

**SETTLEMENT AGREEMENT
AND
MUTUAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of All Claims (“Agreement”) is made between Cristina Talley and the City of Anaheim, a California charter city and municipal corporation (collectively “Parties”).

RECITALS

- A. Cristina Talley was employed by the City of Anaheim as an attorney from 1996 until 2013.
- B. On October 20, 2014, Talley filed a lawsuit against the City of Anaheim in the Superior Court of the State of California for the County of Orange, Case No. 30-2014-00751921-CU-OE-CJC. The City removed the case to federal court, U.S.D.C. Central District Case No. 8:14-cv-01863DOC(RNBx). Talley’s lawsuit is referred to in this document as the “Action.”
- C. The City of Anaheim denies and disputes all the claims and allegations raised by Talley in the Action.
- D. Cristina Talley asserts and maintains that every allegation and claim in the Action is true.
- E. In order to avoid the substantial expense and inconvenience of further litigation, the Parties now desire to fully and finally settle all claims relating to Talley’s employment with and lawsuit against the City of Anaheim. This includes any and all issues and claims that were raised or could have been raised in the Action and any and all claims or potential claims related to Talley’s employment with the City of Anaheim prior to the date of execution of this Agreement, whether or not raised in the Action.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Payment.** In exchange for the promises and warranties of Talley, the City of Anaheim shall:

- A) Pay the gross sums of \$750,000 to plaintiff Cristina Talley and \$700,000 to Talley’s attorneys for attorney’s fees and costs to fully and finally settle her litigation against the City and all claims against the City relating to her employment.
- B) The settlement funds paid to Plaintiff shall be paid as 25% wages and 75% non-wage damages. Plaintiff will be subject to employment taxes on the wage portion and shall receive a Form 1099 for the non-wage damages. The City shall issue a check payable to Cristina Talley for the wage portion of the settlement in the gross amount of \$187,500, less applicable withholdings required for City wage checks. The City shall issue a check payable to Cristina Talley for non-wage damages in the amount of \$562,500.

C) The City shall issue a check payable to the Client Trust Account of Borton Petrini LLP for Plaintiff's attorney's fees and costs in the amount of \$700,000.

D) All three checks set forth in sections (B) and (C) above shall be issued no later than 21 days after the Court dismisses Talley's Complaint, as specified in paragraph 2 below. Talley shall take full and complete responsibility for any and all of the tax liabilities that may result from receipt of the Payments. Talley understands and acknowledges that the City has not and does not warrant or represent any tax consequences with regard to the Payments, the allocation of wage and non-wage income, or this Agreement. Talley agrees that she will hold the City harmless from all tax liability, if any, resulting from this settlement, including but not limited to, withholding, federal, state or local taxes, interest and penalties incurred as a result of this settlement and Agreement.

2. **Dismissal of Action with Prejudice.** Within 48 hours of execution of this Agreement by all parties and Talley's counsel's receipt of the fully executed Agreement, Talley and her counsel shall file a stipulated request for dismissal with prejudice with the Court. Talley agrees that she shall not seek to undo, revoke, vacate or rescind her dismissal of the Action unless this Agreement is breached or she exercises her revocation option pursuant to paragraph 5 below.

3. **Mutual Release of All Claims.** The Parties, Cristina Talley, on behalf of herself and her spouse, her heirs, agents, representatives, successors, and assigns, and the City of Anaheim on behalf of itself, and its agents, officers, representatives, successors, and assigns, hereby unconditionally, irrevocably and absolutely release and discharge one another, as well as any other present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives of the Parties, from any and all causes of action, judgments, liens, indebtedness, damages, liquidated damages, losses, claims, attorneys' fees and costs, liabilities and demands of whatever nature whatsoever, that the Parties may have against one another arising from incidents or events that occurred on or before the effective date of this Agreement that were the basis of claims in the Action or could have been raised as claims in the Action, and these claims shall collectively be referred to hereafter as "Released Claims." Released Claims include, without limitation, any and all claims and potential claims, whether known or unknown, asserted or not asserted in the Action, relating to Talley's employment with the City under the laws of contract or tort, the common law, the state or federal Constitution, and any state or federal statutes, including, without limitation, all causes of action that were or could have been asserted in the Action.

4. **Civil Code Section 1542 Waiver.** The Parties, on behalf of themselves and their heirs, agents, representatives, successors, and assigns, hereby waive any and all rights that they may have pursuant to California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties waive any rights that they might have to invoke section 1542 now or in the future with respect to the releases set out in this Agreement. The Parties also recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or different from what they had previously anticipated, and the Parties expressly assumes all of the risks of this waiver of Section 1542.

