

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of the last day set forth on the signature page (“Effective Date”) by Marlene Wisuri, (“Plaintiff”), and the City of Duluth (“Defendant”). Plaintiff and Defendant (collectively the “Parties”), enter this Settlement Agreement for the purpose of resolving by compromise and settlement of all claims, controversies, alleged liabilities, and disputes between them.

WHEREAS, Plaintiff commenced legal action against Defendant by serving Defendant with a summons and complaint in *Marlene Wisuri v. City of Duluth* (the “Action”), wherein Ms. Wisuri alleges that she suffered injuries and damages during an incident that took place on or about September 13, 2017 at or near 600 East Superior Street, Duluth, Minnesota.

WHEREAS, as a result of settlement negotiations, the Parties agreed to a settlement concerning the Action and any potential future action arising from the facts and circumstances alleged in the Action;

NOW, THEREFORE, the Parties, desiring to fully and finally settle the Action and any other claims, known or unknown, that Plaintiff may have against Defendant and parties known or unknown, including employees, or agents of Defendant, arising from the facts alleged in the Action, and in consideration of the promises and covenants hereinafter contained, and intending to be legally bound, agree as follows:

1. **Releases:** Plaintiff provides a full, final, and general release of all claims, known or unknown, against all parties, known or unknown, arising out of the facts and circumstances alleged in the Plaintiff’s pleadings in the Action. Plaintiff agrees to hold harmless and indemnify Defendant from any cause of action, including, but not limited to, an action to recover or recoup Medicare benefits or loss of Medicare benefits, if the Centers for Medicare and Medicaid Services (CMS) determines that money set aside was spent inappropriately or for any recovery sought by Medicare, including past, present, and future conditional payments.
2. **No admission of liability or wrongdoing:** There is no admission of liability or wrongdoing by any Party, and all Parties understand that this settlement represents a mutual agreement to resolve disputed claims and buy present and future peace as between the Parties on any matter covered by the foregoing Releases.
3. **Settlement Payment:** Plaintiffs shall provide counsel for Defendant and the City with payee information and any necessary tax identification information. Within 30 days of receipt of such payee and other necessary information, as further consideration of the foregoing Release, the City shall make a Settlement Payment to Plaintiff in the amount of twenty thousand dollars (**\$20,000.00.**)
4. **Dismissal of Action:** Plaintiff shall not file the Action, which shall, by operation of law, result in a dismissal with prejudice, on the merits.
5. **Attorneys’ Fees and Costs:** Each Party shall be responsible for its own fees and costs related to the Action.

6. **Acknowledgments:** Each of the Parties acknowledges and agrees that:
- a. This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party.
 - b. Each of the Parties hereto has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that he, she, or it has read this Agreement and that he, she or it is fully aware of its contents and legal effects. All Parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.
 - c. The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the Parties hereto with no presumption in favor of one Party over another in the event of any ambiguity.
7. **Severability:** If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.
8. **Binding Effect:** This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, and assigns.
9. **Governing Law:** This Agreement shall be governed by the laws of the State of Minnesota and any question arising hereunder shall be construed or determined according to such law.
10. **Further Assurances:** The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, deeds or agreements. The Parties further agree to give reasonable cooperation and assistance to any other party or parties hereto in order to enable such other party or parties to secure the intended benefits of this Agreement.
11. **Counterparts:** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile or electronic mail, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.
12. **Integration Clause:** This Agreement contains the entire agreement between and among the Parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or

constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the Parties.

13. **Headings and Captions:** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

PLAINTIFF MARLENE WISURI

Dated: 11/13, 2019

Marlene Wisuri
Marlene Wisuri

Dated: 11/13, 2019

Approved
by Counsel:

Jennifer A. McEwen
Jennifer A. McEwen
jamcewen@falsanibalmer.com
Attorney for Plaintiff
1200 Alworth Building
306 West Superior Street
Duluth, MN 55802
Telephone: (218) 723-1990

DEFENDANT CITY OF DULUTH

Dated: _____, 2019

Approved
by Counsel:

Elizabeth A. Sellers
Assistant City Attorney
esellers@duluthmn.gov
Attorney for Defendant
411 West First Street, Rm. 410
Duluth, MN 55802

Telephone: 218-730-5281

Dated: _____, 2019

By: _____
Mayor

Dated: _____, 2019

Attest: _____
City Clerk

Dated: _____, 2019

Countersigned: _____
City Auditor