

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this 15th day of April, 2013, by and between:

Javier Moreno and Vivian Moreno ("Plaintiffs")
City of Riverside ("Defendant")

Recitals

A. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims arising out of, resulting from, or in any way connected with the alleged Proposition 218 violation as more fully described in *Moreno et al. v. City of Riverside* (Riverside Superior Court Case No. RIC 1210249) ("Lawsuit") and the documents, pleadings and discovery contained therein.

B. Specifically, Plaintiffs have asserted that Defendant illegally transferred and was continuing to transfer 11.5% of the water utility's operating revenues maintained in a water fund ("Water Fund") to Defendant's General Fund, in violation of Proposition 218 (hereinafter, "Revenue Transfer").

C. As of July 1, 2012, Defendant has voluntarily sequestered the 2012/2013 Revenue Transfer pending resolution of the Lawsuit.

Agreement

The parties agree as follows:

1.0 Release and Discharge

1.1 Defendant hereby agrees to do the following:

a. Defendant will cease any further Revenue Transfers until the voters approve the Revenue Transfer in a duly noticed election.

b. If the voters approve the Revenue Transfer at the June 2013 election, Defendant will:

i. Transfer the 2012/2013 Revenue Transfer from the Water Fund to the General Fund; and

ii. Return, in equal installments over a three year period, Ten Million Dollars (\$10,000,000) of the Revenue Transfer from the General Fund to the Water Fund beginning in Fiscal Year 2013/2014.

c. If the voters do not approve the Revenue Transfer at the June 2013 election, Defendant will:

i. Return, in equal installments over a 10 year period, Ten Million Dollars (\$10,000,000) of the Revenue Transfer from the General Fund to the Water Fund beginning in Fiscal Year 2013/2014; and

ii. The 2012/2013 Revenue Transfer from the Water Fund to the General Fund will not be made.

1.2 In consideration of the payments set forth in Section 1.1, Plaintiffs hereby completely release and forever discharge Defendant, a California charter city and municipal corporation, and all of its boards, bureaus, officers, agents, employees and all persons who acted on its behalf with relation to the subject claim or otherwise, from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiffs now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the incident described in Recitals above, including, without limitation, any and all known or unknown claims of Plaintiffs, which have resulted or may result from the alleged acts or omissions of the Defendant.

1.3 This release and discharge shall also apply to Defendant's past, present and future officers, directors, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.4 This release, on the part of the Plaintiffs, shall be a fully binding and complete settlement among the Plaintiffs, the Defendant and their heirs, assigns and successors regarding the Lawsuit and incident described in the recitals above.

1.5 Plaintiffs acknowledge and agree that the release and discharge set forth above is a general release regarding the Lawsuit and incident described in the recitals above. Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the claimants do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into this Settlement Agreement.

1.6 Plaintiffs hereby waive any and all rights based upon the provisions of California Civil Code section 1542 which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor."

1.7 Within five court days of the execution of this Agreement, Plaintiffs shall abandon and cease the prosecution of all of its claims, and deliver to Defendant a fully-executed request for dismissal with prejudice as to the entire action in case number RIC 1210249 in the Superior Court of California, County of Riverside and authorizes a dismissal with prejudice of said action. However, Defendant agrees to not file the request for dismissal until after the

motion for attorney's fees referenced in paragraph 2.0 is heard and decided.

2.0 Attorney's Fees

Plaintiffs shall petition the court in action number RIC 1210249 for recovery of their attorney's fees and costs in an amount not to exceed \$1 million and, in exchange, Defendant agrees that it will not argue that any fees and costs ultimately awarded should be paid out over time. Further, the parties agree that such fees and costs shall be paid from the Ten Million Dollars (\$10,000,000) amount referenced in Section 1.1 and not to be paid in addition to such transfers. The agreement that fees and costs are to be paid from the \$10,000,000 amount referenced in Section 1.1 rather than in addition to such amounts shall not be used as a basis to argue that C.C.P. § 1021.5 does not apply.

3.0 Representation of Comprehension of Document

In entering into the Settlement Agreement, Plaintiffs represents that they have relied upon the advice of their attorneys, who are the attorneys of his/her own choice; that the terms of the Settlement Agreement and Release have been completely read and explained to Plaintiffs by their attorney; and that the terms of this Agreement are fully understood and voluntarily accepted by Plaintiffs.

4.0 Warranty of Capacity to Execute Agreement

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiffs 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.

5.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the law of the State of California.

For the protection of the undersigned Plaintiffs, California law requires the following to appear on this form:

"IT IS UNLAWFUL TO (A) PRESENT OR CAUSE TO BE PRESENTED ANY FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS UNDER A CONTRACT OF INSURANCE AND (B) PREPARE, MAKE OR SUBSCRIBE ANY WRITING WITH INTENT TO PRESENT OR USE THE SAME, AND TO ALLOW IT TO BE PRESENTED OR USED IN SUPPORT OF ANY SUCH CLAIM. ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS PUNISHABLE BY IMPRISONMENT IN THE STATE PRISON OR BY FINE NOT EXCEEDING ONE THOUSAND DOLLARS (\$1,000) OR BOTH."

6.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

7.0 Entire Agreement and Successors in Interest

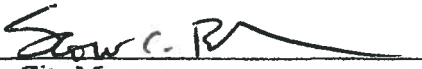
This Settlement Agreement contains the entire agreement between the Plaintiffs and the Defendant with regard to the matters set forth in it and shall be binding upon and inure to the benefits of the executors, administrators, personal representatives, heirs, successors and assigns of each.


8.0 Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the signatories hereto.

CITY OF RIVERSIDE


JAVIER MORENO, Plaintiffs

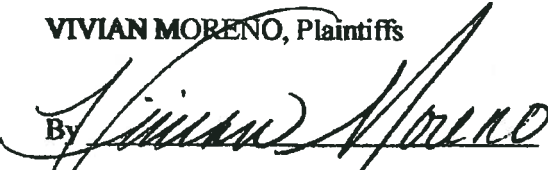
By 
City Manager
Date April 15, 2013

By 
Date 04.12.2013

ATTEST:

VIVIAN MORENO, Plaintiffs

By 
City Clerk
Date April 15, 2013


By 
Date 04.12.2013


Approved as to form:

Approved as to form:

Susan D. Wilson
Deputy City Attorney

Eric J. Benink
Attorney for Plaintiffs

By 
Date 4-15-13

By 
Date 4-12-13