

## **SETTLEMENT AGREEMENT & RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (the "Agreement") is entered into by and between Defendant City of Bell ("City"), a charter city and municipal corporation, and Plaintiff Rene Martinez ("Plaintiff"), ("City" and "Plaintiff" are sometimes referred to herein together as the "Parties") to terminate and release fully and finally all disputes arising out of, or related to, the Incident and Action defined hereinafter.

### **RECITALS**

WHEREAS, Plaintiff alleges that the City is liable for a dangerous condition of public property (i.e. pothole in the roadway) at the intersection of Gage and Walker Avenues which resulted in a bicycle accident on or about May 16, 2011 involving a bicycle ridden by Plaintiff ("Incident").

WHEREAS, as a result of the Incident, Plaintiff filed a complaint against the City in the Superior Court of the State of California, County of Los Angeles, entitled *Rene Martinez v. City of Bell* ("Martinez case" or "Action"), LASC Case No. 12C00102, on or about January 13, 2012, seeking damages for the alleged personal injuries and property damage caused by the Incident.

WHEREAS, all Parties hereto wish to terminate this Action and to avoid the uncertainty and costs of trial, and any potential appeals therefrom, and to resolve fully and finally all disputes that may exist by and between the Parties concerning the Incident and as set forth in the Action.

### **AGREEMENT**

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, both Parties hereto agree as follows:

1. **Settlement.** Following the execution of this Agreement by Plaintiff, and execution by his counsel, as well as receipt of this executed Agreement, and both an executed Request for Dismissal with prejudice and W9 forms for all parties listed on the check, the City shall pay Plaintiff the sum of Six Thousand Seven Hundred Dollars and No Cents (\$6,700.00) in full consideration and settlement of any and all claims by Plaintiff (the "Settlement Sum"). Said Settlement Sum constitutes a full and complete settlement and compromise of any and all disputed claims arising out of or related to the Incident and the Action by Plaintiff. Payment will be made in the form of a check made payable as follows: Six Thousand Seven Hundred Dollars and No Cents (\$6,700.00) to "Rene Martinez and his counsel of record, Ilu J. Ozekhome, Esq. and prior counsel Howard A. Goldstein, Esq."

2. **Personal Injury Claims.** The Parties acknowledge and agree that the payment of said Settlement Sum shall and does hereby fully and totally compensate Plaintiff for any and all loss of earnings, property damage, personal and physical injury and sickness, including without limitation any pain, suffering, emotional distress, anxiety or trauma, and any physical

manifestations thereof, and the medical treatments related thereto, arising out of or related to the Incident and as alleged in the Action against the City.

3. **Dismissal of the Action.** Plaintiff shall cause the Action to be dismissed in its entirety against the City, with prejudice, with all Parties to bear their own costs and attorneys' fees, within five (5) calendar days of receipt of the Settlement Sum. Pursuant to this Agreement, Plaintiff agrees to prepare and sign a Request for Dismissal with prejudice to be attached hereto as Exhibit "A", concurrently with the signing of this Agreement.

4. **General Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Plaintiff and the City do hereby release and forever discharge the "Releasees" hereunder, consisting of Plaintiff, the City, the City's elected or appointed public officials, the City's officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which Plaintiff or the City now has or may hereafter have against the Releasee, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, any Claims constituting, arising out of, based upon, or relating to the Action, as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged in the respective pleadings filed in said suit, or that could be alleged out of the Incident.

5. **Indemnity.** Plaintiff agrees to indemnify and defend the City, the City's officers, agents and employees against, and will hold and save them and each of them harmless from, any and all third party actions, suits, claims, liens, damages to persons or property, losses, costs, penalties, obligations, or liabilities, including any and all healthcare provider liens, that may be asserted or claimed by any person, firm or entity against the settlement proceeds being paid to Plaintiff under this Agreement.

6. **Covenant to Pay Liens and Outstanding Balances.** Plaintiff shall be responsible for any and all liens arising from, based upon, or relating to the Incident, including without limitation, any and all liens against Plaintiff.

7. **Discovery of Different or Additional Facts.** Plaintiff acknowledges that he may hereafter discover facts different from or in addition to those that he now knows or believes to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the Release set forth in Paragraph 4 of this Agreement, and expressly agrees to assume the risk of the possible discovery of additional or different facts, and Plaintiff agrees that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

8. **Release of Unknown Claims.** The Release set forth above in Paragraph 4 of this

Agreement is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which Plaintiff may have as a result of the Action and the Incident, except for any claims which may arise from the terms of this Agreement.

9. **Waiver of Civil Code Section 1542.** Further, Plaintiff expressly agrees to waive and relinquish all rights and benefits he may have against the City and the Releasees under Paragraph 4 of this Agreement based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

**" §1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

10. **No Other Pending Actions.** Plaintiff represents that he has not filed any complaints or charges (other than the Action referenced above) against the Releasees with any local, state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge against the City, or its predecessors, successors, heirs, assigns, employees, officers, directors, agents, or attorneys, whether previously or hereafter affiliated in any manner, on behalf of Plaintiff, whenever filed, Plaintiff will request such agency or court to withdraw and dismiss the matter forthwith.

11. **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of a disputed claim. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any party hereto, or any of its employees or former employees, or any affiliated person(s) or entity/ies, including the City's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to Plaintiff.

12. **No Assignment of Claims.** Plaintiff warrants that he has made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

13. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

14. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further

represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that prior to signing this Agreement they have conferred with their legal counsel to the extent desired concerning the legal effect of this Agreement.

15. **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective legal counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

17. **Singular and Plural.** Whenever required by the context, as used in this Agreement the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

18. **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

19. **Injunctive Relief for Breach.** The Parties acknowledge and agree that any material violation of this Agreement is likely to result in immediate and irreparable harm for which monetary damages are likely to be inadequate. Accordingly, the Parties consent to injunctive and other appropriate equitable relief upon the institution of proceedings therefor by any other party in order to protect the rights of the Parties under this Agreement. Such relief shall be in addition to any other relief to which the Parties may be entitled at law or in equity.

20. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

21. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

22. **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

23. **Waiver.** Failure to insist on 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.

24. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

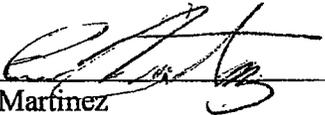
26. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have agreed to all of the terms and conditions herein and have executed this Settlement Agreement and Release of All Claims, consisting of a total of six (6) pages, on the dates set forth below.

“PLAINTIFF”

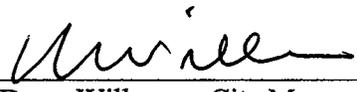
Dated: 14, 2012

By:   
Rene Martinez

“CITY”

Dated: 2/7/13, 2012

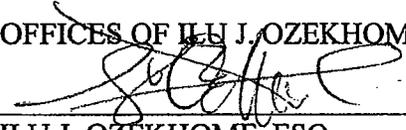
CITY OF BELL

By:   
Doug Willmore, City Manager

APPROVED AS TO FORM:

Dated: 20th, Dec., 2012

LAW OFFICES OF ILU J. OZEKHOME

By:   
ILU J. OZEKHOME, ESQ.  
Attorney for PLAINTIFF

Dated: \_\_\_\_\_, 2012

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
GRACE Y. JO, ESQ.  
Attorney for CITY OF BELL

[END OF SIGNATURES & END OF AGREEMENT]

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“PLAINTIFF”

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Rene Martinez

“CITY”

Dated: \_\_\_\_\_, 2012

CITY OF BELL

By: \_\_\_\_\_  
Doug Willmore, City Manager

APPROVED AS TO FORM:

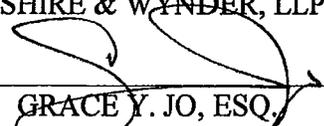
Dated: \_\_\_\_\_, 2012

LAW OFFICES OF ILU J. OZEKHOME

By: \_\_\_\_\_  
ILU J. OZEKHOME, ESQ.  
Attorney for PLAINTIFF

Dated: Dec., 2012

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
  
GRACE Y. JO, ESQ.  
Attorneys for CITY OF BELL

[END OF SIGNATURES & END OF AGREEMENT]