

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into as of the last date of execution of the Agreement (“Effective Date”), by and between Plaintiffs and Petitioners San Diegans for Open Government (“SDOG”) and Chris Shilling (“Shilling”) (collectively, “Plaintiffs”) and Defendant and Respondent the City of Chula Vista, a charter city and California municipal corporation (“City”), (each hereinafter a “Party” and collectively “the Parties”).

A. **WHEREAS**, on or about December 9, 2014, Mayor Mary Salas was sworn into office, creating a vacancy on the City Council;

B. **WHEREAS**, on or about December 9, 2014, the City Council decided to fill the vacancy by appointment;

C. **WHEREAS**, on or about January 5, 2015, the Councilmembers and the Mayor sent the City Clerk their respective nominations for which vacancy applicants would proceed to an “interview;”

D. **WHEREAS**, on or about January 5, 2015 Plaintiffs sent the City a Notice of Intent to File Suit and Demand for Cure regarding the City’s appointment process;

E. **WHEREAS**, on or about January 8, 2015, the Council conducted a specially set City Council meeting for the purpose of interviewing the final applicants, and then deliberated regarding the appointment of one of the applicants;

F. **WHEREAS**, the Counsel was unable to select a candidate for appointment on January 8, on or about January 13, 2015, the Council again considered the applicants and appointed Steve Miesen to fill the City Council vacancy

G. **WHEREAS**, on or about February 23, 2015, Plaintiffs filed *Shilling, et al. v. City of Chula Vista*, in San Diego Superior Court, Department C-69 (“Court”), Case No. 37- 2015-00006097-CU-MC-CTL, demanding declaratory and injunctive relief under the California Ralph M. Brown Act (“Lawsuit”);

H. **WHEREAS** on or about March 8, 2016, the City, by and through its City Council, and the Plaintiffs agreed to settle and dismiss Plaintiffs’ Lawsuit on the terms and conditions specifically set forth in this Agreement.

**NOW THEREFORE**, in consideration of the forgoing and for good and valuable consideration, the Parties hereby agree as follows:

1.0 Revisions to the City Municipal Code: Within forty-five (45) days of the Effective Date, the City shall:

1.1 Amend its Municipal Code to adopt and incorporate the Interim Appointment Process for Members of the Growth Management Oversight, Parks & Recreation, Planning, and Civil Service Commissions (“Interim Appointment Process”), attached hereto as Exhibit “A” and originally approved on or about

June 16, 2015, as the appointment process and clarify that it is no longer an interim process; and

1.2 Amend its Municipal Code to make the Interim Appointment Process the “Appointment Process” applicable to the appointment of City Councilmembers.

1.3 Amend Municipal Code Sections 2.25.050 and 2.43.050 to ensure consistency with the Interim Appointment Process.

2.0 Attorney’s Fees. The City shall compensate Plaintiffs for their costs and attorneys’ fees in the total amount of one hundred and twenty-five thousand dollars (\$125,000.00). Within twenty (20) days of the Effective Date, the City shall deliver a check in the amount of \$125,000 to Coast Law Group, LLP, Attn: Marco Gonzalez, 1140 South Coast Highway 101, Encinitas, California. The check is to be made payable to Coast Law Group LLP only.

3.0 Dismissal. Plaintiffs agree to file a notice of dismissal of the entire Lawsuit, against all Defendants and Respondents, with prejudice, within ten (10) days of the receipt of written notice from the City that the requirements of paragraphs 1.1, 1.2, and 1.3 above have been satisfied.

4.0 Public Records Act Request. Within five (5) days of the Effective Date, Plaintiffs shall submit a formal withdrawal of their Public Records Act Request, dated September 24, 2015, notifying the City that no further documents are requested in response thereto.

5.0 Joint Statement: The City will release the Joint Statement attached hereto as Exhibit “B” after the Effective Date. The Parties shall be free to make additional public statements, including statements to the press, regarding the instant Agreement or the Lawsuit, or both.

6.0 Release.

6.1 The Parties hereby release and forever discharge each other from any and all claims, debts, damages, liabilities, demands, obligations, costs, expenses, attorney fees, disputes, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, which each Party may now hold or have, or at any heretofore owned or held, or may now hold against each other as a result of the subject of the Lawsuit, including, but not limited to those claims set forth in the Lawsuit, all of which are incorporated herein fully by reference.

