protracted litigation, agree that this Court has jurisdiction over the Parties and the subject matter of this action. This Decree, being entered into with the consent of the United States, Ms. Draycott, and the City, shall not constitute an adjudication or finding on the merits of the case, nor be construed as an admission of liability by the City.

In resolution of this action, the Parties waive findings of fact and conclusions of law on the merits of this case, and further agree to entry of this Decree as a final and binding agreement amongst them with regard to all claims asserted in the United States’ Complaint and Draycott’s Complaint in Intervention.

II. FINDINGS

Having examined the terms and provisions of this Decree, the Court finds that it has jurisdiction over the subject matter of and the Parties to this action; and in resolution of

this action, the Parties hereby AGREE to and the Court expressly APPROVES, ENTERS, and ORDERS the following:

III. DEFINITIONS

1. "ARFF" refers to Aircraft Rescue Firefighting, a division of the HFD.
2. "ARFF Certified" means those employees that the HFD has a record of holding an ARFF certification.
3. "ARFF Covered Employee" means individuals holding the rank of Junior Captain (or Captain), Senior Captain, or District Chief in the HFD's ARFF Division who are regularly assigned to Station 54, or because of ARFF's operational needs may work a shift at Station 54 or attend training at Station 54.
4. "Day" or "days" refer to calendar days, not business days, unless otherwise stated.
5. "Date of Entry of this Decree" is the date on which the Court signs and enters this Decree as a final order of the Court.

IV. PURPOSES OF THE CONSENT DECREE

6. The purposes of this Decree are to:
 - a. provide general, non-monetary remedies that ensure that the City does not discriminate against any HFD employee on the basis of sex or retaliate against an employee in violation of Title VII; and
 - b. provide monetary relief to Jane Draycott in consideration for a Release of the claims set forth in her Complaint in Intervention and the Complaint of the United States.

V. GENERAL INJUNCTIVE & EQUITABLE RELIEF

7. In accordance with the terms of this Consent Decree, the City shall not:

- a. engage in any act or practice that discriminates against any HFD employee on the basis of sex or retaliates against an employee in violation of Title VII; or
- b. to the extent proscribed by Title VII, discriminate against any person because that person participated in or cooperated with the United States' investigation of the City, participated in the litigation of this case, complained about or opposed the City's employment practices challenged in this lawsuit, or who received or sought relief under the provisions of this Consent Decree or otherwise benefitted from the terms of this Decree.

VI. REVIEW AND IMPLEMENTATION OF TRAINING

- 8. ARFF Training: The City will develop and provide in-person live or in-person virtual training for its HFD ARFF Covered Employees. The ARFF Training shall include the provision of all relevant written policies as set forth below:
 - a. an explanation of the City's and HFD's policies governing sex-based harassment and retaliation;
 - b. an explanation of Title VII's prohibitions against sex-based harassment and the creation of hostile work environments based on sex;
 - c. an explanation of Title VII's prohibition against the taking of any retaliatory actions against any person who has participated in or opposed any actions by an employer that are prohibited by Title VII;
 - d. an explanation of the City's and HFD's processes for accepting, investigating, and making determinations regarding complaints involving sex-based harassment and/or retaliation; and
 - e. an explanation of the responsibilities and obligations of ARFF Covered

Employees pursuant to the City's and HFD's policies for complaints raising allegations of discrimination, harassment, and/or retaliation.

9. Within sixty (60) days of entry of the Decree, the City will submit to the United States for review the training materials to be used for the ARFF Training. Within fifteen (15) days of receiving the training materials, the United States will review the materials to determine if the materials comply with the requirements set forth in Paragraph 8. If the United States determines that these materials conform to this Decree and the controlling legal standards, it shall provide written assurance to the City that it has no objection to the City's training materials within the same fifteen (15) day time period. If the United States believes the materials do not comply with Paragraph 8 or do not accurately state or conform to controlling legal standards, the United States will provide in writing the reasons thereto to the City within the same fifteen (15) day time period.
10. The United States will not unreasonably withhold its approval of the City's planned training curriculum. The City and the United States will use their best efforts to resolve any dispute about whether the training materials comply with Paragraph 8 and controlling legal standards within thirty (30) days of the City's receipt of the United States' comments and objections. If the United States' objections are resolved during this process, it shall provide the City with written notice that it has no further objections within seven (7) days. However, if the United States or City are unable to agree about whether the training materials comply with the requirements of Paragraph 8, the United States or the City will follow the procedures set forth in Paragraph 20 regarding disagreement as to compliance with the Decree.

