

**SETTLEMENT AGREEMENT AND RELEASE**

**Employee/Claimant:**

Tara Koenig  
3504 Angora Trail  
Schertz, TX 78154

**OJCC Case No.:** 10-4927LAR

**Accident date:** 7/3/2003

**Employer:**

City of Key West  
525 Angela St.  
Key West, FL 33040

**Carrier:**

Employers Mutual Insurance

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**THIS AGREEMENT**, subject to the terms and conditions as set forth below, is intended to be a complete, entire and final release and waiver of any and all rights, to any and all benefits, past, present and future, that the Employee/Claimant, Tara Koenig, is, or may be, entitled to under Chapter 440, Florida Statutes, (as more fully set forth below), and any other actions, claims, demands or causes of actions, whatsoever, that the Employee/Claimant may have against the Employer, City of Key West and the Carrier/Service Agent, Employers Mutual Insurance, hereinafter, Employer/Carrier/Service Agent (ECSA).

**I. TERMS OF WORKER'S COMPENSATION SETTLEMENT AGREEMENT AND RELEASE PURSUANT TO 440.20(11)(c), (d)&(e) (2001):**

**A. TOTAL SETTLEMENT AMOUNT:**

The ECSA will pay the Claimant, in a lump sum, the amount of fifty thousand dollars (\$50,000.00) of which, \$100.00 will be paid as consideration for a separate General Employer Release), payment of which will be made within thirty days (30) from the date of Certificate of Service on the Order approving the Motion for Approval of Attorney's Fee and Allocation of Child Support Arrearage for Settlement under Section 440.20 (11)(c)(d)&(e). It is understood and agreed by the parties that the terms of this agreement are not enforceable until the Judge of Compensation Claims approves the Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage for Settlement under Section 440.20(11)(c)(d)&(e).

## **B. ALL BENEFITS RESOLVED:**

Payment of the aforementioned lump sum is in full satisfaction of the obligation or liability of the ECSA to pay any benefits of whatever kind or classification available under the Florida Workers' Compensation Law including, but not limited to, temporary total and temporary partial disability benefits, impairment benefits, permanent total disability benefits, supplemental benefits, wage loss benefits, rehabilitative temporary total disability benefits, vocational benefits, required to be provided by the Employer, death benefits, attorney's fees, past, present and future medical benefits, attendant care, prescriptions, orthotics, prosthetics, transportation, or any other benefit contemplated under Florida Statute 440 relating to the alleged accident, occurrence, incident, exposure or event which took place on or about 7/3/2003 when the Claimant injured her back while working as a police officer and restraining a suspect within the confines of Monroe County, Florida.

The Claimant acknowledges by her signature below, that upon payment of the consideration referenced in paragraph I, A herein, she waives all entitlement to any and all further Workers' Compensation benefits and that the ECSA will be fully and forever discharged and released from the obligation or liability to pay and all benefits of whatever kind or classification payable under the Florida Workers' Compensation Law.

The undersigned Claimant accepts and assumes all risk; chance or hazard that said injuries, damages, manifestations or losses are now or may become greater, more numerous or more extensive than is now known, anticipated or expected; and the undersigned Claimant agrees that this release applies to all injuries, damages, manifestations, or losses of every kind and character which have arisen, or which may hereafter arise, even though now unknown, unanticipated or unexpected. The undersigned Claimant hereby acknowledges full responsibility for all future medical benefits.

## **C. ATTORNEY'S FEES**

### **1. Fee/ Costs paid by the Claimant-**

The Claimant will pay to her attorney the sum of Five Thousand, Seven Hundred Fifty Dollars (\$5,750.00) representing a statutory fee on the settlement. Additionally, the Claimant shall pay the sum of Three Hundred Twenty-One Dollars and Twelve cents (\$321.12) as costs. The fee and non-taxable costs shall be paid from the settlement proceeds thereby making the net settlement amount Forty-Three Thousand, Nine Hundred Twenty-Eight Dollars and Eighty-Eight Cents (\$43,928.88) (\$100.00 of which will be

paid as consideration for a separate General Employer Release).

2. Prior Representation-

The Claimant will be responsible for any and all attorney's fee liens filed or held by any prior attorney, for representation of the Claimant. The Claimant agrees to indemnify and hold the ECSA harmless as to any attorney fee liens.

**D. CHILD SUPPORT ARREARAGE**

The Claimant and her attorney shall be responsible for making any payment to child support from the Claimant's net settlement.

