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STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BUNCOMBE COUNTY, N.C. 18-CVS-02331

GWEN C. ALEXANDER,

BY) BA

Plaintiff,

**STIPULATION OF SETTLEMENT AND
RELEASE**

v.

CITY OF ASHEVILLE,

Defendant.

IT IS HEREBY STIPULATED AND AGREED by Gwen C. Alexander on behalf of herself and all others similarly situated (collectively, the “Plaintiffs”) and Defendant City of Asheville (“City”), each through their duly authorized counsel, that subject to court approval as required by Rule 23(c) of the North Carolina Rules of Civil Procedure, this action is settled according to the terms and conditions as set forth in this Stipulation of Settlement and Release (“Stipulation”):

1. HISTORY OF THE LITIGATION AND RECITATION OF FACTS

1.1. On June 1, 2018, Plaintiff Gwen C. Alexander, through the undersigned Class Counsel, filed a putative class action lawsuit against the City in the Superior Court of Buncombe County, seeking relief under causes of action seeking a judgment declaring that the City’s collection of monthly “Capital Fees,” in addition to volumetric fees for water service, exceeded the City’s legal authority and is *ultra vires*, based on allegations that the City collected Capital Fees in violation of the *Quality Built Homes, Inc. v. City of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) and exceeded their authority the Public Enterprise Statute at the time it collected the Capital Fees, N.C. Gen. Stat. §§ 160A-311, *et seq.*

1.3. Upon receipt of the *Alexander* complaint, the City timely responded to the complaint, raising multiple justifications and defenses to its collection of Capital Fees, including statutory authority under N.C. Gen. Stat. §§ 160A-311, *et seq.*

1.4. Class Counsel initiated discovery proceedings where the relevant records at the City were made available to and were thereafter reviewed by Class Counsel. Rule 30(b)(6) depositions of the City were taken on three occasions. Interrogatories and requests for production of documents were also served on the City, and the City timely responded to all discovery matters. The City took the depositions of the named plaintiff, and received responses to its written discovery.

1.5. Cross-Motions for summary judgment were heard by the Court, including consideration of the deposition transcripts and affidavits submitted. The Court granted the City's motion for summary judgment, and denied Plaintiff's motion for summary judgment, by Order entered August 7, 2019. Plaintiff gave timely notice of appeal to the North Carolina Court of Appeals.

1.6. On November 14, 2019, counsel for the parties mediated another class action case in good faith and at arms length. After several hours of mediation, the parties reached an impasse; however, Class Counsel and City counsel agreed to keep the settlement discussions open despite the impasse. The possibility of attempting to resolve this case as well was discussed briefly at this initial mediation.

1.7. On December 11, 2019, the parties met at Class Counsel's office in Raleigh and resumed settlement negotiations of this case as well as the other class-action case involving another of the City's utility fees. Both cases were negotiated separately and apart from one another. A settlement of this case was reached and is documented by this Stipulation.

1.8. This Stipulation reflects a proposed compromise between the Plaintiff and the City, and shall in no event be construed as or deemed to be an admission or concession by any Party as to the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any allegation of fault on the part of the City, and all such allegations are expressly denied. Nothing in this Stipulation shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto. It is expressly agreed by all Parties that this Stipulation shall not, in whole or in part, be admitted into evidence against the City in any civil, criminal, regulatory or administrative proceeding in any court, administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce this Stipulation or the Final Order and Judgment.

1.9. The City expressly denies any similarity of its practice in collecting certain fees, including Capital Fees, to that of the practice of the City of Carthage and the Supreme Court's holding in *Carthage*. It expressly denies wrongdoing and does not admit or concede any actual or potential fault, wrongdoing, or liability to Plaintiff, the Settlement Class, Class Counsel, or to any other person or entity in connection with any facts or claims that have been alleged against it in the Action, and in fact the City expressly denies all such liability. The City also denies that the Action meets the requisites for certification as a litigated class action under federal, North Carolina or any other state law, or certification for any purpose except for purposes of the settlement described in this Stipulation. The City intends to vigorously defend the Action in the event the Final Order and Judgment is not entered. Nevertheless, the City considers it desirable to resolve this Action on the terms stated herein, in order to avoid further expense, inconvenience, interruption in its provision of water service, and interference with its

governmental operations, and to dispose of costly and burdensome litigation. Therefore, the City has determined that settlement of this Action on the terms set forth herein is in its best interest.

1.10. Based upon their review, investigation, inspections, testing and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiff and Class Counsel believe that this Settlement is in the best interests of the Class as a whole, and, on behalf of the other members of the proposed Settlement Class, have agreed to settle the Action pursuant to each and all of the provisions of this Agreement, after considering, among other things: (a) the benefits offered to the Settlement Class Members under the terms of this Agreement; (b) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (c) the desirability of consummating this Agreement in order to provide immediate relief to the Settlement Class Members.

2. **DEFINITIONS**

2.1. As used in this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

2.1.1. “Action” means the lawsuit of *Gwen C. Alexander vs. City of Asheville* (18-CV-02331), which remains pending in the Superior Court Division of Buncombe County, North Carolina for consideration of this Stipulation.

