

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS AND ACTIONS

This Settlement Agreement and Release (the "RELEASE") is made by Plaintiff, ANTHONY BOREL, (referred to herein as "PLAINTIFF"), and Defendants CITY OF MURRIETA and MURRIETA FIRE PROTECTION DISTRICT (collectively referred to as "DEFENDANTS"). PLAINTIFF and DEFENDANTS are collectively referred to as the "PARTIES" and each may be referred to individually as a "PARTY".

1. **SECTION HEADINGS.** The section headings contained in the RELEASE are for reference purposes only and shall not affect in any way the meaning or interpretation of the RELEASE.

2. **RECITALS:** The PARTIES agree:

a. PLAINTIFF initiated an Action against Defendant CITY OF MURRIETA in the Riverside County Superior Court, State of California, Case No. RIC2002687 (the "Action"). In the Action, PLAINTIFF seeks to recover damages as a result of an occurrence on or about July 15, 2019, at 23562 Wooden Horse Trail, Murrieta, California 92562 ("the INCIDENT") and which PLAINTIFF alleges was caused by certain alleged acts or omissions by DEFENDANTS and other entities.

b. The PARTIES desire to enter into this RELEASE in order to resolve the Action in full as to DEFENDANTS only, in exchange for the discharge of all claims against DEFENDANTS which are, or might have been, the subject matter of PLAINTIFF'S Complaint upon the terms and conditions set forth below.

3. **INTENT.** By the RELEASE, PLAINTIFF desires to settle any and all of his claims against DEFENDANTS arising out of the INCIDENT which are the subject of the Action and alleged to have been caused by DEFENDANTS due to their acts or omissions (inclusive of, but not limited to DEFENDANTS' employees, agents, representatives, officers, directors, insurers), said claims including: bodily injuries, medical costs / expenses, dental expenses, future medical and/or dental expenses, property damage, loss of consortium, pain and suffering, emotional distress, past and future loss of earnings, general damages, special damages, attorneys' fees, costs, expenses, damages, liens, and/or economic / non-economic losses alleged or which were or could have been alleged in the Action.

4. **RELEASES BY PLAINTIFF.** FOR AND IN CONSIDERATION of settlement funds paid to PLAINTIFF as detailed below, PLAINTIFF hereby releases, acquits and forever discharges DEFENDANTS and any of their owners, agents, representatives, officers, officials, directors, parent companies, subsidiary companies, successors, predecessors, employees, former employees, volunteers, insurers (AXIS Insurance Company, Fire Agencies Insurance Risk Authority, Argonaut Insurance Company, Allied World Insurance Company, Allied Public Risk LLC DBA Allied Community Insurance Services LLC, and Network Adjusters Inc.), and attorneys (collectively, "Released Parties"), from and against any and all actions, cause(s) of action, claims, demands, damages, expenses and compensation on account of, arising from,

relating to, or in any way growing out of the INCIDENT, or which were or could have been alleged in the Action, as to DEFENDANTS only.

5. **SETTLEMENT PAYMENTS**: The settlement funds shall be paid to PLAINTIFF on behalf of DEFENDANTS, as follows: PLAINTIFF will receive a total sum of \$2,800,000 (two million, eight hundred thousand dollars), which may be referred to as the "SETTLEMENT FIGURE". The SETTLEMENT FIGURE will be paid out to the individual(s) named below ("Payee(s)") the sums outlined below:

a. Cash or lump sum payments due at the time of settlement as follows:

- \$1,800,000.00 inclusive of fees and expenses Payable jointly to Anthony Borel and Roberts | Jeandron Law, APC.
- \$450,916.50 payable to Mutual of Omaha Structured Settlement Company for the funding of an annuity policy issued by United of Omaha Life Insurance Company yielding the periodic payments described further in (b.) below.
- \$549,083.50 payable to Prudential Assigned Settlement Services Corp (PassCorp) for the funding of an annuity policy issued by The Prudential Insurance Company of America yielding the periodic payments described further in (c.) below.

b. Periodic payments made according to the schedule as follows (the "Periodic Payments"):

Payee: Anthony Borel

Periodic Payments

- \$4,703.67 payable monthly beginning 07/01/2040. Payable for life with 300 months guaranteed. Guaranteed payments through 06/01/2065.

