

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is entered into this 8th day of November, 2017, between Michael Kealy, Alice Boatner, William Sparling, and Christine Herrera for themselves, ("Releasers") and the City of Longmont, Colorado, a Colorado municipal corporation, for itself and all past, present and future agents, affiliates, related persons and entities, including but not limited to all elected officials, officers, managers, employees, specifically including Officer Michael Marquardt, Officer Billy Sawyer and Sgt. Andrew Feaster, in their official and personal capacities, attorneys, successors, assigns, and insurers ("City" or "Releasee"). The Releasers and the City are also sometimes collectively referred below to as "parties" in this Settlement Agreement and Release.

### **RECITALS**

The Releasers presented a claim to the City regarding alleged entry into their domicile by police officers employed by the City on or about May 10, 2017, in conjunction with staff from the Longmont Housing Authority ("the Incident"). Releasers later presented claims of injury, including injury to civil rights, to the City. In the course of subsequent discussions between the Releasers and the City, through counsel, a mediation effort was undertaken, the result of which is reflected herein.

The parties wish to avoid the expense and vagaries of litigation, and the parties are willing to settle their disputes on the terms set forth in this Agreement, without any admission of liability or wrongdoing by anyone involved.

**IN CONSIDERATION** of the mutual and unilateral covenants, obligations, and promises set out within this Agreement, the parties agree as follows:

1. **INTENT.** The parties intend this Agreement as a complete and unqualified settlement and release of all actual and potential claims and issues between and among themselves, including every present or former officer, member, director, employee, agent, representative, insurer and attorney of the City related to the Incident, whether such claim or issue was raised by the Releasors prior to the date of the Agreement or not. Through this Agreement, the Releasors express the intent to resolve all existing and potential disputes derived from all prior contact with the City, whether or not earlier identified during any such prior contact with the City related to the Incident. Every actual, existing, known and unknown, as well as every potential, dispute and claim by or between the Releasors and each and every released entity and individual described here, whatever or however the nature and basis of any and all such claims, actions and disputes that do or might ever exist, arise or develop at any time in the future from or in connection with the events described respecting Releasors involvement with the City from May 10, 2017 to the present is encompassed by the scope of this Agreement.

2. **RELEASE.** For and in consideration of the payment described below and, on the fulfillment of specific conditions set forth in this Agreement, the Releasors hereby irrevocably on their behalf and on behalf of all successors, agents and estates, as well as all assigns hereby release, acquit and forever discharge the City and every present or former officer, member, director, employee, agent, representative, insurer and attorney of the City from any and all existing or possible claims, demands, obligations, suits, judgments, executions, liabilities, actions or causes of action, rights, damages, expenses, costs, attorney fees or compensation of whatsoever nature related to the Incident, based on any legal theory whatsoever that was or may ever be asserted against any or all of them as a result of any acts or alleged acts by any released entity or individual,

that occurred or could have occurred prior to and as of the date this Agreement is executed, as well as respecting any and all commissions or omissions, alleged or otherwise, by any released entity or individual, to perform acts that were to be performed prior to and as of the date of this Agreement, including, without limiting the generality of the foregoing, any act or omission alleged or otherwise, by any released entity or individual, arising out of or relating to the Releasors interaction with the City and any released entity or individual, raised by the Releasors or otherwise. Without limiting the generality of the foregoing, this Agreement applies to the Releasors' discharge of any and all claims or actions in law or in equity against the City for any and all matters asserted, or that could be asserted by the Releasors, on their behalf or on behalf of any and all of their successors, agents, estates, and assigns up to, on, and following the date that this Agreement is executed and specified conditions set out herein are met, in connection with, related to and arising from May 10, 2017 events involving the parties described above. The parties intend this Agreement to attain and receive the broadest possible application and interpretation to support the finality, release and settlement of all past, existing, and future disputes between the parties to this Agreement related to the Incident.

3. **COVENANT NOT TO SUE.** The Releasors hereby agree and covenant, upon the payment of the settlement amount contemplated by this Agreement, that they did not and will not sue, or assert any federal or state cause of action, at law or in equity, whether before a court of law or an administrative agency, against the City or any current or former officer, director, shareholder, employee, agent, insurer, representative, or attorney of the City and all of its parents, affiliates and subsidiaries, for any claims, causes of action, liabilities, expenses or damages arising out of any acts by any such person or entity arising out of, or relating to any events involving interaction

involving the parties that occurred prior to or as of the date this Agreement is executed, or respecting any omissions the City or any current or former officer, director, shareholder, employee, agent, representative, insurer, or attorney of the City, and all of its affiliates and subsidiaries, to perform acts that were required to be performed prior to or as of the date of this Agreement whether raised by the Releasors or not. The Releasors expressly waive on behalf of themselves and any and all of their successors, agents, estates, and assigns any and all claims or actions related to the Incident they may possess under any state or federal law of any kind or type against the City and all others released herein for all time through and including the date this Agreement is completed and all conditions are complete.

