

SETTLEMENT AGREEMENT & GENERAL RELEASE

THIS SETTLEMENT AGREEMENT & GENERAL RELEASE (“Agreement”) is made and entered into by and between the City of Costa Mesa (“City”), on the one hand, and Costa Mesa City Employees’ Association (“CMCEA”), on the other hand. The City and CMCEA are referred to collectively at all times herein as the “Parties.”

RECITALS

- A. On or around May 16, 2011, the CMCEA filed a complaint for injunctive and declaratory relief against the City, entitled *Costa Mesa City Employees’ Association v. City of Costa Mesa, et al.*, Case No. 00475281, in Orange County Superior Court (“the Lawsuit”), which disputed the City’s right to outsource certain service areas to third parties. Approximately eighteen different service areas were at issue in the original complaint. On or around July 15, 2011, the CMCEA obtained a preliminary injunction order that enjoined the City from contracting out any services performed by the CMCEA’s members to a private third party, and from laying off any of the CMCEA’s members as a result of such actions. On or around January 29, 2013, the Court granted a joint stipulation of the Parties to dissolve the preliminary injunction, without prejudice. On or around May 1, 2013, the CMCEA filed a first amended complaint to which the Court sustained a demurrer by the City. On or around October 15, 2013, the CMCEA filed a second amended complaint that contained two sets of claims for injunctive and declaratory relief, including the positions of Jail Services, Street Sweeping Services, and Parks and Maintenance Services which the City had more recently sought to outsource. The City filed a demurrer and motion to strike as to the second amended complaint, which the Court overruled. Trial is presently scheduled to begin on October 13, 2015.
- B. In recognition of the costs and uncertainties involved in any litigation, the Parties now desire, subject to Paragraph 7 herein below, to settle all differences between them arising from and related to the Lawsuit; and,
- C. The Parties intend, by this Agreement, to settle any and all claims arising from and related to the Lawsuit.

AGREEMENT & RELEASE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The above-mentioned recitals are incorporated into the Agreement by this reference.
2. **Outsourcing.**
 - a. **Jail Services.** The CMCEA agrees to waive and release any and all claims relating to the City’s contracting of Jail Services on or about June 26th, 2013 and will not in the future make any objection to the continued outsourcing of Jail Services by the City.
 - b. **Street Sweeping Services.** The CMCEA agrees to waive and release any and all claims relating to the City’s contracting of Street Sweeping Services on or about

March 1, 2015 and will not in the future make any objection to the continued outsourcing of Street Sweeping Services by the City.

- c. Parks & Maintenance Services. The CMCEA agrees to waive and release any and all claims relating to the City's exploration of contracting out of any Parks & Maintenance Services prior to the date of this Agreement. The Parties agree that for a period of two (2) years, the City shall not have any additional Parks & Maintenance Services performed by private contractors. This moratorium shall expire on June 30, 2017. During this two (2) year period, the City is expressly permitted to evaluate, negotiate, and contract for such services as long as the effective date of any new third party contact does not commence prior to July 1, 2017. No joint meetings between the City and the CMCEA shall be required prior to the issuance of a request for proposals for any Parks & Maintenance Services. If the City does contract with private contractor(s) to perform any additional Parks & Maintenance Services, the City agrees to maintain at least six (6) positions in the Parks & Maintenance division for the employees represented by the CMCEA.
- d. All Other Services. The Parties agree to a four (4) year moratorium on the private outsourcing of all other service areas currently performed by the CMCEA's members. The moratorium on such contracting shall expire on June 30, 2019.

3. Employment & Reassignment. No then current employees represented by the CMCEA will be terminated from employment as a result of outsourcing as provided herein. In the event of such outsourcing, employees represented by the CMCEA are subject to being reassigned to other positions with their salaries Y-rated.

4. Payment and Dismissal of Lawsuit. The City shall pay a sum of three hundred seventy five thousand dollars (\$375,000.00) as and for attorneys' fees and costs to "Orange County Employees' Association" ("the Payment"). The Payment shall be made within ten (10) business days after the Effective Date of this Agreement. The CMCEA shall file a dismissal without prejudice of the Lawsuit within ten (10) business days from the date of the Payment.

5. Wage Increase. The employees represented by the CMCEA shall be provided with a four percent (4%) base wage increase effective as of July 1, 2015. This wage increase is expressly conditioned upon the City's compliance with the C.O.I.N. process required by the City's Municipal Code prior to implementation of the wage increase.

6. Unfreezing of Merit Increases. The City will unfreeze merit increases as of July 1, 2015, and this provision shall be set forth in the new MOU between the City and CMCEA.