11. Within thirty (30) days from the date that the United States provides written assurance that it has no further objections to the City's training materials or, absent agreement, where ordered by this Court, the City shall begin providing ARFF Training as described in Paragraph 8 to all ARFF Covered Employees. The City also will ensure that each ARFF Covered Employee signs an acknowledgment that he or she has completed the ARFF Training. The City will document that each ARFF Covered Employee has received the training as part of the employee's training record maintained by HFD.
12. The City will also provide the ARFF Training as part of the training provided in Paragraph 11 or by using a recording of an earlier training session to members (1) who hold the ranks of Captain (Junior Captain), Senior Captain, or District Chief; (2) who are identified by the City as "ARFF Certified"; (3) who are not assigned to ARFF; and (4) who are currently eligible to transfer to ARFF. The City shall ensure that each member who receives training pursuant to this paragraph signs an acknowledgment that he or she has completed the ARFF Training. The City will document that each member has received the training as part of the employee's training record maintained by HFD.
13. Within twenty (20) days after the training required by Paragraph 11 and 12 occurs, the City will provide to the United States copies of all training materials used and written confirmation that all individuals required to receive such training have received it, including the identification of the individuals trained.

VII. MONETARY RELIEF FOR JANE DRAYCOTT

14. The City has previously agreed to pay Jane Draycott monetary relief of \$275,000.00, in exchange for Jane Draycott's Release of Claims. This payment, together with the injunctive relief detailed elsewhere in this Decree, shall also serve as consideration for settlement of the United States' claims.
15. To receive relief under this Decree, Jane Draycott must execute the release previously agreed to by the City and Ms. Draycott, and return it to the City within ten (10) days of entry of the Decree.
16. The City will provide the United States with a copy of Ms. Draycott's executed release within three (3) days of receipt of a release from Ms. Draycott.
17. The City agrees to issue the appropriate tax reporting forms for the payment in Paragraph 14 within the time prescribed by law.
18. Within five (5) days of City's delivery of payment to Ms. Draycott referenced in Paragraph 14, the City will provide the United States with copies of the check(s) and proof of delivery.
19. Plaintiff Jane Draycott's rights to enforce the terms of this Decree are limited to the enforcement of the City's obligations under this section of this Decree (Section VII) and any other provisions that may be ancillary to the enforcement of this section (Section VII). Plaintiff Jane Draycott shall have no rights to enforce the obligations of the City under Sections III, IV, V, and VI of this Decree.

VIII. DISPUTE RESOLUTION

20. The United States and the City will attempt in good faith to resolve informally any dispute concerning the City's compliance with this Decree. Upon request by the

United States or the City, the United States and the City, through their counsel, will make themselves available for a telephone conference to discuss any such dispute within ten (10) days of such a request. If the United States and the City are unable to reach agreement after informally seeking to resolve the dispute, either Party may move the Court to enforce this Decree and may seek a ruling that enforces this Court Order, provided the moving Party gives at least thirty (30) days written advance notice to the nonmoving Party.

21. The process described in Paragraph 20 does not apply in the event there is a dispute regarding the City's satisfaction of the terms of this Decree set forth under the heading "VIII. MONETARY RELIEF FOR JANE DRAYCOTT."

IX. MODIFICATION OF THE DECREE

22. This Decree constitutes the entire agreement and all commitments between the United States and the City. The Defendant and Jane Draycott have entered into a separate settlement agreement.
23. The United States and the City may agree to modifications of the time limits for the specific performance of the non-monetary relief provisions set forth in this Decree without Court approval. The United States and the City may agree to other modifications of the non-monetary relief provisions of the Decree only with approval of the Court. The Parties may agree to modifications of the time limits for the specific performance of the monetary relief provisions set forth in this Decree without

Court approval. The Parties may agree to other modifications of the monetary relief provisions of the Decree only with approval of the Court.

