

SETTLEMENT AND RELEASE OF ALL CLAIMS

This Settlement and Release of all Claims (Settlement) is made and entered into by and between Plaintiff Heather MacAlpine (MacAlpine) and Defendants Municipality of Anchorage, Mayor Bronson, Niki Tshibaka, Raylene Griffith, and Matthew Jendrusina in their official capacities (collectively the Municipality).

The Parties desire to enter into this Settlement in order to provide for a full and final Settlement of *MacAlpine v. Municipality of Anchorage, Mayor Dave Bronson in his official capacity, Niki Tshibaka in his official capacity, Raylene Griffith in her official capacity, and Matthew Jendrusina in his official capacity*, Anchorage Superior Court Case Number 3AN-22-06827CI, including claims of violation of the Anchorage Whistleblower Act, violation of AS 18.80.220, wrongful termination in violation of public policy, violation of the implied covenant of good faith and fair dealing, and punitive damages and *MacAlpine v. Municipality of Anchorage, Mayor Dave Bronson in his official capacity, Niki Tshibaka in his official capacity, Raylene Griffith in her official capacity, and Matthew Jendrusina in his official capacity*, federal district court case number 3:23-cv-00037-HRH, including a claim of violation of violation of Title VII, 42 U.S.C. 2000-e-2 and punitive damages. The Municipality denies each and every claim. No admission or liability is implied by the Parties entering into this Settlement.

1. Consideration. MacAlpine agrees to sign this Settlement and provide her cooperation in the dismissal of both cases with prejudice, agrees not to sue the Municipality further, appeal, or otherwise prosecute in any way with respect to the subject matter of the Lawsuit and any and every claim released. Upon receiving the payment promised herein, MacAlpine agrees to execute documents necessary to end each case.

In exchange for this Settlement executed by MacAlpine, and the promises made herein, the Municipality agrees to pay to her \$277,500.00 (two hundred and seventy-seven thousand and five hundred dollars), subject to Assembly appropriation. If the Assembly refuses, after consideration, to appropriate the funds to pay the consideration for this Settlement or fails to act within the time periods specified in this paragraph, MacAlpine may continue with her current litigation and this Settlement shall become null and void. MacAlpine understands that the Assembly may take up to 45 days to act upon the appropriation, but will agree to a 15-day extension upon discussion with the Municipal Attorney's office. Further extension(s) may be agreed to by MacAlpine regarding Assembly action after discussion between the Parties. The Municipal Attorney's office agrees to advocate for the settlement to the Assembly and make good faith efforts to obtain Assembly approval.

Each party will bear their own costs and fees. Each party will pay their assessed portion of the fees of Dana Fabe, the mediator in this case.

Within 30 days after the date that the Assembly appropriates the money for the settlement, the Municipality will post the Anchorage Whistleblower Act, AMC 3.75.010 et seq. on its website.

The Parties agree that the terms of the settlement are confidential, but the amount of money paid to MacAlpine is not confidential. Each party agrees to limit public statements about the Settlement to the joint statement agreed upon by the Parties. The Parties and their counsel agree not to publicize or disclose the terms and contents of this Settlement to the media or any person or entity, unless required by law, regulation or court order. If MacAlpine is issued a subpoena or court order to testify to the terms of this Settlement, MacAlpine will provide notification in writing to the Municipality, with sufficient time for the Municipality to intervene and object to the testimony. MacAlpine may disclose the terms of the Settlement to her partner and immediate family, accountant, financial planner, lawyer, and/or tax advisor, so long as she notifies each of the importance of preserving confidentiality. The Municipality may disclose the terms of the Settlement to internal Municipal employees as necessary to obtain the payment and terms required herein or for other functional or procedural purposes, or to external entities as required by law or regulation.

The Parties and their respective counsel agree that within seven (7) days of Assembly approval of this Settlement, the Municipality shall issue the following statement in the form of a press release:

“Heather MacAlpine and the Municipality of Anchorage have mutually agreed to resolve all pending claims in Case No. 3AN-22-06827CI and Case No. 3:23-cv-00037-HRH. The Municipality acknowledges Ms. MacAlpine for her previous ten years of service with the Municipality and, upon her

resignation as director of OEO, her decision to continue her work in the Ombudsman's office."