4. **AGREEMENT RESPECTING TAXES.** Releasors agree that, in the event any part of any money paid in conjunction with this Agreement is determined to be taxable by any taxing authority, the Releasors shall be solely responsible for any tax liability arising therefrom related to taxes, penalties, and fines owed by Releasors. If any entity or person released pursuant to this Agreement is ever found responsible for any tax liability arising from any failure to satisfy any tax liability on any payment attributable to the Releasors, the Releasors agree to defend, indemnify and hold the released entity or person harmless for any tax, interest or penalty assessed on a tax liability, within twenty (20) days after providing notice of the tax liability to the City through its counsel, or following such longer period as specified by the taxing authorities.

5. **NO ASSIGNMENT AND HOLD HARMLESS AGREEMENT.** The Releasors declare and represent that no other person, firm or corporation received any assignment, subrogation or other right of substitution to any claim or claims made or asserted in connection with this matter or pertaining to their representation, relationship, association or contact with any

released entity or individual or to any proceeds of such claim(s) obtained or that were capable of being obtained in connection with any claim they made or could make, and that in the event that any entity, person or party released herein is subjected to any other or further claims of any type by any person or entity, under any actual or purported right of substitution, the Releasers will hold all parties released herein harmless from any and all such claim(s).

6. **NO THIRD PARTY BENEFICIARIES.** The Releasers declare and represent that no other person, firm or corporation is a third party beneficiary to any claim or claims made or asserted in connection with this matter or pertaining to their prior interaction with the City, including interactions with all released parties, or to any proceeds of such claim(s) obtained or that could have been obtained in connection with any claim they made or could make, and that in the event that any entity, person or party released herein is subjected to any other or further claim of any type by any person claiming the status as a third party beneficiary of the Releasers, the Releasers shall hold all parties released herein harmless, indemnify, and defend said released parties from any and all such claim(s).

7. **SATISFACTION OF LIENS.** The Releasers hereby agree to satisfy any applicable lien for health care of any kind or nature related to the underlying circumstances generating this Agreement, associated with interaction with the City, including interaction with City personnel, and to provide proof of the satisfaction of any such lien to counsel for the City.

8. **REPRESENTATIONS AND AGREEMENTS CONCERNING MEDICARE AND MEDICAID.** The Releasers and the City and its counsel, as identified herein, agree that information regarding the Releasers' Medicare and Medicaid eligibility status may bear on any potential lien or claim here. The Releasers and the City agree that the Releasers' Medicare and

Medicaid eligibility status may matter here, as well as to facilitate and meet all of the City's reporting obligations under 42 U.S.C. § 1395y(b)(8) and may require the exchange of information in the future by the parties. The parties hereby agree to participate in good faith in any necessary information exchange in good faith. For purposes of this agreement:

a. "CMS" means the Centers for Medicare & Medicaid Services within the U.S. Department of Health and Human Services, including any agents, representatives, or contractors of CMS, such as the Benefits Coordination & Recovery Center ("BCRC").

b. "MMSEA" means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y(b)(7) and (8). This portion of MMSEA is referred to herein as "Section 111 of MMSEA".

c. "MSP Statute" means the Medicare Secondary Payer ("MSP") statute. 42 U.S.C. § 1395y(b).

d. This Agreement shall in all respects be interpreted, enforced, and governed under federal law to the extent federal law preempts state law.

e. The Releasors agree to provide any and all CMS reporting and reimbursement information and to fulfill any obligations (if any, including those that may arise after execution of this Agreement) under MMSEA Section 111, the MSP Statute and regulations, and CMS guidance, or to respond to any claim or demand asserting reporting violations, penalties, or reimbursement liabilities thereunder, in good faith.

f. The Releasors acknowledge and agree that it is their responsibility pursuant to this Agreement, and not the responsibility of the City, to reimburse Medicaid and

Medicare for any Conditional Payments made by Medicaid and Medicare on behalf of the Releasors; and the Releasors further agree, warrant, and represent as follows: The Releasors' counsel shall hold \$10,000.00 of the Settlement Amount described here in trust and shall not distribute any portion of such amount to the Releasors, counsel for the Releasors, or any other person or entity until the Total Reimbursement Amount negotiated with CMS, Medicaid and Medicare, and all interests related to Conditional Payments arising from or related to any Released Matters is fully resolved and satisfied and written confirmation of same from same is provided to counsel for the City.

