

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of All Claims (hereinafter the Agreement) is made and entered into by the City of Merced (“City”) and The Estate of Edyna Sischo-Nownejad (“Estate” or “Releasing Party or Parties”), Cyrus John Nownejad, as an individual and beneficiary of the Estate (“Releasing Party or Parties”), and Gita Marie Nownejad, as an individual and beneficiary of the Estate (“Releasing Party or Parties”). The City and the Releasing Party or Parties are collectively referred to as the “Parties”.

### **RECITALS**

WHEREAS, on or about February 20, 2020, the City, on behalf of the People of the State of California, filed an Application for Inspection Warrant Under C.C.P. Section 1822.50 *et seq.*; Memorandum of Points and Authorities; and Declaration of Jackie Hicks with the Superior Court of the State of California, County of Merced (“Court”); and

WHEREAS, on or about February 24, 2020, the Court issued the Inspection Warrant, Case No.: 20CV-00847; and

WHEREAS, on or about March 3, 2020, the City inspected the Property in accordance with the Inspection Warrant issued by the Court; and

WHEREAS, on or about March 18, 2020, a Legal Notice and Order to Repair or Abate (“Notice”) for the Property was issued by Denise Frazier, Chief Building Official; Jeremiah Pons, Building Inspector II; and, Jackie Hicks, Code Enforcement/Community Service Officer; and

WHEREAS, on or about April 17, 2020, Releasing Parties appealed the Notice with the City; and

WHEREAS, on or about June 9, 2020, the Appeal Hearing was conducted before the City Building and Housing Board of Appeals (“Board”); and

WHEREAS, the Releasing Parties were present and/or participated in the appeal proceedings by and through their attorney of record, Kenneth W. Ralidis, Esq.; and

WHEREAS, on July 15, 2020, the Board issued its Decision, Findings, and Order which upheld the Notice issued by the City. Said Decision was executed by Ashley M. McComb Thanadabouth, the Chair of the Board and was served upon the Releasing Parties; and

WHEREAS, on or about April 17, 2020, the Releasing Parties filed a Notice of Appeal regarding the Inspection Warrant with the Court, Case No. 20CV-00847, and with the Court of Appeal, Fifth Appellate District, Case Number F081164; and

WHEREAS, on or about July 24, 2020, the Releasing Parties filed a Government Tort Claim against the City of Merced; and

WHEREAS, on or about September 8, 2020, the Releasing Parties filed a Complaint for Judicial Review of a Final Decision of the City of Merced Building and Housing Board of Appeals on June 9, 2020, Case No., 20CV-02608; and

WHEREAS, on or about January 21, 2021, the City, as Applicant, filed an Ex-Parte Application for an Inspection and Abatement Warrant Under C.C.P. Section 1822.50, *et seq.*; Memorandum of Points and Authorities; and Declarations of Jackie Hicks, Jeremiah Pons, and Casey Wilson in Support with the; and

WHEREAS, on or about January 22, 2021, the Court issued the Inspection and Abatement Warrant in Case No. 21CV-00133; and

WHEREAS, on or about February 3, 2021, the Inspection and Abatement by demolition of the Property was initiated and will continue until completed; and

WHEREAS, once the abatement is completed, the City will seek to recover any and all costs associated with the costs of abatement, as well as costs associated with defending the City against the actions filed by the Releasing Parties including, but not limited to, Case Nos. 20CV-00847, F081164, and 20CV-02608, which the City contends are frivolous and which the Releasing Parties dispute and contend are meritorious; and

WHEREAS, notwithstanding the foregoing, the Parties desire to avoid the cost and expense of litigation and have agreed to resolve any and all disputes between the Parties pertaining to or in any way related to the matters set forth herein by entering into this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of and in exchange for the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties mutually agree as follows:

1. Dismissal of Actions with Prejudice. The Releasing Parties shall take any and all actions necessary and shall dismiss with prejudice any and all actions filed against the City and any and/or all of its agents, officials, employees, etc., including, but not limited to, the following:

- A. Merced Superior Court Case No. 20CV-00847 entitled *In the Matter of Inspection of 1050 Rambler Road, Merced, California*; and
- B. Court of Appeal, Fifth Appellate District, Case No. F081164 entitled *Estate of Edyna Sischo-Nownejad, Cyrus Nownejad, Gita Nownejad v. City of Merced*; and
- C. Merced Superior Court Case No. 20CV-02608 entitled *Cyrus John Nownejad, an individual; Estate of Edyna Sischo-Nownejad; Gita Nownejad, an individual v. City of Merced, Building and Housing Board of Appeals.*

2. Abatement Lien. City intends to and shall record a lien on the Property for the total actual costs of the abatement work plus the total amount of the City's administrative costs for its staff time spent on nuisance abatement efforts concerning the Property ("total lien amount"). The Releasing Parties are aware of City's intent to record a lien on the Property for the total lien amount and hereby consents to, and in fact will not object to, the City's lien being recorded on the Property for the total lien amount. Releasing Parties shall not sell, transfer, or otherwise dispose of the Property by sale, transfer, or otherwise unless and until the City has recorded its lien on the Property for the total lien amount. An estimate of total lien costs is attached as Exhibit A.

