

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into this 13 day of October, 2016 ("Effective Date"), by and between B & L Pool Repair & Supply, Inc. ("B & L"), an Arizona corporation, on the one hand, and City of Glendale ("City"), on the other. When referred to collectively herein, the foregoing shall be referred to as the "Parties."

**RECITALS**

A. On March 8, 2016, B & L filed a complaint in Maricopa County Superior Court, captioned *B & L Pool Repair & Supply Company, Inc. v. City of Glendale*, Case No. CV2016-051713 (the "Lawsuit"), in which, as amended, B & L alleged that the City violated Arizona's Regulatory Bill of Rights.

B. The City filed its Answer to B & L's First Amended Complaint on April 26, 2016, in which it denied liability with regard to the claims asserted in the Lawsuit.

C. In order to avoid the expense and uncertainty of litigation, the Parties now desire to enter into this Settlement Agreement to affect a full settlement and discharge of all of B & L's existing and potential claims against the City, upon those terms and conditions set forth below.

**AGREEMENT**

The Parties agree as follows:

1. **Settlement Payment.** In consideration of the covenants set forth herein, the City shall pay B & L the sum of \$5,000 (the "Payment"), within 30 days of the date of the execution of this Agreement. The Payment shall be in the form of a check, which shall be made payable to B & L Pool Repair & Supply, Inc. and delivered to The Law Office of Carl A. Guerrieri.
2. **Dismissal of the Lawsuit.** As soon as possible following the receipt of the Payment, the Parties shall cause their attorneys to file a stipulation to dismiss the Lawsuit in its entirety and with prejudice, with each party to bear its own attorneys' fees, costs, and litigation expenses.
3. **Release and Discharge.** In further consideration of the covenants set forth in this Settlement Agreement, B & L (and, as applicable, its respective members, managers, subdivisions, subsidiaries, affiliates, agents, officers, directors, employees, insurers, indemnitors, predecessors, partners, shareholders, successors, sureties, assigns, attorneys, spouses, representatives, and all related entities) hereby releases and forever discharges the City (and, as applicable, its respective members, managers, subdivisions, subsidiaries, affiliates, agents, officers, directors, employees, insurers, indemnitors, predecessors, partners, shareholders, successors, sureties, assigns, attorneys, spouses, representatives, and all related entities) of and from all causes of action, claims, liens, suits, debts, sums of money, covenants, contracts, controversies, agreements, promises, damages, judgments, interest, executions, claims for attorneys' fees and costs or disbursements, liabilities, obligations, rights or demands of any kind

whatsoever, whether or not well-founded in fact or in law, whether known or unknown, arising from or related to any dealings or transactions between the Parties from the beginning of time through and including the Effective Date, including, without limitation, any and all claims that were raised, or that could have been raised, in the Lawsuit. Notwithstanding the breadth and generality of the foregoing release, the rights, covenants, duties, and obligations of this Settlement Agreement shall survive.

4. **No Admission of Liability.** It is understood and agreed to by the Parties that this settlement is a compromise of disputed claims and is not to be construed as an admission of liability on the part of any Party.

5. **Attorneys' Fees and Costs.** Except as otherwise provided herein, each Party shall bear his or its own attorneys' fees, costs, and litigation expenses in connection with this Settlement Agreement, the Lawsuit, and all related matters.

6. **Representation of Comprehension of Document.** In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their respective attorneys, or have had a reasonable opportunity to seek legal counsel concerning the consequences of this Settlement Agreement, that the terms of this Settlement Agreement have been completely read, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by the Parties.

7. **Warranty of Capacity to Execute Agreement.** The Parties represent and warrant that they have the sole right and exclusive authority to execute this Settlement Agreement. The Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

8. **Counterparts.** This Settlement Agreement may be signed in counterparts. Each executed counterpart shall for all purposes be deemed an original, but all of which together shall constitute in the aggregate one and the same instrument. A photocopy, digital image, or facsimile shall have the same effect as an original.

9. **Entire Agreement; Successors-in-Interest.** This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth in it, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each Party.

10. **Captions.** The headings or captions in this Settlement Agreement are for convenience and reference only and do not control or affect the meaning or construction of any of the provisions hereof.

11. **Modification.** This Settlement Agreement shall not be modified or amended except in a writing executed by all Parties.

12. **Effectiveness.** This Settlement Agreement shall become effective when fully executed by all Parties, which date shall be the Effective Date referred to on the first page of this Settlement Agreement.

13. **Choice of Law; Forum; Enforcement.** The validity, performance, construction, interpretation, enforcement, and effect of this Settlement Agreement shall be governed by and enforced in accordance with the substantive laws of the State of Arizona. Any action to enforce the terms of this Settlement Agreement must be instituted and maintained in a state or federal court sitting in Maricopa County, Arizona, and the Parties irrevocably consent to the personal jurisdiction of these courts. The Party prevailing in any dispute arising under or relating to this Settlement Agreement (by achieving substantial success prosecuting or defending against a significant claim) shall be entitled to recover from the other Party all of the costs, attorneys' fees and necessary disbursements the prevailing Party actually incurred in connection with the resolution of the dispute, as determined by the court.

IN WITNESS WHEREOF, the Parties hereto execute this Settlement Agreement:

City of Glendale:

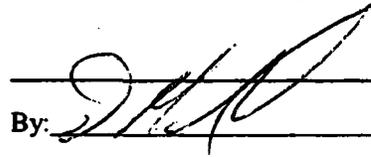
  
\_\_\_\_\_

By: Kevin R. Phelps

Its: City Manager

Dated: \_\_\_\_\_

B & L Pool Repair & Supply, Inc.:

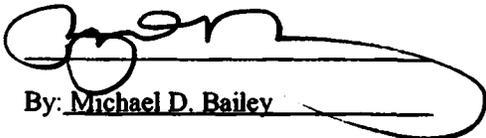
  
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By: \_\_\_\_\_

Its: President

Dated: 10/11/16

APPROVED AS TO FORM:

  
\_\_\_\_\_

By: Michael D. Bailey

Its: City Attorney

Dated: \_\_\_\_\_

ATTEST:

  
City Clerk