

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

This Settlement Agreement and General Release of All Claims ("Agreement") is entered into by and between BELFOR USA GROUP, INC., a Colorado corporation ("Contractor" or "Belfor"), and the CITY OF BELL, a California charter city and municipal corporation ("City"), (collectively, the "Parties", and individually, "Party"), effective as of the date all Parties have signed the Agreement ("Effective Date") with reference to the following recitals:

### **RECITALS**

WHEREAS, on or about November 3, 2014, the City suffered a fire at the City's Community Center, located at 6250 Pine Ave., Bell, California 90201, resulting in extensive property damage throughout the building. The damage included that to the vinyl planked floor, both from the fire and from the water used by the fire department when trying to extinguish the fire. As a result, the floor had to be replaced in its entirety.

WHEREAS, as a result of the fire, the City Council ratified emergency restoration work to return the Community Center to its form prior to the fire. Following the submission of bid proposals, Contractor was selected to perform the needed restoration work.

WHEREAS, the City and Contractor entered into three agreements for the restoration work, the first two of which have been fully performed by both Parties. The third contract, which is the subject of this Agreement, was entered into on or about December 9, 2014, and was amended once through Amendment No. 1 to Agreement for Contract Service (collectively, "Phase 2 Contract"). The Phase 2 Contract provided for a total compensation of \$262,447.37 ("Original Contract Sum"). The Phase 2 Contract is attached hereto as "Exhibit A."

WHEREAS, the Phase 2 Contract required the installation of a new vinyl plank floor in the Community Center, which Contractor installed in March of 2015 per the specifications approved by the City. The specifications did not include the installation of a moisture barrier because the Community Center did not have a moisture barrier before the fire. Belfor also did not recommend a moisture barrier before or during the installation of the new floor.

WHEREAS, a dispute between the Parties arose when, after the floor was installed, the City immediately discovered that the new flooring was defective and in need of replacement due either to moisture from the cement slab underneath the flooring or because the flooring was not appropriate for commercial use ("Dispute").

WHEREAS, the remainder of the restoration work set forth in the Phase 2 Contract has been completed by Contractor to the satisfaction of the City;

WHEREAS, the City has not paid any portion of the Original Contract Sum prior to the Effective Date of this Agreement;

01135.0006/305572.3

WHEREAS, to resolve the Dispute, Contractor agreed to reduce the Original Contract Sum by a specified amount so that the City can use those funds to hire a new contractor to re-install the flooring;

WHEREAS, to determine the appropriate amount of the reduction, the City conducted a bidding process receiving numerous bids and selected the lowest responsible bidder ("New Contractor"), for a bid of \$35,000 to replace the defective vinyl flooring described in these Recitals, which includes a performance bond guaranteeing the same, and concurrent herewith the City will award a contract to the New Contractor;

WHEREAS, the Parties have now agreed to reduce the Original Contract Sum by \$35,00 to resolve this Dispute and to resolve fully and finally all other disputes which may exist by and between the Parties arising from the work to be performed under the Phase 2 Contract, as set forth in this Agreement.

### 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, all Parties hereto agree as follows:

1. **Recitals.** All of the foregoing Recitals above are to be deemed true and material statements upon which this Agreement is based.

2. **Settlement.** As provided for by this Agreement, the Parties desire to fully settle all outstanding claims, burdens, obligations, liabilities, costs and expenses associated with the Dispute and the Phase 2 Contract, except as provided herein. Following the mutual execution and delivery of this Agreement, the Parties agrees to do the following:

a. The Parties agree to reduce the Original Contract Sum of the Phase 2 Contract by thirty-five thousand dollars (\$35,000), from \$262,447.37 to \$227,447.37 ("Amended Contract Sum"), in order that City use the \$35,000 to retain New Contractor to replace the defective flooring that is the subject of the Dispute. As of the effective date of this Agreement, the City has received a bid of \$35,000 from New Contractor, and received a performance bond as guaranty of the same and will enter into a contract with New Contractor for the performance of the work. Belfor shall not be responsible for the work performed by the New Contractor;

b. Except for the flooring work described in Subsection (a) above and in the Recitals, the City shall deem complete and accept all other work completed by Contractor under the Phase 2 Contract;

c. The City shall pay the Amended Contract Sum to Contractor for the work completed under the Phase 2 Contract within fifteen (15) business days of the Effective Date. Contractor shall not be entitled to any additional money or compensation, including interest, other than the Amended Contract Sum for work completed under the Phase 2 Contract;

d. The City shall release Contractor from all claims on the work contracted for in the Phase 2 Contract, except for: (a) any and all warranties, whether express or implied, provided for by the Phase 2 Contract; and (b) any matter related to the provisions of Article 5, entitled Insurance, Indemnification, and Bonds, of the Phase 2 Contract, which shall remain in full force and effect. This Subsection (d) shall not apply to the flooring work described in Subsection (a) and in the Recitals and to be performed by New Contractor.

3. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Contractor do hereby each mutually release and discharge the "Releasees" hereunder, consisting of City and Contractor (including, without limitation, any Parties' elected and/or appointed public officials, officers, employees, and agents, including, but not limited to each and all of them and (as the case may be) each of the Parties' respective associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, lawyers, 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 the Parties now have 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 for any and all Claims constituting, arising out of, or based upon the Dispute or Phase 2 Contract. **This Mutual Release shall not apply to the warranties and insurance, indemnity, and bond provisions as provided above in Section 2(d) of this Agreement.**

4. **Indemnity.** Contractor agrees to indemnify and defend City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, liens, damages to persons or property, losses, costs, penalties, obligations, or liabilities (herein "Claims or Liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with this Agreement and Contractor's work under the Phase 2 Contract, including, but not limited to, Claims and Liabilities by any insurance and/or bonding companies. Contractor shall defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith, and any judgment resulting therefrom.

5. **Discovery of Different or Additional Facts.** The Parties 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 3 of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, and the Parties agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

6. **Release of Unknown Claims.** Except as expressly provided herein this Agreement, the Release set forth above in Paragraph 3 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 the Parties may have arising out of the Dispute or Phase 2 Contract, except for any claims which may arise from the terms of this Agreement.

7. **Waiver of Civil Code Section 1542.** Except as provided herein this Agreement, the Parties expressly agree to waive and relinquish all rights and benefits they may have against the each other under Paragraph 3 of this Agreement based on Section 1542 of the Civil Code of the State of California. The Parties understand and acknowledge that Section 1542 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."**

  
Contractor's Initials

\_\_\_\_\_  
City's Initials

After reading and understanding Civil Code section 1542, the City and Contractor voluntarily waive the application of Section 1542 to this Agreement, except as expressly provided herein this Agreement. The City and Contractor understand and acknowledge that the significance and consequence of this waiver is that even if the City or Contractor should eventually suffer additional damages arising out of the Dispute or Phase 2 Contract, the City and Contractor will not be permitted to make any claim against the other party for those damages. Furthermore, the City and Contractor acknowledge that the City and Contractor intend these consequences even as to claims for damages that may exist, and which, if known, would materially affect the City or Contractor's decision to execute this Agreement, regardless of

01135.0006/305572.3

whether the City or Contractor's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

8. **No Other Pending Actions.** The Parties represent that they have not filed any complaints, claims, or charges against each other 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 either of the Parties, or its respective predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of such Party, whenever filed, the other Party will request such agency or court to withdraw and dismiss the matter forthwith.

9. **No 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.

10. **No Assignment of Claims.** The Parties each warrant that they have made no assignment, and will make no assignment, of any claim, cause of 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.

11. **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.

12. **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 counsel to the extent desired concerning the legal effect of this Agreement.

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

14. **Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and

01135.0006/305572.3

costs in all respects and as to all matters relating to this Agreement, the Dispute, and/or the Phase 2 Contract.

15. **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.

16. **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.

17. **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.

18. **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.

19. **No Third Party Beneficiaries.** No person or entity shall be deemed to be a third Party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the Parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as set forth in Paragraph 11, above.

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

01135.0006/305572.3

time or times.

24. **Governing Law and Jurisdiction.** 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. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Los Angeles, California.

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.

27. **Authority to Bind.** Each of the Parties represents, warrants and agrees that any person executing this Agreement on its behalf has the full right and authority to enter this Agreement on behalf of that Party and has the full right and authority to execute this Agreement and to fully bind that Party to the terms and obligations of this Agreement and that the execution and consummation of this Agreement will not result in any breach of, contravene any provision of, violate or constitute a default under any article of incorporation, charter, bylaw, mortgage, indenture, contract, agreement, instrument, judgment, statute, rule, or regulation to which that Party is subject, and there is no claim or assertion or potential claim or assertion to the contrary. Each of the persons signing this Agreement on behalf of one or more of the Parties hereto makes the same warranties reference above.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release of All Claims, consisting of a total of 8 pages, and agree to all of the above terms and conditions, on the dates set forth below.

**CITY:**  
CITY OF BELL, a charter city

  
Alicia Romero, Mayor

ATTEST:

  
Angela Bustamante, Assistant City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

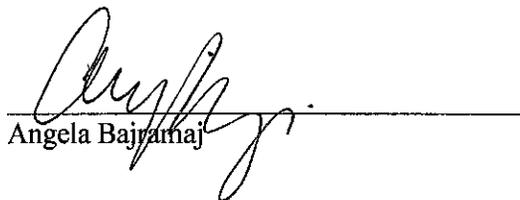
  
David J. Aleshire, City Attorney

**CONTRACTOR:**  
BELFOR USA GROUP, INC., a Colorado Corporation dba BELFOR PROPERTY RESTORATION

By:   
Name: PAUL SIDOROWSKI  
Title: CONTROLLER

Address: 185 Oakland Ave Ste 150  
Birmingham, MI 48009

**APPROVED AS TO FORM:**

  
Angela Bajramaj