CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement") is made and entered into between MICHAEL SIBBITT, JR. and ELISABETH ANNE TERWILLIGER ("Plaintiffs") and the CITY OF PITTSBURG (the "City"). This Agreement is made pursuant to the following terms and conditions.

1. Pending and Future Legal or Administrative Actions.

Plaintiffs represent there are no actions, whether in court, before any agency or otherwise, asserting claims by or on behalf of Plaintiffs against the City, Brian Addington, Patrick Wentz, and their present or former agents, attorneys, employees, subsidiaries, insurance carriers, successors and assigns, (collectively "Releasees") other than Plaintiffs' lawsuits pending in the United States District Court for the Northern District of California, entitled "*Michael Sibbitt, Jr. v. City of Pittsburg, Brian Addington and Michael Perry, et al.*," Case No. 3:16-cv-04377-RS and *Elisabeth Anne Terwilliger v. City of Pittsburg and Brian Addington, et al.*," Case No. 3:16-cv-04373-RS (the "Actions").

2. General Release of Claims and Affirmations.

2.1 It is understood and agreed by and between the Parties to this Agreement that in consideration for the City's agreement as set forth in paragraph 3 of the Agreement, and the other promises contained herein, Plaintiffs completely release and forever discharge Releasees from all causes of action, claims, judgments, obligations, damages, and liabilities of whatever kind and character, including, but not limited to, those claims that are asserted or that could have been asserted in the Actions, and those arising under the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Civil Rights Act of 1871 (42 U.S.C. §§ 1985 and 1986); the Equal Pay Act of 1963; the Consolidated Omnibus Budget Reconciliation Act of 1985; the California Fair Employment and Housing Act, Gov. Code §§ 12940 et seq.; applicable California Wage Order provisions; the California Business and Professions Code §§ 17200 et seq.; the California Civil Code; the California Labor Code; and any other federal, state, or local insurance, human rights, civil rights, wage-hour, pension, or labor laws, rules and/or regulations, public policy, contract or tort laws, and any claim of retaliation under such laws, and any claim arising under common law including, but not limited to, causes of action for wrongful termination; constructive discharge; discrimination or harassment on the basis of age, sex, sexual orientation, religion, marital status, taking a leave of absence, race, disability or national origin or retaliation for opposing such discriminatory practice; intentional infliction of emotional distress; negligent infliction of emotional distress; fraudulent misrepresentation; negligent misrepresentation; fraud; invasion of privacy; false imprisonment; conspiracy to commit any act mentioned herein; breach of contract (whether oral or written, express or implied); breach of the implied covenant of good faith and fair dealing; interference with business advantage; defamation; interference with prospective economic advantage; interference with contractual relationship; violation of any national, state or local statute, law, or ordinance; wrongful termination in violation of public policy; and any other

action, whether cognizable in law or in equity based upon any conduct up to and including the date of this Agreement, and Plaintiffs agrees that they will not, from any source or proceeding, seek or accept any award or settlement therefrom. In the event Plaintiffs institute or are party to any action or proceeding asserting a claim released in this Agreement, such action or proceeding shall be dismissed with prejudice, with an award of attorneys' fees and costs to the subject Releasee(s) incurred as a result of such action or proceeding, immediately upon presentation of this Agreement.

2.2 Plaintiffs represent and warrant that Plaintiffs have not assigned or subrogated any claim concerning Releasees or authorized any other person or entity to assert such a claim or claims on Plaintiffs' behalf. Plaintiffs will take all actions necessary to obtain dismissal of any claim asserted by any other individual or entity against any Releasee on Plaintiffs' behalf and will not accept relief or recovery from any action that is not dismissed.

2.3 Nothing in this Agreement prohibits or prevents Plaintiffs from filing a charge or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state, or local government agency. However, to the maximum extent permitted by law, Plaintiffs agree that if such an administrative claim is made, Plaintiffs shall not be entitled to recover any individual monetary relief or other individual remedies.

2.4 To the extent permitted by law, Plaintiffs waive any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Releasee is a party. Plaintiffs shall take any necessary steps to dismiss them from any class claims, including but not limited to opting-out of such claims.

2.5 Plaintiffs affirm that Plaintiffs have not divulged any confidential information of any Releasee and will continue to maintain the confidentiality of such information consistent with the City's policies and agreements(s) and/or common law.