2.1.2. “Agreement” or “Stipulation” mean this Stipulation of Settlement and Release, including any subsequent amendments agreed to by the Parties and any exhibits to such amendments, which together are the settlement (the “Settlement”).

2.1.3. “Attorneys’ Fees and Expenses” as further defined in Section 9, means such funds as may be awarded by the Court to Class Counsel in accordance with all the terms

and conditions of this Settlement, in order to compensate Class Counsel for all of the past, present and future attorneys' fees, costs (including court costs), expenses and disbursements earned or incurred collectively and individually by any and all of them, their investigators, experts, staff, and consultants combined in connection with the Action, and the Settlement.

2.1.4. "City" means City of Asheville, a North Carolina municipal corporation.

2.1.5. "City Counsel" means Charles Meeker and Stephen Carey of the law firm Parker Poe Adams & Bernstein LLP and Bradley Branham, City Attorney of the City of Asheville.

2.1.6. "Class Counsel" means Daniel K. Bryson and John Hunter Bryson of the law firm of Whitfield Bryson & Mason LLP.

2.1.7. "Class Plaintiffs" means Gwen C. Alexander and other similarly situated.

2.1.8. "Court" means the Superior Court of North Carolina for Buncombe County, North Carolina, acting pursuant to its exclusive and continuing jurisdiction over the Action.

2.1.9. "Capital Fee" means any monthly fee collected for repair and refurbishment water system projects and alleged by Plaintiff to have been collected improperly by the City for connection to water service as a condition of receiving water service from the City from June 1, 2015 to June 30, 2020.

2.1.10. "Effective Date" means the date on which the Final Order and Judgment approving this Agreement becomes final and no longer subject to appellate review. For purposes of this Agreement, the Final Order and Judgment shall become final: (a) if no appeal is taken from the Final Order and Judgment, on the date on which the time to appeal therefrom has expired pursuant to North Carolina Rule of Appellate Procedure 3; or (b) if any appeal is taken

from the Final Order and Judgment, on the date on which all appeals therefrom, including petitions for rehearing or re-argument pursuant to North Carolina Rule of Appellate Procedure 31 and petitions for *certiorari* pursuant to Rule 13 of the United States Supreme Court or any other form of appellate review, have been fully and finally disposed of in a manner that affirms all of the material provisions of the Final Order and Judgment.

2.1.11. “Final Approval Hearing” means the hearing held by the Court to consider evidence and argument for the purposes of determining, among other things, whether this Stipulation and the Settlement are fair, reasonable and adequate; whether this Stipulation should be given final approval through entry by the Court of the Final Order and Judgment; and whether certification of the Settlement Class should be made final.

2.1.12. “Final Order and Judgment” means an order entered by the Court granting final approval to the Settlement and this Stipulation and making final its certification of the Settlement Class pursuant to Rule 23 of the North Carolina Rules of Civil Procedure; and the corresponding judgment entered pursuant to Rule 58 of the North Carolina Rules of Civil Procedure, which shall be in substantially the same form as is agreed to by the Parties and submitted to the Court at least ten (10) days before the Final Approval Hearing.

2.1.13. “Final Settlement Date” shall mean the date on which all sums to be paid have been disbursed and the parties are discharged of all duties and obligations under the terms of this Stipulation.

2.1.14. “Parties” means Class Plaintiffs and City of Asheville, collectively, as each of those terms is defined in this Stipulation.

2.1.15. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement as outlined in this Stipulation.

2.1.16. “Release” and “Released Claims”: “Release” means the release and waiver set forth in Section 8 of this Agreement, and “Released Claims” means each and all claims described in said Release.

2.1.17. “Released Parties” means City of Asheville, and each and all of its subsidiaries, divisions, related and affiliated entities, principals, directors, officers, employees, attorneys, representatives and agents, and all individuals or entities acting by, through, under or in concert with any of them.

2.1.18. “Service Award” means such funds as may be awarded by the Court to the Class Plaintiff, within the limits set forth in this Agreement, to compensate the Class Plaintiff for her efforts and risks taken in bringing and prosecuting the Action on behalf of the Settlement Class and achieving the benefits of this Agreement on behalf of the Settlement Class.

2.1.19. “Settlement” means the terms of this Stipulation which resolve the claims between Parties.

2.1.20. “Settlement Fund” or “Fund” means an amount of money paid by the City that represents the maximum amount of full settlement value, equal to one hundred and thirty thousand dollars (\$130,000).

2.1.21. “Settlement Class” collectively hereinafter means, for purposes of the Settlement and this Stipulation only, those persons or organizations who paid to the City Capital Fees on or between June 1, 2015, and June 30, 2020 which are at issue in this Action.