**E. THIRD PARTY LIENS**

The ECSA does not waive any lien rights pursuant to Florida Statute 440.39 and the lump sum benefits paid herein shall be included in the amount thereof. The Claimant agrees to give written notification to the ECSA or their attorney as to the filing of any suit against third parties arising out of the accident or injuries giving rise to this claim and to advise as to any recovery received from third parties arising out of the accident or injuries which are the subject matter of this claim. The Claimant further agrees that no proceeds from any third party claim shall be disbursed prior to satisfaction of the ECSA's lien.

**II. STIPULATED FACTS:**

**A. MEDICAL CARE:**

The Claimant acknowledges receipt of authorized medical care from doctors McKnight, Shapiro, Catana, Cohen, DeMeo, Keller, Cavalier, Francis and Atkins consisting of physical therapy, an IDET procedure, disc replacement to repair 2 herniated discs at L4-5 and L5-S1. The Claimant currently has a second surgical recommendation for her back. The Claimant understands and acknowledges that the aforementioned authorized treatment has ceased via a Notice of Denial, and such termination of treatment shall be final and non-appealable effective the date the Judge of Compensation Claims approves the Motion for Attorney's Fees and Allocations of Child Support Arrearage for Settlement under Section 440.20(11)(c)(d)&(e).

**B. AVERAGE WEEKLY WAGE AND COMPENSATION RATES:**

The parties stipulate that the Claimant's average weekly wage is approximately \$864.23, thus making the compensation rate approximately \$576.18 per week. The Claimant acknowledges that effective the date the Judge of Compensation Claims approves the Motion for Attorney's Fees and Allocation of Child Support Arrearage for Settlement under Section 440.20(11)(c)(d)&(e), she will no longer be eligible nor entitled to any past, present or future indemnity benefits.

**III. SPECIFIC WAIVERS AND REPRESENTATIONS:**

**A. WAIVER OF RIGHT TO HAVE CASE HEARD BY JUDGE OF COMPENSATION CLAIMS AND RIGHT TO BRING PETITION FOR MODIFICATION:**

The Claimant understands that she does hereby relinquish the right to have any unresolved conflicts or disputes involving the right to monetary compensation benefits, impairment benefits, death benefits, attorney's fees, past due medical benefits, future medical benefits, and rehabilitation benefits heard and decided by the Judge of Compensation Claims. The Claimant also understands that this Settlement Agreement and Release shall not be reviewed by the Judge of Compensation Claims in accordance with Florida Statute 440.20(11)(c). In addition, the Claimant also understands that the Order approving the Motion for Approval of Attorney's Fee and Allocation of Child Support Arrearage for Settlement under Section 440.20(11)(c)(d)&(e) is not an award under the Florida Workers' Compensation Act and is not subject to modification or review.

**B. WAIVER OF PENALTIES AND INTEREST:**

The Claimant does hereby waive any right he may have to any and all penalties and/or interest on account of the alleged accident or occupational disease referenced herein.

**C. RIGHT TO FUTURE MEDICAL CARE CLOSED:**

As provided under F.S. 440.20 (11)(c), the lump sum payable herein will fully discharge and satisfy the ECSA's liability to provide future remedial and palliative medical care under F.S. 440.13 and 440.134, including but not limited to, follow up examinations, pain medication, diagnostic testing, attendant care, and surgery. The ECSA shall no longer be liable for any medical benefits resulting from the alleged accident or occupational disease referenced herein. Any further future medical expenses will be the sole responsibility of the Claimant. The Claimant

agrees to notify his treating physicians that he is now alone fully financially responsible for any and all medical care and treatment.

The Claimant has considered or had the opportunity to consider any and all reports submitted by medical providers and rehabilitation providers. In addition, the Claimant has consulted with or had the opportunity to consult with medical providers and rehabilitation providers. The Claimant stipulates and agrees that he has determined that the amount of money being proposed to settle medical care and treatment is reasonable and adequate to meet the Claimant's future medical needs, in connection with the accident, occurrence, incident, exposure or event, which took place on or about 7/3/03.

