

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is made and entered into by and between Plaintiff Robin Roberts ("Roberts"), on the one hand, and Defendants Margie L. Rice ("Rice"), Richard D. Jones, ("Jones") and the City of Westminster ("City"), on the other hand, (collectively referred to as "Defendants"), with respect to the following facts (Roberts and the Defendants are also referred to as the "Parties").

RECITALS

A. The City formerly employed Roberts as City Clerk.

B. Roberts resigned from the City on or about January 2015.

C. On June 23, 2015, Roberts filed a Complaint in the County of Orange Superior Court, Case Number 30-2015-00795062-CU-OE-CJC, alleging four (4) causes of action against the City for: (1) violation of the Fair Employment and Housing Act ("FEHA"); (2) failure to prevent retaliation; (3) constructive termination in violation of Section 1102.5 of the California Labor Code; and (4) intentional infliction of emotional distress (the "State Court Action"). The fourth cause of action named the City as well as Rice and Jones as defendants.

D. The Defendants deny all allegations of liability and each Defendant has filed a demurrer to the causes of action alleged against it, him or her, which are currently pending. Defendants wish to settle and resolve all grievances, disputes, controversies, claims and actions between themselves and Plaintiff in connection with Plaintiff's employment with the City, and separation from the City, solely in order to avoid the uncertainties of further litigation and the expenses and costs incident thereto;

E. The Parties now desire to fully and finally settle all claims relating to Roberts's employment with and/or separation of employment from the City. This includes any and all issues and claims set forth in the State Court Action, any issues and claims that could have been raised in any action brought by Roberts and any and all claims or potential claims related to Roberts' employment with the City and/or separation of employment from the City, prior to the date of execution of this Agreement.

F. This Agreement is intended to be a full, complete, and final settlement of each and every claim, cause of action, or liability, whether known or unknown, which Roberts may have, or may have had, against Defendants and/or any and all of the City's current and former employees, agents, representatives, successors, assigns, predecessors, insurers, executives, managers, officers, City Council members, attorneys, and any other person acting by, through, or in concert with them (hereinafter collectively referred to as the "Releasees") prior to and up through the date Roberts executes this Agreement.

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

1. The Parties agree that, upon execution of this Agreement, the Parties will perform the following acts:

A) The City shall pay to Roberts the gross sum of \$150,000 ("Settlement Payment") to fully and finally settle all claims against the Defendants relating to Roberts' employment with and separation of employment from the City. The Settlement Payment shall be delivered to Dennis E. Wagner of Wagner & Pelayes, LLP ("Wagner & Pelayes") in the form of one settlement check and shall be made payable to Wagner & Pelayes, LLP. The Settlement Amount represents the full and complete settlement of all of Roberts' claims (a form 1099 will be issued to Roberts and Wagner & Pelayes for this amount – federal taxpayer ID number 20-1416338).

B) The Settlement Payment set forth in Section 1(A), above, will be delivered no later than fourteen (14) days after execution of this Agreement and after counsel for the City, Liebert Cassidy Whitmore, receives the following: (1) a fully executed original of this Agreement; (2) a completed and duly executed Form W-9 from Roberts and Wagner & Pelayes and (3) service of a fully executed Request for Dismissal, with prejudice, of the State Court Action as set forth in the Notice of Settlement of Entire Case filed by Plaintiff on or about October 15, 2015. The Request for Dismissal shall be as to all Defendants including the City, Margie Rice and Richard Jones. The Settlement Payment shall be made as set forth herein provided that Roberts has not exercised her right of revocation as described in paragraph 7 below and provided that Roberts has otherwise fulfilled her obligations under this Agreement.

C) The check to be paid under this Agreement, for which an appropriate Form 1099 will be issued as required by law, in the total amount of one hundred fifty thousand dollars and zero cents (\$150,000.00) represents payment for alleged emotional distress resulting therefrom that Roberts claims she incurred during and related to her employment with the City and separation from the City, as well as Roberts' attorneys' fees and costs. The Settlement Payment is not based on contractual damages of any kind and is not compensation of wages (front or back pay), or commissions. It is understood and agreed that the total amount of this settlement shall not be subject to any withholdings or deductions by the City and is in full and complete settlement of Roberts' alleged emotional distress and attorneys' fees and costs, which Roberts claims she incurred as a result of her employment with and/or separation of employment from the City.