2.6 Other than the settlement sum in paragraph 3, Plaintiffs agree and represent that no other form of monetary compensation is owed to them by any Releasee as of the date they execute this Agreement and that all employment-related compensation has been paid by any Releasee.

2.7 Plaintiffs agree to defend, indemnify and hold harmless the City for any liability or costs arising out of the failure to withhold taxes and the characterization of the settlement sum in paragraph 3. If payroll taxes are subsequently determined to be necessary, the City shall pay its share as the employer, but Plaintiffs shall be responsible for their share and any and all penalties, interest and/or other costs associated therewith. Plaintiffs acknowledge that the City has not provided any tax advice upon which Plaintiffs have relied.

2.8 Plaintiffs represent they are not aware of any liens and/or third-party claims of any type related in any way to the Action. Plaintiffs shall be solely responsible for any such liens and/or claims that exist. Plaintiffs agree to defend, indemnify and hold harmless the City for any liability and costs, including any attorneys' fees, related to any such liens and/or

claims that exist.

3. Settlement Sum.

Pursuant to the terms and conditions contained in this Agreement, including, without limitation the particular requirements set forth in Paragraph 6 herein, within 30 days of the City's counsel's receipt of (1) a copy of this Agreement fully executed by Plaintiffs and their counsel and (2) fully executed W9s from Plaintiffs and their counsel, and subject to the contingent City Council approval as described in Paragraph 16, the City agrees to pay each Plaintiff the sum of Forty Seven Thousand Five Hundred and 00/100 Dollars ($47,500.00) (the "Settlement Sum") for all damages, fees and costs. The Settlement Sum shall be paid by the City issuing one check payable to "Brown | Poore LLP in trust for Elisabth Terwilliger" in the amount of $47,500.00, and one check payable to "Brown | Poore LLP in trust for Michael Sibbitt, Jr." in the amount of $47,500.00. The City shall issue 1099s to each Plaintiff and his/her counsel for the settlement sum to that Plaintiff. Payment shall be made by mailing the checks to Plaintiffs' counsel's office.

4. Denial of Liability.

Plaintiffs acknowledge that Releasees have denied and continue to deny any and all liability for any claims relating to Plaintiffs. Plaintiffs expressly recognize that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of any Releasee.

5. Waiver of California Civil Code Section 1542.

5.1 Plaintiffs agree that by signing this Agreement and in return for the consideration described above, Plaintiffs give up any and all rights Plaintiffs may have to obtain any monetary award against any Releasee, through any administrative agency, court or other forum. Plaintiffs understand and expressly agree that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiffs have or may have against any Releasee, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Such Section reads as follows:

> 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 his or her must have materially affected his or her settlement with the debtor.

5.2 Plaintiffs agree that Plaintiffs have read this Agreement, including the waiver of California Civil Code section 1542, and that Plaintiffs have had the opportunity to consult counsel about the Agreement and specifically about the waiver of Section 1542, and Plaintiffs understand the Agreement and the Section 1542 waiver, and freely and knowingly enters into this Agreement. Plaintiffs acknowledge that Plaintiffs may hereafter discover facts different from or in addition to those Plaintiffs know or now believe to be true with respect to the matters released or described in this Agreement, and Plaintiffs agree the releases and agreements

contained herein shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts. Plaintiffs hereby assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies described herein or with regard to any facts which are now unknown to Plaintiffs relating thereto.

6. Confidentiality and Non-Disparagement.

6.1 Except as noted elsewhere in paragraph 6 of this Agreement, Plaintiffs and Plaintiffs' attorneys shall keep the existence, terms and conditions of this Agreement, completely and strictly confidential. Upon inquiry regarding the matter or any claim Plaintiffs may have had against any Releasee, Plaintiffs and/or Plaintiffs' representatives shall state only that the matter has been resolved. Plaintiffs and their counsel agree not to make or issue any public statement regarding the Action or its resolution. **In the event of a breach of these confidentiality provisions, Plaintiffs expressly agree to pay $5,000.00 as liquidated damages for each disclosure and expressly recognize that the actual amount of damages flowing from said disclosure is not readily ascertainable and the sum of $5,000.00 for each disclosure is a reasonable one. Plaintiffs so agree to be bound:**

DATED: APRIL 17, 2018

MICHAEL SIBBITT, JR.

