

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between Patricia Schilling (“Schilling”), on the one hand, and the City of Manhattan Beach (the “CITY”) and the Independent Cities Risk Management Authority (“ICRMA”) on the other hand. Schilling, ICRMA, and the CITY shall be referred to collectively hereinafter as “the Parties” or individually as “Party.”

### **RECITALS**

**A.** On or about March 21, 2014, Schilling filed a lawsuit in the Superior Court of California, County of Los Angeles as case number BC540125 against the City of Manhattan Beach and DOES 1-20, which was subsequently amended to include FEHA Harassment (Gender), FEHA Retaliation, Labor Code Section 1102.5 retaliation, Failure to Prevent Harassment and Retaliation, and Civil Penalties under the Private Attorney General Act (“Lawsuit”). Among other claims, Schilling alleged that she suffers from supraventricular tachycardia and atrial fibrillation stemming from CITY’s actions;

**B.** CITY denies the validity of Schilling’s claims in the Lawsuit, and denies that it is subject to any liability;

**C.** CITY and ICRMA are willing to provide Schilling with certain consideration described below, which they are not ordinarily required to, provided Schilling dismisses her Lawsuit, with prejudice, releases CITY and ICRMA from any claims Schilling has made or might make arising out of her employment with CITY (except for any worker’s compensation or retirement benefits and the like, as further discussed below), including, without limitation, her claims for personal physical injuries, physical sickness and emotional distress arising therefrom, and agrees to comply with the other promises and conditions set forth in this Agreement; and

**D.** To avoid the substantial expense, inconvenience, uncertainties and delay of further litigation, and without admitting the validity of any real or potential claims, causes of action or defenses that have been or may be asserted by each of the Parties against the other with respect to the matters set forth in the Recitals above, the Parties wish to resolve all disputes between them, as well as any other claim that might arise in connection with the allegations giving rise to the Lawsuit and Schilling’s employment at CITY. However, nothing in this Agreement is intended to constitute or shall be construed as a waiver or release of any rights, claims or assertions as between CITY and ICRMA.

**NOW, THEREFORE**, in consideration of the terms, conditions, and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

### **TERMS AND AGREEMENT**

**1. Non-admission of Liability.** Schilling acknowledges that the execution of this Agreement and the consideration hereunder are not and shall not be construed in any way as an

admission of wrongdoing or liability on the part of CITY, ICRMA, or any other person or business entity.

**2. Consideration.** In exchange for a full release and dismissal of all claims and potential claims against CITY and ICRMA and other promises contained in this Agreement, plaintiff will be paid a total of ONE MILLION, FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$1,500,000.00) as follows. This payment shall be referred to as the “Settlement Sum,” and shall be paid as follows:

a. CITY will issue one check (“First Payment”) made payable to “Patricia Schilling” in the gross amount of ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000.00) as past and future lost wages, which will be subject to withholding and for which a W-2 shall be issued (i.e., the net amount of this First Payment check will be less than \$100,000.00);

b. ICRMA will issue one check (“Second Payment”) made payable to “The deRubertis Law Firm, Client Trust Account” in the amount of one million three hundred ninety-five thousand dollars (\$1,395,000.00), for payment of Schilling’s claim for personal physical injuries, physical sickness and emotional distress arising therefrom;

c. CITY will issue one check (“Third Payment (Schilling-PAGA)”) made payable to “Patricia Schilling” in the amount of one thousand two hundred and fifty dollars (\$1,250.00), representing twenty-five percent (25%) of an allocated and compromised civil penalty under Schilling’s Fifth Cause of Action brought under the Labor Code Private Attorneys General Act of 2004 (seeking a civil penalty under Labor Code section 1102.5(f)), in compliance with Labor Code section 2699(i); and

d. CITY will issue one check (“Fourth Payment (LWDA-PAGA)”) made payable to the “Labor and Workforce Development Agency” in the amount of three thousand seven hundred and fifty dollars (\$3,750.00), representing seventy-five percent (75%) of an allocated and compromised civil penalty under Schilling’s Fifth Cause of Action brought under the Labor Code Private Attorneys General Act of 2004 (seeking a civil penalty under Labor Code section 1102.5(f)), in compliance with Labor Code section 2699(i).