**D. ALL KNOWN ACCIDENTS, INJURIES AND OCCUPATIONAL DISEASES REVEALED AND ALL PENDING CLAIMS AND/OR PETITIONS FOR BENEFITS WITHDRAWNS AND/OR ACTIONS WAIVED:**

The Claimant represents and affirms that all accidents, injuries, and occupational diseases known to have occurred or sustained while employed with the City of Key West have been revealed to the ECSA. All pending Claims/Petitions for Benefits are hereby voluntarily withdrawn and dismissed, with prejudice. It is stipulated and agreed that no accidental injuries or occupational diseases other than that specifically mentioned herein have been sustained, while the Claimant was employed with The City of Key West. This settlement represents a settlement of any and all claims or actions that may arise from the accident referenced herein and any claims or actions that may have arisen out of the Claimant's employment with The City of Key West.

As part of this settlement, the Claimant further specifically agrees to release and discharge the Employer, The City of Key West, its officers, agents, servants, employees, directors, successors, commissioners, assigns and any other person or entity so connected to the Employer, of any and all claims relating to retaliatory discharge under Section 440.205, F.S.

In addition, as further consideration for such payment, the Claimant agrees and does hereby release, discharge, and surrender any and all claims, whether or not asserted, against the Employer, The City of Key West, or its servicing agent, or any of their officers, agents, servants, employees, directors, commissioners, successors, assigns, and any other person or entity so connected to the Employer and/or servicing agent, of any nature whatsoever, without any limitation thereof.

**E. EMPLOYER/CARRIER/SERVICING AGENT'S PAYMENT OF PAST MEDICAL BILLS:**

The ECSA agrees to pay, in accordance with the Workers' Compensation Fee Schedule, any bills for treatment causally related to the work accident or occupational disease, from authorized health care providers/ facilities, for dates of service prior to the date of Order approving the Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage. The ECSA will pay for such services upon receipt of the authorized treating physician's bills, submitted on proper forms.

The ECSA does not agree to pay any bills from unauthorized health care providers/facilities and the Claimant stipulates and agrees that she is solely responsible for resolving and satisfying any liens or attachments, filed by any health care provider/facility, not authorized by the ECSA. The Claimant also stipulates and agrees that she is not aware of any liens or attachments, filed by any health care provider/facilities not authorized by the ECSA. Moreover, the Claimant stipulates and agrees that the ECSA shall be indemnified and held harmless, against any action brought by any third party, for payment of past medical bills, for medical treatment, not authorized by the ECSA.

**F. FULL AND COMPLETE KNOWLEDGE:**

The Claimant acknowledges that she has full and complete knowledge of all pertinent and material facts in the instant claim and it is her desire to settle this claim, fully and finally, consistent with and under the provisions of Section 440.20 F.S.. The Claimant has entered into this agreement after full discussion and consideration of the matter and with full knowledge of the reports and opinions of the Claimant's treating physicians and rehabilitation counselors, as well as the Claimant's own estimate of his own physical condition. The Claimant further represents that her rights under the Florida Workers' Compensation Law have been explained to her satisfaction and that she has made independent inquiry concerning the reasonableness of the settlement and her medical and disability status or has waived the opportunity to do so. The Claimant understands that if this case were not settled, the Claimant would have a period of time following the date of last payment of compensation or furnishing of medical care in which to further a claim against the ECSA herein because of injuries suffered in this accident. The Claimant feels that it is advantageous and in her best interest to terminate this litigation and accept the settlement agreed to hereunder in full and final adjudication and settlement of this claim to compensation and medical benefits. The Claimant understands that the ECSA also waives substantial rights in settlement of this claim. The Claimant also understands that if she initiates legal proceedings pertaining to this Settlement Agreement and Release, after the Judge of Compensation Claims approves the Motion for Approval of Attorney's Fees and Child Support Arrearage and Allocation for settlement under

440.20(11)(c)(d)&(e), the Claimant shall be liable to the ECSA for all its expenses, including reasonable attorney's fees incurred during the proceeding.

As further consideration and inducement for this compromise settlement, the undersigned Claimant agrees to indemnify, protect and hold harmless all parties named in this Settlement Agreement and Release and all other persons, firms and corporations whomsoever from all judgments, costs, attorney's fees and expenses whatsoever arising on account of any action, claim or demand including but not limited to the following: all claims for subrogation, workers' compensation liens, bills and any and all claims under any Federal, State or local disability act; any claim under the Americans with Disabilities Act; any other public programs providing medical expenses, disability payments, or other similar benefits; any and all claims under Medicaid, Medicare, any and all claims for reimbursement or subrogation under any group medical policy, individual medical policy or any health maintenance organization; any and all claims for reimbursement or subrogation under any health, sickness, or income disability coverage; any and all claims for reimbursement or subrogation under any contract or agreement with any group, organization, partnership, or corporation which provides for the payment or reimbursement of medical expenses or wages during the period of disability; and any and all actions, claims or demands whatsoever of any type or nature which may hereinafter be brought or asserted against the parties named in this Settlement Agreement and Release, on account of any injury, loss or damage resulting from the accident, occurrence, incident or event aforesaid.