Upon the death of the annuitant/claimant (aka PLAINTIFF), any remaining guaranteed payments may be commuted at the option of the named beneficiary.

c. Periodic payments made according to the schedule as follows (the "Periodic Payments"):

Payee: Anthony Borel

Periodic Payments

- \$4,300.00 payable monthly, guaranteed for 15 year(s), starting on 07/01/2025 with the last guaranteed payment on 06/01/2040.

The payments above constitute damages (other than punitive damages), whether by suit or agreement, on account of personal injury or sickness in a case involving physical injury or physical sickness, within the meaning of Sections 130(c) and 104(a)(2) of the Code.

ACCELERATION, TRANSFER OF PAYMENT RIGHTS.

None of the Periodic Payments and no rights to or interest in any of the Periodic Payments (all of the foregoing being hereinafter collectively referred to as "Payment Rights") can be

- i. Accelerated, deferred, increased, or decreased by any recipient of any of the Periodic Payments; or
- ii. Sold, assigned, pledged, hypothecated or otherwise transferred or encumbered, either directly or indirectly, unless such sale, assignment, pledge, hypothecation or other transfer or encumbrance (any such transaction being hereinafter referred to as a "Transfer") has been approved in advance in a "Qualified Order" as defined in Section 5891(b)(2) of the Code (a "Qualified Order") and otherwise complies with applicable state law, including without limitation any applicable state structured settlement protection statute.

No Claimant or Successor Payee shall have the power to affect any Transfer of Payment Rights except as provided in sub-paragraph (ii) above, and any other purported Transfer of Payment Rights shall be wholly void. If Payment Rights under this Settlement Agreement become the subject of a Transfer approved in accordance with sub-paragraph (ii) above the rights of any direct or indirect transferee of such Transfer shall be subject to the terms of this Settlement Agreement and any defense or claim in recoupment arising hereunder.

CLAIMANT'S BENEFICIARY

Any payments to be made after the death of Payee pursuant to the terms of the Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Assignees. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Insurer or the Insurer's Assignees. The designation must be in a form acceptable to the Assignees before such payments are made.

CONSENT TO QUALIFIED ASSIGNMENT

(a.) Assignment of Obligation. Claimant acknowledges and agrees that the Defendant (aka DEFENDANTS) will make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's liability for the Periodic Payments set forth above in 5b. to Mutual of Omaha Structured Settlement Company and set forth above in 5c. of Payments Section to Prudential Assigned

Settlement Services Corp (PASSCorp), (hereinafter referred to as "Assignees"). The Assignee's obligations for payment of the Periodic Payments shall be no greater than that of the Defendant (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

(b.) Assignee(s) as Obligor. Any such assignment shall be accepted by the Claimant without right of rejection and shall completely release and discharge the Defendant from the Periodic Payments obligation assigned to the Assignees. The Claimant recognizes that, in the event of such an assignment, the Assignees shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendant shall thereupon become final, irrevocable, and absolute.

RIGHT TO PURCHASE AN ANNUITY

The Defendant, itself or through its Assignees, will fund the liability to make the Periodic Payments set forth in 5b. of Payments Section through the purchase of an annuity policy from United of Omaha Structured Settlement Company and in 5c. of Payments Section, through the purchase of an annuity policy from The Prudential Insurance Company of America (hereinafter referred to as "Annuity Issuer"). The Defendant or the Assignees shall be the sole owner of the annuity policy and shall have all rights of ownership. The Defendant or the Assignees may have Annuity Issuers mail payments directly to the Payee. The Claimant shall be responsible for maintaining a current mailing address for Payee with the Assignees.

DISCHARGE OF OBLIGATION

The obligation of the Defendant and/or Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check or electronic funds transfer in the amount of such payment to the designated address of the Payee named above in 5b and 5c of this Settlement Agreement. If a Payee or beneficiary notifies the Assignees that any check or electronic funds transfer was not received, the Assignees shall direct the Annuity Issuer to initiate stop payment action and, upon confirmation that the check was not previously negotiated or electronic funds transfer deposited, the Annuity Issuer(s) shall process a replacement payment in the amount of such payment to the designated address of the Payee or beneficiary.

6. This Settlement Agreement and Release is binding upon PLAINTIFF's executors, heirs, trustees, and successors in interest.