2.1.22. “Settlement Notice” means the legal notice of the terms of this Stipulation. The Settlement Notice made by newspaper publication, or such other notice as the Court may order, shall contain the following information:

2.1.23.1. A plain, neutral, and objective and concise summary description of the

nature of the Action and the terms of the proposed Settlement. This description shall also disclose, among other things, that: (a) any relief to Settlement Class Members offered by the Settlement is contingent upon the Court's approval of the Settlement, which will not become effective until the Final Order and Judgment date; (b) the City of has agreed to state to the Court, if asked, that they are contractually bound not to object Class Counsel's application for an award of Attorneys' Fees and Expenses as defined in Section 9; (c) that the Settlement is not made contingent upon any Service Award or Attorneys' Fees and Expenses being awarded by the Court, and that if such awards are approved by the Court, they will be paid from the Fund; and (d) that the sums paid in this Stipulation are made in exchange for release of the Released Claims by each of the Settlement Class Members and a copy of the Stipulation is available for review from the Settlement Administrator.

2.1.23.2. The Settlement Notice shall include a description of the Settlement Class.

2.1.23.3. The Settlement Notice shall inform the Settlement Class Members of their right to oppose the settlement and also that they may not seek exclusion from the applicable Settlement Class and the Settlement.

2.1.23.4. The Settlement Notice shall inform Settlement Class Members of their right to appear at the Final Approval Hearing. The Settlement Notice shall provide the deadlines and procedures for exercising these rights.

2.1.23.5. The Settlement Notice shall summarize the proposed terms of the Release contemplated by this Stipulation.

2.1.23.7. The Settlement Notice shall disclose where Settlement Class Members may direct written or oral inquiries regarding the Settlement.

3. CERTIFICATION OF THE SETTLEMENT CLASS

3.1. Class Plaintiff and Class Counsel shall propose, without objection from the City, that the Court: (1) certify the Settlement Class for settlement purposes only under Rule 23 of the North Carolina Rules of Civil Procedure; (2) appoint Class Plaintiff as the representative for the Settlement Class; (3) appoint Class Counsel as legal counsel for the Settlement Classes; and (4) preliminarily approve this Settlement and the notice to Settlement Class Members which the Settlement contemplates.

3.2. The City, without admitting that the proposed settlement class in the Action meets the requisites for certification of a litigation class under North Carolina Rule of Civil Procedure 23 or for class certification for any purpose other than this settlement, hereby consents, on each and all of the terms and conditions set forth herein, and solely for purposes and in consideration of the Settlement set forth herein, to the certification of the Settlement Class, to the appointment of Class Counsel as legal counsel for the Settlement Class, and to the appointment of Class Plaintiff as the representative of the Settlement Class.

3.3. The Court's certification of the Settlement Class for settlement purposes only shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Settlement and this Agreement, and shall not be considered as law of the case, *res judicata*, collateral estoppel or judicial estoppel in the Action or in any other proceeding unless and until the Final Order and Judgment is entered. Whether or not the Final Order and Judgment is entered, the Parties' stipulation to class certification for settlement purposes only (and any and all statements or submission made by the Parties in connection with seeking the Court's approval of the Settlement and this Stipulation) shall not be deemed to be any stipulation or grounds for estoppel as to the propriety of class certification, nor

any admission of fact or law regarding any request for class certification, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Settlement and this Stipulation are not approved, or the Final Order and Judgment is not entered, or this Stipulation is terminated, cancelled, or fails to become effective for any reason whatsoever, the Parties' stipulation to certification of the Settlement Classes for settlement purposes shall be null and void, and nothing in this Stipulation or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action under applicable law, and the City of may continue to oppose certification on all available grounds. In the event the Settlement and this Stipulation are not approved, or the Final Order and Judgment is not entered, or this Stipulation is terminated, cancelled, or fails to become effective for any reason whatsoever, nothing in this Settlement or this Stipulation shall be admissible in this or any other court under any circumstances.

4. RELIEF FOR SETTLEMENT CLASS

4.1. Pursuant to, subject to, and conditioned upon all other terms of this Stipulation, and in consideration for the dismissal of the Action with prejudice on the merits and in consideration of the Release and the approval, entry and enforcement thereof by the Court, and provided the Final Judgment and Order is first entered, the City has agreed to provide Plaintiffs and the Settlement Class with the following relief (and only the following relief), subject to each and all of the terms and conditions specified herein.

4.2. Relief to Settlement Class for Settlement Claims. Subject to the Final Judgment and Order being first entered, the Settlement Class Members shall be accorded relief in the following manner:

4.2.1. Relief Afforded: The City will cease charging the Capital Fees as of

July 1, 2020. The City is not barred, and indeed is expressly allowed, to charge other monthly fees and shall be entitled to adjust its volumetric rates. The Capital Fee shall not be reinstated unless (a) the General Assembly passes legislation which specifically authorizes such a fee, or (b) five years has passed (i.e., July 1, 2025). The City will also pay \$130,000, as approved by the Court, for expenses of the newspaper advertising, fees and expenses of Class Counsel and an award to the Class Plaintiff. Newspaper advertising expenses in excess of \$10,000 shall also be paid by the City. Should additional notice be required, the City will pay all reasonable notice costs in excess of \$10,000.