X. JURISDICTION OF THE COURT

24. Upon entry of this Decree, all claims in this case shall be dismissed with prejudice, although the Court shall retain jurisdiction over this Decree for the purposes of implementing the relief provided herein, and resolving any disputes or entering any orders that may be necessary to implement the relief provided herein.

XI. DURATION OF CONSENT DECREE AND TERMINATION

25. This Decree will remain in effect for twelve (12) months from the Date of Entry of the Decree or until the City has provided to the United States copies of the materials described in Paragraph 13, whichever is less. The United States may move the Court to extend the duration of the Decree, and the Court may extend the term only upon a showing (1) the City's substantial non-compliance with this Decree during its term, and (2) good cause for extending the term. Absent an extension, the Decree will expire without further order of the Court at the conclusion of this twelve (12) month period.

XII. GENERAL PROVISIONS

26. If any provision of this Decree is found to be unlawful, only the specific provision in question will be affected and the other provisions will remain in full force and effect.

27. The Parties will bear their own costs, expenses, and attorneys' fees in this action, including the costs of compliance or monitoring.

28. The Parties agree that, as of the date of entry of this Decree, additional litigation regarding this matter is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored

information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Decree, including the obligation to maintain documents demonstrating compliance with this Decree.

29. Where possible, all documents required to be delivered to the United States under this Decree shall be sent via electronic mail to Jeremy Monteiro (at jeremy.monteiro@usdoj.gov), Hector Ruiz (at hector.ruiz@usdoj.gov), and Hillary Valderrama (at hillary.valderrama@usdoj.gov). Where such electronic mail is not possible, documents shall be sent via overnight delivery to:

Jeremy Monteiro
Hector Ruiz
Hillary Valderrama
Employment Litigation Section
Civil Rights Division
United States Department of Justice
4 Constitution Square
150 M Street, NE
Washington, DC 20530

30. All documents required to be delivered under this Decree to the City shall be sent via electronic mail where possible to the City Attorney, Ronald C. Lewis (Ronald.Lewis@houstontx.gov), Section Chief Donald Fleming (Don.Fleming@houstontx.gov), Deidra Norris Sullivan (Deidra.Sullivan@houstontx.gov) and Marjorie Cohen (Marjorie.Cohen@houstontx.gov). Where such electronic mail is not possible, documents shall be sent via overnight delivery to:

Donald Fleming
Deidra Norris Sullivan
Marjorie Cohen
City of Houston Legal Department
Labor, Employment and Civil Service Section

P.O. Box 368
Houston, Texas 77001-0368

31. Any Party may update mailing or electronic addresses to all other parties without requiring any changes to this Consent Decree.

32. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Decree. The Parties agree to be bound by facsimile signatures.

IT IS SO ORDERED this ___ day of _____ 2020.

The Honorable Sim Lake
United States District Judge

Date: September 15, 2020

RYAN K. PATRICK
United States Attorney
Southern District of Texas

KEITH
s/ WYATT Digitally signed by KEITH WYATT
Date: 2020.09.15
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KEITH EDWARD WYATT
Assistant United States Attorney
Texas Bar No. 22092900
Federal Bar No. 3480

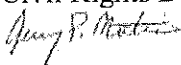
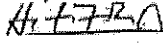
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s/ KARPATI Digitally signed by ELIZABETH KARPATI
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Agreed to and entered into by:

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Civil Rights Division

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Chief
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Civil Rights Division

KAREN D. WOODARD
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Hillary K. Valderrama

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Counsel for Jane Draycott

THE CITY OF HOUSTON, TEXAS

Mayor

Date: _____

ATTEST/SEAL

City Secretary

COUNTERSIGNED BY:

City Controller

Date: _____

APPROVED:

DocuSigned by:
Samuel Peña
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Samuel Peña, Fire Chief
Houston Fire Department

DocuSigned by:

Ronald C. Lewis

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City Attorney

APPROVED AS TO FORM:

DocuSigned by:

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Senior Assistant City Attorney

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Chief, Labor, Employment, & Civil Service

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