

## GENERAL RELEASE & SETTLEMENT AGREEMENT

THIS GENERAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into effective as of the \_\_\_\_ day of December 2022 (the "Effective Date"), by and between Paul and Denise Eckstein ("Plaintiffs") and the City of Colorado Springs (the "City"), Chris McGuire, d/b/a McGuire's Appraisal and d/b/a AmeriClaim of Southern Colorado and Grand Junction ("McGuire")(The City and McGuire collectively referred to herein as "Defendants").

### RECITALS

1. Plaintiffs, and any and all of their heirs, personal representatives, executors, administrators, attorneys, successors, and assigns are hereinafter collectively referred to as "**RELEASORS**."

2. The CITY including any of the CITY'S employees, officers, attorneys, insurers, and any of their current or former entities, officials, officers, attorneys, employees, agents, servants, insurers and reinsurers, MCGUIRE, AMERICLAIM OF SOUTHERN COLORADO AND GRAND JUNCTION (as named in the Complaint filed in the civil action referenced in Recital 4 herein), and any of Mr. McGuire's/AmeriClaim's employees, employers, affiliated entities (including McGuire's Appraisal, LLC), independent contractors, licensors (including AC Branch Holdings, LLC), licensees, agents, insurers, attorneys, and any of these entities' employees, employers, members, shareholders, affiliates, officers, directors, attorneys, insurers, and any of their current or former entities, officials, officers, employers, successors, assigns, attorneys, employees, agents, servants, insurers and reinsurers, if any, are hereinafter collectively referred to as "**RELEASEES**."

3. **RELEASORS** and **RELEASEES** are collectively referred to as "Parties."

4. On or about October 2, 2022, **RELEASORS** filed a civil action against the City of Colorado Springs, Chris McGuire and AmeriClaim of Southern Colorado and Grand Junction in El Paso County District Court, at civil action number 2022CV31704 ("Civil Action"). The Civil Action arose out of alleged water/wastewater intrusion and resulting property damage in December 2021 at 22 West Cheyenne Mountain Boulevard, Colorado Springs, Colorado and the subsequent investigation and processing of **RELEASORS'** claims (the "Incident").

5. **RELEASEES** deny Plaintiffs' allegations and all liability related to the same.

6. **RELEASORS** have decided to enter into this Agreement on the terms set out in these recitals and agreement below and to reach a complete resolution of any claims arising out of the Incident or the Civil Action as well as any and all claims of any kind **RELEASORS** may have against **RELEASEES** and for any damages and/or injuries of any kind, known and unknown, foreseen and unforeseen. For the purpose of this Agreement, all of the claims asserted in the Civil Action, whether remaining or dismissed,

and all other actual or potential claims or disputes by Plaintiffs against Defendants shall be referred to hereafter collectively as the "Claims."

7. With the execution of this Agreement, **RELEASORS** have stipulated to the dismissal with prejudice of the Civil Action.

8. In entering into this Agreement, it is acknowledged that **RELEASORS** and **RELEASEES** have incurred and expect to incur considerable costs and fees in pursuing and defending this litigation and enter into this agreement, in part, to avoid the cost of further litigation. It is further acknowledged that this Agreement is entered into in good faith for the purpose of avoiding further costs and fees of litigation and shall not be construed as any sort of admission or concession of liability, cause, injury, or responsibility by **RELEASEES** and is not intended to be used and may not be used as evidence of liability or wrongdoing of **RELEASEES**.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree, without admission as to any fault, liability or responsibility, and solely to resolve the matters indicated in this Agreement, as follows:

#### **RELEASE**

##### **Release, Covenant Not to Sue, Hold Harmless, and Indemnification.**

9. **RELEASORS** agree irrevocably and unconditionally to discharge and do release and forever discharge **RELEASEES** from any and all claims and any and all damages and/or injuries pursuant to any federal or state statute, constitution, common law, contract or otherwise, known and unknown, foreseen and unforeseen, including but not limited to those which may now or hereafter arise out of, or result in any way from the Incident described in the recitals and the Civil Action, and/or which have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof.

10. **RELEASORS** understand and agree that this Agreement prevents any appeal of any of the dismissals, stipulated or otherwise, against any of the Parties or for any of the Claims made in the Civil Action.

11. **RELEASORS** represent and warrant that, other than that which is set forth in the Recitals to this Agreement, they have not filed or caused to be filed or asserted any claim in or with any court or agency based on or related to the Incident or Claims and agree that they will not file any claim in or with any court or agency based on or related to the Incident or Claims against **RELEASEES** and will indemnify **RELEASEES** for attorney's fees and costs incurred by **RELEASEES** should such claim or charge be made or filed by **RELEASORS**.