The First Payment, Second Payment, and Third Payment (Schilling-PAGA) shall be sent by messenger, overnight delivery, or other trackable means to The deRubertis Law Firm, APC, 4219 Coldwater Canyon Avenue, Studio City, California 91604. The Fourth Payment (LWDA-PAGA) shall be sent to the Labor and Workforce Development Agency in a manner that complies with the LWDA’s requirements (*see, e.g.,* [http://www.labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://www.labor.ca.gov/Private_Attorneys_General_Act.htm)) (currently, this means sending the Fourth Payment (LWDA-PAGA) to “Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10<sup>th</sup> Floor, San Francisco, CA 94102).

The Settlement Sum shall be paid within 10 days of court approval and after counsel for the CITY receives: (1) a fully executed copy of this Agreement from Schilling and her counsel; (2) an executed Form W-4 executed by Schilling; (3) and an executed Form W-9 form from Schilling and The deRubertis Law Firm, APC. The Settlement Sum is subject to the

indemnification provision set forth below. The Settlement Sum shall constitute full and fair consideration and payment to Schilling, regardless of any third-party liens or claims. It shall be Schilling's sole obligation to ensure that all third-party liens arising out of the Lawsuit are satisfied. Neither ICRMA nor CITY shall in any way be responsible for any third-party liens or claims, and Schilling shall indemnify and hold harmless CITY and ICRMA in the event a third party makes any claim against CITY or ICRMA for payment on such lien.

**3. Termination and Future Employment.** Schilling agrees that she was terminated from her employment effective April 24, 2013. She agrees to no future employment at the CITY.

**4. Dismissal of Lawsuit.** Prior to payment of the Settlement Sum set forth in the paragraph above, Schilling shall instruct her counsel to execute a Request for Dismissal of the Lawsuit, with prejudice, and provide it to counsel for CITY, who is authorized to file it with the court once it obtains confirmation that counsel for Schilling has received the Settlement Sum and the funds have cleared (Schilling and her counsel shall act in good faith and with reasonable diligence to confirm the same). Schilling will cause to be dismissed, with prejudice, all other claims arising out of her employment with CITY that she may have made to any agency or court or other forum, and Schilling further agrees that she will not pursue an appeal or any other claims or lawsuits against CITY or ICRMA for alleged causes of action or claims existing as of the date this Agreement is fully executed. Each of the Parties agrees that it will execute and deliver to the other Party all other instruments and do such further acts and things as the other Party or Parties may reasonably request when they are necessary to effectuate the purposes of this Agreement. Nothing in this paragraph or this Agreement is intended to have any effect on or constitute any waiver of any rights Schilling may have to any workers' compensation benefits for any pending or previously-filed worker's compensation claim.

**5. Tax Obligations.** Schilling understands and agrees that she is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement, and agrees that she will indemnify and hold CITY, ICRMA, and Releasees (defined below) harmless from and against any tax or tax withholdings claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority or governmental agency with regard to the above recited consideration.

**6. Release of Claims By Schilling.** In consideration of the promises set forth in this Agreement, Schilling does hereby, for herself and for her heirs, representatives, attorneys, executors, administrators, successors, assigns, and agents, release, acquit, remise, and forever discharge CITY and ICRMA and all of its present and former representatives (including their employees, agents, administrators, investigators, independent contractors, insurers, directors, officers, council members, principals, heirs, executors, trustees, attorneys, subsidiaries, affiliates, assigns and successors, or anyone acting by, through or in concert with such persons or entities, collectively the "Releasees") from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs actually incurred), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or un-matured, of any kind or nature whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof, including but not