The undersigned Claimant warrants that no promise or inducement not herein expressed has been made; that in executing this Release the undersigned Claimant is not relying upon any statement or representation made by any person, firm or corporation hereby released or any agent, physician or doctor or other person representing them or any of them concerning the nature, extent or duration of the injuries, losses or damages here involved or the legal liability therefore, or concerning any other thing or matter; that the payment of the above mentioned sum is in compromise settlement and full satisfaction of all the aforesaid actions, claims and demands whatsoever; that the undersigned Claimant is over the age of twenty-one (21) years and legally competent to execute this Release and that the undersigned Claimant is fully informed of the contents of this Settlement Agreement and Release and signs it with full knowledge of its meaning.

#### **G. VOLUNTARY RESIGNATION FROM EMPLOYMENT**

As a result of an irreparable Employee/employer relationship, it is stipulated that the Claimant will voluntarily resign her employment and

will not seek re-employment with The City of Key West. The agreement to voluntarily resign and not seek re-employment is not being entered into due to any disabilities the Claimant may allege and is not the sole consideration for settlement of the claim referenced herein. The Claimant's voluntary resignation from further employment with The City of Key West, will take place immediately without any further action by any party. It is further agreed that the Claimant will not re-apply with The City of Key West.

#### **H. VOLUNTARY SETTLEMENT:**

The Claimant understands that she, like the ECSA does not have to settle and is doing so freely, voluntarily and with no duress or coercion from anyone. The Claimant also affirms that she is mentally competent and understands all of the terms of this agreement and the consequences therefrom and further has had the advice from counsel, with whom the Claimant is satisfied. The Claimant further understands that she has had the right to take any claim/petition for any workers' compensation benefit to a hearing to have said claim/petition heard by a judge of Compensation Claims and that by settling, she gives up that right permanently. The Claimant represents that she has read this Settlement Agreement and Release and hereby acknowledges that she understands and accepts all of the terms and conditions herein and that she has done so with the advice of counsel.

#### **I. SEVERABILITY CLAUSE**

The ECSA and the Claimant agree that if any one section of this Settlement Agreement and Release shall be found to be void or otherwise ineffective, same shall not serve to nullify the entire Settlement Agreement and Release and that such section(s) shall be severable from the Settlement Agreement and Release.

#### **J. CONSTITUTIONALITY CLAUSE**

The ECSA and the Claimant agree that in the event this Settlement Agreement and Release shall be found to be unconstitutional or invalid by the District Court of Appeal or the Supreme Court of Florida, or is not otherwise given full force and effect or is voided for any reason, in part or in whole, the ECSA shall be entitled to full reimbursement of the full lump-sum paid to the Claimant provided herein, within fourteen (14) days of the request by the ECSA, the ECSA shall be entitled to 100% offset against the Claimant's indemnity and medical benefits until the settlement amount is fully repaid. Under no circumstances shall the settlement amount provided for herein be considered a gratuitous payment by the ECSA.



**K. CONSIDERATION OF MEDICARE'S INTERESTS IN SETTLEMENT PURSUANT TO 42 C.F.R. 411.46, 411.47 AND THE MEDICARE INTERMEDIARY MANUAL:**

The Centers for Medicare and Medicaid Services have stated in a memorandum circulated to its regional offices that Medicare's interests must be considered only in those Workers' Compensation settlements wherein: 1) the Claimant is already a Medicare beneficiary and the settlement amount is in excess of \$25,000.00 OR 2) the Claimant has a "reasonable expectation" of Medicare enrollment within thirty (30) months of the settlement date and the anticipated settlement is in excess of \$250,000.00. If the settlement meets the above criteria and CMS' interests are not considered, then the parties may be liable for double the damages. Based upon that memorandum, the parties agree that this settlement does not meet the above criterion because the Claimant states that he is not a Medicare beneficiary, and therefore, a Medicare set-aside account is not required.