ELISABETH ANNE TERWILLIGER

6.2 The only exceptions to paragraph 6.1 are as follows:

6.2.1 If the terms or conditions of this Agreement must be disclosed as required by law; or to any federal, state or local agency; or upon order of any court of competent jurisdiction in any action in which Plaintiffs are a party; or if Plaintiffs are subpoenaed as a witness; or

6.2.2 If the terms or conditions of this Agreement must be disclosed to remedy a breach of any term or condition herein; or

6.2.3 The Plaintiffs may inform Plaintiffs' legal counsel and their tax or financial advisors, on the further condition that Plaintiffs advise such individuals in advance of disclosure that the terms and conditions of the Agreement are strictly confidential. Plaintiffs agree to be held liable for any and all unpermitted disclosures of this Agreement by individuals identified in this paragraph and that any such unpermitted disclosure of this Agreement shall subject the responsible party to liability pursuant to paragraph 6.1.

6.3 If disclosure is to be made pursuant to paragraph 6.2.1, Plaintiffs or Plaintiffs' representatives shall immediately, but in no event more than five (5) business days

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from receipt of a request or order for such disclosure, and at least thirty (30) days prior to any such disclosure, notify the City so, if it chooses, it can seek appropriate relief from a court or tribunal of competent jurisdiction, at the City's own expense, to prevent said disclosure.

6.4 Plaintiffs agree that as to any Releasee, they shall not engage in any defamatory or maliciously disparaging conduct.

7. Waiver of Future Contractual Relationship and/or Employment.

Due to their irreconcilable differences, Plaintiffs no longer wishes to pursue any relationship with the City, or with any of its affiliated organizations, successors and assigns. Therefore, Plaintiffs agree not to seek work with, or become in any way contracted or employed with, any such entity or organization. Plaintiffs agree that, if they knowingly or unknowingly apply for, are offered, accept a position, or in any way becomes contracted with or employed with an entity described in this paragraph, the offer may be withdrawn or the relationship or contract may be severed immediately without notice or cause. Subject to paragraph 2.4 of this Agreement, Plaintiffs waive any right to seek legal or administrative redress of any kind for events relating to the withdrawal of any offer, or termination, as described in this paragraph. The provisions in this paragraph may only be waived by explicit written consent of the Parties, specifically referencing this Paragraph.

8. Agreement Not to Assist Others In Commencing or Prosecuting Any Claim Against Releasees.

Plaintiffs agree and understand that, except as may be required by subpoena, court order, or other force of laws, and except as specified in paragraph 2.4, they shall not in any way knowingly assist any individual or entity in commencing or prosecuting any action or proceeding against any Releasee. Absent legal compulsion, and except as specified in paragraph 2.4, this Agreement bars Plaintiffs from testifying, providing documents or information, advising, counseling or providing any other form of assistance to any person or entity who Plaintiffs are aware, are considering making, or who are making, any claim against any Releasee.

9. Severability.

If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction or arbitrator and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect. If Plaintiffs take any action to challenge any provision in this Agreement, or if any provision of this Agreement is deemed unenforceable in an arbitration or civil or administrative proceeding (regardless of whether Plaintiffs instituted such proceeding), Plaintiffs shall immediately return to the City the entire settlement sum in paragraph 3.

10. Construction.

The normal rule of construction that any ambiguity or uncertainty in writing shall be interpreted against the party drafting the writing shall not apply to any action on this

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Agreement. This Agreement shall be construed and interpreted in accordance with the law of the State of California.

11. Integration.

This Agreement represents the complete understanding between the Parties. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the Parties hereto.

12. Execution and Enforcement.

This Agreement may be signed in counterparts and on separate signature pages. These separate signature pages will become part of the integrated Agreement. Facsimile or electronic executed copies of this Agreement shall be enforceable as if they were originals, and facsimile or email exchange of executed copies of this Agreement shall bind the Parties. If any Party seeks to enforce the terms of this Agreement, such action shall be pursued in Federal Court. Any Party prevailing in any action to enforce the terms of this Agreement shall be entitled to an award of reasonable attorneys' fees and costs.

13. Medicare.

13.1. General Statement for Consideration of any Medicare Interest. This settlement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The Parties resolved this matter in compliance with both state and federal law.

13.2. Representations and Warranties By Plaintiffs. Plaintiffs and Plaintiffs' counsel warrant that Plaintiffs are not Medicare beneficiaries as of the date of this Agreement. Because Plaintiffs are not a Medicare recipients as of the date of this Agreement, no conditional payments have been made to Medicare.

