

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into this 2nd day of September, 2015, by and among the Estate of Freddie Carlos Gray Jr., Freddie Carlos Gray Sr., and Gloria Darden (the "Releasing Parties"), and The Mayor and City Council of Baltimore (the "City"), and the Baltimore Police Department (together with the City, the "Released Parties"). The Released Parties together with the Releasing Parties are referred to herein as the "Settling Parties."

RECITALS

WHEREAS, the Releasing Parties have asserted claims against the Released Parties (the "Claim"), arising out of an arrest of Freddie Carlos Gray Jr. ("Freddie Gray") and injuries suffered while in police custody on or about April 12, 2015 resulting in Freddie Gray's death on or about April 19, 2015 (the "Occurrence"); and

WHEREAS, the Settling Parties are desirous of settling and terminating all existing or future claims, disputes, and actions between and among them of whatever nature, arising from or in anyway connected with the Claim or the Occurrence and bringing complete resolution to this matter.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby covenant and agree as follows:

1. **Recitals:** The foregoing recitals are incorporated into and made part of this Agreement.

2. **Payment:** The City shall make the sum total payment to the Releasing Parties of Six Million Four Hundred Thousand Dollars and no cents (\$6,400,000.00) (the "Settlement Sum"), on behalf of the Released Parties, as full and final payment for making the release herein. The payment of the Settlement Sum shall be as follows:

- a. The sum total of Five Million Three Hundred Thousand Sixty Dollars and no cents (\$5,360,000.00) shall be paid to Gloria Darden.
- b. The sum total of Six Hundred Thousand Forty Dollars and no cents (\$640,000.00) shall be paid to Freddie Gray, Sr.
- c. The sum total of Four Hundred Thousand Dollars and no cents (\$400,000.00) shall be paid to the Estate of Freddie Gray Jr.
- d. Only Two Million Eight Hundred Thousand Dollars and no cents (\$2,800,000.00) of the Settlement Sum will be paid in City Fiscal Year 2016 (the "First Distribution"). One Million Eight Hundred Thousand Dollars and no cents (\$1,800,000.00) of the First Distribution will be paid within fifteen (15) days of the date of the approval by the City's Board of Estimates, unless otherwise agreed to by counsel for the Settling Parties in writing. The remaining One Million Dollars and no cents (\$1,000,000.00) of the First Distribution will be paid by November 1, 2015, unless otherwise agreed to by counsel for the Settling Parties in writing. All payments herein will be made to the Releasing Parties in proportion to each of the individual Releasing Parties' *pro rata* share of the Settlement Sum as outlined in Paragraphs 2.a, 2.b. and 2.c.

- e. Three Million Six Hundred Thousand Dollars and no cents (\$3,600,000.00) of the Settlement Sum will be paid in City Fiscal Year 2017 by July 15, 2016 (the "Second Distribution"), unless otherwise agreed to by counsel for the Settling Parties in writing. All payments herein will be made to the Releasing Parties in proportion to each of the individual Releasing Parties' *pro rata* share of the Settlement Sum as outlined in Paragraphs 2.a, 2.b. and 2.c.

3. **Approval by City's Board of Estimates:** The Settling Parties understand that payment of the Settlement Sum as set forth in this Agreement and other obligations of the City as set forth herein are subject to, and contingent upon, the prior approval of the City's Board of Estimates. The City shall present this Agreement to the Board of Estimates for approval no later than September 9, 2015. In the event that the Board of Estimates declines to approve, this Agreement shall become void and of no legal effect, upon which time the parties may continue to seek whatever redress that is available regarding the Occurrence through the claims process, litigation or otherwise.

4. **Warranty of Capacity to Enter Into Agreement:** The Releasing Parties represent and warrant that no other person or entity has any interest in the claims, demands, allegations or causes of action referred to in this Agreement except as otherwise set forth herein and that they have the sole right and exclusive authority to execute this Agreement, to receive the sum specified in it and to release all claims on their behalf, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Agreement. If any person should assert a claim on behalf of any of the Releasing Parties for damages against any of the Released Parties claiming that the Releasing Parties did not have the right or authority to

enter into this Agreement or receive the monies hereunder, the Releasing Parties agree to indemnify, defend and hold harmless the Released Parties from any and all claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of such claim or lawsuit.

5. **General Release and Covenant not to Sue:** In consideration of the payment of the Settlement Sum and other good and valuable consideration, the Releasing Parties, their heirs, assigns, agents, representatives, attorneys and successors in interest hereby unconditionally release and forever discharge and covenant not to sue the Released Parties, their past or present officials, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, entities and corporations from any and all claims which the Releasing Parties may now or hereafter have or claim to have, arising out of, or in any way related to, the detention, arrest or transport of Freddie Gray or otherwise connected with the Occurrence and/or the allegations or claims asserted, or that could have been asserted, in the Claim. "Claims" include, but are not limited to, any and all losses, costs, expenses, debts, actions (statutory, in law or in equity), causes of action, suits, damages, claims, demands and all other claims, liabilities and obligations of any nature whatsoever including but not limited to any and all claims under the United States Constitution, under any federal civil rights statute, (including 42 U.S.C. § 1983), or any comparable state law, whether presently known or unknown, including attorneys' and consultant's fees.

