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			nd continues to be, ees can raise compla				mination-free work ar of reprisal; and	place wi	here	
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WHEREAS	Plaintiffs hav	e agree	d to this settlement	and wil	l sign a	ıll requi	ired releases; and			
WHEREAS, Commission		y funds f	for this settlement a	are avail	able in	the Cit	y of Jersey City Insı	ırance F	und	
NOW, THE	REFORE, BE	IT RES	OLVED by the Mu	nicipal C	Council	of the	City of Jersey City t	hat:		
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2. The Zappella" a c	Jersey City In	ount of f	ifty thousand dollars	and zero	cents (S	\$50,000	Gayle Loftis, Esq. a .00), which payment issts and any other cla	s being i	nade	
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Adopted at a me	eting of the	Municip	oal Council of the	e City o	f Jerse	y City	N.J.			
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( Colarido)							J			

#### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is entered into by and between Constance Zappella ("Zappella"), and the City of Jersey City (the "City"), Armando Roman, Jerome Cala, Darren Rivers and Steven McGill (collectively, "Defendants") (Zappella and Defendants, collectively, hereinafter referred to as the "Parties").

#### RECITALS

WHEREAS, the Parties to this Agreement are also parties to a civil action entitled Zappella v. City of Jersey City, et al., United States District Court, District of New Jersey, Civil Action No. 2:14-cv-03369-JMV-MF (the "Action"); and

WHEREAS, Defendants deny the allegations in Zappella's claims, and denies that they, or any of the City's parents, subsidiaries, affiliates, departments, divisions, agencies, servants, officers, directors, employees, agents, insurers, benefit plan fiduciaries or successors are liable for any claims raised by Zappella; and

WHEREAS, the City has been, and continues to be, committed to a discrimination-free workplace where not only Zappella but all employees of the Jersey City Fire Department ("JCFD") can raise complaints freely without fear of reprisal; and

WHEREAS the Parties have agreed that it is in their mutual best interests to discontinue the Action and have agreed to terms to fully and finally settle and resolve the Action; and

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

# 1. Agreements by the City and Zappella

A. In consideration for Zappella's agreement to all of the terms, conditions and promises in this Agreement, the City agrees as follows:

- (1) In accordance with Article 8, Section E of the Collective Bargaining Agreement between the City and the Jersey City Fire Officers Association (the "Union"), the JCFD will ensure it follows and enforces its system to track when fire officers of the JCFD ("Firefighters") submit a form 489. Specifically, this system will insure that the form 489's are date-stamped by the receiving department upon receipt, with an acknowledgement to be provided to the Firefighter submitting the form;
- (2) Within thirty (30) days of the entry of this Agreement, the JCFD will implement a departmental policy in the form of a General Order that when the JCFD requests Firefighters to respond whether they have interest in positions or assignments within the department, the JCFD will identify which positions or assignments it has plans to fill in the immediate future as opposed to those for which the JCFD is merely seeking feedback as to the Firefighters' interest in said positions and/or assignments. Prior to starting the selection process to fill any such positions or assignments, the JCFD will make available any pre-requisites and criteria for such positions and assignments;
- ("PPE") provided by the City do not properly fit Zappella, Zappella may submit a Work Station Uniform Order to the JCFD's Compliance Office in order to obtain her own uniforms or PPE, approval of which may not be unreasonably withheld. The costs of specially ordered uniforms and/or PPE will be paid for by the City, with the exception of footwear, which Zappella will be required to pay the difference, if any. Notwithstanding the foregoing, it is understood and agreed that the City will only obtain and Zappella will only be permitted to wear during the course of her employment with the JCFD, those uniforms and/or PPE that meet the necessary requirements, standards and guidelines established by the City, the JCFD, the Union and/or the

JCFD Health and Safety Committee. <u>Under no circumstances is Zapella authorized to wear any uniform or PPE that does not satisfy the requirements, standards and/or guidelines set forth above, including but not limited to safety requirements as established by the JCFD Health and Safety Committee, the Union, the JCFD, or any department, division, agency, or committee of the JCFD.</u>