D) Roberts acknowledges and agrees that the City has made no representations to her regarding the tax consequences of any amounts received by her pursuant to this Agreement. Roberts agrees to pay federal, state or local taxes, if any, which are required by law to be paid. Roberts and Wagner & Pelayes shall each be solely responsible for all taxes, associated penalties and/or interest, if any, that Roberts and/or her spouse, and/or Wagner & Pelayes may owe for the Settlement Payment described herein, and shall each, jointly and severally, indemnify and hold harmless the City and all persons and entities that are the subject of the Release by Roberts from any claims, fines, penalties, demands, deficiencies, levies, assessments, executions, judgments, or recoveries by any governmental entity against the Releasees for any amounts claimed due related to the monies paid pursuant to this Agreement and for any costs, interest, expenses, fines, penalties, attorneys' fees or damages incurred or sustained by the Releasees by reason of Roberts' failure to pay such taxes.

2. Roberts agrees that the Settlement Payment shall constitute the entire consideration provided to her under this Agreement and that she will not seek, nor is she in any way entitled to, any further compensation for any claimed damages, costs, or attorneys' fees in connection with the matters encompassed in this Agreement, Roberts' employment with the City, or any alleged conduct towards Roberts by the City, Rice, Jones or any other Releasee. Roberts agrees that the Settlement Payment constitutes full and complete settlement for any and all of her claims, attorneys' fees, and costs.

3. **No Further Employment by City.** Roberts hereby expressly waives any and all claims now and forever that she has or may have for reinstatement to any position with the City. Roberts further agrees that she will not seek or maintain employment, independent contractor status, or any other business relationship with the City in any position or capacity with the City whatsoever and that the City is entitled to reject, with or without cause, any application for employment or agreement for independent contractor status or any other business relationship with the City made by Roberts. Roberts further agrees that any rejection of any such application or offer made is not for a discriminatory or any other illegal purpose. Roberts further agrees that this Agreement constitutes a legitimate, non-discriminatory, non-retaliatory business reason for any and all refusals by the City to employ her at the City in any capacity.

4. **Definition of "Claims."** The Parties understand the word "claims" to include all actions, claims, and grievances, whether actual or potential, known or unknown, and specifically but not exclusively all claims arising out of Roberts' employment with and/or separation of employment from the City, any allegations Roberts made as to any of the Defendants relating to her employment with and/or separation from the City and any and all facts and circumstances occurring prior to the Parties' execution of this Agreement. All such claims (including, without limitation, related attorneys' fees and costs) are forever barred by this Agreement and without regard to whether those claims are based on any alleged breach of a duty arising in contract or tort; any alleged unlawful act, including without limitation, discrimination, retaliation, harassment and/or any other claim or cause of action; and regardless of the forum in which it might be brought.

5. **No Pending Claims.** Roberts represents that, with the exception of the State Court Action, which she hereby agrees to dismiss with prejudice as to all Defendants, she has not filed and/or does not have pending any complaints, administrative agency complaints, claims, lawsuits, requests for information, grievances, or actions against the City, Rice, Jones and/or the Releasees with any state, federal, or local agency or court, or with any administrative body, board, commission, the City or other governmental entity whatsoever and that she will not file, initiate, or pursue any of the same at any time following the execution of this Agreement regarding any and all facts and circumstances occurring prior to execution of this Agreement.

The Parties represent that they will not initiate any litigation or administrative proceeding against the other with regard to Roberts' employment with the City, or any claim released hereunder, and that all pending claims or other actions have been resolved hereunder in their totality. Roberts agrees not to encourage, assist, or participate in any lawsuit or complaint of any

other person against the City, or any current or former employee of the City except as compelled by legal process or required by law.

6. **General Release of All Claims.** Roberts, on behalf of herself and her heirs, agents, representatives, successors, and assigns, hereby unconditionally, irrevocably and absolutely releases and discharges the City, Rice, and Jones as well as any other present or former employees, officers, agents, attorneys, affiliates, insurers, successors, assigns and all other representatives of the City, 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 Roberts may have against the City, Rice, Jones and/or any of the Releasees arising from incidents or events from her employment and/or separation of employment with the City that occurred on or before the effective date of this Agreement 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, relating to Roberts' 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, any claims for discrimination, harassment, and/or retaliation, claims under the Ralph M. Brown Act (Gov. Code, §§ 54950, et seq.), the Fair Employment and Housing Act (Gov. Code, §§ 12900, et seq.), the California Family Rights Act (Gov. Code, § 12945.2), California Government Code §§ 810 et seq. or §1090, the Political Reform Act of 1974, the Unruh and George Civil Right Acts (Civ. Code, §§ 51, et seq., all provisions of the California Labor Code and any wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.), the Age Discrimination in Employment Act (29 U.S.C. § 621, et seq.), the Equal Pay Act (29 U.S.C. § 206(d)), the Fair Labor Standards Act (29 U.S.C. § 201, et seq.), the Family and Medical Leave Act (29 U.S.C. § 2601, et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Sections 1981-88 of Title 42 of the United States Code (48 U.S.C. § 1981, et seq.), the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), claims of retaliation or whistle-blowing (including but not limited to California Labor Code §§ 6310 and 1102.5, et seq., and Government Code § 12653), all of which are waived.