g. The Releasors acknowledge and agree that any portion of the Settlement Amount not paid to Medicaid and Medicare will not be disbursed to the Releasors, their counsel, or any other person or entity until counsel for the City receives Medicaid and Medicare's written confirmation of receipt of payment in full satisfaction of Medicaid and Medicare's demand for reimbursement of Conditional Payments arising from or related to any Released Matters.

h. The Releasors further agree that the Releasors, not the City, shall be responsible for satisfying all liens, claims, demands, subrogated interests, or causes of action that may exist or were asserted or that may in the future exist or be asserted.

i. To the extent the Releasors' representations and warranties related to their Medicaid and Medicare status and receipt of medical services and items related to the Released Matters are inaccurate, not current, or misleading, the Releasors agree to indemnify and hold harmless Releasees from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that were, or may in

the future be, asserted by Medicare, or any person or entity acting on behalf of Medicaid or Medicare, arising from or related to this Agreement, payment of the Settlement Amount, any Conditional Payments made by Medicaid and Medicare, or any medical expenses or payments arising from or related to any Released Matters.

j. Included in the release provided as part of this Agreement is the Releasors' release of any claim or cause of action they may have against the City under the MSP Statute, including any private cause of action under 42 U.S.C. § 1395y(b)(3)(A).

9. **SETTLEMENT PAYMENT.** Within twenty-one (21) days following execution of this Agreement, through the affixing of all necessary notarized signatures, and after a fully executed Internal Revenue Service FEIN disclosure form pertinent to the firm trust account, the City shall pay to the trust account of counsel of the Releasors a total of two hundred ten thousand dollars and no cents (\$210,000.00) in full settlement of all claims, including for attorney fees and costs, that the Releasors did assert or might assert against any released entity or individual as described within this Agreement. The City will not withhold any federal, state and local taxes from this settlement payment. The parties and their counsel commit to fulfilling any reasonable request associated with completing this Agreement's terms and conditions. The City will issue an IRS form 1099 to the trust account of counsel for Releasors in relation to the payment described here. Releasors and their counsel shall provide appropriate tax identification information to the City as requested and otherwise cooperate in good faith with the reasonable requests of the City in carrying out the provisions of this requirement.

10. **ADDITIONAL SETTLEMENT OBLIGATIONS.** The City agrees to the following as part of its obligations in this Agreement:



a. An opportunity for the ACLU to provide comments and present concerns to Chief Butler regarding the City's policies related to obtaining consent to search and searches in public housing;

b. Making available for interviews with ACLU attorneys Chief Butler, Deputy Chief Satur, and, if they consent to such interviews, LPD officers Marquardt and Sawyer regarding the planning of, agreement to, supervision of, and/or participation in the K-9 searches at the Suites;

c. Release to the public the Weld County Sheriff's investigation report within five days of Chief Butler's disciplinary determination with respect to the Incident; the City, in good faith belief, will make this available by December 31, 2017;

d. Provision of a forum open to the public and including the ACLU, where Releasors will have an opportunity to speak about this matter if they wish;

e. The option for Releasors to participate in a restorative justice process with LPD;

f. Public release of a statement by the City as follows:

The Longmont Public Safety Department regrets playing a role in the search of apartments of the residents of the Suites on May 10, 2017. Michael Kealy, Alice Boatner, William Sparling and Christine Herrera did not consent to the police searches of their apartments, nor were they given an opportunity by Longmont Police Services to do so. The Longmont Public Safety Department is working, and will continue to work, to ensure that its Police Officers conduct themselves in keeping with Longmont police policies and the Fourth Amendment.

11. **INTEGRATION.** The parties understand, acknowledge and agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter and transactions referred to herein. The parties understand, acknowledge and agree that the terms of this Agreement are contractual in nature and not mere recitals. As such, the parties understand, acknowledge and agree that this Agreement is fully integrated and supersedes all previous oral or written agreements of the parties.

12. **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, all the successors, assigns, personal representatives and heirs of the parties.

13. **HEADINGS.** The headings used in this Agreement are for the convenience of the parties only. As such, these headings shall not have any legal effect whatsoever or, in any other way alter or modify the meaning or interpretation of this Agreement.

14. **ADDITIONAL ASSURANCES.** This agreement is intended to be self-operative. Notwithstanding the foregoing, both parties agree that, at the reasonable request of the other party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Agreement.

15. **SEVERABILITY.** If any provision of this Agreement should ever be declared to be unenforceable, with the exception of the provisions of Paragraph Two and Paragraph Nine, then the remainder of this Agreement shall continue to be binding upon the parties. The provisions of Paragraph Two and Paragraph Nine of the Agreement are an integral part of this Agreement and are not severable.

16. **FEES AND COSTS.** All parties to this Agreement shall bear all of their own costs and fees, including all attorney fees, incurred prior to the date this Agreement takes effect, whether or not such fees or costs were incurred in connection with reaching this Agreement, except that the City shall pay the entire cost of the mediation of this matter.

