

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is made and entered into this 16th day of April, 2013 ("Effective Date"), by and among Plaintiffs Charles E. Holcombe Jr., Sandra Gillam, James Gillam, Amy Holcombe, and Timothy Holcombe (collectively "Plaintiffs"), and the City of Redlands, a municipal corporation ("City"). Plaintiffs and City are together referred to herein as the "Parties" and, individually, as a "Party."

RECITALS

WHEREAS, there is now pending in the Superior Court of San Bernardino County an action by Plaintiffs against City bearing case number CIVD1211306 (the "Lawsuit"); and

WHEREAS, the subject matter of the Lawsuit concerns claims for damage to property owned by Plaintiffs commonly known as 624 W. State Street in the City of Redlands (the "Property") from the failure of a storm drainage channel maintained by City, which claims are denied by City; and

WHEREAS, City has previously made payments in the sum of \$35,000 for lost rent, and in the sum of \$110,000 as an advance toward the cost of repair the Property, which sums were paid in consideration for partial releases from Plaintiffs; and

WHEREAS, the Parties in good faith desire and intend, by this Agreement, to resolve, compromise and settle any and all disputes, claims and controversies between or among them pertaining to the issues in the Lawsuit;

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

1. Settlement Payment. Within ten (10) business days of the Effective Date of this Agreement, City shall pay Plaintiffs the additional amount of \$244,460 as full and final settlement of the Lawsuit. This payment, together with the above stated sums, is referred to as the "Settlement Sum" and constitutes a full and complete settlement and compromise of the Lawsuit and of all disputed claims arising out of or related to the Lawsuit between the Parties. Payment will be made through a check made payable to "Trust Account of Scott Showler."

2. Dismissal of Action. Plaintiff shall cause the Lawsuit to be dismissed in its entirety against City, with prejudice, with all Parties to bear their own costs and attorneys' fees, within seven (7) calendar days of payment of the Settlement Sum to Plaintiffs.

3. Mutual Release. For valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Plaintiffs do hereby release and forever discharge each other and their respective "Releasees" hereunder, consisting of their respective

elected officials, officers, agents, owners, trustors, settlors, trustees, members, employees, attorneys, co-owners, spouses, and/or any other persons acting on their behalf 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, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which the Parties now have or hereafter may have against each other and/or 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, the Lawsuit as well as any matters, causes, or things whatsoever that were, or have been, or could in any way have been, alleged in the Lawsuit.

4. Release of Unknown Claims. The Parties intend and agree that the Release set forth above in Paragraph 3 of this Agreement is to be interpreted as broadly as possible, and 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 as a result of the Lawsuit except for any claims which may arise from the terms of this Agreement.

5. Waiver of Civil Code Section 1542. Further, the PARTIES expressly agree to waive and relinquish all rights and benefits they may respectively have against each other and the Releasees under Paragraph 3 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 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."

City's initials: RA

Plaintiffs' initials: SD. [Signature] [Signature]

6. 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 this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the Parties agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or 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

elected officials, officers, agents, owners, trustors, settlors, trustees, members, employees, attorneys, co-owners, spouses, and/or any other persons acting on their behalf 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, losses, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which the Parties now have or hereafter may have against each other and/or 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, the Lawsuit as well as any matters, causes, or things whatsoever that were, or have been, or could in any way have been, alleged in the Lawsuit.

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City's initials: _____

Plaintiffs' initials: SM [Signature] [Signature] [Signature] TA

6. **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 this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, injuries, damages and/or claims and the Parties agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts, injuries, damages and/or 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 any affiliated persons or entities, including the City's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to the other Parties.

8. No Assignment of Claims. The Parties each warrant that they have 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, officers, owners, members 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. 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.

11. 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.

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 in such action shall be entitled to reasonable attorneys' fees (including attorneys' fees for a Party's use of in-house counsel) and costs pertaining to such action, in addition to any other relief to which that Party may be entitled.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

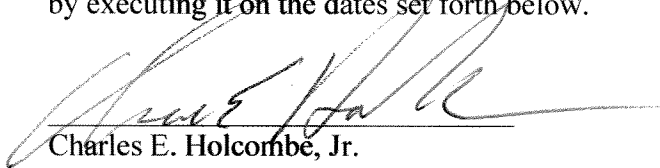
19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties for the subject matter herein. The Parties each acknowledge 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.

20. Modifications. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by the Parties hereto in order to become effective.

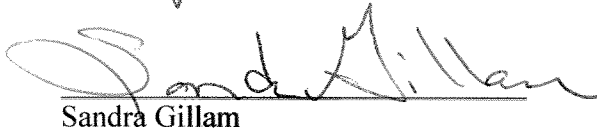
21. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity that is not a Party to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement.

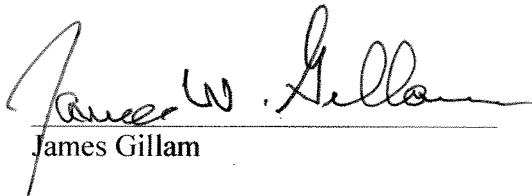
22. Authority to Sign. The persons executing this Agreement on behalf of Plaintiffs warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party and to bind that Party, including its members, agents and assigns, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

IN WITNESS WHEREOF, the undersigned have read, understand and agree to all of the above terms and conditions of this Agreement, consisting of a total of 6 pages, by executing it on the dates set forth below.


Charles E. Holcombe, Jr.

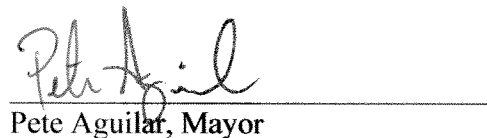

Amy Holcombe


Sandra Gillam


James Gillam

Timothy Holcombe

CITY OF REDLANDS

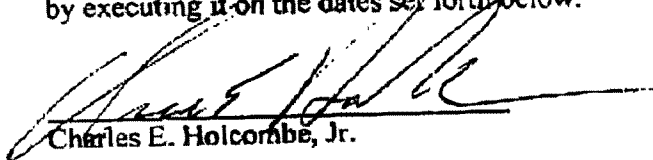
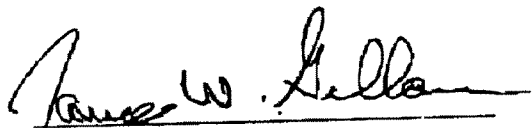
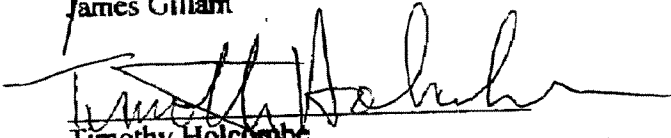

Pete Aguilar, Mayor

ATTEST:


Sam Irwin, City Clerk

22. Authority to Sign. The persons executing this Agreement on behalf of Plaintiffs warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party and to bind that Party, including its members, agents and assigns, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

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Charles E. Holcombe, Jr.
Amy Holcombe
Sandra Gillam
James Gillam
Timothy Holcombe

CITY OF REDLANDS


Pete Aguilar, Mayor

APPROVED AS TO FORM

For PLAINTIFF:



Scott Showler, Esq.

For CITY:



Daniel McHugh, City Attorney