4.2.2. Maximum Settlement. Subject to the Final Judgment and Order being first entered, relief afforded above to the Settlement Class, including attorneys' fees and expenses, are subject to a maximum settlement value, of \$130,000, except for newspaper and other notice expenses in excess of \$10,000. Should additional notice be required, the City will pay all reasonable notice costs in excess of \$10,000.

4.3. Attorneys' Fees and Expenses and Incentive Awards. As additional consideration for the dismissal of the Action with prejudice on the merits and entry of the Release, the City will pay the above \$130,000 for any Attorneys' Fees and Expenses and Service Awards that may be awarded by the Court, subject to the terms, conditions, and maximum amount limitations set forth in this Agreement. Attorneys' fees in a maximum amount as determined by the Court shall be paid within 60 days of the Court order.

4.4. Notice and Settlement Administration Costs. Any and all reasonable costs of providing newspaper or other notice to the Settlement Classes which are detailed in this Agreement, shall be paid from the \$130,000 up to \$10,000. Should additional notice be required, the City will pay all reasonable notice costs in excess of \$10,000. Notice costs, as directed by

the Court, above that amount shall be paid by the City.

4.5. The Parties agree, that with the consent of the Court, that any remaining funds shall revert to the charitable organization the parties have mutually selected.

5. **NOTICE TO, AND COMMUNICATIONS WITH, THE SETTLEMENT CLASS**

5.1. Subject to the requirements of the Preliminary Approval Order, newspaper notice to potential Claimants shall commence no later than ten (10) days after entry of the Preliminary Approval Order and to be substantially completed no later than ninety (90) days after the entry of the Preliminary Approval Order.

5.2. The Settlement Notice shall be the legal notice to be provided to the Settlement Class Members, and shall otherwise comply with North Carolina Rule of Civil Procedure 23 and any other applicable statutes, laws, and rules, including, but not limited to, the Due Process Clause of the United States Constitution.

5.3. Following issuance of the Preliminary Approval Order, Class Counsel and City Counsel may by mutual written agreement make any changes in the font, format or content of the Settlement Notice or the exhibits thereto any time before the Settlement Notice is published to Settlement Class Members, so long as such changes do not materially alter the substance of the Settlement Notice. Any material substantive changes proposed by Class Counsel and City Counsel following issuance of the Preliminary Approval Order must be approved by the Court.

5.4. Class Counsel expressly reserves, and the Parties agree that, Class Counsel shall have the right to communicate with, and respond to inquiries from, Settlement Class Members.

5.5. The City also reserves the right to communicate in any manner whatsoever with its citizens and water system customers generally about this Stipulation, the reasons for the settlement and effects that the settlement may have on its citizens and customers.

6. OBJECTIONS TO SETTLEMENT

6.1. While Settlement Class Members may not request exclusion from the Settlement Class, they may object to the fairness, reasonableness, or adequacy of this Agreement, or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or the Service Award, or to any other aspect or effect of the proposed Settlement, by filing with the Court, and deliver to Class Counsel and to City Counsel, no later than thirty (30) days before the originally scheduled date of the Final Approval Hearing (if the Final Approval Hearing is continued, the deadline runs from the first scheduled Final Approval Hearing), or as the Court otherwise may direct, a written statement of their objection.

6.2. A written statement of objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Gwen C. Alexander vs. City of Asheville* (18-CV-02331); (Superior Court Division of Buncombe County, North Carolina);" (b) identify whether the objection is to the Settlement Class; (c) set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court's attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection; (d) include the name and address of the Settlement Class Member; (e) be personally signed by the Settlement Class Member; (f) include an identification, by case style and number, of any other class settlements the objector or the objector's attorney(s) have asserted an objection; and (g) include an identification of all attorneys having a financial interest or stake in the objection (f) include three different dates within the calendar month you are submitting the objection in which you will make yourself available for a deposition.

6.3. A separate copy of each objection must be sent to each of the following:

Daniel K. Bryson
John Hunter Bryson

Bradley Branham
City of Asheville

Whitfield Bryson & Mason LLP
900 West Morgan Street
Raleigh, North Carolina 27603

70 Court Plaza
Asheville, NC 28801

Charles C. Meeker and Stephen V. Carey
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite #1400
Raleigh, North Carolina 27601

Clerk of Superior Court
Buncombe County Superior Court
60 Court Plaza
Asheville, NC 28801

6.4. A Settlement Class Member may file and serve a written statement of objection either on his own or through an attorney retained at his own expense; provided, however, that a written statement of objection must be personally signed by the Settlement Class Member, regardless of whether he has hired an attorney to represent him.

6.5. Any Settlement Class Member who properly files and serves a timely written objection, as described in this Section 7, may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or to any other aspect or effect of the proposed Settlement. However, any Settlement Class Member who intends to make an appearance at the Final Approval Hearing must include a statement to that effect in their objection. If a Settlement Class Member hires their own personal attorney to represent them in connection with an objection, and if the attorney wishes to appear at the Final Approval Hearing, the attorney must: (a) file a notice of appearance with the Clerk of Court in the Action no later than thirty (30) days before the originally scheduled date of the Final Approval Hearing (if the Final Approval Hearing is continued, the deadline runs from the first-scheduled Final Approval Hearing); and (b) serve and deliver a copy of that notice of appearance to Class Counsel and City Counsel no later than thirty (30) days before the originally scheduled date of the Final Approval Hearing (if

the Final Approval Hearing is continued, the deadline runs from the first-scheduled Final Approval Hearing).