7. Settlement drafts to PLAINTIFF shall be made payable as described in paragraph 5(a) above. PLAINTIFF's attorneys will provide a completed W-9 Form to DEFENDANTS' attorneys for issuance of the settlement drafts. PLAINTIFF's attorneys will also provide any requested documents related to Medicare, Medicaid, or other government benefits. Following payment of the SETTLEMENT FIGURE, PLAINTIFF'S attorneys will file or forward a Request for Dismissal to DEFENDANTS' counsel, with prejudice, of the Action as to DEFENDANTS

only (i.e., PLAINTIFF's Complaint as against CITY OF MURRIETA) within seven (7) calendar days of confirmation of deposit of the SETTLEMENT FIGURE to the various payees.

8. **FEES AND COSTS.** The PARTIES each agree to bear all their own fees and costs incurred in connection with the Action.

9. **RESOLUTION OF LEGAL ACTION.** The PARTIES agree not to file and/or make any additional actions, cause(s) of action, claims, demands, seek any damages, expenses and compensation, as against any other PARTY, on account of, arising from, or in any way growing out of or related to the INCIDENT, or which were or could have been alleged in the Action. The foregoing does not apply to any Claims for damages or indemnity that the PARTIES may have against SOUTHERN CALIFORNIA GAS COMPANY in the ACTION or any case including any of the other cases which have been consolidated and/or related to the ACTION.

10. This Agreement is contingent upon an Order by the Court that the settlement is in good faith and that the Cross-Complaint by Defendant SOUTHERN CALIFORNIA GAS COMPANY is therefore dismissed.

11. **FULL SATISFACTION.** Except as otherwise provided herein, the compromise fully and completely satisfies, without limitation, any and all of PLAINTIFF'S claims for attorneys' fees, medical and dental expenses, personal injuries, past and future loss of earnings, loss of consortium, damages, costs, and/or interest against DEFENDANTS, and any of their agents, representatives, employees, insurers, arising in any way from all claims which were or could have been asserted in the Action. Further, PLAINTIFF specifically agrees to bear his own costs, medical expenses, dental expenses, fees, attorney's fees, and other expenses of whatever nature, except as expressly provided herein.

12. **AUTHORITY TO RELEASE.** PLAINTIFF represents and warrants that he is duly authorized and empowered to execute the RELEASE and has not assigned, sold, pledged, encumbered, or transferred to anyone any of the claims assigned and/or released hereby, and that he will not assign, sell, pledge, encumber, or transfer (except by operation of law) any of their claims. PLAINTIFF hereby warrants and agrees to indemnify and hold DEFENDANTS, its/their successors, representatives, assigns, and Released Parties harmless from and against any and all claims, damages, costs, fees, expenses, liens on account of, or any way growing out of, any and all such known and unknown assignments, sales, pledges, encumbrances, and/or transfers, including without limitation attorneys' fees and costs.

13. **REPRESENTATION AND AGREEMENT RE: LIENS AND MEDICARE:** It is agreed that PLAINTIFF shall be solely responsible for any and all liens and Third Party claims, of any kind, nature, and/or amount, alleged to be related to or resulting from the INCIDENT. Further, the PARTIES have been advised and fully understand that conditional payments, including the benefits paid by Medicare and Medi-Cal up to the date of settlement, are the sole responsibility of the PLAINTIFF and must be satisfied out of the SETTLEMENT FIGURE. It will be the responsibility of PLAINTIFF to resolve all outstanding conditional payments owed to Medicare or any other lien claimant. PLAINTIFF agrees to indemnify, defend

and hold the DEFENDANTS and the Released Parties harmless from any action by Medicare/CMS or any other lienholder / claimholder seeking payment of past medical expenses/conditional payments, and from all other liens or claims for reimbursement arising out of, or related to, the Action, including but not limited to any workers compensation claim.

14. The Settling PARTIES have also addressed Medicare's right of recovery for possible future medicals. It is agreed that all future medical care and costs are the sole responsibility of PLAINTIFF and he agrees to indemnify, defend and hold DEFENDANTS and the Released Parties harmless from any action by Medicare seeking payment or reimbursement for post-settlement medical payments. This settlement is based upon a good faith determination of the PARTIES in order to resolve a questionable claim. The PARTIES have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. §1395(y)(b). The PARTIES acknowledge and understand that any present or future action or decision by Medicare on this settlement, or on PLAINTIFF's eligibility or entitlement to Medicare or Medicare payments, will not render this RELEASE void or ineffective, or in any way affect the finality of this liability settlement.

