

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between the City of Waterloo, Iowa (“Respondent”) and the United States Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (“Office of Special Counsel”).

WHEREAS, on May 14, 2013, the Office of Special Counsel received a charge filed by ██████████ (“Charging Party”) against Respondent DJ# 197-27-25 (the “OSC Charge”) alleging citizenship status discrimination in violation of the unfair immigration-related employment practices provisions of 8 U.S.C. § 1324b (the “Act”).

WHEREAS, the Office of Special Counsel concluded based upon its investigation of the OSC Charge that there is reasonable cause to believe that Respondent committed citizenship status discrimination against the Charging Party in violation of the Act.

WHEREAS, the Office of Special Counsel and Respondent wish to resolve the OSC Charge without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained and to fully and finally resolve all disputes among the parties hereto as of the date of this Agreement, it is agreed as follows:

1. Respondent shall pay a civil penalty to the United States Treasury in the amount of thirteen thousand dollars (\$13,000.00).
2. The monies discussed in paragraph 1 shall be paid via the FedWire electronic fund transfer system within twenty (20) business days of Respondent’s receipt of a fully executed copy of this Agreement and fund transfer instructions.
3. Respondent shall provide the Charging Party with an impartial and non-discriminatory opportunity to complete the testing process for the Firefighter Recruit position that was posted by Respondent in April 2013 subject to the same rules and following the same procedures as the testing that was administered to the other candidates for the Firefighter Recruit position, subject to the following conditions:
 - (a) All evaluative aspects of the testing and scoring process shall be conducted in an impartial and nondiscriminatory manner, without the participation of any personnel involved in or consulted about matters arising from the allegations contained in the OSC Charge, provided, however, that a representative from the Human Resources department may be present during any oral interview process.
 - (b) Within fifteen (15) days of the effective date of this Agreement, Respondent shall transmit in writing a letter to the Charging Party inviting the Charging Party to participate in a testing process for the Firefighter

Recruit position in accordance with the terms of this paragraph. The letter shall inform the Charging Party that if he wishes to participate in the testing process, the Charging Party must contact Respondent within ten (10) days of receipt of the letter.

- (c) If the Charging Party wishes to participate in the testing process, Respondent and the Charging Party shall select a mutually agreeable date and time for the Charging Party to take the written examination. The date selected shall be within ninety (90) days of the effective date of this Agreement. If the Charging Party achieves a sufficient score on the written test to be eligible to take the physical ability test, Respondent and the Charging Party shall select a mutually agreeable date and time for the Charging Party to take this test. The date selected shall be within thirty (30) days of the date that the Charging Party took the written examination. If the Charging Party passes the physical ability test, the parties shall select a mutually agreeable date and time for the oral interview. The date selected for the oral interview shall be within twenty (20) days of the date that the Charging Party took the physical ability test. Respondent shall act in good faith and make reasonable efforts to select an agreeable date for each stage of the testing process (if applicable) with the Charging Party within the aforementioned time periods.
- (d) If the Charging Party achieves a score equal to or higher than the sixth-ranking candidate on the original Civil Service List and satisfies all other non-discriminatory requirements and conditions for the position, Respondent shall pay the Charging Party \$818.85 per week in the manner described in paragraph 4 of this Agreement from the date the sixth-ranking candidate on the original Civil Service List started employment as a fire fighter for Respondent until the Charging Party begins paid employment with Respondent as a Firefighter Recruit. The amount of the payments to be made to the Charging Party by Respondent shall be reduced by the gross taxable earnings earned by or accruing to the Charging Party during this period. In no event shall the total amount of payments made to the Charging Party under this Agreement exceed \$30,000. If the Charging Party does not achieve a score equal to or higher than the sixth-ranking candidate on the original Civil Service List, but is otherwise eligible to be placed on the Civil Service List, Respondent shall rank the Charging Party on the Civil Service List in the same manner that he would have been ranked had the Charging Party undertaken the testing process from May to July 2013 and obtained the same score, and shall treat him accordingly.
- (e) If the Charging Party does not pass the physical ability test or achieve a score (whether it be based on the written examination alone or the combined weighted score of the written examination and the oral interview) sufficient to be eligible to be placed on the Civil Service List,

Respondent shall be under no obligation to place the Charging Party on the current Civil Service List.

