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FINAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is between the City of Colorado Springs (the "City"), Peter Wysocki ("Wysocki"), the Colorado Springs Urban Renewal Authority ("CSURA") and Catherine L. Clemens ("Clemens"), and shall be effective on the day on which it is signed all Parties (the "Effective Date"), provided that Clemens does not later revoke this Agreement in accordance with Section 6.c. below. The City, Wysocki, the CSURA, and Clemens are collectively referred to as the "Parties" and separately as "Party."

Recitals

WHEREAS, Clemens commenced a proceeding against the City and Wysocki in the Small Claims Court for the District and County Courts of El Paso County, Colorado, Case No. 2017S1104, Division S (the "Lawsuit"). As of the date of this Agreement, the City and Wysocki have not been served with the Lawsuit; and

WHEREAS, the Parties have reached an amicable resolution of their differences and desire to more fully set forth their agreement to resolve the Lawsuit and all other disputes between them by means of this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **No Admission of Liability.** This Agreement is entered into for the purpose of resolving disputed claims. No Party admits liability for any claims made in the Lawsuit, which could have been asserted in the Lawsuit or otherwise asserted, or which arise out of the facts and circumstances underlying the Lawsuit, and any claim of wrongdoing or liability is expressly denied. No provision of this Agreement shall be used or construed as an admission of liability for any purpose.

2. **Payment.** Upon the Effective Date, the City shall be obligated to pay the total sum of four thousand five hundred and 83/100 dollars (\$4583.00) (the "Settlement Payment") to Clemens. The Settlement Payment represents repayment of the moving allowance deducted from Clemens' City of Colorado Springs' payroll checks dated November 25, 2016 and December 9, 2016. The City shall deliver the Settlement Payment to Clemens at 660 3rd Street, Meeker, Colorado 81641, within ten (10) business days following the date this Agreement becomes final and binding and irrevocable.

3. **Confidentiality/ Non-Disparagement.**

a. **Confidentiality of Agreement.** To the extent permitted by law, neither Clemens nor any other person under Clemens control or direction will disclose the negotiations related to this Agreement or facts learned or documents disclosed during the negotiations that are not in the public record. Clemens may disclose such information to Clemens spouse, or as required by subpoena or law, or to an attorney or accountant to the extent necessary to obtain professional advice. The Parties acknowledge the City and the CSURA are subject to the Colorado Open Records Act ("CORA"). Clemens represents and warrants to the City, Wysocki,

Clemens' initials *CLC*

and the CSURA that, prior to the date Clemens signs this Agreement, Clemens did not disclose the terms of this Agreement to any person other than to Clemens spouse, tax advisor, and/or counsel.

b. *Non-disparagement.* Clemens shall not make negative or disparaging comments relating to Wysocki, the City, or the Colorado Springs Urban Renewal Authority ("CSURA"), their elected officials or representatives, their services, or Clemens' employment with the City. The CSURA Commissioners as of October 24, 2016 shall not make negative or disparaging comments relating to Clemens or her employment with the City. The City will provide Clemens with a neutral reference. All Parties acknowledge the City and the CSURA are subject to the Colorado Open Records Act. Notwithstanding the foregoing, if any Party is subject to a valid subpoena or court order, or is otherwise required by law, to provide truthful testimony in a proceeding, such testimony will not be a violation of Section 3 of this Agreement.

c. *Discrimination Claims.* Nothing in this Agreement is intended to limit in any way Clemens' right or ability to file a charge or claim of discrimination with the Equal Employment Opportunity Commission ("EEOC") or comparable state or local agency. Clemens retains the right to communicate with the EEOC and comparable state or local agencies and such communication may be initiated by Clemens or in response to the government and is not limited by any confidentiality or non-disparagement obligation under this Agreement. Clemens shall not be entitled to recover any monetary relief or other individual remedy from the City, Wysocki, or the CSURA in connection with a charge or claim of discrimination related to her employment with the City filed with the EEOC or comparable state or local agency or any resulting litigation.

4. Dismissal of Lawsuit. Prior to the Lawsuit trial date of June 20, 2018, Clemens shall prepare and file a Stipulation of Dismissal with Prejudice of the Lawsuit with each Party bearing their own costs.