- (4) The City reaffirms its commitment to General Order 16-10 issued on or about May 17, 2016 by the Department of Fire and Emergency Services, Office of the Chief. Specifically, the City acknowledges and agrees that no Firefighter shall be subject to discipline for going outside the "Chain of Command" or the JCFD in reporting unlawful and prohibited discrimination, harassment or retaliation. The City also reaffirms that Zappella and all other Firefighters may report any such complaints to any of the EEO/AA Liaison Officers as may be designated by the City from time to time. By way of example, should Zappella need to report a complaint of discrimination, harassment or retaliation, she could report same to any of the designated officers on the list attached hereto as Exhibit A (as same may be updated from time to time) including, but not limited to, any such designated officers that are outside the Public Safety (Fire) Department;
  - (5) The City will confirm that the o
- (6) The City reaffirms its commitment to fully complying with Executive Order 2014-001, prohibiting unlawful discrimination, harassment or retaliation, and requiring reasonable accommodations for qualified individuals;
  - (7) The City reaffirms its obligations under Section 37 of the City's Policies

and Procedures Manual that City employees shall be periodically provided with the opportunity for anti-harassment, anti-discrimination and anti-retaliation training, and the City will make best efforts to provide mandatory training on the then-current state of the law on the topics of harassment, discrimination and retaliation with a goal that all members of the JCFD, inclusive of supervisors or supervisory personnel, will participate in such training at least every two years or as frequently as may be determined by the City's Equal Employment Opportunity Office.

- B. In the event of a violation of subparagraphs (1), (2), (3), (4), (5) and (7) of this Paragraph 1.A, Zappella's sole recourse for the City to remedy any such violation will be pursuant to and in accordance with Article 24 (Contractual Grievance Procedure) and/or Article 25 (Non-Contractual Grievance Procedure) of the Collective Bargaining Agreement between the City and the Union, for which the City acknowledges and represents that such violations and/or grievances would fall under.
- C. Although the City maintains that it was not necessary for Zappella to retain legal counsel to address her complaints about the JCFD, it also recognizes that she has incurred certain legal fees and costs not only in connection with the Action but dating back to 2012 when she filed a grievance with the Union and complaints/charges with the City's EEO Office, the U.S. Equal Employment Opportunity Commission (the "EEOC") and the New Jersey Division of Civil Rights (the "NJDCR"). As such, as further consideration for Zappella's agreement to all of the terms, conditions and promises in this Agreement, the City will issue a check made payable to "D. Gayle Loftis, Esq. and Constance Zappella" in the amount of fifty thousand dollars and zero cents (\$50,000.00), which payment is being made in full settlement of any and all of Zappella's claims for attorneys' fees and costs and any other claims she may have (the "Settlement Payment"). The City agrees to deliver the Settlement Payment to Zappella's

attorney, D. Gayle Loftis, Esq., 210 River Street, Suite 32, Hackensack, New Jersey 07601, in accordance with the instructions provided by Ms. Loftis, within thirty (30) days following the approval of this Agreement by the Municipal Council of the City of Jersey City and/or the Insurance Fund Commission; provided that the City has received an executed Agreement with Zappella's original signature and the date of execution. The Parties agree that no part of any payments by the City pursuant to this Agreement constitute: (i) a fine or penalty under any law; or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

C. Zappella understands and agrees that the City's existing anti-harassment and anti-discrimination policies as well as the commitments set forth in Paragraph 1.A above provide her with sufficient means to: (1) report any alleged incidents of harassment, discrimination, retaliation or other improper conduct within the City which she may become aware of; and (2) raise any other concerns or complaints she may have in the future regarding her own or other employees' terms and conditions of employment.

