

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“**Agreement**”) is entered into this \_\_\_ day of July, 2014, between Lorraine DeRosa (“**Plaintiff**”) and the City of Tempe (“**Tempe**”), herein referred to jointly as the “**Parties**.” This Agreement shall be the full, binding, and the complete settlement and release agreement between the Parties, save only and excepting its executory provisions.

### AGREEMENT

For valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions contained herein, the Parties hereby stipulate and agree as follows:

#### **1. Payment; Release, Discharge**

Tempe agrees to pay to Plaintiff:

a. The sum of ONE HUNDRED AND EIGHTY FIVE THOUSAND DOLLARS (\$185,000.00) (the “**Settlement Sum**”) as consideration for Plaintiff’s complete release, discharge, and waiver of all causes of action that are alleged to arise from or are related to the accident that occurred on October 17, 2012, between Plaintiff and Thomas Sprenkle, an employee of Tempe, as more fully described in Maricopa County Superior Court Cause No. CV2013-012791 (“**the Event**”).

b. As consideration for Tempe’s payment of the Settlement Sum, Plaintiff agrees to fully and completely discharge all past, present, and future claims or causes of action against Tempe and Thomas Sprenkle and any other city employee or agent that are alleged to have arisen from or are related to the Event. While this settlement is between the Parties, Plaintiff acknowledges that this release includes both Thomas Sprenkle and Tempe, its officers, employees and agents in both their official and individual capacity.

#### **2. Dismissal of Complaint**

As consideration for Tempe's payment of the Settlement Sum, within 10 days of the execution of this agreement, Plaintiff agrees to file a stipulation to dismiss with prejudice Maricopa County Superior Court Cause No. CV2013-012791.

**3. General Release.**

Plaintiff acknowledges and agrees that the release set forth herein is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages that exist as of this date but of which Plaintiff does not know or does not suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this Agreement.

**4. Attorneys' Fees and costs.**

Each of the Parties shall bear all of the attorneys' fees and costs arising from the actions of its own counsel in connection with the Notice of Claim, this Complaint and all the matters and documents referred to herein.

**5. Indemnification.**

Plaintiff agrees to indemnify Tempe and hold it harmless with respect to any liens and/or claims, medical, governmental, or otherwise, existing or potential, which have resulted, or may result, from the Event. Plaintiff agrees to fully satisfy any of the liens and/or claims. This subsection of the Agreement constitutes a material representation by Plaintiff, and she agrees to indemnify and hold harmless Tempe as to any such lien and/or claim now existing, and all future ones, without limitations.

**6. Interpretation.**

This Agreement is not to be construed or interpreted for or against any of the Parties on the grounds of sole or primary authorship or draftsmanship.

**7. Policy**

This Agreement does not imply, and shall not be construed to be, official Tempe policy with respect to the resolution of the issues in dispute herein. This Agreement shall not be admissible in any other proceeding, except proceedings brought to enforce the terms of this Agreement.

**8. Entire Agreement and Successors in Interest.**

This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein, and it shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. All prior or contemporaneous agreements, representations, and understandings of the Parties, whether oral or written, are hereby superseded and incorporated herein. This Agreement may be modified only by a written amendment signed by the Parties or their agents.

**9. Representation and Comprehension of Document.**

In entering into this Agreement, Plaintiff represents that she has relied upon the legal advice of her attorney, who is an attorney of her own choosing, that her attorney had an opportunity to participate in the drafting of this Agreement, and that the terms of this Agreement have been explained to her by her attorney, and that she fully understands and voluntarily accepts those terms. Further, each of the Parties acknowledge that it is executing this Agreement relying solely upon its own knowledge, belief, and judgment, and with the advice of counsel, and not relying upon any representations made by the other Party, or others on behalf of the other Party.

**10. Governing Law and Subsequent Court Action.**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. In the event one of the Parties finds it necessary to bring an action against another the other to enforce any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be paid all reasonable costs and attorneys' fees by the non-prevailing party, and in the event any judgment is secured by the prevailing party, all such costs and attorneys' fees shall be included therein.

**11. Severability.**

If any provision of this Agreement is found to be invalid or unenforceable, in whole or in part, the remainder of the Agreement will not be affected by the invalidity or unenforceability. In such event, the Parties agree to reform this Agreement to conform as nearly as possible to the original intent of the Parties.

**12. Warranty of Capacity to Execute Agreement.**

Plaintiff represents and warrants that no other persons or entities have, or had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement except as otherwise set forth herein; that she has the sole right and exclusive authority to execute this Agreement and receive the Settlement Sum specified in it; and that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

**13. Authority to Execute.**

Each of the Parties expressly represents and warrants that the person signing below on their behalf is authorized to execute this Agreement.

**14. Effectiveness.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

**PLAINTIFF:**

\_\_\_\_\_  
Lorraine DeRosa

Date: \_\_\_\_\_

STATE OF ARIZONA     )  
  : ss.  
County of Maricopa     )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My commission expires:

**Approved as to form:**

**PLAINTIFFS' ATTORNEY:**

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

Date: \_\_\_\_\_

**TEMPE:**

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

Date: \_\_\_\_\_

CITY OF TEMPE

Its: \_\_\_\_\_