

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT made this ____ day of _____, 2019, by and between Nicola Moore and Levi Berig (“CLAIMANTS”) and the City of Greeley, Colorado (“CITY”) (collectively, the CLAIMANTS and the CITY, “PARTIES,” each individually, a “PARTY”), is an agreement which exchanges a full and mutual release of all claims by Claimants against the City of Greeley as result of any and all injuries and damages arising from an incident occurring on or about November 17, 2017, in exchange for the following consideration.

IN CONSIDERATION of the mutual covenants undertaken and the mutual releases contained in this Agreement the adequacy of which is acknowledged by and between the Parties, CLAIMANTS and the CITY agree as follows:

RECITALS

- A. CLAIMANTS submitted a claim to the CITY, seeking reimbursement for damages to CLAIMANTS caused by a motor vehicle accident involving an employee of the CITY.
- B. The PARTIES have agreed that the total damages claimed by CLAIMANTS are reasonable and justified. This includes any property damage to CLAIMANT’s motor vehicle, as well as any physical and emotional injury suffered by CLAIMANTS.
- C. CLAIMANTS timely filed notice of the claim to the CITY.
- D. The PARTIES desire to enter into this Agreement in order to provide for a full and final mutual settlement as well as a discharge of all claims CLAIMANTS have or may have in the future against the CITY related to the Incident.

AGREEMENT

1. **Settlement Compensation.** The CITY agrees to pay CLAIMANTS the amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000). A check in this amount shall be issued by the CITY within fifteen (15) business days following the execution of this Agreement and receipt by the City of a W-9 from CLAIMANTS.

2. **Release and Discharge.** In consideration of the equitable distribution of expenses called for herein and mutual promises between the PARTIES, the PARTIES completely release and forever discharge each other and any past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employers, employees, subsidiaries, affiliates, partners, predecessors, successors and assigns, and all other persons, firms or corporation with whom the PARTIES have been, are now or may hereafter be affiliated of and from any and all past, present or future claims, demands, obligations, actions, causes of action, damages, exemplary damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on tort, contract or other theory of recovery, which the PARTIES now have, or which may hereafter accrue or otherwise be acquired, arising out of or in any way relating to the Incident, which are or could have been the subject of the claim including, but not limited to, any and all known or unknown claims, as well as any and all known or unknown claims for or any future claim of the PARTIES’ representative(s) or assignee(s). This Release and Discharge shall be a fully binding and complete settlement between the PARTIES, their affiliates, assigns, predecessors and successors.

3. General Release. The PARTIES hereby acknowledge and agree that the Release and Discharge pursuant to paragraph 2 is a general release of any and all claims arising out of or in any way relating to the Incident, and they further expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the PARTIES do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the PARTIES' decision to enter into this Agreement. The PARTIES further agree that they have accepted the benefit of the payment of the sum specified herein and the mutual promises as a complete compromise of matters involving disputed issues of law and fact, and the PARTIES each assume the risk that the facts or law may be otherwise than the PARTIES believe. It is understood and agreed by the PARTIES that this Agreement is a compromise of a disputed claim, and the payment is not to be construed as an admission of liability on the part of the CITY.

4. Scope of Agreement. This Agreement is intended as a release of all claims of the kind or nature set forth above by any of the PARTIES in connection with the Incident as to all persons, firms or corporations, regardless of whether such persons are specifically named or designated herein, and regardless of whether such persons, firms or corporations or parties to any litigation arising out of this matter except to the extent any limitations are specifically designated herein to the contrary.

5. Denial of Liability/Assumption of Risk/Mistake of Fact. The PARTIES specifically affirm that the above-described compensation would not be paid, except as consideration set forth in exchange for the full and complete release of any and all claims, actions or causes of action, known or unknown, as described above. It is understood and agreed to by the PARTIES that this settlement is a compromise of a disputed claim and the payments are not to be construed as an admission of liability on the part of any PARTY. The PARTIES specifically acknowledge that they have taken into account and are aware of the facts and circumstances surrounding the Incident. The PARTIES have specifically taken into account that potential mistake of facts may have been made and reached in this particular settlement and affirm that part of the consideration above is being given by the PARTIES to each other for the voluntary assumption of that potential risk arising from this possible mistake of fact. The PARTIES' assumption of this potential risk is final and complete, but this assumption of risk shall not constitute any admission by any PARTY of any liability or wrongdoing. The PARTIES acknowledge that there may be unknown injuries or damages, of which they are not aware, relating to the above-described Incident and the surrounding circumstances. It is the PARTIES' intent to release the other PARTIES from any and all claims which may arise from the Incident.