Notwithstanding the above, it is not the purpose of this settlement agreement to shift to Medicare the responsibility for payment of medical expenses for the treatment of work-related conditions. Instead, this settlement agreement is intended to provide the Claimant with a lump sum and/or structured payment which will foreclose the ECSA's/ TPA's responsibility for future payments of all work-related medical expenses.

Should Medicare determine that it should be reimbursed for any past medical expense which were paid on behalf of the Claimant for medical treatment related to the work injury, then the Claimant stipulates and agrees that the Claimant is solely responsible for resolving and satisfying any and all of the outstanding conditional payments identified by Medicare within the requirements prescribed by Medicare. Nonetheless, the Claimant also stipulates and agrees that the Claimant is not aware of any outstanding conditional payments made by Medicare related to this work injury. Likewise, the parties submit that since the Claimant is not a Medicare beneficiary at this time, no conditional payment should have been made.

The claimant also agrees to hold harmless and indemnify the ECSA from any cause of action, including, but not limited to, any action to recover or recoup Medicare benefits paid or a loss of Medicare benefits, if Medicare determines that a Medicare set-aside account was required, or for any recovery sought by Medicare including past, present and future liens.

The Claimant acknowledges that the Claimant has not relied on any representations, advice of counsel of the ECSA, their attorney's agents or

adjusters or the Claimant's attorney regarding the Claimant's entitlement to social security Medicare or Medicaid benefits and the impact the terms of this Stipulation may have on those benefits. The Claimant further acknowledges that any decision regarding entitlement to Social Security Medicare or Medicaid benefits including the amount and duration of payments and offset reimbursement for prior payments is exclusively within the jurisdiction of the Social Security Administration, the United States government, and the United States federal courts and is determined by federal law. As such, the United States government is not bound by any of the terms of this Settlement Agreement and Release.

The Claimant has been appraised of his right to seek assistance from legal counsel of his choosing or directly from the Social Security Administration or other governmental agencies regarding the impact of this Settlement Agreement and Release may have on the Claimant's present or future entitlement to Social Security or other governmental benefits. Notwithstanding the foregoing, the Claimant desires to enter into the terms of this Stipulation.

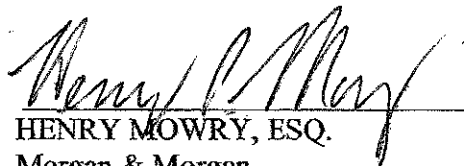
This Settlement Agreement and Release was signed by the Claimant on the 5 day of April, 2012, and by the attorney for the Claimant on the 10<sup>th</sup> day of April, 2012 and by the attorney for the ECSA on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**EMPLOYEE-CLAIMANT:**

**CLAIMANT'S ATTORNEY:**



TARA KOENIG  
3504 Angora Trail  
Schertz, TX 78154




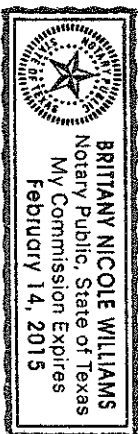
HENRY MOWRY, ESQ.  
Morgan & Morgan  
76 S. Laura St. Suite 1100  
Jacksonville, FL 32202

**ATTORNEY FOR THE ECSA:**

\_\_\_\_\_  
RONALD RAMSINGH, ESQ.  
City Attorney's Office  
3128 Flagler Ave.  
Key West, FL 33040  
(305) 809-3775

State of Texas  
County of Harris

This instrument was acknowledged before me on 5 day of April 2012 by TARA KOENIG  
  
Notary Public's Signature  
My Commission Expires 02/14/2015



**AFFIDAVIT**

Texas<sup>BW</sup>  
~~STATE OF FLORIDA~~ )  
 ) SS:  
 Harris<sup>BW</sup>  
 COUNTY OF: ~~MONROE~~ )

**BEFORE ME**, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared, **TARA KOENIG**, to me known to be the person described in, or has produced identification in the form of Texas Drivers License, on this 5 day of April, 2012, who upon duly being sworn, certifies that the information furnished by her as incorporated in the foregoing Settlement Agreement and Release is true and correct and that she has read the Stipulation and has executed the foregoing General Release and Resignation from employment freely and voluntarily for the uses and purposes therein expressed.

**SWORN TO AND SUBSCRIBED** before me this 5 day of April, 2012

Tara Koenig  
 TARA KOENIG

Brittany Williams  
 NOTARY PUBLIC, State of ~~Florida~~<sup>Texas</sup>  
 Texas<sup>BW</sup>

My commission expires: 02/14/2015  
 (print or stamp below:)

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