13.3. Hold Harmless. Plaintiffs will indemnify, defend and hold Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiffs' alleged injuries, claims or lawsuit, Plaintiffs will defend and indemnify Releasees, and hold Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities. Plaintiffs shall reasonably cooperate with any Releasee upon request with respect to any information needed to satisfy any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim for which Plaintiffs are required to indemnify any Releasee under this paragraph. Plaintiffs waive any and all future actions against any Releasee for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

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13.4. Concluding Statement of Intent of the Parties. While it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith determination of the Parties in order to resolve a disputed claim. The Parties have attempted to resolve this matter in compliance with both state and federal law, and it is believed that the settlement terms adequately consider and protect any Medicare interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The Parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiffs' eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this settlement.

14. Dismissal.

Within five (5) days of Plaintiffs' counsel's receipt of the settlement proceeds described in paragraph 3, Plaintiffs shall take any and all steps to have the Actions dismissed with prejudice, with each party to bear their own costs and fees.

15. Mutual Representations, Covenants and Warranties.

Each of the Parties to this Agreement represents, warrants, and agrees as follows:

15.1 Each party has had the opportunity to receive independent legal advice from their or its attorney with respect to the advisability of reaching a settlement in this action, the advisability of executing its agreement, and the ramifications of the meaning of California Civil Code section 1542.

15.2 No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and no party has relied upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative or attorney for the other party) in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement.

15.3 Each party has entered into this Agreement freely and voluntarily and has made an investigation of the facts pertaining to the settlement, this Agreement and all of the matters relating thereto.

15.4 Each party or responsible officer or agent thereof has read this Agreement and understands the contents hereof. Each of the persons executing this Agreement on behalf of the respective Parties is empowered to do so and thereby binds this respective party.

16. Council Approval.

This Agreement is contingent upon the City obtaining City Council approval of the Agreement. The City shall seek such approval on or before May 7, 2018.

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in paragraph 17 for Elisabeth Terwilliger, it will include as the third sentence the following: "The investigation related to MDC communications, report writing regarding use of force, and harassment." RA

17. **Memorandum in Personnel File.**

Within thirty (30) days of the dismissal of the Actions, the City shall place a memorandum in each Plaintiff's personnel file as follows:

> *_____ was a police officer with the City from _____ to _____. In June 2014 an internal affairs investigation began against _____. The investigation was not concluded and no negative findings were ever made against _____. The matter which was the subject of the internal investigation was discussed with the District Attorney's office. A representative for that office conveyed the District Attorney would not pursue criminal charges against _____.*

18. **Request to District Attorney.**

Within thirty (30) days of the dismissal of the Actions, the City shall submit a correspondence as follows to the Contra Costa District Attorney's office:

> *The City has received a request from former Officers Michael Sibbitt, Jr. and Elisabeth Terwilliger (formerly Ingram) for the Contra Costa District Attorney's Office to reconsider their status on a "Brady" list. Based on that request, the City is recommending that you assess their current status regarding that list. The individuals last worked for the City in June of 2014. The individuals have represented they would be available to discuss their situations with the District Attorney's office if you so choose. Thank you for your anticipated cooperation with this request.*

DATED: April 17, 2018

PLAINTIFF:
MICHAEL SIBBITT, JR.

DATED: April ___, 2018

PLAINTIFF:
ELISABETH ANNE TERWILLIGER

Elisabeth Terwilliger

I CHIEF BRIAN ADDINGTON AGREE ON BEHALF OF THE CITY TO, IMMEDIATELY FOLLOWING APPROVAL OF THIS AGREEMENT, PROVIDE TO PLAINTIFFS, LETTERS SIGNED BY ME CONTAINING THE LANGUAGE IN PARAGRAPHS 17+18 ABOVE.

DATED: April 17, 2018

CITY OF PITTSBURG

By: _____

BRIAN ADDINGTON
(print name)

Its: POLICE CHIEF

AGREED TO AS TO FORM:

_____
Scott Brown
Attorneys for PLAINTIFFS
MICHAEL SIBBITT, JR. and
ELISABETH ANNE TERWILLIGER

_____
Michael J. Christian
Attorneys for DEFENDANT
CITY OF PITTSBURG

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