2. Execution of Settlement. MacAlpine agrees to fully and forever release all claims she has or may have had against the Municipality and release any and all claims, demands, actions, causes of action and suits whatsoever, whether in law or in equity, known or unknown, foreseen or unforeseen against the Municipality, which were or which could have been the subject of a claim in the state and federal lawsuits referenced herein.

MacAlpine on behalf of her heirs, assigns, executors, administrators, successors, agents, and lawyers, hereby completely and unequivocally releases and forever discharges the Municipality including its past, present, and future officers, representatives, employees, agents, servants, affiliates, and lawyers, in both their official or individual capacities, from all claims, and discharges any and all past, present, or future claims, demands, actions, causes of action and suits whatsoever, whether in law or in equity, known or unknown, foreseen or unforeseen.

MacAlpine represents and warrants that she is fully and duly authorized to execute this Settlement and that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement. MacAlpine further warrants that if such assignment or transfer has occurred, she will indemnify and hold the Municipality harmless from and against any claims based on or arising out of any assignment or transfer purported or claimed. The obligation to indemnify and hold harmless shall include the obligation to pay reasonable attorneys' fees and costs actually incurred, whether or not litigation has been commenced.

3. Disclaimer of Liability. MacAlpine agrees and acknowledges that she has voluntarily agreed not to bring any and all claims and that there is no admission by the Municipality as to any claims, and that no past or present admission of liability, if any, shall be implied, the same being expressly denied.

4. Scope of Settlement. Without limiting the generality of the foregoing, it is MacAlpine's intent to release and fully discharge the Municipality from all claims which were or which might have been asserted against them arising under the statutory, regulatory or common law of the State of Alaska or other states, all claims arising under federal statutory or common law, all claims from local government, all claims regarding the Municipality's policy and procedures, and all claims which are now or which might be recognized in any such jurisdiction, relating to the subject of her state and federal lawsuits referenced herein. This includes without limitation all claims for whistleblower, wrongful discharge or termination of employment, discrimination, retaliation, breach of implied covenant

of good faith and fair dealing, violation of public policy, harassment, defamation and slander, breach of contract and implied contract, injunctive relief, intentional interference with contract, negligent hire/retention/control, violation of wage and hour laws (including, but not limited to any claim for wages, overtime, specialty pay, accumulated leave, or benefits), emotional distress and other non-economic damages, punitive damages, promises or omissions, and from all claims for alleged violations of federal, state, and local statutes and ordinances, including all claims arising under Americans with Disabilities Act (ADA), the Alaska Wage and Hour Act, Fair Labor Standards Act (FLSA), Alaska Whistleblower Act, Anchorage Whistleblower Act, the Fair Credit Reporting Act (FCRA), The Alaska Labor Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000(e), *et seq*, the Age Discrimination in Employment Act (ADEA) (29 U.S.C. §621 *et seq.*); Older Workers Benefit Protection Act (OWBPA); the Genetic Information and Discrimination Act (GINA), the Equal Pay Act, Employee Retirement Income Security Act (ERISA), the Family and Medical Leave Act (FMLA), Occupational Safety and Health Act (federal and state); National Labor Relations Act (NLRA), Alaska Statute §18.80.220, all Municipal ordinances, and all amendments, regulations, and decisions applicable to such statutes, regulations and ordinances, and all claims for any claims for damages, declaratory or injunctive relief of any kind, costs, interest and attorneys' fees.

The Parties agree that nothing in this Settlement is intended to or shall be construed to limit, hinder, affect or interfere with the protected right of MacAlpine to file a charge or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, if a timely action is available. Nothing in this Settlement is intended to constitute an unlawful waiver of any of MacAlpine's right to participate in an EEOC investigation, although MacAlpine does waive and release her right to recover any monetary or other damages, including but not limited to compensatory damages, non-economic, punitive and liquidated damages. If MacAlpine is called to testify under subpoena or court order in any forum, she agrees it is her duty to provide truthful testimony.

5. ADEA Compliance. This Settlement specifically waives all MacAlpine's rights and claims arising under the Age Discrimination in Employment Act (ADEA), as amended, and the Older Workers' Benefit Protection Act (OWBPA). [REDACTED]

[REDACTED]. MacAlpine agrees that she has been informed of her right to review and consider the Settlement for 21 calendar days, if she chooses.