- (f) If the Charging Party fails to timely respond to the invitation to participate in the testing process as set forth in subparagraph (b) of this paragraph, or does not appear at the date and time selected by the parties for any stage of the testing process (i.e. the written examination, the physical ability test and/or the oral interview) as set forth in subparagraph (c) of this paragraph, Respondent shall have no further obligation to continue the testing process, and the Charging Party shall not be placed on the current Civil Service List.
 - (g) Respondent shall provide the Office of Special Counsel with the results of each stage of the Charging Party's testing process and all related documents within two (2) business days of the results being available.
4. Any monetary payments made to the Charging Party under paragraph 3 shall be paid in the same manner as wages are paid to any other employee of Respondent occupying the Firefighter entry level position. Respondent shall provide proof of such payment to the Office of Special Counsel upon reasonable notice.
 5. Respondent shall withhold applicable taxes from the Charging Party's monetary award in accordance with Internal Revenue Service rules and guidance, and shall credit the Charging Party's monetary award to the appropriate time periods in accordance with Social Security Administration rules and guidance.
 6. In the event that the Charging Party is receiving monetary payments under paragraph 3, and for the duration of such period, Respondent may require, as a condition of receiving such payments, that Charging Party notify Respondent and the United States within five (5) days of obtaining alternative paid employment. In such case, the Office of Special Counsel and Respondent shall work in good faith to determine what amount, if any, of Respondent's monetary payment should be reduced.
 7. Respondent shall identify to the extent practicable any potential applicants for the full-time fire fighter position that was advertised by Respondent in April 2013 who were deterred by the United States citizenship requirement contained in the advertisement and invite them to participate in the testing process, which shall be conducted in the same manner as the testing process administered from May to July 2013. The parties acknowledge that based upon information currently available, no other individuals other than the Charging Party inquired about the United States citizenship requirement.
 8. Respondent shall not discriminate on the basis of citizenship status or national origin in violation of 8 U.S.C. § 1324b, and will treat all individuals equally, without regard to citizenship or immigration status, or national origin, during the hiring, firing, and employment eligibility verification and re-verification process.

9. Respondent shall not intimidate, threaten, coerce, or retaliate against the Charging Party or any other person for his or her participation in this matter or the exercise of any right or privilege secured by 8 U.S.C. § 1324b.
10. Respondent shall post an English and Spanish version of the Office of Special Counsel “If You Have The Right to Work” poster (“OSC Poster”), in color and measuring no smaller than 18” x 24”, an image of which is available at <http://www.justice.gov/crt/about/osc/htm/worker.php#>, in all places where notices to employees and job applicants are normally posted. The Notice will be posted within fourteen (14) days from the effective date of this Agreement and will remain posted for three (3) years thereafter.
11. Within thirty (30) days of receipt of a fully signed copy of this Agreement, Respondent will review its employment policies and shall, as necessary, revise such policies to:
 - (a) Prohibit (1) the imposition of United States citizenship requirements in the hiring and recruiting process that violate 8 U.S.C. § 1324b; and (2) discrimination on the basis of citizenship status or national origin in the hiring, recruiting, and firing process.
 - (b) Refer applicants and employees who complain, formally or informally, of discrimination in the hiring, firing, or Form I-9 employment eligibility verification and re-verification process immediately to the Office of Special Counsel by directing the affected individual to the OSC Poster and the Office of Special Counsel’s worker hotline and website, and advise the affected individual of his or her right to file a charge of discrimination with the Office of Special Counsel.
 - (c) Provide that Respondent shall not take any reprisal action against an employee for having opposed any employment practice made unlawful by 8 U.S.C. § 1324b, or for filing any charge, or participating in any lawful manner in any investigation or action under 8 U.S.C. § 1324b.
 - (d) Incorporate an equal employment opportunity statement that reflects Respondent’s commitment to nondiscrimination on the basis of citizenship status as prohibited by the Act.