12. **RELEASORS** hereby certify and affirmatively represent and warrant as follows: (1) their claim is solely a claim for property damages; (2) they have not suffered any bodily injury or medical consequences as result of the Incident; and (3) they have not

sought or received medical treatment as a result of the Incident and their Claims, and do not anticipate seeking any medical care in the future related to the Incident. In the event **RELEASEES** are subject to any further claims or demands under such actual or purported benefit assignment, lien, subrogation, or other right of substitution for such benefits, **RELEASORS** will defend, indemnify, and hold **RELEASEES** harmless from such claims or demands.

13. **RELEASORS** hereby declare and represent that no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the Claim or Claims made or which could have been asserted, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed. In the event **RELEASEES** are subjected to further claims by any person, firm, or corporation under any actual or purported lien or right of substitution, including any lien for medical expenses, **RELEASORS** will hold **RELEASEES** harmless from any such claims or demands and indemnify **RELEASEES** for any judgment obtained by reason of such purported lien or right of substitution. **RELEASORS'** attorneys will retain an amount sufficient to satisfy the liens or claims in their trust account and will notify **RELEASEES'** attorney in writing when all liens and claims have been satisfied.

14. **RELEASORS** understand and agree that they are solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided to them pursuant to it. **RELEASORS** agree that **RELEASEES** have provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or tax reporting or payment obligations for the monetary consideration set out herein.

15. **RELEASORS** further warrant that they fully realize that they may have sustained unknown and unforeseen losses; fees; costs; expenses; damages; liabilities; claims; bodily, personal, or psychological injuries; damage to property; business losses; or rights of restitution, and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by **RELEASORS**, which resulted or may result from the above-mentioned Incident and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this Agreement was executed without reliance upon any statement or representation by **RELEASEES**, and that **RELEASORS** are each legally competent to execute this Agreement. **RELEASORS** accept full responsibility and assume the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, including any mistake in medical diagnosis or prognosis for any injuries, known or unknown, sustained as a result of the above-mentioned Incident and all matters incident and related thereto applicable to the Claims and any potential claims **RELEASORS** have or may have against **RELEASEES**.

16. As part of the consideration for this Agreement, **RELEASORS** have authorized and instructed their attorney to execute and file a stipulated motion to dismiss, with prejudice, the Civil Action, with the Parties each to pay their own costs and fees.

#### Consideration

17. **RELEASEES** agree to settle this matter for the amount of ONE HUNDRED AND FOUR THOUSAND DOLLARS (\$104,000.00) to be distributed as follows. It is agreed that the CITY will tender a check in the amount of NINETY-NINE THOUSAND DOLLARS and NO CENTS (\$99,000.00) to **RELEASORS'** attorney, payable to Paul Eckstein and Denise Eckstein. It is further agreed that the MCGUIRE will tender a check in the amount of FIVE THOUSAND DOLLARS and NO CENTS (\$5,000.00) to **RELEASORS'** attorney, payable to Paul Eckstein and Denise Eckstein. The Agreement will be signed by all Parties by December 20, 2022 and, after execution, Releasors will pick up the checks at the Office of the City Attorney. **RELEASORS'** attorney will then immediately (on December 20, 2022) file a motion to dismiss with prejudice with the Court.

18. It is agreed that consideration for this Agreement as set forth herein, including dismissal of all claims in the Civil Action with prejudice, shall be full and final payment for all claims released herein and all claims that might have been asserted against **RELEASEES** in any state or federal judicial or administrative forum up to the date of execution of this Agreement, including any claims for attorney's fees and costs. **RELEASORS** represent that they have not assigned or transferred any of the claims released in this Agreement.

19. **RELEASORS** and their attorney agree that the monetary consideration described in this Agreement will be held by their attorney and that their attorney will not distribute the monetary consideration described in this Agreement until such time as all liens or interests in such monetary consideration are satisfied. .

20. The Parties acknowledge that the monetary consideration in this matter is far less than the damages alleged by the **RELEASORS** and that they each seek to enter into this Agreement, in part, to prevent incurring further costs and fees for trial which are projected to be significant. **RELEASORS** acknowledge, however, that the consideration paid by **RELEASEES** is to secure a full and final release for any and all claims that they may have arising out of the Incident and as described herein.

#### Non-Disparagement & Confidentiality

21. To the extent permitted by law, **RELEASORS** agree not to disparage or to assist another in disparaging **RELEASEES** regarding any issue, matter, or factual allegation made a subject of or arising out of the Claims made in the Civil Action.. Notwithstanding the provisions of this paragraph, **RELEASORS** are relieved from the non-disparagement provision should **RELEASEES** first disparage **RELEASORS**.