7. **Specific 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, Roberts acknowledges that she is knowingly and voluntarily, for just compensation in addition to anything of value to which Roberts was already entitled, waiving and releasing any rights she may have under the ADEA and/or OWBPA. Roberts further acknowledges that she has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- 1) This waiver/release is written in a manner understood by Roberts.

- 2) Roberts 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. Roberts acknowledges by her signature that she has carefully read and fully understands the waiver and that she is voluntarily agreeing to waive any claims that she has or may have under the ADEA, OWBPA, and any other laws prohibiting age discrimination in employment arising from or related or attributable to the Parties' allegations or claims.
- 3) Roberts has been given a period of at least twenty-one (21) days, which it is agreed has elapsed and/or been waived, within which to consider entering into this Agreement and that for a period of seven (7) calendar days following the execution of this Agreement Roberts may revoke this Agreement and that this Agreement will not become effective or enforceable until the revocation period has expired. (29 U.S.C. § 626(f)(1)(G).)
- 4) Roberts specifically acknowledges that she has received valuable consideration for her waiver of rights and that she knows of her right to consult an attorney or other representative prior to executing this Agreement.
- 5) City, individual defendants Rice and Jones, and Roberts also agree and acknowledge that the seven (7) day revocation period set forth herein is non-waivable and that Robin Roberts may revoke this Agreement within seven (7) calendar days of its being dated and signed by her. In the case of such revocation, this Agreement shall be considered null, void, and withdrawn, simultaneously with the revocation being effectuated. The revocation shall be deemed timely effectuated if written notice is received by Mark Meyerhoff, counsel for the City of Westminster, no later than 5:00 p.m., on the seventh (7th) calendar day following signature of this Agreement by Robin Roberts. If the seventh (7th) calendar day falls on a holiday or weekend, then timely notice of invocation of the right of revocation shall be served on the next following business day. Written notice of revocation shall be in the form of a facsimile, email, or other method of written communication.
- 6) 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 herein.

8. **Waiver of Civil Code Section 1542.** The Parties agree that the releases contained in this Agreement include a waiver of all rights under California Civil Code section 1542, which provides 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.”

Roberts waives any rights that she might have to invoke section 1542 now or in the future with respect to the releases set out in this Agreement. Roberts also recognizes and acknowledges that factors which have induced her to enter into this Agreement may turn out to be incorrect or different from what she had previously anticipated, and Roberts expressly assumes all of the risks of this waiver of Section 1542.

9. **No Admissions.** By entering into this Agreement the Parties do not 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 and that the City, Rice, and Jones specifically deny liability in the State Court Action and intend to avoid further litigation and expense by entering into this Agreement.

10. **Confidentiality.** Roberts and Defendants agree that to the extent allowed by law, the terms of and payment amount in this Agreement are confidential, and that the Parties, and their attorneys, will not disclose the settlement amount paid by the City under the Agreement to any third parties, including, but not limited to, any past, present, or prospective employees of the City and/or attorneys for such employees, or any members of the news media, except as required by law, court order, subpoena, or as necessary for legitimate law enforcement or compliance purposes. Roberts may disclose the fact and monetary amount of this Agreement to her spouse, respective tax advisors and/or accountants after advising such individuals of this confidentiality provision.

Except as provided above, the Parties expressly agree that they may respond to any inquiry, comments, or statements about the terms and amount of this Agreement and resolution of the Civil Action, substantially as follows: “The matter has been resolved.”

11. **Admissibility of Agreement.** This Agreement and each of its provisions, terms, and conditions are and shall continue to be inadmissible in any action or proceeding, other than an action or proceeding to construe or enforce any of the provisions, terms, or conditions of this Agreement.

12. **Right to Consult Counsel.** The Parties represent and agree that before executing this Agreement, they have had ample opportunity to consult with counsel and to thoroughly discuss all aspects of this Agreement, that they have apprised themselves of sufficient relevant data, either through experts or through other sources of their own selection, in order that they might intelligently exercise their own judgment in deciding to execute this Agreement. The Parties agree that they each have carefully read and fully understand all the provisions of this Agreement, and that they are voluntarily entering into this Agreement.

