

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Jose Banuelos ("Plaintiff") and the City of San José ("Defendant"), collectively referred to as the "Parties."

WHEREAS, Plaintiff filed an action against the Defendant on or about October 6, 2010 in the Superior Court of California, County of Santa Clara, case number 1-10-CV-184319, entitled *Teresa and Jose Banuelos v. City of San Jose, et al.* ("Action");

AND WHEREAS, the Parties now undertake to settle this Action in its entirety, and Defendant and Plaintiff now undertake to release and extinguish on a final basis any and all claims against the Defendant, arising out of, or in any way connected with, the incident which is the subject of the action, which occurred on or about March 15, 2010, in San Jose, California, as more fully described in the Complaint filed in this Action ("Incident");

AND WHEREAS Plaintiff desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of ten thousand dollars (\$10,000.00), Plaintiff on behalf of himself, his past and present assigns, heirs, executors, and administrators, hereby releases and forever discharges the Defendant, its past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. A draft in the amount of

ten thousand dollars (\$10,000.00) shall be made payable to: "Daniel G. Hems, Esq. in Trust for Jose Banuelos" and shall be delivered to counsel for Plaintiff within twenty-one (21) days of receipt of the Settlement Agreement and Release. In consideration for the above-referenced payment, Plaintiff shall stipulate to dismiss the Action with prejudice within ten (10) days after service of the draft.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

**"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."**

Plaintiff represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that he hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the Incident based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Incident. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore

made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

7. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

9. Plaintiff agrees to hold the Defendant harmless with regard to any liens or claims for medical treatment and/or expenses he or Plaintiff Teresa Banuelos may have incurred as a result of the Incident, including, but not limited to, any liens or claims for reimbursement by Medicare arising out of the Incident.

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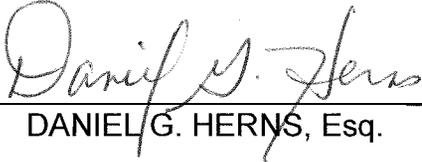
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10. IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: May 30, 2011

  
\_\_\_\_\_  
JOSE BANUELOS  
Plaintiff

Dated: 5/30/11

LAW OFFICE OF DANIEL G. HERNES  
By:   
\_\_\_\_\_  
DANIEL G. HERNES, Esq.  
Attorney for Plaintiff

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

CITY OF SAN JOSE

By: \_\_\_\_\_  
NORA FRIMANN  
Assistant City Attorney as  
Authorized Agent for the  
CITY OF SAN JOSE

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
MICHAEL J. DODSON  
Sr. Deputy City Attorney  
Attorney for Defendant