- a. MacAlpine is not waiving any rights or claims under the Age Discrimination in Employment Act that may arise after the Settlement is executed, or any rights or claims to test the knowing and voluntary nature of the Settlement under the Older Workers' Benefit Protection Act.
- b. MacAlpine is waiving her rights and claims under the Age Discrimination in Employment Act and Older Workers' Benefit Protection Act

in exchange for the consideration stated above, which is in addition to anything of value to which she is already entitled.

c. MacAlpine acknowledges that she has had ample opportunity to consult with an attorney prior to signing this Settlement, and she was encouraged and advised to do so by the Municipality. MacAlpine's attorney is Eva Gardner.

d. MacAlpine certifies that, in accordance with 29 C.F.R. §1625.22 (e)(6), she knowingly and voluntarily decided to sign the Settlement.

e. MacAlpine has carefully read and fully understands all of the provisions and effects of the Settlement.

f. MacAlpine knowingly and voluntarily intends to be legally bound by all of the terms set forth in the Settlement.

g. MacAlpine has relied solely and completely upon her own judgment or the advice of an attorney of her choosing when entering into the Settlement.

h. MacAlpine is, through the Settlement, releasing the Municipality from any and all potential claims she may have against the Municipality or Bronson relating to her employment and separation, including claims arising under the Age Discrimination in Employment Act and the Older Workers' Benefit Protection Act.

i. MacAlpine's initials evidence her understanding and voluntary waiver of all claims against the Municipality, including but not limited to those pursuant to the Age Discrimination in Employment Act and the Older Workers' Benefit Protection Act.

MacAlpine's Initials: AM

j. MacAlpine agrees that she was offered the full twenty one (21) days in which to consider the terms of the Settlement.

MacAlpine's Initials: AM

If MacAlpine chooses to waive the twenty one day consideration period, after talking to her attorney, she may do so, and she agrees that it is her voluntary decision. Please initial if MacAlpine voluntarily chooses to waive this twenty one day period.

MacAlpine's Initials: AM

k. By signing the Settlement, MacAlpine has seven (7) days in which to reconsider and revoke the Settlement. This seven day period cannot be shortened or waived, which she acknowledges.

MacAlpine's Initials: AM

Any consideration will be made only after the seven days has expired.

l. If MacAlpine elects to exercise her right to rescind the Settlement, she must deliver the rescission in writing, and the rescission must be delivered within the seven (7)-day period; properly addressed to

Linda Johnson
Municipal Attorney's Office

632 W. 6th Ave., Suite 730
Anchorage AK, ~~99519-6650~~
99501 AAJ

A rescission must be sent by certified mail, return receipt requested or hand delivery (no email). If MacAlpine rescinds the Settlement, the Municipality will have no obligation to make the payment specified to her in this Settlement or to others whose rights might derive from her nor to continue with any other term or condition agreed to herein.

6. Tax Liability. MacAlpine expressly understands and agrees that the Municipality has not offered any opinion or guarantee to MacAlpine regarding any tax consequences of the consideration paid pursuant to this Settlement. MacAlpine represents and warrants to Employer that she has or will obtain independent legal, tax, or accounting advice in order to understand the potential tax consequences of the consideration to be paid pursuant to this Settlement. It is further understood and agreed that the Municipality does not assume any tax liability for MacAlpine or payments for her taxes arising out of this Settlement or payment made thereunder. If MacAlpine fails to pay her taxes, she will be solely liable for any penalties or interest incurred. In the event the Internal Revenue Service (IRS) takes the position that federal taxes are owed by MacAlpine and have not been paid, or have been underpaid, MacAlpine agrees that she is solely responsible for such taxes that are finally determined to be due by the IRS, or by a court of competent jurisdiction and, at MacAlpine's expense, to defend, to indemnify, and to hold the Municipality harmless from any such demands, actions, claims, or litigation by the IRS, including any costs, interest, and penalties which may be assessed by that agency.