17. **WARRANTIES.** The parties expressly warrant that they carefully and completely read the terms of this Agreement. The parties expressly warrant that they were afforded the opportunity to consult with counsel prior to executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this agreement knowingly and voluntarily, and without coercion, duress or undue influence. The parties expressly acknowledge that they believe the terms of this Agreement are appropriate to reach a full and final settlement of these matters. The parties expressly understand and agree that their signature on this Agreement shall be forever binding, and no rescission, modification or release of the parties from the terms of this Agreement will be made for mistake or any other reasons. The parties represent that they are legally competent to read, understand, enter into and execute this Agreement and to accept full responsibility and assume the risk of any mistake of fact as to any damages, losses, or injuries, whether disclosed or undisclosed, sustained as a result of the parties claims against each other or that could be brought, or any other matter between the parties occurring up to the date of signing this Agreement. The parties further warrant and acknowledge that no promise or inducement was offered except as set forth herein and that this Agreement was executed by them without reliance upon any statement or representation by any persons or parties released or any representatives of such persons or parties concerning the nature or extent of any damages or any legal liability therefore. The parties acknowledge that entering into this agreement is not an admission by either

party of any wrongful or improper actions, but rather reflects the parties' desire to resolve this matter amicably without additional expense or litigation.

18. **AMENDMENT.** This Agreement may not be amended except in a writing setting forth such amendment and executed by both parties.

19. **ENFORCEABILITY, CONSTRUCTION, INTERPRETATION.** Any dispute arising out of this Agreement shall be brought in the District Court, County of Boulder, State of Colorado. The parties, through counsel participated in the preparation of this Agreement, and no rules of construction or interpretation based upon which party drafted any portion of the Agreement shall be applicable or invoked.

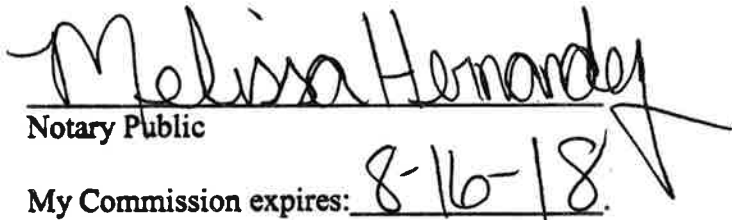
AGREED AND ACCEPTED this \_\_\_\_ day of November 2017.

**READ CAREFULLY BEFORE SIGNING:**

  
MICHAEL KEALY

SUBSCRIBED and SWORN to before me by the person known to me as

Michael Kealy, in the County of Boulder, State of Colorado, this 5<sup>th</sup> day of November 2017.

  
Notary Public  
My Commission expires: 8-16-18

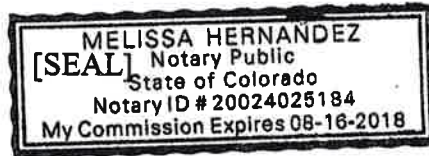


**READ CAREFULLY BEFORE SIGNING:**

William Sparling  
~~ALICE BOATNER~~ William Sparling

SUBSCRIBED and SWORN to before me by the person known to me as  
William Sparling, in the County of Boulder, State of  
Colorado, this 8<sup>th</sup> day of November 2017.

Melissa Hernandez  
Notary Public  
My Commission expires: 8-16-18



**READ CAREFULLY BEFORE SIGNING:**

Christine Herrera  
CHRISTINE HERRERA

SUBSCRIBED and SWORN to before me by the person known to me as  
Christine Herrera, in the County of Boulder, State of  
Colorado, this 8 day of November 2017.

Melissa Hernandez  
Notary Public  
My Commission expires: 8-16-18

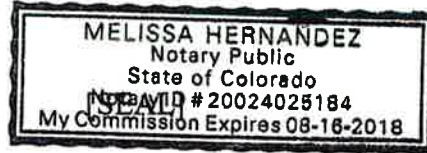


**READ CAREFULLY BEFORE SIGNING:**

Alice Boatner  
~~WILLIAM SPARLING~~ Alice M. Boatner

SUBSCRIBED and SWORN to before me by the person known to me as  
Alice M Boatner, in the County of Boulder, State of  
Colorado, this 8 day of November 2017.

Melissa Hernandez  
Notary Public  
My Commission expires: 8-16-18



**APPROVED AS TO FORM:**

BY: [Signature]  
ATTORNEYS FOR RELEASORS

**ON BEHALF OF THE CITY OF LONGMONT**

BY: Eugene Mei  
**EUGENE MEI**  
**CITY ATTORNEY**

BY: [Signature]  
**HAROLD DOMINGUEZ**  
**CITY MANAGER**