6.6. Any Settlement Class Member who fails to strictly comply with the provisions and deadlines of this Section 7 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the jurisdiction of the Court, to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release.

7. RELEASE AND WAIVER

7.1. Plaintiff and City agree to the following release and waiver, which shall take effect upon the Effective Date (the following, separately and severally, shall be referred to for purposes of this Agreement as the “Released Claims”):

In consideration for the Settlement benefits described in this Agreement, Plaintiff and the other members of the Settlement Classes, on behalf of themselves and on behalf of their heirs, guardians, executors, administrators, predecessors, successors and assigns, as well as any person accepting benefits under this Agreement, will, by virtue of this Agreement and by virtue of the Court’s Final Order and Judgment, be deemed to have fully, finally and forever released, remised, relinquished, acquitted, and forever discharged each and all of the Released Parties of and from, and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Settlement Class or on behalf of any other person or entity, any claims, actions, causes of action, suits, rights, debts, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state or local law, statute, ordinance, regulation, code (including but not limited to building code), contract, common law, or any other source, or any claim that Plaintiff or Settlement Class Members had, or may have had against the Released Parties that were or reasonably could have been alleged by them or on their behalf in the Action or in any other court, tribunal, arbitration panel, commission, agency, or

before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising out of or relating to the charge of Capital Fees of Class members by the Released Parties from June 1, 2015, through June 30, 2020, or any other issues with their fees that were or reasonably could have been discovered and/or alleged in the Action, including, but without in any way limiting the generality of the foregoing, the claims alleged in the Action, and any claims for breach of contract, breach of express or implied warranty, tort, or statutory violations arising from, or directly or indirectly, or in any way whatsoever, pertaining to or relating to the charge or collection by the City charge of Capital Fees of Class members by the Released Parties from June 1, 2015, through June 30, 2020.

7.2. Without in any way limiting its scope, and, except to the extent otherwise specified in this Agreement, this Release covers by example and without limitation, any and all claims for damages, equitable relief, attorneys' fees, costs, expenses, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, expenses and/or disbursements incurred by Class Counsel, or by Class Plaintiffs or by the Settlement Class Members regarding Released Claims for which any of the Released Parties might otherwise be claimed liable.

7.3. Plaintiffs expressly understand and acknowledge, and all Settlement Class Members will be deemed by the Final Order and Judgment to acknowledge, that certain principles of law and equity, including, but not limited to, **Section 1542 of the Civil Code of the State of California, provide that “a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** To the extent that anyone might argue that these principles of law or equity are applicable, Plaintiffs hereby agree that the provisions of all such principles of law, equity or similar federal or state laws, rights, rules, legal or equitable principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and

released by them and all Settlement Class Members.

7.4. Class Plaintiffs acknowledge, and all Settlement Class Members will be deemed by the Final Order and Judgment to acknowledge, that they are aware that they could conceivably hereafter discover claims that were existing in the past or present, that may be presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true with respect to the allegations or subject matters in the Action or with respect to the Released Claims but, nevertheless, intend to fully, finally and forever settle and release such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or current asserted in any action or proceeding) related in any way to the facts, transactions, and claims asserted in the Action or with respect to the Released Claims.

7.5. The Parties and each of the Settlement Class Members shall be deemed to have agreed that the Release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based in whole or in part upon the claims released by and through this Agreement. Class Plaintiffs acknowledge and agree, and all Settlement Class Members will be deemed by the Final Order and Judgment to have agreed, that each of them shall be permanently barred and enjoined by the Final Approval Order from hereafter instituting, participating in, prosecuting or maintaining, either directly or indirectly, on their own behalf, or on behalf of the Settlement Class or any other Settlement Class Member, person or entity, any action or proceeding of any kind asserting any of the Released Claims.

7.6. Upon entry of the Final Order and Judgment, the Parties shall be deemed to have agreed that the Release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the claims released by and through this

Agreement.

7.7. The Preliminary Approval Order shall contain a preliminary injunction against filing, prosecution, or maintenance by Settlement Class Members of actions asserting claims that would be subject to the Release provided for by this Agreement, in order to protect the Court's jurisdiction and facilitate the Court's consideration of whether final approval of this Agreement and the Settlement is appropriate.

7.8. Subject to the provisions of this Section 8 and the injunctions contemplated thereby, nothing in this Release shall preclude any filing in this Action seeking to have the Court enforce the terms of this Agreement, including participation in any of the processes detailed therein.

7.9. The Parties hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of this Agreement and shall be included in any Final Order and Judgment entered by the Court.

