

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by Richard P. McKee and the City of Fillmore ("City"), a municipal corporation of the State of California, and the City Council of the City of Fillmore ("Council") (collectively as the "Parties") and is effective as of November ____, 2009.

Purpose

The purpose of this Agreement is to fully and forever settle any and all claims existing between the Parties as of the date of this Agreement, whether asserted or unasserted, as more fully set forth herein, and the litigation by McKee against the Council, styled as *McKee v. the Fillmore City Council*, Ventura County Superior Court Case No. 56-2009-00357966-CU-WM-VTA (the "Lawsuit").

Terms

1. **Dismissal with Prejudice.** Mr. McKee agrees to dismiss the Lawsuit with prejudice, which dismissal with prejudice shall be filed by November 13, 2009. In exchange for Mr. McKee's dismissal of the Lawsuit and execution of the Release, set forth herein, the City and Council agree to the following:

2. **Public Statement.** The City will issue a press release containing the following admissions with respect to the Council meeting held August 25, 2009. The City:

a. Did not announce that Government Code section 54956.9 was the code section authorizing the closed session on the ground of threatened litigation;

b. Did not provide members of the public an opportunity to comment directly to the City Council on the closed session item of business prior to holding the closed

session; and,

c. Did not announce the vote of each Council member immediately after the Council returned from closed session.

In addition to the foregoing admissions, the press release will detail the prompt curative action that the City Council took to correct the above deficiencies, and describe the results of the District Attorney's investigation and conclusion as detailed in the District Attorney's October 23, 2009 letter to Ms. Yvonne Quiring. The City will also include the language contained at Exhibit A in its press release that concerns whether the closed session was authorized.

3. Brown Act Re-Training. The City has always, and continues, to take its obligations under the Brown Act seriously, as confirmed by the District Attorney's investigation, which was concluded on October 23, 2009, and summarized in a letter dated the same day. Accordingly, the Council agrees to allot two hours for a Brown Act re-training, conducted by Fillmore's City Attorney, by December 15, 2009, and set at a time and date convenient for the Council and City Attorney. The City invites Mr. McKee to participate in said training.

4. Monetary Payment. Solely to buy its peace, and without admitting or acknowledging any wrongdoing other than what is expressly set forth above, the City agrees to pay McKee the sum of six-thousand dollars (\$6,000.00), which amount is inclusive of attorney's fees and costs.

5. Costs/Fees of Suit. Other than as expressly set forth in paragraph 5, the Parties, and each of them, agree to bear their own costs and attorney's fees incurred prior to the date of this Agreement.

6. **Mutual Releases.**

(a) In consideration for this Agreement, and the other consideration set forth above, all acknowledged and received as adequate, the Parties hereby mutually release, waive, and forever discharge each other and their predecessors, successors, heirs, assigns, employees, owners, agents, attorneys, subsidiaries, experts, consultants, insurance carriers and divisions or affiliated corporations with which they were previously or hereinafter affiliated in any manner, from any and all manner of action and actions, cause and causes of action, damages, judgments, executions, claims, demands for injunctive or other equitable relief, statutory penalties, debts, rights, causes of action or liabilities whatsoever, obligations, attorney's fees, costs and liabilities, arising out of the Lawsuit as of the date the Parties executed this Agreement and by reason of any act or omission of a Party concerning any matter, cause or thing, including, without limiting the generality of the foregoing, any act, cause, matter or thing stated, claimed, or alleged, or which could have been alleged as of the date of this Agreement.

(b) The release set forth above is a general release of all claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever that are described in this Agreement, including, but not limited to claims arising out of the Lawsuit, and is intended to encompass all known and unknown, or hereafter becoming known, for, upon, or by reasons of any matter that could have been asserted as of the date of this Agreement; now existing or hereinafter arising, in law, equity or otherwise, whether under state, federal or foreign statutory or common law; foreseen or unforeseen claims which the parties to this Agreement hereto may have as of the date the Parties execute this Agreement by reason of any act or omission concerning any matter or thing stated, claimed or alleged, or could have been alleged as part of

the Lawsuit.

(c) The Parties to this Agreement and each of them waive and relinquish all rights and benefits they otherwise have under Section 1542 of the California Civil Code. That Section reads as follows:

Section 1542. [Certain claims not affected by a general release]. 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 by him or her must have materially affected his or her settlement with the debtor.