5. **Age Discrimination Waiver.** The Age Discrimination in Employment Act of 1967 (“ADEA”) makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual’s employment on the basis that the individual is age forty or older. The Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. §§ 626, et seq., further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, Talley acknowledges that she is knowingly and voluntarily, for just compensation in addition to anything of value to which Talley was already entitled, waiving and releasing any rights she may have under the ADEA and/or OWBPA. Talley further acknowledges that she has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a. This waiver/release is written in a manner understood by Talley.
- b. Talley is aware of and has been advised of her rights under the ADEA and OWBPA, and of the legal significance of her waiver of any possible claims she currently may have under the ADEA, OWBPA, or similar age discrimination laws.
- c. Talley is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement, and the waiver and release of any rights she may have under the ADEA, the OWBPA, or similar age discrimination laws, but she may, in the exercise of her own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days.
- d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the date this Agreement takes effect.
- e. Talley is hereby advised that she should consult with an attorney prior to executing this Agreement.
- f. Talley has seven (7) days following her execution of this Agreement to revoke the Agreement by submitting a written revocation addressed to and received by Brian Walter, counsel for the City of Anaheim, at bwalter@lcwlegal.com.
- g. This Agreement shall not be effective until the effective date, which is the day after the expiration of the seven (7) day revocation period set forth in the preceding paragraph, as set forth in paragraph 15.

6. **No Prior Assignments.** Talley represents and warrants that she has not assigned to any other person or entity any of the Released Claims. Talley agrees to defend, indemnify and

hold the City harmless from any liability, losses, claims, damages, costs or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

7. **No Admissions.** By entering into this Agreement, neither Talley nor the City admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practices. It is understood and agreed that this Agreement is not an admission of liability by either party, and that the Parties intend to avoid further litigation and expense by entering into this Agreement.

8. **No Pending Claims, Suits or Complaints.** Other than the Action, Talley represents that she has not filed any lawsuits, complaints, claims, applications, or charges against the City, or any related persons or corporations or against any past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest, and assigns, and/or all persons acting by, though, under, or in concert with any of them, with any state or federal court, local, state, or federal agency, or administrative or quasi-administrative tribunal or person, in regards to her employment with the City on or prior to the date of her execution of this Agreement. Nothing in this Agreement shall be construed to prohibit Talley from filing a charge with or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission or a comparable state or local agency, but Talley agrees to waive her right to recover monetary damages in any charge, complaint, or lawsuit filed by her or by anyone else on her behalf arising out of her employment by the City between 1996 and 2013 and/or the Action.

9. **California Law.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law.

10. **Modifications.** This Agreement may be amended only by a written instrument executed by all Parties hereto that specifically references this Agreement.

11. **Interpretation; Construction.** The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. Talley acknowledges that she has had an opportunity to review and discuss each term of this Agreement with her legal counsel and, therefore, the normal rule of construction, which is that any ambiguities in the document are resolved against the drafting party, shall not be employed in the interpretation of this Agreement.

12. **Entire Agreement.** Talley and the City declare and represent that no promise, inducement or agreement not herein discussed has been made between them and that this Agreement contains the entire expression of agreement between Talley and the City on the subjects addressed herein.

13. **Binding Effect.** This Agreement shall bind the heirs, personal representatives, successors, and assigns of Talley and the City, and it shall inure to the benefit of Talley and the City and their respective heirs, successors, and assigns.

14. **Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such

counterparts shall together constitute one and the same instrument. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each Party upon that Party's signing of such a counterpart.

15. **Effective Date.** The Effective Date of this Agreement shall be the eighth day following the execution of this Agreement by Talley, or the date on which all parties have signed this Agreement, whichever occurs later.

PLEASE READ CAREFULLY. THIS AGREEMENT AND MUTUAL GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: _____, 2016

By: _____
Cristina Talley
Plaintiff

CITY OF ANAHEIM, a California charter city and municipal corporation

Dated: _____, 2016

By _____
Paul Emery
City Manager

APPROVED AS TO FORM AND SUBSTANCE:

BORTON PETRINI LLP

LIEBERT CASSIDY WHITMORE

By: _____
Edward J. Morales
Attorneys for Plaintiff

By: _____
Brian P. Walter
Attorneys for Defendant

Dated: _____, 2016

Dated: _____, 2016