5. Representations, Warranties, Indemnification.

a. Clemens warrants that no liens exist with regard to medical or other care or services she has sought associated with her claimed personal injuries and other injuries or damages asserted in the Lawsuit and agrees to indemnify, defend, and hold harmless the City, Wysocki, and the CSURA to the extent any such liens are asserted.

b. The City, Wysocki, and the CSURA make no representation as to the tax consequences of this Agreement or the payments referenced herein. Clemens agrees to indemnify the City, Wysocki, and the CSURA for any interest or penalties to it arising from any failure by Clemens to pay any taxes due on the amounts paid herein. The City shall be responsible for appropriately reporting and paying over to taxing authorities any money withheld for those purposes from any wage payment compensation, if any, paid pursuant to this Agreement.

c. Clemens hereby warrants that she has not assigned or transferred to any person any portion of any claim which is released, waived or discharged in this Agreement.

6. Release of Claims.

a. *Release.* Clemens, on behalf of herself and her heirs, personal representatives and assigns, and any other person or entity that could or might act on behalf of Clemens (all of whom are collectively referred to as "Releasers"), hereby fully and forever releases and discharges the City, Wysocki, and the CSURA their past, present and future departments and divisions, and each of their past, present and future elected officials, officers, employee benefit plans or programs, and any and all other persons or entities that are now or may become liable to any Releaser due to any Releasee's act or omission, (all of whom are collectively referred to as "Releasees") of and from any and all actions, causes of action, claims, demands, costs and expenses, including attorneys' fees, of every kind and nature whatsoever, in law or in equity, whether now known or unknown, that Releasers may now have, or claim at any future time to have, based in whole or in part upon any act or omission occurring on or before the date Clemens signs this Agreement, without regard to present actual knowledge of such acts or omissions, including specifically, but not by way of limitation, matters which may arise at common law, such as breach of contract, express or implied, promissory estoppel, wrongful discharge, tortious interference with contractual rights, infliction of emotional distress, defamation, or under federal, state or local laws, such as the Fair Labor Standards Act, the Employee Retirement Income Security Act, the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Equal Pay Act, the Americans with Disabilities Act, the Family and Medical Leave Act, and any civil rights law of any state or other governmental body; PROVIDED, HOWEVER, that notwithstanding the foregoing or anything else contained in this Agreement, the release set forth in this Section shall not extend to: (i) any rights arising under this Agreement; (ii) Clemens's rights, if any, to indemnification, and/or defense under any City Charter, City Code, policy or procedure in connection with Clemens acts and omissions within the course and scope of Clemens employment with the City; (iii) any vested, unpaid rights Clemens may have under any pension, retirement, profit sharing, or similar plan; (iv) Clemens rights, where applicable, to file and/or participate in any administrative proceeding of any federal, state or local government agency, subject to Clemens acknowledgment and agreement that, by signing and not revoking this release of claims, Clemens shall not be entitled to recover any monetary relief or other individual remedy in connection with the proceeding or any ensuing litigation; or (v) any rights that are not waivable or releasable by law.

Clemens represents and warrants that Clemens has not experienced any illness, injury, or occupational disease that Clemens attributes to Clemens employment with the City giving rise to a potential workers' compensation claim under the workers' compensation laws of the state of Colorado that was not reported to the City before the Effective Date. Clemens has had the opportunity to consult with counsel with respect to the agreements, representations, and declarations set forth in the previous sentence.

Clemens understands and agrees that by signing this Agreement Clemens is giving up any right to bring any legal claim against the City, Wysocki, or the CSURA concerning, directly or indirectly, Clemens employment relationship with the City, including Clemens separation from employment. Clemens agrees that this legal release is intended to be interpreted in the broadest possible manner in favor of the City, Wysocki, and the CSURA to include all actual or potential legal claims that Clemens may have against the City, Wysocki, or the CSURA except as specifically provided otherwise in this Agreement.

b. *Acknowledgment of Rights Under the Older Workers Benefit Protection Act.* Clemens agrees and acknowledges that Clemens: (i) understands the language used in this Agreement and the Agreement's legal effect; (ii) understands that by signing this Agreement Clemens is giving up the right to sue the City, Wysocki, or the CSURA for age discrimination; (iii) will receive compensation and benefits under this Agreement to which Clemens would not have been entitled without signing this Agreement; (iv) has been advised by to consult with an attorney before signing this Agreement; and (v) was given no less than a 21-day consideration period. Clemens agrees that any changes to this Agreement prior to the signing of this Agreement will not result in an additional 21-day period to consider the Agreement.