13. **Entire Agreement.** The Parties 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 Roberts, the City, Rice, and Jones on the subjects addressed herein.

14. **Binding Agreement.** This Agreement shall be binding upon the Parties to this Agreement and upon their heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of these Parties and each of them and to their heirs, administrators, representatives, executors, successors, and assigns.

15. **No Prior Assignments.** Roberts represents and warrants that she has not assigned to any other person or entity any of the Released Claims. Roberts agrees to defend, indemnify and hold the City, Rice, and Jones 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.

16. **Severability.** Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

17. **Supersedence.** This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings, written or oral, between the Parties pertaining to the subject matter contained in this Agreement.

18. **Integration.** This Agreement is intended by the Parties to be a fully integrated document. The terms of this Agreement are the complete, exclusive and final embodiment of the Parties' intent and may be modified only in a written document signed by all Parties.

19. **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.

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

21. **Interpretation; Construction.** The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. Roberts 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.

22. **Authority to Execute Agreement.** The Parties represent and warrant to one another that the person executing this Agreement on its, her or his behalf is a representative duly authorized to bind it, her or him and is empowered to enter into this Agreement on its, her or his behalf.


23. **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.

24. **Effective Date.** The Effective Date of this Agreement shall be the eighth day following the execution of this Agreement by Roberts, as long as Roberts has not revoked the Agreement, or the date on which all parties have signed this Agreement, whichever occurs later.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND ARE VOLUNTARILY ENTERING INTO THIS AGREEMENT.

November 7
Dated: October _____, 2015



Robin Roberts

CITY OF WESTMINSTER

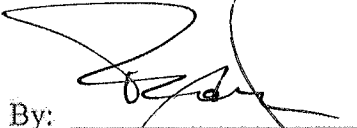
Dated: October _____, 2015

By: _____
Eddie Manfro, City Manager

Dated: October _____, 2015

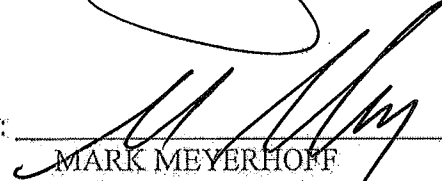
By: _____
Margie L. Riee, Councilwoman

Nov. 9
Dated: October _____, 2015


By: _____
Richard D. Jones, City Attorney

APPROVED AS TO FORM


November 19
Dated: October _____, 2015



By: _____
MARK MEYERHOFF
Liebert Cassidy Whitmore
Attorneys for City of Westminster

nbv
Dated: October 9, 2015

Nov. 12
Dated: October _____, 2015


Dated: October _____, 2015

By: 
DENNIS E. WAGNER, ESQ.
Wagner & Pelayes, LLP
Attorneys for Robin Roberts

By: 
SASKIA T. ASAMURA
Richards, Watson & Gershon, APC
Attorneys for Richard D. Jones

By: _____
DANIEL K. SPRADLIN
GREGORY E. BULLARD
Woodruff, Spradlin & Smart
Attorneys for Margie L. Rice

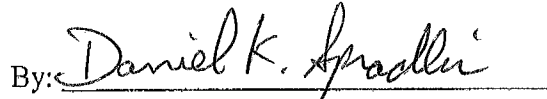
psv
Dated: ~~October~~ 9, 2015

By: 
DENNIS E. WAGNER, ESQ.
Wagner & Pelayes, LLP
Attorneys for Robin Roberts

Dated: October _____, 2015

By: _____
SASKIA T. ASAMURA
Richards, Watson & Gershon, APC
Attorneys for Richard D. Jones

NOVEMBER 11
Dated: ~~October~~ _____, 2015

By: 
DANIEL K. SPRADLIN
GREGORY E. BULLARD
Woodruff, Spradlin & Smart
Attorneys for Margie L. Rice

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November 7
Dated: ~~October~~ _____, 2015




Robin Roberts

November 12
Dated: ~~October~~ _____, 2015

CITY OF WESTMINSTER

By: _____
Eddie Manfro, City Manager

Dated: ~~October~~ 11-11, 2015

By: 

Margie L. Rice, Councilwoman

Dated: October _____, 2015

By: _____
Richard D. Jones, City Attorney

APPROVED AS TO FORM

Dated: October _____, 2015

By: _____
MARK MEYERHOFF
Liebert Cassidy Whitmore
Attorneys for City of Westminster