

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is made by and between City of South Bend ("City"), and Darryl Boykins ("Boykins") (collectively referred to as the "Parties").

A. On May 30, 2013, Boykins filed a Complaint against the City in Federal District Court for Northern District of Indiana under Cause Number 3:13-CV-506. On October 25, 2012, Tim Corbett, Steve Richmond, Dave Wells, Brian Young and Sandy Young (the "Wiretap Plaintiffs") filed a Complaint against the City and Boykins in Federal District Court for Northern District of Indiana under Cause Number 3:12-CV-532. Both cases and the issues raised in or which could have been raised in the cases are referred to as the "Disputes" and/or the "Lawsuits."

B. On November 2, 2012 Boykins filed a Counterclaim against the Wiretap Plaintiffs for fraud, defamation, intentional interference with contract/employment and intentional infliction of emotional distress arising from the same Disputes.

C. The Parties now desire that the Disputes which now exist, had previously existed or may have existed between them be immediately settled (which settlement is conditioned upon the Wiretap Plaintiffs and Boykins dismissing the prejudice their claims and counterclaims in Cause No. 3:12-CV-532) and that the Parties be spared the trouble and expense of further litigation. The Parties also mutually desire that: (1) Boykins and the City will keep all of the terms and conditions of their compromise and settlement strictly confidential but acknowledge that the City (but not Boykins) is subject to state or federal disclosure laws and (2) that each Party's communications with any other regarding the Lawsuits shall remain strictly confidential and shall not act as a waiver of any attorney-client or work-product privilege.

NOW, THEREFORE, in consideration of the matters set forth, the terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties further agree as follows:

1. Settlement. In exchange for complete releases related to the Disputes and dismissals with prejudice of the Lawsuits that each Party has initiated (described more fully below), the Parties hereby agree as follows:

- A. The City will pay within 10 days of the execution of this Agreement to Boykins attorney of record the amount of \$25,000 and will thereafter pay to Boykins before the end of November 2013 the sum of \$25,000.00 and before the end of January 2014 the sum of \$25,000.
- B. Boykins represents that he possesses no tape cassettes made from the recordings (the "Recordings") which are the subject of the Wiretap Plaintiff's Lawsuit nor any transcripts, notes or any other document which contain any part of the Recordings.
- C. The Parties to the Lawsuits will file a Stipulation of Dismissal with Prejudice for the Lawsuits with the Court at a time mutually agreed upon by the Parties.
- D. Boykins has additionally agreed to dismiss his Counterclaim against the Wiretap Plaintiffs in exchange for the Wiretap Plaintiffs agreeing to dismiss their Complaint against Boykins, both with prejudice.

2. Release. Upon the filing of the dismissal called for above, the Parties for themselves, their agents, attorneys, predecessors, heirs, executors, administrators, successors, assigns, parent companies and/or subsidiaries, hereby RELEASE and FOREVER DISCHARGE each other Party and its (or his/her) agents, attorneys, predecessors, heirs, executors, administrators, successors, assigns, parent companies and/or subsidiaries, both individually and in their representative capacities, from any and all rights, claims, demands, damages, actions, causes of action, judgments, or liabilities of whatever nature, whether known or unknown,

disclosed or undisclosed, that each Party had, now has, or may have had arising out of, related to, or connected with the Disputes and the Lawsuits in which each Party made claims. This Release is meant to be construed as broadly and comprehensively as possible.

3. Further Assurances. Each Party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement including the execution of a mutual release between the Wiretap Plaintiffs and Boykins.

4. No Admission. It is understood and believed that this Agreement and the settlements contained within it is the compromise of disputed and doubtful claims, and that the consideration given is not to be construed as an admission of liability on the part of any Party and that each Party has denied liability. The Parties further agree that neither is aware of any evidence of illegal activity by the Wiretap Plaintiffs or any evidence that reveals that the Wiretap Plaintiffs used any racist word against Boykins.

5. Representation. The Parties represent and warrant that they have not assigned or transferred to any person or entity any of the claims released above, and that each is the sole party in interest with respect to such claims.

6. Disputes. The Parties agree that any action for breach of this Agreement will be filed in a court of competent jurisdiction in St. Joseph County, Indiana. All Parties hereby agree to consent to the jurisdiction of such court and agree that venue is proper. In any action for breach, attorney fees and costs of collection shall be awarded to the prevailing party.

7. Governing Law. The terms and conditions of this Agreement and the Parties' obligations hereunder shall be construed under and be governed by the internal laws of Indiana, without regard to principles of choice of law.

8. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the settlement of the Disputes and the Lawsuits and the claims that the Parties have or could have asserted as of the execution of this Agreement. The Parties have not relied on representations or promises of any other party to execute this Agreement, other than the representation and promises contained in this Agreement.

9. Captions. The captions to this Agreement are for convenience and identification purposes only, are not integral parts of this Agreement and are not to be considered in the interpretations of any part of this Agreement.

10. Negotiated Agreement / Construction: This Agreement is the result of negotiations among the Parties. Counsel of record for each party have reviewed and drafted its contents together. Thus, the Parties expressly agree that no party shall be deemed to be the drafter of this Agreement. The language of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party.

11. Advice of Counsel. Both Parties have been represented by legal counsel of their own choice in the negotiation of the compromise and settlement provided for in this Agreement, and each Party has freely decided to agree to the terms of this Agreement after receiving advice from his/her own counsel about the legal effect of this Agreement.

12. Binding on Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

13. Counterparts. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates

indicated below.

THE CITY OF SOUTH BEND

By: Christine Bruc, Corporation Counsel

Dated: 11/12/2013

DARRYL BOYKINS

By: Darryl Boykins

Dated: 11/12/13