### 2. Tax Liability

Neither the City nor any of its employees or agents, nor counsel to the City, nor counsel for the individually named defendants in the Action has provided any advice regarding the taxability of the Settlement Payment pursuant to Paragraph 1 of this Agreement. The City shall not be liable for the payment of any federal, state and local taxes which may be due as a result of payment of the Settlement Payment. In addition, Zappella agrees to fully defend, indemnify and hold harmless the City, and each of its parents, subsidiaries, affiliates, departments, divisions, agencies, and their servants, officers, directors, employees and agents of each of them, harmless from any liability for payment of taxes, penalties, withholdings obligations and interest that may required by any government agency at any time as a result of the Settlement Payment.

### 3. Consideration

The Parties agree that sufficient consideration has passed between them by virtue of this Agreement, including the releases, covenants, equitable relief, payments and other provisions herein, all of which the Parties deem valid and enforceable. Zappella understands and agrees that she is not eligible for or entitled to any other benefit or consideration from the City except as provided in this Agreement or except as provided pursuant to any applicable collective bargaining agreement or applicable employment manual or policy of the City.

## 4. Release

- A. In exchange for the consideration set forth herein, Zappella agrees, intending to be legally bound, to the maximum extent permitted by law, to release and forever discharge the Defendants, including its current and past parents, subsidiaries, affiliates, departments, divisions, agencies, servants, officers, directors, employees (including but not limited to Jerome Cala, Armando Roman, Darren Rivers and Steven McGill), agents, insurers, benefit plan fiduciaries and successors (collectively, the "Releasees"), individually and collectively, from any and all claims, causes of action, complaints, lawsuits or liabilities of any kind (collectively, "Claims"), which she, her heirs, agents, administrators or executors may have against the City or the other Releasees (except for those Claims set forth in Paragraph 4.D below).
- B. By agreeing to this release, Zappella is waiving, to the maximum extent permitted by law, any and all Claims which she may have against Defendants or the other Releasees arising out of or relating to any conduct, matter, event or omission existing or occurring prior to her signing of this Agreement, including, but not limited to, the following:
- (i) any Claims which Zappella asserted or could have asserted in connection with her employment with the City;

- (ii) any Claims relating to or arising out of Zappella's employment with the City and/or any of its parents, subsidiaries, departments, divisions, agencies or affiliates;
- (iii) any Claims which Zappella asserted or could have asserted in the Action;
- (iv) any Claims for unpaid or withheld wages, severance, disability pay, distributions, profits, benefits, bonuses, commissions and/or other compensation of any kind;
  - (v) any Claims for reimbursement of expenses of any kind;
  - (vi) any Claims for attorneys' fees, costs or expenses;
- (vii) any Claims of discrimination and/or harassment and/or retaliation based on age, sex, pregnancy, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, or any other factor protected by Federal, State or Local law (such as the Age Discrimination in Employment Act, 29 U.S.C. §621 et. seq., Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Equal Pay Act and the New Jersey Law Against Discrimination), and any Claims for retaliation under any of the foregoing laws;
- (viii) any Claims regarding leaves of absence under Federal, State or Local law [including any Claims under the Family and Medical Leave Act (FMLA) and the New Jersey Family Leave Act (FLA)];
  - (ix) any Claims under the National Labor Relations Act;
  - (x) any Claims under the Sarbanes-Oxley Act;
  - (xi) any Claims for violation of public policy;

- (xii) any other Claims for retaliation and/or any whistleblower Claims (including any Claims under the Conscientious Employee Protection Act);
  - (xiii) any Claims for emotional distress or pain and suffering; and/or;
- (xiv) any other statutory or common law Claims, now existing or hereinafter recognized, known or unknown, asserted or unasserted, including, but not limited to, breach of contract, libel, slander, fraud, wrongful discharge, promissory estoppel, equitable estoppel and misrepresentation.
- C. Zappella understands that this General Release includes all Claims known or unknown by her, including those that she may have asserted or raised previously as well as those that she has not raised or asserted previously.
- D. The Release set forth in this paragraph does not apply to: (a) any claims for vested benefits under any City retirement, 401(k) or other deferred compensation plan; (b) any Claims to require the City to honor its commitments set forth in this Agreement; (c) any Claims to interpret or determine the scope, meaning or effect of the Agreement; (d) any Claims relating to any conduct, matter, event or omission occurring after the Parties' execution of this Agreement; (e) any past, pending or future claims for Worker's Compensation benefits and awards; or (f) any Claim that cannot be waived as a matter of law.