Richard P. McKee _____ City Council
By: _____

(d) The Parties hereby assume the risks referred to herein and understand the significance and consequence of the above section 1542 waiver, which is that even if one of the Parties should eventually suffer additional damages or other injury arising out of the matters released herein, neither Party will be able to make a claim for damages or any other relief. Further, each party acknowledges that he/it consciously intends these consequences even as to claims for damages that may exist as of the date of this Agreement that he or it does not know exists, and which, if known, would materially affect his decision to execute this Agreement, regardless of whether his or her lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7. **No Admission of Liability.** Other than as expressly set forth herein, this Agreement is the result of a compromise of disputed claims and shall never at any time for any purpose be considered as an admission of correctness, liability or responsibility on the part of

any Party.

8. **Continuing Jurisdiction of the Trial Court.** The Parties agree that the Court retains jurisdiction to enforce the terms of this Agreement pursuant to Code of Civil Procedure section 664.6.

9. **Advice of Legal Counsel.** The advice of legal counsel has been obtained by all of the Parties prior to the execution of this Agreement. All of the Parties hereby execute this Agreement voluntarily and with full knowledge of its significance and with the express intention of extinguishing any and all obligations and claims of the Parties arising out of or connected with the matters specified herein.

10. **Non-Assignment of Claims.** The Parties and each of them represent and warrant that no portion of any claim, right, demand, action, or cause of action which they have or might have arising out of the matters referred to herein, nor any portion of any recovery or settlement to which they might be entitled, has been assigned or transferred to any other person, firm or corporation not a party to this Agreement, in any manner, including by way of subrogation or operation of law or otherwise. In the event that any claim, demand, or suit should be made or instituted against any of the Parties because of any such purported assignment, subrogation, or transfer, the Parties agree to indemnify and hold harmless the party subject to such an action against such claim, suit, or demand and to pay and satisfy any such claim, suit, or demand, including necessary expenses of investigation, actual attorneys' fees and costs.

11. **Understanding of Agreement.** Each of the Parties has read and understands the contents of this Agreement. The paragraph headings contained herein are solely for reference and the convenience of the reader, and do not confer upon the Parties any substantive legal rights.

12. **Entire Agreement.** This Agreement constitutes the entire and exclusive agreement between the Parties. To the extent any prior agreements between the Parties relate to the subject matter herein released, whether written or oral, such agreements are expressly superseded and preempted by this Agreement.

13. **Binding Upon Agents and Representatives.** Each and every term of this Agreement shall be binding upon the agents, representatives, insurers, employees, attorneys, heirs, administrators, executors, successors, and assigns of the respective Parties hereto and any parent, subsidiary, or affiliated entity of each of the Parties.

14. **Cooperation.** The Parties hereto agree to execute any and all other documents and instruments in writing which may be reasonably necessary or proper to effectuate and carry out the terms of this Agreement.

15. **Authority to Enter Into Agreement.** Each of the Parties represent, warrant and covenant that they have the authority to enter into this Agreement, that any person executing this Agreement in a representative capacity is duly authorized to do so, and each person executing this Agreement in a representative capacity represents, warrants and covenants that he or she is duly authorized to do so pursuant to appropriate by-law or resolution or other authority.

16. **Modifications in Writing.** Any modifications to this Agreement must be made in writing executed by all the Parties.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Further, each of the parties acknowledges and agrees that the place of execution of this Agreement is in the County of Ventura, State of California and that all disputes arising out of this Agreement shall be litigated in the Ventura Division of the Ventura County Superior Court.

18. **Severability.** In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be declared in a legal forum to be invalid, illegal, ineffective or unenforceable in any respect, such invalidity, illegality, ineffectiveness or unenforceability shall not affect any other provision of this Agreement, which Agreement shall remain in full force and effect, valid and binding upon both Parties to this Agreement. Each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement.

19. **Attorney's Fees.** In the event litigation is necessary to enforce any of the rights and obligations set forth in this Agreement, the prevailing party in any such litigation shall be entitled to his or its actual attorney's fees and costs reasonably incurred in connection with such litigation. As used in this paragraph, the term "litigation" shall include, without limitation, any and all negotiations and communications prior to the filing of any complaint in any state or federal court or administrative agency, concerning a dispute arising out of this Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

20. **Counterparts.** This Agreement may be executed in multiple counterparts, by way of either an original, facsimile, or scanned signature, each of which shall be considered an original but all of which shall constitute one and the same written agreement.

21. **Time is of the Essence.** Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

WHEREFORE, the Parties hereto have executed this Agreement on the date set forth above.

November 9, 2009

Fillmore City Council

By: Patti Walker

Printed Name: Patti Walker

Title: Mayor

November __, 2009

Richard P. McKee

Approved as to form:

November 9, 2009

Fillmore City Attorney

By: Theodore J. Schneider

November __, 2009

Law Offices of Kelly A. Aviles

By: _____
Kelly A. Aviles