TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 61, SERIES 2019

A RESOLUTION RATIFYING FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

WHEREAS, pursuant to C.R.S. § 31-15-103, the Town Council of the Town of Timnath (the “Town”) has the power to pass resolutions; and

WHEREAS, on October 7, 2017, Mr. John Vazquez had an encounter with Town Police Officers Forrest Andersen and Andrew Tope (the “Incident”) and Mr. Vazquez subsequently filed a lawsuit titled Vazquez v. Andersen et al., No. 1:18-cv02645 (D. Colo.) (the “Lawsuit”); and

WHEREAS, Mr. Vazquez; Officer Forrest Andersen and Officer Andrew Tope; the Town of Timnath, including Town Manager, April Getchius, Chief Sherri Wagner, Sergeant Robert Wynkoop, and the Town of Timnath’s police department, divisions, insurers, principals, attorneys, agents, employees, contractors, successors, servants, elected officials, officers, and directors (the “Town”), and the Colorado Intergovernmental Risk Sharing Agency (“CIRSA”) have agreed to settle all claims related to the Incident and have entered into a Full and Final Release and Settlement Agreement (the “Agreement”) dated November 1, 2019, attached hereto as Exhibit A; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public to ratify the Agreement, as attached.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section I. Ratification
The Agreement, in substantially the form as attached hereto as Exhibit A, is ratified, with such modifications and additions as the Town Manager, in consultation with Legal Counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON NOVEMBER 12, 2019.
ATTEST:

Milissa Peters-Garcia, CMC
Town Clerk
EXHIBIT A

FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT
FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

1.0     Parties and Controversy.

1.1     The Parties to this Full and Final Release and Settlement Agreement ("Agreement") are as follows:

A.     John Vazquez ("Claimant");

B.     Officer Forrest Andersen and Officer Andrew Tope (collectively referred to as the "Officers");

C.     The Town of Timnath, including Town Manager, April Getchius, Chief Sherri Wagner, Sergeant Robert Wynkoop, and the Town of Timnath's police department, divisions, insurers, principals, attorneys, agents, employees, contractors, successors, servants, elected officials, officers, and directors (the "Town"), and the Colorado Intergovernmental Risk Sharing Agency ("CIRSA").

1.2     The case or controversy giving rise to this Agreement is Claimant’s contact with the Officers on October 7, 2017, in Timnath, Colorado, and his subsequent imprisonment and criminal prosecution, which is the subject matter of Claimant’s lawsuit titled Vazquez v. Andersen et al., No. 1:18-cv-02645 (D. Colo.) (the "Incident").

2.0     Release.

2.1     Claimant hereby releases, acquits, and forever discharges the Officers, CIRSA, and the Town as well as all other related persons and entities, both past and present, including, but not limited to, the Officers’ and the Town’s agents, attorneys, principals, executors, administrators, insurers, successors, assigns, subrogees, subrogors, lienholders, departments, divisions, employees, servants, elected officials, officers, and directors, of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, attorneys’ fees, costs, interest, compensation, judgment, and any and all consequential and punitive damages, of whatever kind or nature, either in law or equity, whether pled or unpled, known or unknown, which exist or might exist with regard to any and all claims in any way related to or arising from the facts and circumstances of the Incident.

2.2     Claimant hereby acknowledges and agrees that this Agreement, and the terms hereof, shall be binding on Claimant, his agents, attorneys, principals, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, lienholders, and any and all other persons or entities which have or may have any claim on behalf of Claimant related to or arising from the Incident, or which are or may be entitled to share in any settlement related to or arising from the Incident.

2.3     Claimant hereby acknowledges that a portion of the consideration given for this Agreement is being given for the full and final release of any and all unknown losses, claims,
injuries, costs, expenses, and damages which either may have occurred in the past and are not yet known, or which may occur in the future and are not presently known related to or arising from the Incident. Claimant agrees to voluntarily and knowingly assume the risk of any mistake of fact or law, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages, and shall not, under any circumstances, seek to present further claims himself or on behalf of his agents, attorneys, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, or lienholders related to or arising from the Incident as against the persons and entities herein released.

2.4 It is expressly intended and understood that the settlement payment set forth in Section 3.1 below represents settlement of Claimant’s personal damage claims concerning the Incident and is not wages. Notwithstanding such intent and understanding, Claimant agrees that the Officers/Town/CIRSA may file tax forms and reports reflecting the settlement payment that they deem necessary or appropriate with taxing authorities. In the event that any part of the settlement payment is determined to be taxable, Claimant will be solely responsible for any tax liability arising therefrom, including any interest or penalty assessed.

2.5 Every provision of this Agreement is intended to be severable unless otherwise noted. In the event that any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

2.6 It is understood and agreed that the payment and consideration set forth in Section 3.1 of this Agreement is in full settlement and compromise of Claimant’s disputed and potential claims; that the payment and consideration made under this Agreement are not to be construed as an admission of liability on the part of the persons and entities hereby released; and that any and all liability is by said persons and entities hereby expressly denied.