22. To the extent permitted by law, neither **RELEASORS** nor any other person under **RELEASORS'** 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. **RELEASORS** may disclose such information 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 is subject to the Colorado Open Records Act ("CORA"). Nothing in this provision shall be interpreted to restrict **RELEASORS'** counsel's right to practice in violation of Rule 5.6(b) of the Colorado Rules of Professional Conduct.

Voluntariness, Denial of Liability, Entire Agreement, and Other Miscellaneous Terms

23. **RELEASORS** have carefully read the above and foregoing Agreement, know and understand the contents thereof, and have signed the same as their free and voluntary act for the purpose of making a full and final settlement of any and all claims, disputed or otherwise, known and unknown, and after having the opportunity to have the same explained by counsel. **RELEASORS** expressly state that they have been advised of their right to consult with their attorney and with additional professionals of their choice, including physicians, lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatsoever kind and nature, which **RELEASORS** may have or will incur, whether suspected or unsuspected. **RELEASORS** further expressly understand and agree that the signing of this Agreement shall be forever binding and no rescission, modification, or release of **RELEASORS** from the terms of this Agreement will be made for any mistake.

24. It is expressly understood and agreed that the acceptance of the above-mentioned consideration is in full accord and satisfaction of a disputed claim and that payment of said sum is not to be construed in any way as an admission of liability on the part of **RELEASEES**, but, on the contrary, **RELEASEES** specifically deny any wrongdoing, misconduct, or liability on account of said Incident or any matters related or incidental hereto, or otherwise. It is further understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and that the terms of this Agreement are contractual and not mere recitals.

25. This Agreement is not intended to be an admission of any fact or issue alleged by any party relating to the Incident or the Claims in the Civil Action and, with the exception of a claim related to breach or enforcement of this agreement, this Agreement is not intended to be evidence in any other matter.

26. This Agreement is the product of negotiation and preparation by and among counsel for the Parties. Hence, this Agreement and each of its provisions shall not be deemed to be prepared or drafted by one Party or another, or its attorneys, and shall not be construed more strongly against any Party.

27. Plaintiffs represent that they have the full power and authority and are competent to enter into this Agreement and be bound by its terms.

28. Colorado law shall govern the interpretation, construction, and enforcement of this Agreement. Its language shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. Venue for any dispute arising from the enforcement of this Agreement shall be in El Paso County District Court, Colorado.

29. Releasors agree that each Party shall bear his, her or its own attorneys' fees, costs, and expenses arising from or related to the Civil Action, the negotiation of this Agreement, and through the Effective Date.

30. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

31. This Agreement, including the Recitals, constitutes the entire understanding and agreement between the Parties with respect to the subject matter herein and cannot be amended, supplemented or changed nor can any provision of this Agreement be waived or terminated except in writing signed by the Parties.

32. **RELEASORS** certify that they have fully read and understand the foregoing Agreement and hereby affix their signatures this \_\_\_\_\_ day of December, 2022, as their own free and voluntary act.

\_\_\_\_\_  
PAUL ECKSTEIN

\_\_\_\_\_  
DENISE ECKSTEIN

STATE OF COLORADO    )  
                                  ) ss  
COUNTY OF EL PASO    )

SWORN TO AND SUBSCRIBED by Paul and Denise Eckstein this \_\_\_\_\_ day  
of December, 2022.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

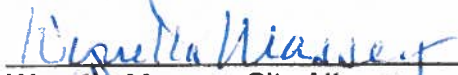
I, John Gregory Walta, as attorney for Paul and Denise Eckstein, have reviewed the within General Release and Settlement Agreement with my clients and have fully explained each and every term, condition, limitation, and obligation set forth herein to Paul and Denise Eckstein and believe that each are competent and understand the same. By my signature below, I further signify my approval of the within General Release and Settlement Agreement and acknowledge my responsibilities under the General Release and Settlement Agreement.

Further, I have specifically requested that the check be made payable only to my clients. By doing so, I agree to irrevocably and unconditionally discharge and do release and forever discharge **RELEASEES** from any and all claims, including any claims for attorney's fees or costs, known and unknown, foreseen and unforeseen, including but not limited to those which may now or hereafter arise out of, or result in any way from my representation of Plaintiffs in the Civil Action, and/or which have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof.

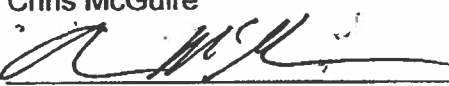
---

John Gregory Walta  
1521 Vista Place  
Colorado Springs, CO 80905  
Attorney for the Plaintiffs

The City of Colorado Springs

  
Wynetta Massey, City Attorney  
Dated: December 16, 2022.

Chris McGuire

  
Chris McGuire  
Dated: 12/15, 2022.