## 5. Agreement to Dismiss Lawsuit and Refrain from Filing Claims

In consideration for the benefits set forth in this Agreement and prior to being eligible to receive the Settlement Payment, Zappella's attorney shall execute a "Stipulation of Dismissal with Prejudice as to all Defendants" (the "Stipulation") and return it to the City's attorney along with Zappella's delivery of an executed original of this Agreement. The Stipulation will not be filed until after the Settlement Payment has been received by counsel for Zappella. Zappella

agrees to take any other necessary actions to dismiss, with prejudice, the Action. Zappella also agrees, to the maximum extent possible under applicable law, that: (a) she will not file or initiate a lawsuit in any court, initiate an arbitration proceeding, or opt into any collective or class action, against any of the Releasees for any Claims released by the Agreement (the "Released Claims"); (b) she will not permit herself to be a member of any class in any court or in any arbitration proceeding seeking relief against any of the Releasees based on any of the Released Claims; and (c) if a court, arbitrator, or government agency rules that she may not waive a Released Claim, she will not accept or be entitled to any money damages or other relief in connection with any other action or proceeding asserting any Claims against any of the Releasees that are released by this Agreement. Zappella understands that this Agreement shall not affect her right to file charges with, or assist/participate in an investigation conducted by any agency that expressly prohibits waiver of such rights, such as the EEOC. However, Zappella further understands and agrees that the Settlement Payment and other benefits provided under this Agreement shall be the sole relief provided to her for the Released Claims and that, in connection with the filing of any such charge and/or her participation in any such investigation, hearing or proceeding, she will not be entitled to recover, and agrees to waive, any monetary benefits or recovery for any Claims she has released in this Agreement

### 6. No Admission of Wrongdoing

This Agreement is entered into as a compromise and for the purpose of avoiding the costs and uncertainties of litigation, and does not constitute an admission by any Party of liability for any matter including, but not limited to the claims and defenses in the Action. Nothing in this Agreement nor any act or omission relating thereto is or shall be considered an admission, concession, acknowledgment or determination of any alleged liability. Rather, this Agreement

has been entered into without any admission, concession, acknowledgement or determination of any liability or non-liability whatsoever, and has no precedential or evidentiary value whatsoever. The Parties intend that this Agreement and its terms be subject to the full protection provided by Rule 408 of the Federal Rules of Evidence and all similar provisions of law (whether by statute, rule or common law) that protect settlements or settlement communications.

# 7. Representations by Zappella

Zappella represents and warrants as follows: (a) No promise or inducement not expressed herein has been made to her; (b) that, other than the Action and the charges she filed with the EEOC and NJDCR as referenced in Paragraph 1.C of this Agreement (the "Charges"), she has not filed any complaints or charges against the City of or any other Releasees with any local, state or federal agency, tribunal or court, or with any arbitration association; (c) to the best of her knowledge, the EEOC and the NJDCR have closed their files regarding the Charges and are not pursuing any further investigation or action into said Charges; (d) she has not taken any action to pursue the Charges, other than as part of the claims asserted in the Action; (e) she has not heretofore assigned or transferred or purported to assign or transfer to any person any Released Claim and will not do so; and (f) that during the course of this Action (whether in the Complaint, interrogatory answers or during her deposition), Zappella has identified to the best of her recollection all incidents of which she is aware that potentially could be deemed violations of applicable local, state or federal law.