15. **COVENANT.** After payment of the SETTLEMENT FIGURE, and filing of the Request for Dismissal as to DEFENDANTS, PLAINTIFF hereby covenants and promises that no claims shall be made, and no action, claims, lawsuit or further proceeding shall be commenced against DEFENDANTS based upon or arising out of the INCIDENT or injuries or damages incurred in the INCIDENT that are the subject of the Action.

16. **NO ADMISSION.** It is understood and agreed that in making the RELEASE, the PARTIES acknowledge that the compromise reached shall not be construed as an admission of the sufficiency of any of their respective claims, defenses, allegations, assertions, or contentions, the existence of any alleged dangerous condition of public property or negligence, the existence of any contractual right to defense or indemnity, all of which are expressly denied.

17. **FACTS MAY TURN OUT DIFFERENT THAN BELIEVED.** The PARTIES fully understand that the injuries and/or damages and/or claims alleged as a result of the INCIDENT may turn out to be greater than, or different from, that now believed, and that other damages or lien rights may exist of which the PARTIES may not be presently aware. By the RELEASE, the PARTIES expressly assume the risk of potential unknown damage, and expressly warrant that the RELEASE shall not be subject to termination or rescission because of any such unknown damage or other rights.

18. **WAIVER.** Further, PLAINTIFF expressly waives all rights under Section 1542 of the California *Civil Code* which provides as follows:

- a. "GENERAL RELEASE – CLAIMS EXTINGUISHED: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY

HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY”.

- b. PLAINTIFF understands and acknowledges that a risk exists that he incurred or suffered or may incur or suffer, loss or damages as a result of the matters, facts, events, occurrences, transactions, causes and things referred to in this RELEASE which were unknown, unsuspected or unanticipated at the time this RELEASE was executed. PLAINTIFF assumes this risk and agrees that the foregoing waiver(s) and/or Release(s) shall in all respects be effective and not subject to termination or rescission.
- c. BASED UPON THE ADVICE OF COUNSEL, PLAINTIFF VOLUNTARILY, AND WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE, WAIVES AND RELINQUISHES, AS TO DEFENDANTS ONLY, ANY AND ALL RIGHTS THAT HE MAY HAVE UNDER SECTION 1542 AS WELL AS UNDER THE PROVISIONS OF ALL COMPARABLE, EQUIVALENT OR SIMILAR STATUTES AND PRINCIPLES OF COMMON LAW OR OTHER DECISIONAL LAW OF ANY AND ALL STATES OF THE UNITED STATES.

19. **LEGAL REPRESENTATION.** In executing the RELEASE, the PARTIES acknowledge and certify that they have relied solely upon his/her/its/their own judgment, beliefs, and knowledge, have had the opportunity to consult with an attorney and, with the advice of his/her/its/their independently selected attorney concerning the nature, extent, and duration of his/her/its/their rights and claims in connection with the RELEASE (and including all law referenced), have had his/her/its/their rights fully explained to him/her/it/them by his/her/its/their counsel, which are completely understood. The terms of the RELEASE have been drawn by mutual cooperation between the PARTIES; therefore, the RELEASE shall not be construed for or against any of the PARTIES by reason of his/her/its/their participation, or lack of participation, in the drafting of the RELEASE.

20. **VOLUNTARY EXECUTION.** Each of the PARTIES to this RELEASE warrant and certify that he/she/it/they have entered into the RELEASE freely, voluntarily, and of his/her/its/their own volition without fraud, duress, or undue influence. Each of the PARTIES to this RELEASE has read the RELEASE in its entirety knows the contents thereof and signs the RELEASE as his/her/its/their own free act. The PARTIES also acknowledge that, because it has been reached after thorough negotiation and bargaining, the compromise which forms the basis of the RELEASE represents a full, final, and agreeable settlement.