Clemens acknowledges that Clemens may sign this Agreement at any time prior to the expiration of the 21-day consideration period and that any decision by Clemens to do so has not been induced by the City, Wysocki, or the CSURA through fraud, misrepresentation, a threat to withdraw or alter the offer prior to the expiration of the 21-day period, or by offering different terms if the Agreement is signed prior to the expiration of the 21-day period.

c. *Revocation Right.* For a period of 7 days after the date Clemens signs this Agreement, Clemens may, in Clemens sole discretion, rescind this Agreement, by delivering a written notice of rescission to Michael Sullivan, Chief Human Resources Officer. If Clemens rescinds this Agreement within such 7 calendar day period, this Agreement shall be void, all actions taken pursuant to this Agreement shall be reversed, and neither this Agreement nor the fact of or circumstances surrounding its execution shall be admissible for any purpose whatsoever in any proceeding between the Parties, except in connection with a claim or defense involving the validity or effective rescission of this Agreement. If Clemens does not rescind this Agreement within the 7 calendar day period, this Agreement shall become final and binding and shall be irrevocable.

7. Miscellaneous.

a. *Entire Agreement.* This Agreement sets forth the complete agreement between the Parties and replaces or supersedes any prior agreement of the Parties relating to payments, severance, or benefits. No other covenants or representations have been made or relied upon by any Party, and no other consideration, other than that set forth in this Agreement, is due between the Parties.

b. *Choice of Law.* This Agreement is governed by the laws of the State of Colorado.

c. *Additional Warranty and Acknowledgment.* The Parties warrant and represent that they have been offered no promise or inducement except as expressly provided in this Agreement, and that this Agreement is not in violation of or in conflict with any other agreement of any Party.

d. *Other Agreements.* Each Party shall promptly execute, acknowledge and deliver any additional document or agreement that another Party reasonably believes is necessary to carry out the purpose or effect of this Agreement.

e. *Withholdings.* All payments under this Agreement shall be subject to legally-required withholdings.

f. *City and CSURA Property.* Clemens has returned to the City and the CSURA, or will return to the City and the CSURA, all City or CSURA Property and all documents containing City or CSURA information. "City or CSURA Property" includes, but is not limited to, vehicles, keys, access cards, files, furniture, memoranda, reports, software, credit cards, computer disks or drives, instructional and management manuals, books, cellular phones, computer equipment, electronic equipment, and any electronically stored information.


g. *Invalidated Provision.* If any provision of this Agreement should be declared to be unenforceable by any administrative agency or court of law, the remainder of the Agreement shall remain in full force and effect, and shall bind the Parties as if the invalidated provision were not part of this Agreement.


h. *Counterparts and Telecopies.* This Agreement may be executed in counterparts, or by copies transmitted by telecopier or electronic mail, all of which shall be given the same force and effect as the original.

DATE CLEMENS WAS PROVIDED AGREEMENT: Mailed by Federal Express on May 24, 2018 to Catherine L. Clemens at 660 3rd Street, Meeker, Colorado 81641.

DATE CLEMENS WAS PROVIDED REVISED AGREEMENT: Emailed to kitty@clemens.com on June 15, 2018.

By their signatures below, the Parties acknowledge that they have read this Agreement and understand its terms.

CATHERINE L. CLEMENS

Date: 6/18/18


CITY OF COLORADO SPRINGS
By: 
Tracy Lessig, City Attorney, Division Chief
Print name and title
Date: 6/18/18

COLORADO SPRINGS
URBAN RENEWAL AUTHORITY
By: _____

Print name and title
Date: _____

PETER WYSOCKI

Date: _____

Approved as to form:

Date: 6/18/18

CATHERINE L. CLEMENS HEREBY ACKNOWLEDGES THAT SHE HAD AN OPPORTUNITY TO CONSULT WITH HER OWN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT AND THAT SHE HAD 21 DAYS TO REVIEW THIS AGREEMENT AND IF SHE CHOOSES TO EXECUTE THIS AGREEMENT PRIOR TO THAT TIME, SHE HAS DONE SO VOLUNTARILY.

Catherine L. Clemens

CATHERINE L. CLEMENS

Dated: 6/18/18