8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

8.1. The Parties' negotiations and mediation regarding attorneys' fees, costs and expenses took place only after they reached an agreement in principle as to all other material terms of this Agreement. As a result of their negotiations and compromises, and subject to the provisions of this Section 8, the Parties have agreed that Class Counsel shall be entitled to apply to the Court for an award of Attorneys' Fees and Expenses from the \$130,000 agreed by the Parties. The City agrees that it will have no other comment on the requested attorneys' fees and expenses other than that it does not oppose the request. Plaintiffs' attorneys agree not to seek and not to accept any amount or award of Attorneys' Fees and Costs which is in excess of the amount

awarded by the Court under applicable law. The City will pay from the Attorneys' Fees, Costs, and Service Awards that may be awarded by the Court by check made payable as Class Counsel may instruct. Class Counsel agrees not to seek and not to accept any amount or award of Attorneys' Fees and Expenses which is in excess of this amount.

8.2. It is an express condition of this Stipulation that the City shall not be liable to Class Counsel or to anyone else for any further attorneys' fees and costs, or any claim by any other counsel or Settlement Class Member for any amounts other than those listed in this Agreement.

8.3. Plaintiffs, Class Counsel, the City and City Counsel agree to oppose, including on appeal, any request for attorneys' fees and costs, expert fees, service awards, costs and/or expenses by any Settlement Class Member, objector, intervenor or proposed intervenor, or any separate attorney hired by any of the foregoing, except as provided in this Stipulation. If any other or additional attorneys' fees, costs, or expenses are awarded beyond those Attorneys' Fees and Expenses set forth in Paragraph 9.1, the City at its sole option may declare this Agreement void as set forth in Section 11.

8.4. The Parties have also agreed that Class Counsel shall be entitled to apply to the Court for a Service Award of up to \$5,000 to the Plaintiff. The City will not object to any application by Class Counsel for Service Award to the Plaintiff up to \$5,000.

8.5. The City will pay or cause to be paid any Attorneys' Fees, Costs, Expenses and Service Award that may be awarded by the Court by check made payable as Class Counsel may instruct. The total of such payment, including up to \$10,000 in newspaper notice costs, shall not exceed \$130,000. Should additional notice be required, the City will pay all reasonable notice costs in excess of \$10,000.

8.6. In the event the Final Order and Judgment is not entered or the Effective Date is not reached, the City will not be liable for, and shall be under no obligation to pay, any of the Attorneys' Fees, Costs, Expenses or the Service Awards set forth in this Agreement.

8.7. The effectiveness of this Stipulation and the Settlement will not be conditioned upon or delayed by the Court's failure to approve Class Counsel's applications for Attorneys' Fees, Costs, Expenses and Service Awards. The denial, downward modification, or failure to grant Class Counsel's request for Attorneys' Fees, Costs, Expenses and Service Awards shall not constitute grounds for modification or termination of this Stipulation or the Settlement proposed herein.

9. **PRELIMINARY APPROVAL ORDER, FINAL ORDER AND JUDGMENT, AND RELATED ORDERS**

9.1. At the hearing on the motion for entry of the Preliminary Approval Order, the Parties shall ask the Court to set a date for the Final Approval Hearing no earlier than sixty (60) days after the Court grants the Preliminary Approval Order.

9.2. Not later than ten (10) days before the Final Approval Hearing, the Parties shall file a motion and all supporting papers seeking entry of the Final Order and Judgment by the Court.

10. **MODIFICATION OR TERMINATION OF THIS AGREEMENT**

10.1. Prior to entry of the Final Order and Judgment, the terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Order and Judgment, the Parties may by mutual written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are not materially

inconsistent with the Court's Final Order and Judgment and do not materially limit, or materially and adversely affect, the rights or obligations of Settlement Class Members under this Agreement.

10.2. This Agreement shall terminate at the sole option and discretion of either the City or Plaintiff if: (a) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Stipulation that the terminating Party in his, her or its sole judgment and discretion determine(s) is material, including, without limitation, the terms of relief, the findings or conclusions of the Court, the provisions relating to notice (including the proposed plan for the dissemination of notice to the Settlement Class set forth in Section 5), the definition of the Settlement Class and the terms and conditions for its certification, and/or the terms of the Release; or (b) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Order and Judgment, or any of the Court's findings of fact or conclusions of law, that the terminating Party in his, her or its sole judgment and discretion determine(s) is material. However, under no circumstances shall the amount of the Service Award or Attorneys' Fees and Expenses awarded by the Court provide Plaintiffs or Class Counsel with a basis for terminating the Settlement.

10.3. The City may also in its sole discretion elect to terminate this Agreement if: (1) the amount of Attorneys' Fees, Costs, Expenses and the Service Award by the Court to Class Counsel exceed the maximum aggregate total amount of \$130,000.

10.4. The terminating Party must exercise the option to withdraw from and terminate this Stipulation, as provided in this Section 11, by a signed writing served on the other Party no later than fifteen (15) days after receiving notice of the event prompting the termination unless there is a motion or petition seeking reconsideration, alteration or appellate review of the event,

in which case no later than thirty (30) days after the final conclusion of any such motion or petition seeking reconsideration, alteration, or appellate review thereof, whichever is later.