21. **ENTIRE RELEASE.** The RELEASE contains the entire agreement between the PARTIES regarding the Action, and its terms are contractual and not merely a recital. No other promise, agreement, or inducement, written or oral, express or implied, has been made or exists between the PARTIES concerning the subject matter of the Action.

22. **SEVERABILITY.** If any provision of the RELEASE is held to be invalid or unenforceable, the remaining portion of the RELEASE shall continue to be valid and will be performed, construed, and fully enforced to the fullest extent permitted by law, and the invalid or

unenforceable term shall be deemed amended and limited in accordance with the intention of the PARTIES, as determined from the face of the RELEASE, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

23. **MODIFICATION.** This RELEASE may not be amended or modified except by a written instrument executed by all the PARTIES to this RELEASE.

24. **JURISDICTION AND GOVERNING LAW.** The RELEASE shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California. Any action to enforce any term or condition of the RELEASE shall be brought in the Orange County Superior Court which shall hear or determine any such dispute. The prevailing party shall be entitled to reasonable costs and attorney's fees.

25. **EXECUTION IN COUNTERPARTS/FACSIMILE/ELECTRONIC COPIES OF SIGNATURES.** This RELEASE may be executed in counterparts with the same effect as if all original signatures were placed on one document and which, when taken together, shall constitute one original agreement. Facsimile copies and/or electronic copies of signatures to this RELEASE, including those made through DocuSign, Adobe Acrobat or the like, will be treated as an original signature and will have the same effect as an original signature. A photocopy, facsimile copy, or electronic copy of this RELEASE, or any part thereof, may be substituted in place of the original version of the same.

26. **COURT TO RETAIN JURISDICTION TO ENFORCE THIS AGREEMENT; ENFORCEMENT; REMEDIES.** This RELEASE constitutes a stipulation in writing pursuant to California Code of Civil Procedure § 664.6. The PARTIES agree that the Riverside Superior Court shall retain jurisdiction over the PARTIES to interpret and enforce the settlement and/or this RELEASE until performance in full of the terms of this RELEASE.

Pursuant to California Evidence Code § 1123, this RELEASE shall be admissible, without objections, for the sole purpose of interpreting and enforcing this RELEASE, if need be.

All PARTIES shall be entitled to all remedies available at law or in equity for any violation of the RELEASE, including but not limited to the remedy of specific performance, and the PARTIES intend that the RELEASE shall be enforceable in the event of a material breach hereof. If any motion, proceeding, or action is brought to enforce the RELEASE, or is brought in connection with any dispute arising out of the RELEASE or the claims which are the subject of the RELEASE, the prevailing PARTY(IES) shall be entitled to recover damages, reasonable attorneys' fees, and other costs incurred in such litigation, in addition to any other relief which that PARTY(IES) may be entitled to by law and/or equity.

IN WITNESS WHEREOF, the undersigned, with a full understanding of the terms contained herein and the significance of the same, have executed this RELEASE and agree to the terms herein on the date affixed by their signature(s), and thereby warrant, agree, and promise to be bound by its terms.

BY SIGNING THIS RELEASE WHERE INDICATED BELOW I CERTIFY THAT I UNDERSTAND AND HAVE READ (OR BEEN READ TO) THE FOREGOING RELEASE IN ITS ENTIRETY INCLUDING CIVIL CODE SECTION 1542 QUOTED IN SECTION 16, THAT I FULLY UNDERSTAND ALL THE WORDS, LANGUAGE, TERMS AND CONDITIONS CONTAINED IN THIS RELEASE, THAT I HAVE CONSULTED WITH COUNSEL OF MY OWN CHOICE, AND THAT I AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS IN THIS RELEASE.

APPROVED AND AGREED:

PLAINTIFF:

Dated: _____

ANTHONY BOREL

CITY OF MURRIETA

Dated: _____

Justin Clifton, City Manager

ATTEST:

Cristal McDonald, City Clerk

APPROVED AS TO FORM ONLY:

ROBERTS JEANDRON INJURY LAW

DATED: _____

Jeff Roberts
Michael Jeandron
Attorneys for PLAINTIFF Anthony Borel

**BREMER WHYTE BROWN & O'MEARA,
LLP**

DATED: _____

Kevin Wheeler
Attorney for Defendant, CITY OF MURRIETA and
MURRIETA FIRE PROTECTION DISTRICT