6. Warranty of Capacity to Execute Agreement. Each PARTY, as to its claims, demands, obligations, or causes of action referred to in this Agreement, represents and warrants that no other person or entity has or has had any interest to such PARTIES' claims, demands, obligations, or causes of action, except as otherwise set forth herein, and each PARTY has the sole right and exclusive authority to execute this Agreement and receive the sums specified herein, and that each PARTY has not sold, assigned, transferred, conveyed or otherwise disposed of any of its claims, demands, obligations, or cause of action released or referred to in this Agreement.

7. Subrogation/Attorney Lien. CLAIMANTS agree that all payments to third parties who may have subrogation rights and/or Attorney's Liens to any monies received pursuant to this Agreement as a result of any and all injuries and damages to CLAIMANTS arising from the Incident are the sole responsibility of CLAIMANTS. CLAIMANTS agree to accept sole responsibility for any lien asserted by any third party on any monies received pursuant to this Agreement. CLAIMANTS, by this Agreement,

agree to hold harmless, defend, and indemnify the CITY from any third-party claims to any portion of the monies received under this Agreement.

8. Action to Enforce terms. The PARTIES agree that presentation of the Agreement shall be a complete affirmative defense to any and all such claims and shall be a complete bar to any such action.

9. Miscellaneous.

- A. This instrument constitutes and contains the entire Agreement and understanding of the PARTIES and the subject matter herein between the PARTIES arising from any and all damages and injuries arising from the Incident and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or verbal, all concerning the subject matter hereof. No PARTY, nor any agent or attorney therefore, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein.
- B. Neither the process of negotiating nor the act of executing this Agreement is intended to be nor shall at any time be deemed, construed, or treated in any respect as an admission of liability of the legal validity of any claim asserted by any party hereto or otherwise. Nothing in this Agreement shall be construed as a waiver of immunity provided by common law or by state statute, including the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.; and further shall not be deemed as an assumption of any duty with respect to any non-party to this Agreement.
- C. No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing, signed by the PARTY waiving the breach.
- D. If any provision of this Agreement shall be determined to be invalid or void, for any reason, the remaining provisions shall nonetheless remain in full force and effect.
- E. Each PARTY hereto acknowledges that they and/or their respective counsel have participated in or had the opportunity to participate in the drafting, preparation and review of this Agreement and, therefore, no part hereof shall be construed against any PARTY based upon the identity of any person who purported to be the drafter of such language.
- F. The PARTIES execute this Agreement without reliance upon any statements or representations by any other PARTY concerning the nature and extent of any damages, legal liability, tax consequences or any other matter except as contained in this Agreement. CLAIMANTS voluntarily agree to assume the risk and obligation to pay any and all taxes due as the result of receiving the settlement funds referenced herein.

- G. This Agreement is contractual in nature and not a mere recital, each PARTY asserting that valuable consideration has been received, binding the PARTIES to their respective rights and obligations hereunder.
- H. It is understood and agreed that the PARTIES shall each bear their own attorneys' fees and costs, if any, arising from the action of its own counsel in connection with the claim.
- I. The PARTIES agree to cooperate fully and execute any and all supplementary documents, and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Agreement.
- J. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.
- K. This Agreement shall become effective following its execution by the PARTIES and upon the release of funds, as stated in paragraph 1 above.

NICOLA MOORE

Date: _____

LEVI BERIG

Date: _____

THE CITY OF GREELEY, COLORADO:
APPROVED AS TO SUBSTANCE:

By: _____
Roy Otto, City Manager

APPROVED AS TO AVAILABILITY OF
FUNDS:

By: _____
Renee Wheeler, Finance Director

APPROVED AS LEGAL FORM:

By: _____
Doug Marek, City Attorney