3. Listing and Sale of the Property. The Releasing Parties shall:

- A. Within 24 hours of the Releasing Parties execution of this Agreement, list the Property for sale with a Broker/Agent located with the city limits of the City of Merced; and

- B. Provide the City with a copy of the listing/broker agreement within 48 hours of execution but not later than 96 hours from the listing of the Property in accordance with the preceding paragraph; and
- C. Sell the Property to a bona fide purchaser for value within a reasonable period of time not to exceed one hundred and eighty (180) days unless an extension is granted in writing by the City Manager and City Attorney. The sale of the Property shall be subject to the approval of the City Manager and City Attorney; and
- D. Pay the compromise sum of Sixty-four thousand four hundred dollars (\$64,400.00) in lieu of all City liens including, but not limited to, those set forth in Exhibit A out of the escrow associated with the sale of the Property, except in case of default, in which case the full sum shall be due and payable to City.

4. Failure to Renew, Terminate, or Otherwise Cancel the Listing and/or Sale of the Property; Payment of Attorney's Fees and Costs. If the Releasing Parties elects not to renew, terminate, or otherwise cancel the listing/broker agreement, the Releasing Parties shall provide the City with ten (10) days' notice of its intent not to renew, terminate, or cancel the listing/broker agreement. In addition, the Releasing Parties shall relist the Property for sale with another Broker/Agent located within the city limits of the City of Merced within fifteen (15) days of the non-renewal, termination, or cancellation of the prior listing/broker agreement. Failure to relist or sell the Property shall entitle the City to terminate this Agreement in its sole and unfettered discretion. If City elects to terminate this Agreement for failure to relist or failure to sell the Property, Sections 1 and 2 of this Agreement shall survive such termination. In addition, City shall be entitled to the immediate payment of all of its liens by the Releasing Parties. City shall also be entitled to recover all attorneys' fees and costs associated with the defense of the actions set forth in Section 1.

5. The Releasing Parties shall not sell, transfer or attempt to transfer the Property without the written consent of the City and without having satisfied all of the City's liens including, but not limited to, the total lien amount set forth in Exhibit A to this Agreement.

6. Mutual Waiver, Release and Dismissal. Except as set forth in this Agreement including, but not limited to Sections 2 and 4, the Parties specifically and mutually release and discharge each other, including their respective officers, directors, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors, and assigns from all obligations, damages, costs, expenses, liens, attorney fees of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, past, present, or future, pertaining to the matters set forth herein.

The Parties hereto expressly waive and relinquish all of their rights and benefits, if any, arising under the provisions of California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. Voluntary and Knowing Release. This release in all respects has been voluntarily and knowingly executed by the Releasing Parties and City with the express intention of effecting the legal consequences provided in California Civil Code § 1541, that is, the extinguishment of obligations herein designated, except as otherwise provided herein. Notwithstanding the foregoing, this release does not extend to claims based on obligations created by this Agreement, claims arising after execution of this Agreement, or any claims which, by operation of law, cannot be waived.

8. No Admissions of Liability. It is understood and agreed by the Parties hereto that this Agreement represents a compromise and settlement for various matters and that the promises and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Parties and that all such Parties deny any liability to each other.

9. Attorneys' Fees and Costs. Except as set forth in this Agreement including, but not limited to Sections 2 and 4, the Parties agree that they will

bear their own attorneys' fees and costs incurred in connection with the matters which are the subject of this Agreement. In the event of any default or breach of any party hereunder, the prevailing party or parties may recover their reasonable costs and attorneys' fees caused thereby.

10. Notice. Any notice required or permitted to be given pursuant to this Agreement shall be in writing or electronically, and shall be deemed to be given when served personally or by email (to the Releasing Parties to its current counsel, Kenneth W. Ralidis, at [ken@ralidislaw.com](mailto:ken@ralidislaw.com); and to City, at [goulartj@cityofmerced.org](mailto:goulartj@cityofmerced.org)) or on the third business day after mailing if mailed by United States mail, postage prepaid, addressed to the other party hereto and/or its counsel. If Releasing Parties' counsel withdraws or ceases to represent the Releasing Parties, such notice shall be electronically served to [cnownejad@aol.com](mailto:cnownejad@aol.com), [cyrusv.cyril@gmail.com](mailto:cyrusv.cyril@gmail.com), and [gmmmdl@gmail.com](mailto:gmmmdl@gmail.com).

11. No Reliance Upon Representations by the Other Side. Each party hereto represents and acknowledges that in executing this Agreement it does not rely and has not relied upon any representation or statement made by any other party or by the agents, attorneys, or representatives of the other party with regard to the subject matter of this Agreement, or its basis, or the effects of this Agreement other than those representations specifically set forth in this written document.