10.5. If an option to withdraw from and terminate this Stipulation as provided by this Section 10 arises, none of the Parties is required for any reason or under any circumstance to exercise that option.

10.6. If this Stipulation is terminated pursuant to the provisions of this Section 10, then:

10.6.1. This Stipulation shall be null and void and shall have no force or effect, and no Party to this Stipulation shall be bound by any of its terms, except for the terms of this Paragraph 11.6. and its sub-sections;

10.6.2. This Stipulation, all of its provisions, and all negotiations, statements, documents, orders and proceedings relating to it shall be inadmissible in evidence for any purpose, and shall be without prejudice to the rights of the City, Class Plaintiff or any Settlement Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Stipulation.;

10.6.3. The Released Parties, as defined in Section 2, expressly do not waive any, but instead affirmatively reserve all, of their defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action;

10.6.4. Plaintiff and all other Settlement Class Members, on behalf of themselves and their current and former predecessors, successors, heirs, executors, administrators, agents, attorneys, representatives and assigns, expressly and affirmatively reserve and do not waive any motions as to, and arguments in support of, all claims that have been or might later be asserted in the Action including, without limitation, any argument concerning class certification, liability and/or available remedies;

10.6.5. This Stipulation, the fact of its having been made, the negotiations leading to it, any discovery or action taken by any of the Parties or Settlement Class Members pursuant to or as a result of this Stipulation, and any documents, statements or communications pertaining to this Stipulation shall not be admissible or be entered into evidence for any purpose whatsoever in the Action or in any other proceeding, by any Party or Settlement Class Member, other than to enforce the terms of this Stipulation;

10.6.6. The Parties stipulate that upon termination of this Stipulation pursuant to the provisions contained herein, any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Stipulation shall be deemed vacated and shall be without any force or effect, and that any of the Parties may move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Stipulation.

11. GENERAL MATTERS AND RESERVATIONS

11.1. The obligation of the Parties to implement and conclude the proposed Settlement is and shall be contingent upon each of the following:

11.1.1. Entry by the Court of the Preliminary Approval Order, followed thereafter by the Final Approval Hearing and subsequent entry by the Court of the Final Order and Judgment approving the Settlement, from which the time to appeal has expired or which has remained unmodified after the exhaustion and final disposition of any appeal(s) or petition(s) for appellate review; and

11.1.2. Any other conditions stated in this Stipulation.

11.2. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefore, nor any actions taken to carry out or obtain Court

approval of this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. The City expressly denies the allegations asserted in the Action. Neither this Agreement, nor the fact of the Settlement, nor the settlement proceedings, nor settlement negotiations, nor statements made in court proceedings, nor any related document, shall be used as an admission of any fault or omission by the City, or be construed as, offered as, received as, or used as evidence of an admission, concession, presumption, or inference of any fact or of any liability or wrongdoing by the City in any proceeding, or as a waiver by the City of any applicable defense, or for any other purposes other than such proceedings as may be necessary to consummate, interpret, or enforce this Stipulation.

11.3. Class Counsel represent that: (1) they are authorized by Class Plaintiff to enter into this Stipulation on their behalf, and on behalf of Class Counsel, with respect to the claims in the Action; and (2) they are seeking to protect the interests of the entire Settlement Class.

11.4. Class Plaintiff represents and certifies that she: (1) has agreed to serve as the representatives of the Settlement Class; (2) is willing, able, and ready to perform all of the duties and obligations of a representative of the Settlement Class; (3) has read the complaints filed in the Action, or has had the contents of such pleadings described to them by Class Counsel; (4) is familiar with the results of the fact-finding undertaken by Class Counsel; (5) has been kept apprised of the progress of the Action and the settlement negotiations between the Parties, and have either read this Stipulation (including the exhibits annexed hereto) or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) has consulted with Class Counsel about the Action, this Stipulation and the duties and obligations imposed on a

representative of the Settlement Class; (7) has authorized Class Counsel to execute this Stipulation on their behalves; and (8) will remain and serve as the representative of the Settlement Class until the terms of the Stipulation are effectuated, this Stipulation is terminated in accordance with its terms, or the Court at any time determines that they can no longer serve in a representative capacity on behalf of the Settlement Class.

11.5. The persons executing this Stipulation on behalf of the City represent that they are authorized to enter into this Stipulation on behalf of the City.

11.6. This Stipulation sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument made in accordance with the provisions of this Agreement and executed by Class Counsel and City Counsel. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them and that in deciding to enter into this Stipulation, they each have relied solely upon their own judgment and knowledge. This Stipulation supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matters of this Stipulation.

11.7. This Stipulation and any amendments thereto shall be governed by and interpreted according to the law of the State of North Carolina, notwithstanding its conflict of laws provisions. The North Carolina Superior Court of Buncombe County shall retain jurisdiction over this Stipulation.

11.8. Any disagreement and/or action seeking directly or indirectly to challenge, modify, construe, obtain relief from, extend, limit, or enforce this Stipulation shall be commenced and maintained only in this Court and in this Action. Without in any way

compromising the finality of the Final Order and Judgment, the Court shall retain exclusive and continuing jurisdiction over all matters related in any way to the Settlement and the Stipulation, including but not limited to the implementation of the Settlement (including, but not limited to, the Claims Process) and the interpretation, administration, supervision, enforcement and modification of this Stipulation.