## 8. No Prevailing Party Designation.

The Parties agree that this Agreement shall not be construed to render Zappella a "prevailing party" within the meaning of the Civil Rights Act of 1964, as amended, the Age

Discrimination in Employment Act of 1967, as amended, the Fair Labor Standards Act, as amended, the New Jersey Law Against Discrimination, the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or under any law, statute or ordinance allowing attorney's fees and/or costs to a party who "prevails" in any manner or sense, nor shall this Agreement be deemed to constitute a factor supporting an award of attorney's fees and/or costs under any law, statute or ordinance.

### 9. Jurisdiction to Enforce Settlement Agreement/Choice of Forum

Except as specifically limited by Paragraph 1.B above, the United States District Court for the District of New Jersey shall retain jurisdiction to enforce this Agreement and any proceeding relating to this Agreement, including a default by any of the Parties as to any of terms of this Agreement, with the exception of Paragraph 1.A.(1), (2), (3), (4), (5) and (6), shall be brought in the United States District Court for the District of New Jersey by way of application in the Action.

#### 10. No Third Party Beneficiaries

The provisions of this Agreement are intended solely to resolve disputed claims between the Parties. This Agreement does not and is not intended to create any rights or benefits for any person other than the Parties and the Releasees. No other person shall have any legally enforceable rights or benefits under this Agreement.

## 11. Integrated Agreement

The Parties agree that this Agreement represents the sole and exclusive agreement between the Parties with respect to the settlement of the Action and all other matters set forth herein and that all prior communications, representations, undertakings and understandings with respect thereto are merged into and superseded by this Agreement. Any modification or

amendment to this Agreement shall be effective only if in writing and executed by each Party hereto.

#### 12. Amendments

This Agreement may not be changed, modified or altered except in writing signed by the Party against whom the amendment is sought to be enforced.

## 13. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Party. No assignment or delegation of the obligations hereunder shall be made by any Party without the prior written consent of the other Parties.

### 14. Agreement as Defense

This Agreement may be pleaded as a full and complete defense to any claim that may be instituted, prosecuted or attempted in breach of this Agreement.

### 15. <u>Voluntary Execution</u>

This Agreement is executed voluntarily by each of the Parties. At the time of the execution of this Agreement, each of the Parties acknowledge that they were not under duress or undue influence and that they each relied upon the advice of competent legal counsel of their own choosing.

# 16. Joint Drafting

Each of the Parties participated in drafting this Agreement, and each has read, fully reviewed and understands each of the provisions of this Agreement. Each Party has relied on the advice and representation of competent legal counsel of their own choosing in connection with the drafting of this Agreement. Therefore, the language of this Agreement shall not be presumptively construed in favor of or against either Party.

### 17. Partial Invalidity

If any provision of this Agreement or any portion of this Agreement is declared null and void or unenforceable by any court having jurisdiction, such provision or such portion of a provision shall be considered separate and apart from the remainder of the Agreement, which shall remain in full force and effect.

## 18. Waiver of Breach

The waiver by either Party of a breach by the other Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Any waiver by a Party of a breach shall be effective only if made in writing and duly executed by the Party alleged to have waived the breach.

### 19. Sense and Circumstance

All references made and all pronouns used herein shall be construed in the singular or plural and in such gender as the sense or circumstances require.

### 20. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions.

## 21. Paragraph Headings

The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## 22. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed to be an original and all of which, when taken together, shall constitute the same instrument notwithstanding that the Parties may not have signed the same counterpart.

# 23. Authority of Signatories

The individuals signing this Agreement and the representatives of the Parties on whose behalf such individuals are signing, hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the Parties for whom they have signed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties knowingly and voluntarily have caused this Agreement to be executed on the date(s) indicated below their respective signatures.

