

AGREEMENT OF SETTLEMENT AND
GENERAL RELEASE

1. **PARTIES:** The parties to this Agreement of Settlement and General Release (“Agreement”) are Stephen W. Rogers (“Plaintiff/Petitioner”), and City of Redlands (“Defendant/Respondent”).

2. **RECITALS:** This Agreement is made with reference to the following facts:

2.1: On April 25, 2012, Petitioner submitted a letter to Respondent requesting certain public records. Among other things, Petitioner requested an electronic copy of the City of Redlands Memorandum dated June 6, 2011 (“Memorandum”), captioned as an attorney-client privileged memorandum, which was referenced in Exhibit “1” to the September 6, 2011 Fifth Amendment to the Agreement for the Provision of Professional Environmental Consulting Services between Michael Brandman Associates and Respondent. On May 3, 2012, Respondent refused to produce the Memorandum on the grounds that it represented attorney-client privileged communications.

2.2: As a result of Respondent’s refusal to turn over the Memorandum to Petitioner, a dispute arose between the parties regarding whether or not Petitioner was entitled to the Memorandum under the California Public Records Act. That dispute resulted in the civil action currently pending in the San Bernardino County Superior Court, also known as *Stephen W. Rogers v. City of Redlands et al.*, Case No. CIVDS 1206381.

2.3: It is the intention of the parties to hereto settle and dispose of, fully and completely, any and all claims, demands, and causes of action existing as to the effective date of this agreement, arising out of, connected with, or incidental to, the demands and cause or causes of action reflected in the civil action referenced in Paragraph 2.2 above.

3. **DISMISSAL:** Concurrently with the execution of this Agreement, Petitioner shall dismiss, with prejudice, the civil action referenced in Paragraph 2.2 above, in exchange for the Respondent’s agreement to waive the right to seek recovery of attorney’s fees and costs incurred in the defense of Petitioner’s claims.

4. **GENERAL RELEASE:** In consideration of the mutual general releases contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party hereto, the parties promise, agree, and generally release as follows:

4.1: Except as to such rights or claims as may be created by this Agreement, each party hereto hereby releases, remises, and forever discharges each other party hereto from any and all claims, demands, and cause or causes of action existing as of the effective date, which arise out of any and all claims, demands, and cause or causes of action reflected in the civil action referenced in Paragraphs 2.1 and 2.2 above.

4.2: The other provisions of this Agreement notwithstanding, Petitioner is not releasing any of his rights against Respondent that were not asserted in the civil action referenced in Paragraph 2.2 above.

4.3: Each party to this Agreement specifically waives the benefit of the provisions of Section 1542 of the Civil Code of the State of California, 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 him or her must have materially affected his or her settlement with the debtor.

5. *REPRESENTATIONS AND WARRANTIES*: Each of the parties to this Agreement represents and warrants to, and agrees with, each other party hereto, as follows:

5.1: Each party has received independent legal advice from his attorneys with-respect to the advisability of making the settlement provided for herein, with respect to the advisability of executing this Agreement, and with respect to the meaning of California Civil Code Section 1542.

5.2: No party (nor any officer, agent, employee, representative, or attorney of or for any party), has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation, omission or promise of any other party (or of any officer, agent, employee, representative, or attorney of or for any party), in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

5.3: Each party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement, and all the matters pertaining thereto, as he deems necessary.

5.4: Each party or responsible officer thereof has read this Agreement and understands the contents hereof. Each party executing this Agreement on its own behalf, or officer executing this Agreement on behalf of a respective corporation, is empowered to do so, and, if executing on behalf of a corporation, thereby binds such respective corporation.

5.5: In entering into this Agreement and the settlement provided for herein, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or that any fact was concealed from them, or that his/her understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith including, without limitation on the generality of the foregoing, any

alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding between the parties hereto, regardless of any claims of misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

5.6: Each party has not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, and cause or causes of action disposed of by this Agreement.

5.7: Each term of this Agreement is contractual and not merely a recital.

5.8: Each party is aware that he may hereafter discover claims or facts in addition to or different from those he now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties to fully, finally and forever to settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or heretofore have existed-between them. In furtherance-of-such intention, the releases given herein shall be and remain in effect as full and complete mutual releases of all such matters, notwithstanding the discovery of existence of any additional or different claims of facts relative thereto.

5.9 The parties will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

6. **SETTLEMENT:** This Agreement affects the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party. Each of the parties hereto denies any liability in connection with any claim and intends hereby solely to avoid litigation and buy its peace.

7. **MISCELLANEOUS:**

7.1 This Agreement shall be deemed to have been executed and delivered within the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

7.2 This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing, signed by the parties thereto.

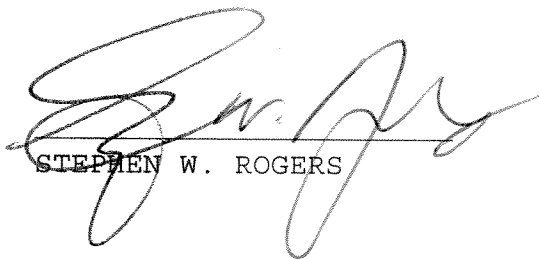
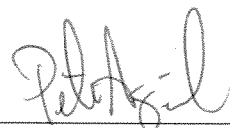
7.3 This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

7.4 Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

7.5 In the event of litigation relating to this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

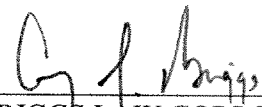
7.6 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties.

7.7 This Agreement, consisting of four-pages, is made and entered into on and as of April 10, 2013, in Redlands, California, and is effective as of this date.

 _____ STEPHEN W. ROGERS	 _____ PETE AGUILAR, MAYOR CITY OF REDLANDS
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APPROVED AS TO FORM AND CONTENT:

ATTEST:



BRIGGS LAW CORPORATION



SAM IRWIN, CITY CLERK



KINKLE RODIGER AND SPRIGGS