7. Unknown Damages and No Reliance. It is understood that the nature and extent of any damages and injuries which may have been sustained by MacAlpine may substantially change or worsen and that new damages may be discovered in the future. MacAlpine shall unequivocally release and forever discharge the Municipality from any and all claims accrued, accruing, or which may accrue in the future as a result of, in connection with, or related to any changes in the nature and extent of her damages or injuries or as a result of the discovery of new damages or injuries. If MacAlpine is not familiar with this concept she will either study it or consult her attorney. MacAlpine's signature below means that it is her intent to release the Municipality from any and all claims accrued, accruing, or which may accrue in the future relating to the subject of her state and federal lawsuits referenced herein. MacAlpine states that it is her true intent and desire to fully release all the individuals who might in any way have been connected with any claims released herein as fully as though they were specifically listed and named herein. MacAlpine specifically acknowledges freedom of choice and represents that she understands that she voluntarily entered into the terms of this Settlement, further acknowledging the availability of other reasonable alternatives and adequate remedies, but has nonetheless freely, voluntarily and intelligently

chosen not to pursue the same for the purposes of making a full, final and complete compromise of the claims released herein. MacAlpine acknowledges she was not required to agree to the terms of this Settlement. MacAlpine represents and acknowledges that, in executing this Settlement, she did not rely upon any representation or statement made by the Municipality, or by any of its employees, agents or representatives, with regard to the subject matter, basis, or effect of this Settlement or otherwise.

8. Modification. This Settlement may not be modified, altered, or amended except by mutual agreement, which is reduced to writing, and signed by both MacAlpine and an authorized representative of the Municipality..

9. Choice of Law. This Settlement shall be construed and interpreted in accordance with the laws of the State of Alaska, and any claim or controversy between the parties arising out of or relating to MacAlpine's employment or this Settlement or its breach shall be governed by the laws of the State of Alaska.

10. Severability. MacAlpine agrees that, whenever possible, each provision of this Settlement shall be interpreted in such a manner as to be effective and valid under applicable law and to carry out each provision herein to the greatest extent possible, but if any provision of this Settlement is held to be void, voidable, invalid, illegal or for any other reason unenforceable, the validity, legality and enforceability of the remaining provisions of this Settlement will not be affected or impaired thereby, and will be interpreted so as to effect, as closely as possible, the intent of the parties hereto. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of the Settlement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

11. Representation. MacAlpine agrees and acknowledges that she has received and read this Settlement, that the provisions of this Settlement are understandable to her, and that she fully appreciates and understands the meaning of the terms of this Settlement and their effect and that she has executed this Settlement freely and voluntarily. MacAlpine agrees and acknowledges that she has been provided with a reasonable and sufficient period of time within which to consider whether to sign this Settlement, and she had the opportunity to consult with the attorney of her choice for advice in connection with this Settlement prior to signing it, and her attorney is Eva Gardner.

12. Integration Clause. This Settlement contains the entire agreement between the Parties with regard to the matters set forth herein. The Parties expressly acknowledge that they did not rely on other representations of any sort, oral or written that are not explicitly set forth within this Settlement.

13. Execution. This Agreement may be executed in counterparts, and each such copy, including facsimile copies or scanned signatures, shall for all purposes be deemed to be an original. All such copies shall together constitute but one and the same instrument.

14. Effective Date. This Settlement shall become effective immediately upon signing this document. MacAlpine, after due consideration, and after reading this document and consulting with her attorney, has authorized, executed and delivered this Settlement as of the date below.

Date

April 2, 2023

Signature of Employee

Heather MacAlpine
Heather MacAlpine

Date

4/4/2023

Signature of Acting Municipal Manager
Municipality of Anchorage

Kent Kohlhase
Kent Kohlhase

ADDENDUM TO SETTLEMENT AND RELEASE OF ALL CLAIMS

Notwithstanding the terms set forth in the Settlement and Release of All Claims signed by the Municipality of Anchorage and Heather MacAlpine in April 2023, both parties mutually agree that the Municipality of Anchorage may publicly produce a copy of the Settlement and Release of All Claims. This modification is made pursuant to paragraph 8.

5/22/2023

Dated

DocuSigned by:
Heather MacAlpine
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Heather MacAlpine

5/22/2023
Dated

Kent Kohlhasse
Kent Kohlhasse
Acting Municipal Manager