PLAINTIFF  Onstance Sepalle  Constance Zappella	WITNESS
Date: Que 8 2014	Date: Que 3, 2014
CITY OF JERSEY CITY	
By:  Robert Kakoleski,  Business Administrator	·
Date:	
ARMANDO ROMAN	
Ву:	
Date:	-
DARREN RIVERS	
By:	
Date:	
JEROME CALA	
Ву:	
Date:	
STEVEN McGILL	
Ву:	
Date:	

IN WITNESS WHEREOF, the Parties knowingly and voluntarily have caused this Agreement to be executed on the date(s) indicated below their respective signatures.

PLAINTIFF	WITNESS		
Constance Zappella			
Date:	Date:		
CITY OF JERSEY CITY			
By: Robert Kakoleski, Business Administrator			
Date:			
By: Date:			
DARREN RIVERS	,		
Ву:		,	
Date:			
JEROME CALA			
By:			
Date:			
STEVEN McGILL			
Ву:		·	
Date:			

IN WITNESS WHEREOF, the Parties knowingly and voluntarily have caused this Agreement to be executed on the date(s) indicated below their respective signatures.

PLAINTIFF	WITNESS	
Constance Zappella		_
Date:	Date:	
CITY OF JERSEY CITY		_
By:  Robert Kakoleski,  Business Administrator  Date: 19  ARMANDO ROMAN		
Ву:		
Date:  DARREN RIVERS  By: (3/13/16		
JEROME CALA  By: Jerome Cula  Date: 12/9/16  STEVEN MORILL () ()		

CONTACT NUMBERS FOR VARIOUS COMPLAINTS & WORKPLACE ISSUES

Business Administrator:

Robert J. Kakoleski, 201-547-5147

H.R. Department Director:

Nancy Ramos, 201-547-5217

FMLA/ADA Coordinator:

Cameron Day 201-547-5962(for issues and applications for Family Medical Leave Act, (FMLA)

and Workplace Accommodations with the ADA

EEO/AA Officer:

Mark Bunbury, Esq., 201-547-5732 (for issues/complaints pertaining to legally Protected Characteristics and Americans with Disabilities Act, ADA (for General HR/Workforce Complaints/issues); Tamara Brown, EEO investigator, email: TBrown@jcnj.org

**Employee Relation Officer:** 

Alexis inselberg, 201-547-4533 (for issues/complaints pertaining to contractual labor-related

matters)

Dept. of Human Resources:

Main number 201-547-5217

Department-Designated Liaison Officers:

City Clerk:

Karen Bellamy, 201-547-4823

City Council:

Margaret DeVico, Council Secretary, 201-547-5204

D.P.W:

Amanda Khan, 201-547-6584

Health & Human Services:

Inez Anderson, 201-547-6525

H.E.D.C.:

Charles O'Dei, 201-547-5082

Law Department:

Stevie Chambers, Esq., 201-547-4908

Mayor's Office:

Lenora Brown, 201-547-5200

Municipal Courts:

Beverly Ross, 201-209-6770

Public Safety (Fire):

**Uniformed Officers:** 

BC Joseph Menendez, 201-547-4259

Training Uniformed Officers: Barbara Traina, 201-547-4247 Non-uniformed Employees: Barbara Bonglovanni 201-547-4397\*

Public Safety (Police):

<u>Uniformed Officers:</u> Captain Anthony Genova, 201-547-5499,

Alt. for Uniformed Officers: Sgt. Cristino Fellx, 201-547-5408 Training Uniformed Officers: Sgt. Morgan Torres, 201-547-5355

Non-Uniformed Employees: William O'Donnell, 201-547-4264; Alt: Ralph Sutton, 201-547-4700

Recreation:

Dan Wiley, 201-547-4448

Tax Assessor's Office:

Bennie Anderson, 201-547-5084

LGBT Llaison:

Brian Platt, Mayor's Office, 201-547-5200; Det. Philip Raleigh, Police Dept., 201-547-5831

If you have any questions regarding the above, please contact HR/Workforce Mgmt. at telephone 201-547-5217. We are located at 280 Grove Street, City Hall, Room 103. Revised 1/29/16.