During the one (1) year following the effective date of this Agreement (the “Reporting Period”), Respondent shall provide any subsequent changes in employment policies as they relate to nondiscrimination on the basis of citizenship status and national origin to the Office of Special Counsel for review at least thirty (30) days prior to the effective date of such revised policies.

12. Within thirty (30) days of receipt of a fully signed copy of this Agreement, Respondent will review all employment and personnel forms and, as necessary, revise such forms to conform with 8 U.S.C. § 1324b.

13. Within ninety (90) days of receipt of a fully signed copy of this Agreement, all individuals who are responsible for formulating, carrying out, and/or conducting training on Respondent's hiring, firing, equal employment, and employment eligibility verification policies, including all managers and employees who have any role in making employment eligibility decisions, such as completing the Form I-9 (“Human Resources Personnel”), shall receive training provided or approved by the Office of Special Counsel on their duty to comply with 8 U.S.C. § 1324b.
 - (a) All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions.
 - (b) Counsel for Respondent shall certify to the Office of Special Counsel in the form of Attachment A as soon as Respondent has complied with the provisions of this paragraph.
14. During the Reporting Period, the Office of Special Counsel reserves the right to make reasonable inquiries to Respondent necessary to determine Respondent’s compliance with this Agreement. As a part of such review, the Office of Special Counsel may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.
15. If the Office of Special Counsel has reason to believe that Respondent is in violation of any provision of this Agreement, the Office of Special Counsel shall promptly notify Respondent of the purported violation. Respondent will then be given a thirty (30) day period from the date it is notified by the Office of Special Counsel, unless extended by mutual agreement, in which to cure the violation before Respondent is deemed by the Office of Special Counsel to be in violation of this Agreement.
16. Notwithstanding paragraph 15, this Agreement does not affect the right of any individual (other than the Charging Party as set forth below in paragraph 18) to file a charge alleging an unfair immigration-related employment practice against Respondent with the Office of Special Counsel, the authority of the Office of Special Counsel to investigate or file a complaint on behalf of any such individual, or the authority of the Office of Special Counsel to conduct an independent investigation of Respondent’s employment practices.
17. This Agreement resolves any and all differences between the parties relating to the OSC Charge through the date this Agreement is signed by the parties.
18. On the effective date of this Agreement, the OSC Charge will be deemed dismissed with prejudice.

19. The requirements of paragraph 1 notwithstanding, the Office of Special Counsel shall not seek from Respondent any additional civil penalty for citizenship status discrimination pertaining to the OSC Charge through the date this Agreement is signed by all parties.
20. This Agreement may be enforced in the United States District Court for the Northern District of Iowa or any other court or tribunal of competent jurisdiction.
21. The Office of Special Counsel and Respondent agree that, as of the effective date of this Agreement, litigation concerning the violations of 8 U.S.C. § 1324b that the Office of Special Counsel has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that either 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 either party of any other obligations imposed by this Agreement.
22. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Respondent and the Office of Special Counsel agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement invalid.
23. Respondent and the Office of Special Counsel agree to bear their own costs, attorneys' fees and other expenses incurred in this action.
24. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The parties agree to be bound by facsimile signatures.

City of Waterloo, Iowa

By:



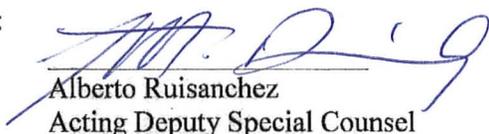
Ernest G. Clark
Mayor

Dated:

1/28/2014

Office of Special Counsel for Immigration-Related Unfair Employment Practices

By:



Alberto Ruisanchez
Acting Deputy Special Counsel

Dated:

1/30/2014