6.2 The Parties acknowledge that there is a risk that, subsequent to the execution of this Agreement, one or more of the Parties could incur injury, loss, damage, costs, attorneys’ fees, or expenses, which are in some way caused by or connected with the persons, entities, matters, and/or issues referred to herein, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. Nevertheless, the Parties acknowledge this Agreement has been negotiated and agreed upon in light of that realization. The Parties have had the benefit and advice of independent legal

counsel on this issue and, therefore, enter into this Agreement with full knowledge and recognition of the above stated possibilities.

6.3 Wherefore, the Parties specifically waive their rights under California Civil Code section 1542. Section 1542 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.”

7.0 Miscellaneous Provisions.

7.1 Compromise of Disputed Claims. This Agreement is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any Party; nor shall the furnishing of any consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by either Party.

7.2 Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

7.3 Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Any waiver by the City must be formally approved by the City Council. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by all Parties to this Agreement.

7.4 Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element, if any.

7.5 Captions. Paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

7.6 Interpretation and Intent. This Agreement is the result of arms-length negotiations by the Parties, each of whom had their own counsel. Accordingly, all Parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or

another. No provision of this Agreement shall be interpreted against any Party because that Party, or their legal representative, may have drafted that provision.

7.7 Additional Documents. The Parties each agree to sign any additional documents which are reasonably necessary to carry out the purpose and intent of this Agreement.

7.8 Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

7.9 Governing Law. This Agreement has been executed in the State of California, and shall be interpreted and enforced under California law. Venue for any action related to this Agreement shall be in San Diego County.

7.10 Warranty of Authority. Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign. Each Party hereto agrees to defend, indemnify, and hold harmless the other Parties hereto against all claims, suits, actions and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this Agreement.

7.11 No Assignment. Each party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

7.12 Signatures. This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to be originals.

7.13 Representation by Counsel. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement after having received full legal advice as to their rights from an attorney of their choice.

7.14 Agreement Voluntarily. The undersigned and each of them acknowledge and represent that they have read this Agreement in its entirety, understand all of its terms and provisions, and sign this Agreement voluntarily and of their own free will, knowing that it is a legally binding document and with the intent to be bound hereby.

7.15 No Reliance On Other Party. The undersigned and each of them acknowledge and represent that they are affecting this compromise and settlement and are executing this Agreement (i) after they and their respective legal counsel

had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on representation made by the other Party or the other Party's attorney.

7.16 Severability. Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid.

7.17 Notices. All notices given pursuant to this Agreement or law shall be written. Notices shall be delivered with all delivery or postal charges prepaid. Notices may be given personally; by United States first-class mail; by United States certified or registered mail; or by other recognized overnight service. Notices shall be deemed received on the date of personal delivery; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a Party gives notice of a change, notices shall be sent to:

FOR PLAINTIFFS: Marco Gonzales, Esq.  
Livia Borak, Esq.  
1140 South Coast Highway 101  
Encinitas, CA 92024  
for Plaintiff Chris Shilling  
  
Cory Briggs, Esq.  
4891 Pacific Highway, Suite 104,  
San Diego, CA 92110  
for Plaintiff San Diegans for Open Government

FOR THE CITY: Glen Googins, City Attorney  
c/o Bart Miesfeld  
Office of the Chula Vista City Attorney  
276 Fourth Avenue  
Chula Vista, CA 91910

IN WITNESS THEREOF, the undersigned have executed this Agreement as follows:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Chris Shilling

SAN DIEGANS FOR OPEN GOVERNMENT

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Pedro Quiroz, Jr.  
Its: President

CITY OF CHULA VISTA

Dated: \_\_\_\_\_

By: \_\_\_\_\_

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

APPROVED AS TO FORM:

COAST LAW GROUP, LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Marco Gonzalez  
Attorneys for Plaintiffs Chris Shilling and  
San Diegans for Open Government

BRIGGS LAW CORPORATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Cory Briggs  
Attorneys for Plaintiffs Chris Shilling and  
San Diegans for Open Government

GLEN GOOGINS  
City Attorney

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Bart Miesfeld  
Deputy City Attorney  
City of Chula Vista

DENTONS, US LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Charles A. Bird  
Attorneys for City of Chula Vista