6. **Costs and Expenses:** Each party will be responsible for his, her or its own costs and expenses incurred in connection with the prosecution, defense and settlement of the claims asserted by the Releasing Parties against the Released Parties.

7. **No Admission of Liability:** It is understood and agreed by the Settling Parties that this Agreement and the releases contained herein shall not be construed in any way as an admission of liability or guilt on the part of the Released Parties or the officers who were involved in the detention, arrest or transport of Freddie Gray or otherwise connected with the Occurrence or allegations of the Claim, any such liability or guilt being expressly and unequivocally denied, and that rather, the purpose of this Agreement is to fully and finally resolve all civil differences amongst the Settling Parties and to allow the Settling Parties to avoid the time, expense and uncertainties of protracted litigation. Importantly, the prompt and early pre-suit Agreement is intended to: (a) spare the broader Baltimore community from the ongoing turmoil that would inevitably result from protracted and much scrutinized civil litigation among the Settling Parties, and (b) allow the broader community to heal from the events of, and immediately following, the Occurrence.

8. **Public Statements:** Counsel to the Settling Parties agree that they will participate in a public announcement or announcements of this Agreement and act in compliance with its terms.

9. **Medicare/Medicaid Liens:** The Releasing Parties understand that Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") imposes a lien (the "Medicare Lien") for reimbursement of certain payments made by Medicare. The Settling Parties understand and believe that there are no outstanding Medicare Liens. Notwithstanding this, in the event that payment of the claims results in an obligation to reimburse Medicare, the Releasing Parties agree to make such reimbursement and agree that their attorneys may retain sufficient funds in the attorneys' escrow account to satisfy the Medicare Lien. If the Releasing Parties or their attorneys fail to satisfy a Medicare Lien,

and that failure causes the Released Parties to pay or reimburse any person or entity any amount MMSEA specifies, the Releasing Parties agree to reimburse the Released Parties' payment or reimbursement to such person or entity. Upon receipt of documentation from Medicare that any Medicare Lien is satisfied, the Releasing Parties will send a copy of such documentation to the Released Parties.

10. **No Evidence of Need to Indemnify:** It is understood and agreed by the Settling Parties that this Agreement and/or corresponding settlement or payment of the Settling Sum is not to be construed as evidence of an obligation on behalf of the City to indemnify any person who may be covered under this Agreement for claims of intentional conduct, as such contention is expressly denied.

11. **Entire Agreement of the Parties:** It is understood and agreed by the Parties that this Agreement constitutes the entire Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Agreement may only be amended by a writing signed by all parties hereto.

12. **Drafting of the Agreement:** The Parties acknowledge and agree that this Agreement represents the product of negotiations and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in this Agreement, the Settling Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party than the other.

13. **Severability:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void, or illegal by any court of competent

jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

14. WAIVER OF JURY TRIAL: TO THE EXTENT AN ACTION IS FILED IN ANY COURT FOR A BREACH OF ANY COVENANT, TERM OR CONDITION OF THIS AGREEMENT, THE SETTLING PARTIES HEREBY VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

15. Knowing and Voluntary Act: Each of the Settling Parties represents that each has read this Agreement and acknowledges that each has been represented or had the opportunity to be represented by legal counsel of their own choice throughout all of the negotiations which preceded the execution of this Agreement and that each party has voluntarily executed this Agreement with the consent and/or on the advice of such legal counsel. Each of the Settling Parties further acknowledges that each and such party's counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the considerations specified herein. The Settling Parties shall bear their own costs, including, but not limited to, attorneys' fees associated with the Claim, the Occurrence, or this Agreement.


16. Survival of Terms: The Settling Parties agree that this Agreement shall upon approval inure to the benefit of the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The

Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Agreement shall survive the closing of the Agreement.


17. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions, and any disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Baltimore City, Maryland.

18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. An emailed, facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:



WITNESS

 (SEAL)
Gloria Darden, individually, and as Personal
Representative of the Estate of Freddie Gray Jr.

WITNESS

Freddie Gray Sr. (SEAL)

MAYOR AND CITY COUNCIL OF BALTIMORE

WITNESS

By:  (SEAL)
George A. Nilson, City Solicitor

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Representative of the Estate of Freddie Gray Jr.



WITNESS


_____(SEAL)
Freddie Gray Sr.

MAYOR AND CITY COUNCIL OF BALTIMORE

WITNESS

By: 
_____(SEAL)
George A. Nilson, City Solicitor

Approved as to Form and Legal Sufficiency **APPROVED BY THE BOARD OF ESTIMATES**

By: 
David E. Ralph, Deputy Solicitor

By: _____
Clerk DATE