limited to any claims or causes of action that Schilling may now have, has ever had, or hereafter may have relating directly or indirectly to the allegations raised in the Lawsuit, and Schilling's employment with CITY, including, but not limited to, claims for wages, which, have been fully paid to Schilling prior to the execution of this Agreement, back pay; front pay; reinstatement; damages; or benefits. Schilling also releases any and all claims she may have that arose prior to the date of this Agreement, and hereby specifically waives and releases all claims, including, but not limited to, those arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991; 42 U.S.C. §2000e *et. seq.*, the Equal Pay Act; the Americans With Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act, as amended; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Immigration Reform and Control Act, as amended; the Workers Adjustment and Retraining Notification Act, as amended; the Occupational Safety and Health Act, as amended; the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Family and Medical Leave Act; the Employee Retirement Income Security Act of 1974, as amended; the National Labor Relations Act; the Fair Labor Standards Act; and any and all state or local statutes, ordinances, or regulations, as well as all claims arising under common law, federal, state, or local law involving any tort, employment contract (express or implied), public policy, wrongful discharge, or any other claim, including, but not limited to claims under California Labor and Government Codes; claims based upon the California Constitution; the California Family Rights Act, the California Fair Employment & Housing Act, the Unruh Civil Rights Act, the Labor Management Relations Act, the American Recovery and Reinvestment Act of 2009, and the Genetic Information Nondiscrimination Act of 2008. Expressly excluded from the foregoing release, however, is Schilling's pending worker's compensation claim/Schilling's rights to worker's compensation benefits, Schilling's entitlement to pension/retirement benefits (including but not limited to benefits/money being paid through the California Public Employees' Retirement System or other agency, entity, plan, or benefit), or any other benefit earned through Schilling's employment; this Agreement is not intended to affect the settlement, payments, or rights in connection with such employment/retirement/worker's-compensation benefits.

This Agreement shall not apply to rights or claims that may arise after the effective date of this Agreement; nor shall any provision of this Agreement be interpreted to waive, release, or extinguish any rights that—by express and unequivocal terms of law—may not under any circumstances be waived, released, or extinguished. Nothing in this paragraph or this Agreement is intended to limit or restrict any rights Schilling may have to enforce this Agreement or challenge the Agreement's validity under the ADEA, or any other right that cannot, by express and unequivocal terms of law, be limited, waived, or extinguished. Schilling understands and agrees that she is releasing CITY and ICRMA from any and all claims (except those exempted from this Agreement as discussed above (e.g., workers' compensation)) by which she is giving up the opportunity to recover any compensation, damages, or any other form of relief in any proceeding brought by Schilling or on Schilling's behalf.

Schilling is responsible for satisfaction of any and all Medicare Set Asides, State and federal liens, whether known or unknown. Schilling acknowledges awareness of the requirements associated with Medicare Set Asides and agrees to indemnify CITY and ICRMA from any and all liability associated and/or derived from the failure to satisfy any Medicare Set Asides, State or federal liens.

**7. General Release of Unknown Claims.** For the purpose of implementing a full and complete release, Schilling expressly acknowledges that the release given in this Agreement is intended to include in its effect, without limitation, claims that Schilling did not know or suspect to exist in Schilling's favor at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Agreement is also for the release of those claims and contemplates the extinguishment of any such unknown claims. In furtherance of this settlement, Schilling waives any rights she may have under California Civil Code Section 1542 (and other similar statutes and regulations) (except as to employment/retirement/worker's-compensation benefits, which, as stated above, are not released by this Agreement). Section 1542 states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in her or her favor at the time of executing the release, which if known by her or her must have materially affected her or her settlement with the debtor.”

For all purposes of this Agreement, the term “creditor” as used and referred to in Section 1542 of the California Civil Code means and refers to Schilling.

**8. Return of Property.** On or before December 1, 2016, Schilling shall return to the CITY in good working order all property of the CITY within her possession, custody and control. Such property includes, but is not limited to, documents, papers, photographs, computers, badges, keys, software, calculators, tools, equipment, credit cards, forms, files, manuals, correspondence, business cards, contracts, contract information, agreements, leases, plans, brochures, catalogues, training materials, computer tapes and diskettes or other portable media. This paragraph does not apply to discovery or litigation documents in the Lawsuit.

**9. Compliance with Older Workers Benefit Protection Act.** Schilling, being 40 years of age or older, understands and agrees that she:

- a. Has carefully read and fully understands all of the provisions of this Agreement;
- b. Is, through this Agreement, releasing any and all claims she may have against CITY and ICRMA, including but not limited to claims for disability discrimination, harassment, failure to prevent discrimination, retaliation, failure to accommodate and failure to engage in the interactive process under the Fair Employment and Housing Act (Government Code section 12940 *et seq.*), and any claims related to Schilling's employment, and any other claim that could be included in the Lawsuit (except for the exceptions set forth above);
- c. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;
- d. Knowingly and voluntarily intends to be legally bound by the same;
- e. Consulted an attorney prior to agreeing to the terms of this Agreement; and
- f. Has been offered more than twenty-one (21) days to consider and accept the terms

of this Agreement prior to signing it, and has seven (7) days after signing this Agreement to revoke her signature. Revocation can be made by delivering a written notice of revocation to Cheryl Johnson-Hartwell, Esq., Burke, Williams & Sorensen, LLP, 444 South Flower Street, Suite 2400, Los Angeles, California 90071. For this revocation to be effective, written notice must be delivered to Cheryl Johnson-Hartwell not later than the close of business on the seventh (7th) calendar day after Schilling signs this Agreement and must state "I hereby revoke my acceptance of our Settlement Agreement and Release." If Schilling revokes this Agreement, it shall not be effective or enforceable and Schilling will not receive the benefits provided herein.

**10. No Pending Actions.** Other than the Lawsuit, the related DFEH complaint, the notice to the Labor and Workforce Development Agency, and her workers' compensation claims against CITY, which Schilling filed prior to filing her Lawsuit, Schilling represents there has been no filing on her behalf with any government agency or court of any claim, charge, or complaint against CITY or ICRMA.

**11. No Future Actions Based on Past or Current Events.** Neither Schilling nor any person, organization, or other entity acting on Schilling's behalf will in the future file any claim, charge, or complaint asserting any claim that is waived under paragraphs 6 and 7. If Schilling breaks this promise and files a lawsuit making any claim waived in this Agreement, Schilling will pay for all costs, including reasonable attorneys' fees, incurred by CITY or ICRMA required to defend themselves against any such claim.

**12. No Further Employment and No Re-employment.** Schilling permanently, unequivocally, and unconditionally waives any and all rights Schilling may now have, may have had in the past, or may have in the future to obtain or resume employment with CITY. Schilling also promises that she will not seek or accept future work from CITY, and that CITY has no obligation to employ Schilling and may refuse to do so without any recourse.

**13. Successors.** This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors, insurers, and assigns, and shall inure to the benefit of each and all of the Releasees, and to their heirs, representatives, executors, administrators, successors, and assignees.

**14. Attorneys' Fees or Costs.** The Parties agree that they each shall bear her or its own respective costs and fees, including attorneys' fees, in connection with the negotiation and execution of this Agreement. However, if any Party brings an action for breach of any provisions of this Agreement, the prevailing Party in that action will be entitled to recover reasonable attorneys' fees from the Party over whom she or it prevails.

**15. No Representations.** The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

**16. Ownership of Claims.** Schilling represents that she has not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim described in this Agreement. Schilling further agrees to indemnify and hold harmless CITY, ICRMA, and Releasees against any and all claims based upon, arising out of, or in any way connected with

any such actual or purported transfer or assignment.

**17. Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California applicable to contracts made and to be performed entirely within such State.

**18. Representation By Counsel And Informed Consent.** Schilling expressly acknowledges and represents that she has been represented by counsel in the negotiations culminating in this Agreement, and that she has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of her waiver of rights under California Civil Code § 1542.

**19. Court to Retain Jurisdiction.** This Agreement may be enforced pursuant to California Code of Civil Procedure section 664.6, and after dismissal the Parties agree that the Court shall retain jurisdiction to enforce this Agreement under section 664.6. The Parties agree to submit a stipulation and proposed order to this effect.

**20. Miscellaneous.**

a. The language of all parts in this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

b. Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

c. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement.

d. This Agreement may be executed in multiple counterparts (including electronic, facsimile, or other counterparts, each of which shall be deemed to be an original and all of which together shall constitute one document.

e. The Parties agree that the failure of any Party to enforce or exercise any right, condition, term, or provision of this Agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

\*\*\* *Signature page follows* \*\*\*

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES THE RELEASE OF  
ALL KNOWN AND UNKNOWN CLAIMS.

FOR PLAINTIFF:

Patricia Schilling  
Patricia Schilling, Plaintiff

DATED: 11/29, 2016

Kelly Knight  
Counsel for Plaintiff

DATED: 11/29, 2016

FOR DEFENDANT CITY OF MANHATTAN BEACH:

\_\_\_\_\_  
Print Name

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Signature

FOR INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY:

\_\_\_\_\_  
Print Name

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Signature