

## CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release ("Agreement") is made and entered into by Plaintiff ANTONIO PEREZ, ("PLAINTIFF") and CENTRAL BASIN MUNICIPAL WATER DISTRICT ("DEFENDANT"), hereinafter collectively referred to as "the Parties."

A. PLAINTIFF filed a civil lawsuit against DEFENDANT styled *Antonio Perez v. Central Basin Municipal Water District, a public entity, exact form unknown and/or Water District, and Does 1 through 100, inclusive*, California Superior Court, Los Angeles County Case No. BC585732 filed June 19, 2015 (which shall be referred to as "the Action" herein), alleging causes of action for Retaliation in Violation of Labor Code § 1102.5; Retaliation in Violation of False Claims Act [Cal. Gov. Code § 12653]; Retaliation in Violation of the FEHA; Breach of Contract; and Defamation.

B. DEFENDANT and PLAINTIFF each deny all of the other's respective allegations, and each denies that he or it has any legal or equitable responsibility for the damages, wages, or penalties alleged by the other.

C. The Parties desire to compromise, settle, and release all claims arising out of and related to the allegations in the Complaint, cost bills, claims for fees and costs, and any and all other claims, whether known or unknown, arising out of or based on any fact, matter, or event which occurred prior to the date of this Agreement.

NOW, THEREFORE, in consideration of the covenants set forth below, the Parties, intending to be legally bound, hereto agree as follows:

### **1. Payment of Money**

Subject to the approval of Defendant's Board of Directors ("the Board") during a Special Meeting of the Board on December 15, 2015, in consideration for the execution of the general release and other representations by the Parties hereto, DEFENDANT will pay PLAINTIFF Seven Hundred Thousand Dollars \$700,000.00 ("the Settlement Payment"), in two checks as follows: (1) a wage check in the amount of Seventy Thousand Dollars (\$70,000.00) payable to

Antonio Perez and subject to usual and customary payroll withholdings; and (2) a check for the remainder in the amount of Six Hundred Thirty Thousand Dollars (\$630,000.00) payable to "ATTORNEY-CLIENT TRUST ACCOUNT OF BALL & BONHOLTZER." In addition, DEFENDANT will pay PLAINTIFF'S share of the mediation fee. PLAINTIFF's counsel will be notified of the Board's decision regarding approval or nonapproval of the Settlement Payment on December 15, 2015. Provided that the Board approves the Settlement Payment, DEFENDANT will make the Settlement Payment within thirty (30) days of PLAINTIFF's execution of this Agreement. Plaintiff's counsel will file a Request for Dismissal with the court within five (5) days of receipt of the Settlement Payment. The non-wage portion of the Settlement Payment will be reported to the Internal Revenue Service and all applicable state and/or local taxing authorities by means of a Form 1099 as income to the PLAINTIFF. In addition, Plaintiff and Plaintiff's counsel will provide defense counsel with W9 forms reflecting their tax identification numbers.

**2. Mutual Release of All Claims**

The Parties for themselves and for their heirs, executors, administrators, successors, and assigns, hereby fully and forever release and discharge each other and their present and former partners, shareholders, members, employees, agents, directors, officers, attorneys, insurers or re-insurers and their agents and representatives, predecessors, successors, assigns, heirs, executors, administrators, related entities, affiliated entities, and all other persons, firms, corporations, associations, partnerships, of and from any and all claims, demands, causes of action, charges and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which each party now owns or holds or has at any time before this date owned or held against the other, including, but not limited to, any and all known or unknown claims, charges, demands, and causes of action: (1) which arose out of or are in any way connected with PLAINTIFF's employment with DEFENDANT or the termination of PLAINTIFF's employment with DEFENDANT; (2) which are related to or concern the allegations and defenses to

PLAINTIFF's operative Complaint herein; (3) which are related to fees and/or costs incurred in prosecuting or defending either the operative Complaint; or which are related to any of the following: (i) discrimination under any local, state, or federal law based on age, sex, race, color, national origin, religion, disability status, or any other category protected by any such law, including, but not limited to, any federal Civil Rights statutes; (ii) violation of federal or state common law, including wrongful termination, breach of express and implied-in-fact contract, breach of the covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress, defamation, invasion of privacy, breach of employment contract, fraud or negligent misrepresentation, intentional interference with contractual relations and prospective economic advantage, violation of public policy, retaliation in violation of any state or federal statute, and other torts; and (iii) failure to pay wages, overtime pay, meals and rest breaks, waiting time penalties, severance pay, commissions, relocation expenses, bonuses, sick leave, holiday pay, vacation pay; (4) violation of California *Business and Professions Code* Section 17200, *et seq.*, and/or the California *Labor Code*; or (5) which arose out of or are in any way connected with any transactions, occurrences, acts, omissions, loss, damage, or injury whatsoever resulting from any act committed or omission made prior to the date of this Agreement. This release does not apply to any claims PLAINTIFF may have pursuant to the Federal Age Discrimination in Employment Act, which claims are released in Section 3, below.

It is the Parties' intent that the execution of this Agreement will forever bar every claim, demand, cause of action, charge, and grievance against any of the Parties (including all named and unnamed persons or entities acting on behalf of DEFENDANT) existing at any time prior to and through the date of execution of this Agreement. Because this is the Parties' intent, **the Parties expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code Section 1542**, which provides:

///

///

**“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.”**

The Parties understand that the General Release does not release any claims that they cannot lawfully release.

**3. Release of Federal Age-Related Claims**

PLAINTIFF, for himself and for his heirs, executors, administrators, successors, and assigns, does hereby fully and forever release and discharge DEFENDANT and its present and former shareholders, partners, members, employees, agents, directors, officers, attorneys, insurers and re-insurers, predecessors, successors, assigns, heirs, executors, administrators, related entities, affiliated entities, and all other persons, firms, corporations, associations, partnerships from any and all claims, demands, causes of action, charges and grievances, of whatever kind or nature, whether known or unknown, suspected or unsuspected, which PLAINTIFF now owns or holds or has at any time before this date owned or held against any of them for age discrimination under the federal Age Discrimination in Employment Act of 1967 (and the Older Workers Benefit Protection Act). PLAINTIFF does not waive any rights or claims that may arise **after** the date this agreement is executed.

**A. Period for Review and Consideration of Agreement**

PLAINTIFF confirms that he has been given twenty-one (21) days to review and consider this Agreement before signing it. PLAINTIFF understands that he may use as much or as little of this period as he wishes prior to signing the Agreement.

**B. PLAINTIFF’S Right to Revoke Waiver Claims under the ADEA (and ADEA Only)**

In order to comply with the Older Workers Benefits Protection Act (29 U.S.C. Section 626(f)) and effectuate the release by PLAINTIFF of any potential claims under the Federal Age

Discrimination in Employment Act of 1967 ("ADEA"), PLAINTIFF agrees that he has carefully reviewed this Agreement and understands the terms and conditions it contains. By entering into this Agreement PLAINTIFF is giving up potentially valuable legal rights under the ADEA in exchange for the consideration paid, and he intends to be bound by all the terms and conditions set forth in this Agreement. PLAINTIFF acknowledges that the consideration given for this waiver and release is in addition to anything of value to which he was already entitled. He is entering into this Agreement freely, knowingly, and voluntarily. He has been advised to consult legal counsel before executing the Agreement, and has, in fact, been represented by counsel at all stages of the negotiation of this Agreement. If this Agreement is signed by PLAINTIFF and returned to counsel for DEFENDANT within the time specified in Paragraph 3(A), PLAINTIFF may revoke the **release of ADEA claims only**, within seven (7) calendar days of the date of PLAINTIFF's signature to this Agreement. Revocation must be made by delivering a written notice of revocation to DEFENDANT's counsel and must be received no later than the close of business on the seventh (7th) calendar day (or next business day thereafter, if the seventh calendar day is not a business day) after the PLAINTIFF signs this Agreement. If PLAINTIFF revokes any ADEA claims under this Agreement, this Agreement shall not be effective or enforceable as to any rights PLAINTIFF may have under the ADEA. In addition, this Release eliminates all penalties, such as attorneys' fees, for any action brought by PLAINTIFF challenging the validity of the ADEA waiver. In the event PLAINTIFF revokes the release of ADEA claims, he will not be entitled to Three Hundred Thousand Dollars (\$300,000) of the Settlement Payment and will receive only Four Hundred Thousand Dollars (\$400,000.00) as consideration for the general release set forth in paragraph 2.

Notice to DEFENDANT for purposes of this Agreement shall be effective if, and only if, it is delivered within the revocation period set forth above by one or more of the following means: (a) personally; (b) by overnight courier; (c) by registered mail, or (c) by facsimile to:

JOHN L. BARBER, Lewis Brisbois Bisgaard & Smith LLP, 650 Town Center Drive, Suite 1400, Costa Mesa, California 92626, telephone: (714) 545-9200, fax: (714) 850-1030.

**4. Tax Liability**

DEFENDANT's payment to PLAINTIFF described above in paragraph 1 represents a compromise of PLAINTIFF's claims against DEFENDANT. PLAINTIFF recognizes that DEFENDANT is not withholding any federal or state income taxes, FICA, or any other type of payroll deduction from the non-wage portion of the Settlement Payment and that no FICA contribution is being made by DEFENDANT on such payment. PLAINTIFF agrees that any liability for state or federal income tax payments or penalties arising from said payment shall be PLAINTIFF's sole responsibility. PLAINTIFF agrees to indemnify and to hold harmless DEFENDANT and its insurers and/or re-insurers, from any and all actions, claims, or demands brought by any tax or other authority based upon PLAINTIFF's tax obligations arising from the payment to be made pursuant to this Agreement. PLAINTIFF agrees specifically to reimburse DEFENDANT for any taxes, interest, and penalties paid by DEFENDANT and for the costs, legal fees, and any other expenses incurred by DEFENDANT as a result of any such actions, claims, or demands.

**5. Voluntary Execution**

PLAINTIFF acknowledges that he has executed this Agreement knowingly, voluntarily, and without coercion. PLAINTIFF further acknowledges that he has been advised and provided the opportunity to seek the advice of independent legal counsel and has in fact been so advised at all stages incident to the execution of this Agreement.

**6. Wages and Compensation**

PLAINTIFF further warrants and represents that he has received all wages and compensation due to him on account of his relationship with DEFENDANT.

7. **References**

DEFENDANT agrees that upon request by any employer wishing to inquire as to PLAINTIFF's former employment with DEFENDANT, DEFENDANT will provide only the dates worked and the last position held. PLAINTIFF will instruct all inquiring entities to direct such inquiries to DEFENDANT's Human Resources Manager. Representations by any other individual, including current employees of DEFENDANT, shall **not** be considered those of DEFENDANT. In addition, Kevin Hunt will provide a letter of recommendation for Plaintiff.

8. **Waiver of Future Employment**

PLAINTIFF will neither apply for employment with DEFENDANT nor seek reinstatement as an independent contractor of DEFENDANT or any entity under common ownership or control with DEFENDANT without a specific written invitation from the DEFENDANT's Board of Directors. The execution of this Agreement shall be good and sufficient cause to reject any application for employment or engagement with DEFENDANT, its successors, or any entity under common ownership or control, as defined.

9. **Severability**

If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

10. **Assignment of Claims**

The Parties hereby represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer to anyone or any entity any claims, assertions of claims, demands, actions, causes of action, or suits based upon, arising out of, pertaining to, concerning or connected with any other matters herein released. The Parties agrees to defend,

indemnify, and hold each other harmless against any claim, demand, damage, debt, liability, account, action, cause of action, attorneys' fees actually paid or incurred, cost, or expense arising out of or in connection with any such transfer, assignment, or purported or claimed transfer or assignment.

**11. Integration Clause**

The Parties acknowledge that they have entered into this Agreement voluntarily based on their own judgment and without coercion. The Parties further acknowledge that they entered into this Agreement not in reliance on any promises, representations, or statements made by the other parties, other than those contained in this Agreement. This Agreement constitutes and contains the entire agreement and understanding between the Parties and supersedes and replaces all prior negotiations and agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Agreement. The parties have read this Agreement and are fully aware of its contents and legal effects. This is an integrated document.

**12. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the respective parties, their respective legal successors, heirs, administrators, executors, assigns, and each of them.

**13. Captions**

The captions utilized herein have been inserted solely for identification and reference purposes only and shall not be used in the construction or interpretation of this Agreement. References herein to terms "herein," "hereof," "hereunder," and other similar references refer to the whole of this Agreement unless otherwise qualified. "Include," "including and similar terms are not used as words of limitation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and all pronouns stated in either the masculine, the feminine, or the neuter gender shall include the masculine, feminine, and neuter gender.

**14. Non-Admission of Liability**

PLAINTIFF acknowledges that the consideration detailed herein does not constitute an admission of liability, express or implied, on the part of DEFENDANT with respect to any fact, matter, or event arising out of and related to PLAINTIFF's employment with DEFENDANT. PLAINTIFF acknowledges that DEFENDANT is providing PLAINTIFF with the above-recited consideration solely for the purpose of resolving any and all controversies and disputes, known and unknown, between the Parties.

**15. Attorneys' Fees and Costs**

Nothing in this Agreement, or the existence of this Agreement, shall be interpreted to render PLAINTIFF prevailing party for any purpose, including, but not limited to, an award of attorneys' fees and costs. The Parties agree that each party shall bear his or its own attorneys' fees and costs.

**16. Counterparts**

This Agreement may be signed in separate counterparts, which together shall constitute one instrument.

**17. Facsimile Signatures**

A signed facsimile version of this Agreement or an emailed portable document format (PDF) version of this Agreement shall have the same force and effect as a signed original of this Agreement.

**18. Choice of Law**

This Agreement shall be construed in accordance with the laws of the State of California.

**19. Waiver**

No term or condition of this Agreement may be waived except in a writing signed by the party to be bound thereby

**20. Modification**

This Agreement may not be amended, except in writing signed by the parties hereto.

**21. Medicare and Social Security Liens and Benefits**

It is expressly understood and agreed that Plaintiff further covenants and agrees that any and all Medicare, Social Security, hospital, medical insurance coverage subrogation claims and/or any and all other type of liens or interest that is and/or could be claimed by any person and/or entity, will be fully paid, satisfied, and released from the settlement proceeds paid herein, in trust, unless and until such time as said liens and/or claims have been fully paid, satisfied or released. In this regard, Plaintiff agrees to indemnify and hold harmless Defendant and the Releasees from any claim by, through and/or under Plaintiff including, but not limited to, any direct claim by Medicare and/or Social Security for reimbursement of any funds paid by them relating to the Action, relating to any and all injuries alleged in the Action, and/or relating to any alleged injuries arising out of Plaintiff's employment with Defendant (the "Claims").

Plaintiff affirms that Plaintiff is not, and has never been, a recipient of Medicare benefits in any way related to the Claims. Plaintiff further affirms that Plaintiff has not sought medical treatment or incurred medical costs (either on behalf of Plaintiff or through Medicare) as a result of the Claims. Plaintiff agrees to indemnify and hold Employer and its insurers and reinsurers harmless from any and all liability, including, without limitation, all penalties, interest, and other costs that may be imposed by the Centers for Medicare and Medicaid Services ("CMS") for any reimbursement obligation that may arise from the monetary consideration made to Plaintiff under this Agreement. In addition, Plaintiff agrees to release as part of this agreement any right to bring any possible future action under Medicare Secondary Payer Statute against Defendant and the Releasees.

This Agreement is based upon a good faith determination of Defendant and Plaintiff to resolve a disputed claim. The Parties to this Agreement have not shifted responsibility of any medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The Parties to this Agreement resolved this matter in compliance with both state and federal law. The Parties to this Agreement made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff attests that Plaintiff is not, and has never been, a recipient of

Medicare benefits in any way related to the Claims. Plaintiff affirms that Plaintiff has not sought medical treatment or incurred medical costs as a result of the Claims. Plaintiff further affirms that Plaintiff has to date submitted no medical bills to Medicare pertaining to the Claims and has no knowledge of any lien owed to Medicare for any medical bill related to treatment obtained in connection with the Claims or any other matters released herein. To the extent such liens exist, Plaintiff agrees to satisfy any and all liens and claims of lien, including but not limited to Medicaid, Medi-Care, hospital, medical, healthcare, chiropractic, emergency, psychological, and attorney liens, which have been made or which may be made in connection with the Claims, or which relate in any way to the Claims which are the subject of this Agreement.

Should CMS determine that Plaintiff is entitled to Medicare benefits and should CMS or any other government agency seek reimbursement from the settlement funds identified in Paragraph 3 herein, Plaintiff is solely and exclusively responsible for such reimbursement and neither Defendant nor Releasees will contribute any additional monies to satisfy Plaintiff's reimbursement obligations. Further, should CMS or any other agency claim that any Medicare reimbursement is owed by Defendant or Releasees, Plaintiff shall indemnify Defendant and Releasees from any and all claims, liens, Medicare conditional payments, and rights to payment, known or unknown which relate in any way to the Claims. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages, including without limitation multiple damages against Defendant and/or Releasees relating to payment by such governmental entity or anyone acting on behalf of such governmental entity, relating to the Claims, Plaintiff will indemnify Defendant and Releasees, and hold Defendant and 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.

Plaintiff has been apprised of his right to seek assistance from legal counsel of his choosing or directly from Social Security Administration or other government agencies regarding the impact this Agreement may have on Plaintiff's current or future entitlement to