11.9. Whenever this Stipulation requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and next-day (excluding Saturdays, Sundays and Legal Holidays) express delivery service as follows:

11.9.1. If to the City, then to:

Charles C. Meeker
Stephen V. Carey
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite #1400
Raleigh, North Carolina 27601
Email: charlesmeeker@parkerpoe.com
Email: stevecarey@parkerpoe.com

11.9.2. If to Class Plaintiffs, Settlement Class, or Class Counsel, then to:

Daniel Bryson
Hunter Bryson
WHITFIELD BRYSON & MASON LLP
900 W. Morgan Street
Raleigh, North Carolina 27603
Email: dan@wbmlp.com
Email: hunter@wbmlp.com

11.10. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Legal Holiday (as defined by

the North Carolina Rules of Civil Procedure), or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

11.11. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

11.12. Neither the Settlement Class, Class Plaintiff, Class Counsel, the City, nor City Counsel shall be deemed to be the drafter of this Stipulation or of any particular provision, nor shall any of them argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. All Parties agree that this Settlement was drafted by counsel for the Parties during and through extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify this Stipulation's terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

11.13. The Parties expressly acknowledge and agree that this Stipulation and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of North Carolina Rule of Evidence 408. N.G. Gen. Stat. § 8C-408. In no event shall this Stipulation, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Stipulation or the rights of the Parties

or their counsel. Without limiting the foregoing, neither this Stipulation nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence of an admission or concession of any proposition of fact or law or of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Class Plaintiff or the Settlement Class or as a waiver by the Released Parties, Class Plaintiff or the Settlement Class of any applicable privileges, claims or defenses.

11.14. Class Plaintiff expressly affirms that the allegations asserted in the Action were made in good faith and have a basis in fact, but that she considers it desirable for the Action to be settled and dismissed because of the risks associated with continued litigation and the substantial benefits that the Settlement will provide to the Settlement Class Members.

11.15. The City expressly denies all liability and affirms that the allegations asserted in the Action had no basis in fact, but the City considers it desirable for the Action to be settled and dismissed because of the risks associated with protracted litigation and the substantial benefits the Settlement will provide to the City.

11.16. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Stipulation in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Stipulation.

11.17. The waiver by one of the Parties of any breach of this Stipulation by another of the Parties shall not be deemed a waiver of any prior or subsequent breach of this Stipulation.

11.18. If one of the Parties to this Stipulation considers another of the Parties to be in breach of its obligations under this Stipulation, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach

before taking any action to enforce any rights under this Stipulation.

11.19. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking the approval of the Court of this Stipulation and in the event of any appeal(s), and to use their best efforts to effect the prompt consummation of this Stipulation and the proposed Settlement.

11.20. No opinion concerning the tax consequences, if any, of this Stipulation and Settlement as to individual Settlement Class Members or anyone else is being given or will be given by the City, City Counsel, Plaintiff or Class Counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation or Settlement. The Settlement Notice will direct Settlement Class Members to consult their own tax advisor(s) regarding the tax consequences of the Settlement and this Stipulation, and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. Nothing in this Stipulation, or in the Settlement Notice is to be construed as tax advice of any kind.

11.21. Headings contained in this Stipulation are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

11.22. This Stipulation shall be equally binding upon and inure to the benefit of the Class Plaintiff and the Settlement Class Members, their representatives, heirs, successors and assigns, as upon and to the benefit of the City.

11.23. This Stipulation may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

Agreed to on the date(s) indicated below.

APPROVED BY CLASS COUNSEL AND CLASS PLAINTIFFS:

Dated: 3/19/20

WHITFIELD BRYSON & MASON LLP

John Bryson
Daniel K. Bryson
J. Hunter Bryson
Attorneys for Plaintiffs

Dated: _____

Gwen Alexander

Agreed to on the date(s) indicated below.

APPROVED BY CLASS COUNSEL AND CLASS PLAINTIFFS:

WHITFIELD BRYSON & MASON LLP

Dated: _____

Daniel K. Bryson
J. Hunter Bryson
Attorneys for Plaintiffs

Dated: March 17, 2020

Gwen C. Alexander
Gwen Alexander

ON BEHALF OF CITY OF ASHEVILLE:

Dated: _____

CITY OF ASHEVILLE

By: _____

Brad Branham
City Attorney

APPROVED BY CITY OF ASHEVILLE COUNSEL:

Dated: _____

Charles C. Meeker /act

Charles C. Meeker


Stephen V. Carey /act

Stephen V. Carey
Attorneys for the City

ON BEHALF OF CITY OF ASHEVILLE:

Dated: _____

CITY OF ASHEVILLE

By: 

Brad Branham
City Attorney

APPROVED BY CITY OF ASHEVILLE COUNSEL:

Dated: _____

Charles C. Meeker

Stephen V. Carey
Attorneys for the City