3.0 Terms.

3.1 In consideration of the releases set forth at Section 2.0, et. seq., above, the Officers agree to cause payment to be made, through their insurer, to Claimant as follows: a cash payment, made payable by check, in the amount of Two-Hundred and Fifty Thousand Dollars ($250,000) shall be sent to Claimant’s counsel within seven (7) days after the lawsuit is dismissed with prejudice pursuant to Section 9 of this Agreement (the “Settlement Funds”). The check shall be made to “Trust Account of The Life & Liberty Law Office LLC” and delivered to 1209 Cleveland Ave., Loveland, CO 80537.

3.2 Claimant, the Officers, and the Town agree that each shall bear his/their own attorneys’ fees and costs associated with the Incident and the lawsuit related thereto.

4.0 Representation of Comprehension of Document.

In entering into this Agreement, Claimant represents that the terms of this Agreement have been completely read and explained; and that the terms of this Agreement are fully understood and voluntarily accepted by Claimant.
5.0 Warranty of Capacity to Execute Release.

Claimant represents and warrants that: (1) no other person or entity has, or has had, any interest in the claims, demands, obligations, and causes of action referred to in this Agreement, except as otherwise set forth herein; (2) Claimant has the sole right and exclusive authority to execute this Agreement and receive the consideration specified in it; and (3) Claimant has not sold, assigned, transferred, subrogated, liened or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement. Claimant hereby agrees to fully indemnify and defend the Officers and the Town against any claims which might be asserted by any person or entity asserting any such derivative right. Claimant further warrants that he has authority and legal capacity to execute this document.

6.0 Tax Liability Clause.

6.1 It is understood between the Parties to this Agreement that Claimant has not relied upon any representations, express or implied, made by the Officers or the Town or any of their representatives, as to the tax consequences of this Agreement and that Claimant releases the Officers and the Town from any and all liability in connection with any such tax consequences.

6.2 Claimant agrees to indemnify and hold the Officers and the Town harmless from any claims, demands, liens and/or lawsuits by the Internal Revenue Service, any other governmental agency, or any other creditor which may arise out of the settlement payment made pursuant to the terms outlined herein.

7.0 Health Care Lien Clause.

7.1 Claimant agrees to indemnify and hold the Officers and the Town harmless from any demands, claims, liens, and/or lawsuits by any health care provider or other creditor which arose, or may arise, out of the subject matter of the claims relating to the Incident and released herein, including but not limited to any physical or mental health treatment, and/or Medicare and/or Medicaid claims related to the Incident.

7.2 Claimant agrees that he is solely responsible for satisfying all demands, claims, and liens, including, but not limited to, Medicaid or Medicare liens held by any provider relating to the Incident. Claimant agrees that any demands, claims, liens, and/or lawsuits shall be fully satisfied prior to disbursement of the Settlement Funds. Claimant further agrees to cooperate in identifying any Medicare or Medicaid claims, including signing any necessary releases of information.

8.0 Dismissal of Lawsuit with Prejudice.

In consideration for the promises, releases, and covenants set forth in this Agreement, Claimant agrees to, within 24 hours of execution of this Agreement, dismiss the lawsuit Vazquez v. Andersen et al., No. 1:18-cv-02645 (D. Colo.), with prejudice.
9.0 Governing Law and Forum.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado. Any lawsuit arising out of or related to this Agreement will be filed in a Colorado court of competent jurisdiction.

10.0 Entire Agreement and Successors In Interest.

This Agreement contains the entire Agreement among Claimant, the Officers, and the Town with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

11.0 Counterparts/Facsimile Signatures.

This Agreement may be executed in two or more counterparts and shall be fully effective when executed by all Parties. This Agreement may be executed on multiple copies via facsimile or electronic signature and shall be effective as if all signatures were affixed to one copy.

12.0 Effectiveness.

An electronically stored executed copy of this Agreement has the same force and effect as the original.
Signature Page

John Vazquez
Date: 10-30-19

Forrest Andersen
Date: 

Andrew Tope
Date: 

The Town of Timnath
By: 
Title: 
Date: 

APPROVED AS TO FORM:

Attorneys for Claimant:

Sarah Schielke

Date: 10/30/19

Attorneys for the Officers:

Michiko A. Brown

Date: ________________

Attorneys for the Town:

Robert G. Rogers

Date: ________________
Signature Page

John Vazquez

Date: ____________________________

Forrest Andersen

Date: ____________________________

Andrew Tope

Date: ____________________________

The Town of Timnath

By: Jill Grossman-Belisle

Title: Mayor

Date: 11/1/2019
APPROVED AS TO FORM:

Attorneys for Claimant:

Sarah Schielke

Date: __________________________

Attorneys for the Town:

Robert G. Rogers

10/30/2019

Date: __________________________

Attorneys for the Officers:

Michiko A. Brown

Date: __________________________
Signature Page

John Vazquez
Date: 

Forrest Andersen
Date: 10.30.2019

Andrew Tope
Date: 

The Town of Timnath
By: 
Title: 
Date: 
Signature Page

John Vazquez
Date: 

Forrest Andersen
Date: 

Andrew Tope
Date: 11/1/19

The Town of Timnath
By: 
Title: 
Date: 

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APPROVED AS TO FORM:

Attorneys for Claimant:

Sarah Schielke

Date:

Attorneys for the Officers:

Michiko A. Brown

Date: 11/4/19

Attorneys for the Town:

Robert G. Rogers

Date: