SETTLEMENT AGREEMENT & RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the "Agreement") is entered into by and between City of Bell ("City"), a charter city and municipal corporation, Plan Administrator/Board of Trustees of City of Bell Supplemental Retirement Plan ("Plan Administrators"), Wells Fargo Bank, N.A. ("Wells Fargo") and Xavier Vargas ("Vargas"), ("City," "Plan Administrators," "Wells Fargo" and "Vargas" are sometimes referred to herein together as the "Parties") to terminate and release fully and finally all disputes.

RECITALS

WHEREAS, on November 28, 2011, Luis Ramirez, et al. filed a complaint in the Superior Court of the State of California, County of Los Angeles, entitled *Luis Ramirez, et al. v. City of Bell, et al.* ("*Ramirez* case"), LASC BC474118;

WHEREAS, through their complaint in the *Ramirez* case, the plaintiffs sought benefits under the Supplemental Retirement Plan ("SRP") and the City's medical benefits plan;

WHEREAS, on January 18, 2013 the City's Motion for Summary Judgment in the *Ramirez* case was granted, and on February 7, 2013 judgment was entered in the City's favor;

WHEREAS, on April 3, 2013 plaintiffs in the *Ramirez* case filed an appeal ("*Ramirez* appeal");

WHEREAS, on September 4, 2012, the City filed a complaint in the Superior Court of the State of California, County of Los Angeles, entitled *City of Bell v. Avila* ("*Avila* case"), LASC Case No. BC491531 (referred to together with the *Ramirez* case and the *Ramirez* appeal as the "Action");

WHEREAS, on October 9, 2012, the City filed its First Amended Complaint ("FAC") in the *Avila* case;

WHEREAS, through its FAC in the *Avila* case, the City seeks to invalidate the SRP and Medical Benefits which the City contends were improperly created by the former City Council;

WHEREAS, Vargas was named as a defendant in the *Avila* case and a plaintiff in the *Ramirez* case; and

WHEREAS, all Parties hereto wish to resolve fully and finally all disputes which may exist by and between the Parties.

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, the Parties hereto agree as follows:

1. **Settlement.** Following the execution of this Agreement by Vargas and receipt of this executed Agreement by the City, the City shall pay Vargas the sum of Ten Thousand Dollars and Zero Cents ($10,000.00) (the "Settlement Sum") in full consideration and settlement of the Action between the Parties. Pursuant to Paragraph 2 of this Agreement, the City and Ramirez shall file Requests for Dismissal of the *Avila* case, the *Ramirez* case and the *Ramirez* appeal . with respect to each other and the Plan Administrators and Wells Fargo. Payment will be made in the form of a check made payable as follows: Ten Thousand Dollars and Zero Cents ($10,000.00) to "Xavier Vargas." Payment shall be made within ten (10) working days after the City has signed the Agreement and has received an IRS Form W-9 from Vargas, but in no event shall payment be made earlier than the eighth (8th) day after Vargas signs the Agreement. The IRS Form 1099R issued by the City in connection with this transaction shall indicate the payment was a lump sum pension distribution.

2. **Dismissal of the Action.** Within five (5) business days after the City pays the Settlement Sum, (a) the City shall cause the *Avila* case to be dismissed, in its entirety, with respect to Vargas, with prejudice, with all Parties to bear their own costs and attorneys' fees, and (b) Vargas shall cause to be dismissed the *Ramirez* case and the *Ramirez* appeal, in their entirety, with respect to the City, the Plan Administrators and Wells Fargo, with prejudice, with all Parties to bear their own costs and attorneys' fees.

3. **Entire Consideration.** Execution of this Agreement, payment of the Settlement Sum and the filing of the Requests for Dismissal pursuant to Paragraph 2 of this Agreement together constitute a full and complete settlement and compromise of any and all disputed claims. Vargas agrees that the Settlement Sum and the described dismissal of Vargas with prejudice from the Action shall constitute the entire consideration provided to him under this Agreement and that he will not seek any further compensation from the City, the Plan Administrators or Wells Fargo for any other claimed damage, costs, or attorneys' fees in connection with the matters encompassed in this Agreement.

4. **Mutual General Release Between Vargas and the City.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Vargas does hereby release and forever discharge the "Releasees" hereunder, consisting of the Plan Administrators and the City, its elected or appointed public officials, its 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 Vargas now has or may hereafter have against the Releasees, 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 suits, or are related in any way to the SRP or the Medical Benefits. Further, the City and Plan Administrators do hereby release and forever discharge Vargas of and from any and all manner of 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 City and Plan Administrators now have or may hereafter have against Vargas, 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, 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 suits, or are related in any way to the SRP or the Medical Benefits.

a. **Discovery of Different or Additional Facts.** The City and Vargas acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe 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 agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

b. **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 Paragraph 4 and is intended to encompass all known and unknown, foreseen and unforeseen Claims which the City and Vargas may have against each other, except for any claims which may arise from the terms of this Agreement.

c. **Waiver of Civil Code Section 1542.** Further, the City and Vargas expressly agree to waive and relinquish all rights and benefits 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."

5. **Mutual General Release Between Vargas and Wells Fargo.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Vargas does hereby release and forever discharge Wells Fargo, its subsidiaries and affiliates, their officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, representatives, attorneys, and all persons acting by, through, under or in concert with them, or any of them (collectively, "WFB"), 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 against WFB"), which Vargas now has or may hereafter have against WFB, 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 against WFB 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 suits, or are related in any way to the SRP or the Medical Benefits. Further, Wells Fargo does hereby release and forever discharge Vargas of and from any and all manner of 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 against Vargas"), which Wells Fargo now has or may hereafter have against Vargas, 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 against Vargas 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 suits, or are related in any way to the SRP or Medical Benefits.

a. **Discovery of Different or Additional Facts.** Vargas and Wells Fargo acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe 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 5 of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

b. **Release of Unknown Claims.** The Release set forth above in Paragraph 5 of this Agreement is a release of <u>ALL</u> claims, demands, causes of action,

obligations, damages, and liabilities of any nature whatsoever that are described in Paragraph 5 and is intended to encompass all known and unknown, foreseen and unforeseen claims which Vargas and Wells Fargo may have as a result of the Action, except for any claims which may arise from the terms of this Agreement.

c. **Waiver of Civil Code Section 1542.** Further, Vargas and Wells Fargo expressly agree to waive and relinquish all rights and benefits 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."

6. **Release of Rights and Claims Under Age Discrimination in Employment Act and Older Workers Benefit Protection Act.** The following provisions apply notwithstanding anything to the contrary otherwise provided in this Agreement:

a. The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary.

b. In consideration of the dismissal of Vargas with prejudice from the *Avila* case and the Settlement Sum, provided in this Agreement and Release, Vargas acknowledges that he knowingly and voluntarily, for just consideration in addition to anything of value to which Vargas was already entitled, specifically waives and releases any and all existing rights and claims he may have against Releasees under the ADEA and/or OWBPA. This waiver does not extend to rights or claims that may arise after the date on which this Agreement and Release was fully executed.

c. Vargas acknowledges that he has been advised to consult with an attorney of his choosing before executing this Agreement and Release.

d. Vargas has discussed this waiver and release with, and been advised with respect thereto by, Vargas's counsel of choice, or acknowledges having the opportunity to do so and having freely chosen not to use counsel, and

Vargas does not need any additional time within which to review and consider this Agreement.

e. Vargas acknowledges that this Agreement and Release is written in a manner designed to be understood by Vargas and that he has read it carefully and understands its terms.

f. Vargas acknowledges that under the ADEA, the OWBPA and similar age discrimination laws, he has twenty-one (21) days from receipt of this Agreement to consider it before signing it. Vargas may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one calendar days.

g. Vargas has the right to revoke this Agreement and Release within seven (7) days following his execution of the Agreement, and this Agreement and Release shall not become effective until expiration of that seven-day period.

h. To revoke this Agreement, a written notice of revocation by Vargas must be delivered to **June S. Ailin., at Aleshire & Wynder, LLP, 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245** within the seven-day period stated, and must state "I hereby revoke my acceptance of our Settlement Agreement and Release of All Claims."

7. **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of disputed claims. 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 an affiliated person(s) or entity/ies, including the City's attorneys and Wells Fargo, all of whom have consistently taken the position that they have no liability whatsoever to Vargas.

8. **No Assignment of Claims.** Vargas 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.

9. **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.

10. **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 City further specifically represents that prior to signing this Agreement, it conferred with its legal counsel to the extent desired concerning the legal effect of this Agreement. Vargas further specifically represents that prior to signing this Agreement he conferred with his legal counsel and tax advisor to the extent desired concerning the legal effect and tax consequences of this Agreement, and that he may be giving up important legal rights by entering into this Agreement and/or incurring tax liabilities. Vargas acknowledges and assumes all responsibility for the payment of any taxes due on the Settlement Sum, including interest and penalties due, if any.

11. **Counterparts; Authorization of Agreement and Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement. The City represents and warrants that this Agreement was approved by the City Council in accordance with the Brown Act and that the individual signing the Agreement on behalf of the City has been duly authorized by the City Council to sign this Agreement on behalf of the City.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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. The Parties consent to the exclusive jurisdiction of the Superior Court of California, County of Los Angeles, with respect to all matters relating to and referred to in this Agreement.

20. **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.

21. **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 Parties hereto have read all of the foregoing, understand the same, have agreed to all of the terms and conditions herein and have executed this Settlement Agreement and Release of Claims, consisting of a total of ten (10) pages, on the dates set forth below.

"VARGAS"

Dated: 6-25, 2014

By: _____
Xavier Vargas

"CITY"

CITY OF BELL

Dated: 6/20, 2014

By: _____
Doug Willmore, City Manager

ATTESTED TO BY:

By: _____
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Dated: 7/8, 2014

By: _____
Jane S. Ailin, Esq.
Attorneys for the CITY OF BELL and the PLAN ADMINISTRATORS

"WELLS FARGO"

WELLS FARGO BANK, N.A.

Dated: _____, 2014

By: _____
Tim Shortt
Regional Director

[END OF SIGNATURES & END OF AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have read all of the foregoing, understand the same, have agreed to all of the terms and conditions herein and have executed this Settlement Agreement and Release of Claims, consisting of a total of ten (10) pages, on the dates set forth below.

"VARGAS"

Dated: _____, 2014

By: _____
Xavier Vargas

"CITY"

CITY OF BELL

Dated: _____, 2014

By: _____
Doug Willmore, City Manager

ATTESTED TO BY:

By: _____
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Dated: _____, 2014

By: _____
June S. Ailin, Esq.
Attorneys for the CITY OF BELL and the PLAN ADMINISTRATORS

"WELLS FARGO"

WELLS FARGO BANK, N.A.

Dated: 6/12, 2014

By: _____
Tim Shortt
Regional Director

[END OF SIGNATURES & END OF AGREEMENT]