12. Binding Nature; No Assignment. This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors, and assigns of each party hereto, and inure to the benefit of each of the Parties, their agents, directors, officers, employees, servants, successors, insurers, attorneys and assigns. The Parties hereto promise and guarantee that they have not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

13. Effect of Illegality. Should any part, term, or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby. Said illegal, invalid, or unenforceable

part, term, or provision shall be deemed not to be a part of this Agreement.

14. Compliance with Terms; No Waiver. The failure to insist upon compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

15. Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Claims Disputed. The Parties hereto agree that this settlement is fair, reasonable, and adequate. The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of the Action, and by executing this Agreement none of the Parties admits wrongdoing, liability, or fault in connection with either the Action or the allegations asserted in the Action.

17. Assumption of Risk. The Parties each represent that they fully understand that if the facts pertaining in any way to the Action are later found to be different from the facts now believed to be true by any Party, each of them expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall remain effective notwithstanding such differences in facts. The Parties also each represent that this Agreement was entered into under the laws in existence as of the effective date and agree that this Agreement shall remain effective notwithstanding any future changes in the law.

18. Independent Advice of Counsel. The Parties each represent that they know and understand the contents of the Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations and with respect to the execution of this Agreement.

19. Entire Agreement. No promise, inducement, understanding, or agreement not expressed has been made by or on behalf of the Parties, and this

Agreement contains the entire agreement between the Parties related to the Action.

20. Indemnity. Each Party represents that it has not assigned, transferred, or purported to assign or transfer to any person or entity any matter released herein and also agrees to indemnify and hold harmless the other party and their successors and assigns against any claims, demands, causes of action, damages, debts, liabilities, costs or expenses, including, but not necessarily limited to, attorney fees, arising out of or in connection with the Actions set forth in Section 1 or any other actions that are released herein.

21. Amendments in Writing. This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

22. Construction. The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.

23. Additional Acts. The Parties agree to take such actions and to execute such documents as are necessary to carry out the terms and purposes of this Agreement.

24. Enforcement. The Parties agree that, in any proceeding to enforce the terms of this Agreement, a court shall have the authority to award equitable relief, including but not limited to specific performance, and the Parties consent to the awarding of such equitable relief, including but not limited to specific performance. If any Party to this Agreement files a lawsuit to enforce or interpret this Agreement, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees and costs.

25. Choice of Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Merced, California.

26. Counterparts. This Agreement may be executed by facsimile and in counterparts, each of which is deemed an original and all of which shall constitute



this Agreement.

27. Effective Date. The date on which the last counterpart of this Agreement is executed shall be the effective date of this Agreement.

28. Authority to Execute. Each Party represents that they have the authority to enter into and perform the obligations necessary to provide the consideration described in this Agreement. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

IN WITNESS WHEREOF, having read the foregoing Settlement Agreement and Release of All Claims and knowing the contents thereof, are affecting this settlement and executing this Agreement.

Dated: \_\_\_\_\_  
Cyrus John Nownejad

Dated: \_\_\_\_\_  
Gita Marie Nownejad

Estate of Edyna Sischo-Nownejad

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Cyrus John Nownejad, as  
Executor of Estate of Edyna  
Sischo-Nownejad

APPROVED AS TO FORM:

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
Kenneth W. Ralidis, Esq.,  
Attorney for Releasing Parties

*{Signatures continued on next page}*

Dated: \_\_\_\_\_

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney                      Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

**EXHIBIT A**

**COST ASSESSMENT REPORT  
PUBLIC NUISANCE ABATEMENT  
1050 RAMBLER ROAD, MERCED, CA  
APN 007-022-002-000**

This Cost Assessment Report pertains to the nuisance abatement proceedings regarding property located at **1050 Rambler Road, Merced, California**, also known as Assessor's Parcel Number: 007-022-002-00

<u>ITEM</u>		<u>COST</u>
1	First American Title-Litigation Guarantee	1,060.00
2	Administrative Citations	7,400.00
3	Fire Response Costs:	
	December 18, 2015	9,020.23
	October 12, 2020	6,027.66
	December 4, 2020	1,269.97
4	Unruh Bobcat Service-Demolition	24,500.00
5	Staff Time	15,635.30
	<b>TOTAL</b>	<b><u>\$64,913.16</u></b>

**SUMMARY OF COSTS RELATED TO STAFF TIME**

<u>JOB TITLE</u>	<u>TOTAL</u>	
City Attorney	411.20	
Senior Deputy City Attorney	1,404.17	
Paralegal	1,572.98	
Fire Inspector	236.10	
Community Services Officer(s)	2,981.02	
Chief Building Official	1,710.64	
Building Admin Assistant & Planner	3,898.47	
Building Inspector	546.58	
Merced Police Patrol Officer(s)	2,874.14	
	<b>TOTAL</b>	<b><u>\$15,635.30</u></b>