7. Future Proceedings. Both Parties shall retain the right to assert or reassert any claims or defenses raised in the Lawsuit in any future litigation. This Agreement shall not be admissible in future proceedings as evidence that any positions in the bargaining unit which are subject to the moratoria provide "special services" or that other services not referenced herein can be legally contracted out to private parties.

8. Specific Performance. The Parties agree that each and every provision hereof, and specifically, each and every right and obligation of the Parties' shall be considered a material term hereof, and the failure of one or both of the Parties to comply with any term, condition, waiver, obligation, provision, promise, assurance hereof, and any failure of one

or both of the Parties to act in good faith in carrying out the terms of this Agreement shall be deemed a breach thereof, constituting irreparable harm and injury to other Party, thus entitling it to seek and obtain injunctive relief, and/or specific performance. The Parties agree that an award of damages may be inadequate to address a breach, and that the availability of injunctive relief and/or the right to obtain specific performance of the terms of this Agreement is essential to allow the Parties to obtain the benefit of the bargain which is documented herein. The Parties further agree, that if any action for injunctive relief is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees pursuant to California Civil Code section 1717.

9. Release. Except as expressly provided for herein, the CMCEA and its members, individually and collectively, and on behalf of their successors, heirs, assigns, principals, agents, employees, consultants, representatives, members, attorneys, bonding companies, and insurers, agree to release and forever discharge the City and its successors, heirs, assigns, principals, agents, employees, consultants, representatives, members, attorneys, bonding companies, and insurers, from all liability in connection with all claims, damages, attorney's fees, costs, and allegations arising from or in any way related to the Lawsuit, whether made or unmade, asserted or unasserted, stated or unstated or that could have been stated, and of any kind whatsoever.

10. Release. Except as expressly provided for herein, the City, and on behalf of its successors, heirs, assigns, principals, agents, employees, consultants, representatives, members, attorneys, bonding companies, and insurers, agree to release and forever discharge the CMCEA and its members, and their successors, heirs, assigns, principals, agents, employees, consultants, representatives, members, attorneys, bonding companies, and insurers, from all liability in connection with all claims, damages, attorney's fees, costs, and allegations arising from or in any way related to the Lawsuit, whether made or unmade, asserted or unasserted, stated or unstated or that could have been stated, and of any kind whatsoever.

11. Civil Code Section 1542 Release. The Parties are aware of all rights that may be granted to them pursuant to California Civil Code section 1542, which provides in full 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 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties nevertheless waive all rights granted to them by California Civil Code section 1542, and any similar statute, code, law, or regulation of any state of the United States, or of the United States, and assume all risks for claims arising from the Lawsuit, heretofore or hereafter arising, known or unknown, from the subject matters of this release. Furthermore, the Parties agree that the facts on which the release under which this Agreement is based may turn out to be different from the facts now known or believed to be true in respect to the matters referred to above. Nevertheless, the Parties accept and assume the risk that such facts may turn out to be different and agree that the terms of the release in this Agreement shall in all respects be

effective and not subject to termination, rescission, or modification by any such difference in the facts.

12. No Admission. The Parties, and each of them, understand and agree that this Agreement is not to be construed as an admission of liability whatsoever by either Party, and that this Agreement is made solely for the purpose of avoiding the burden that would be imposed upon the Parties by further litigating the Lawsuit.

13. No Assignment. The Parties, and each of them, represent and warrant that they have not assigned or transferred, or purported to transfer, and shall not hereafter assign or transfer any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of actions released under this Agreement.

14. Consultation with Attorney. Each Party declares that prior to the execution of this Agreement, he/she/it has had the opportunity to consult with an attorney in order that he/she/it may intelligently exercise his/her/its own judgment in deciding whether to execute this Agreement.

15. Authority to Execute. Each Party declares that he/she/it has read this Agreement and understands and knows the contents thereof, and represents and warrants that each of the persons executing this Agreement is lawfully empowered to do so and hereby binds the respective Party, and all of its successors, heirs, assigns, principals, members, agents, employees, consultants, representatives, attorneys, bonding companies, and insurers to the terms hereunder.

16. Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties hereto. The Parties further agree that a facsimile or electronic copy of the executed counterparts shall have the same force and effect as an original.

17. Enforcing Agreement. This Agreement is enforceable under California Code of Civil Procedure section 664.6, and the court, upon motion of either Party, may enter judgment pursuant to the terms hereof. The Parties also agree that, in the event that either Party files a motion to enforce this Agreement under California Code of Civil Procedure section 664.6, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs in doing so.

18. Choice of Law. This Agreement shall in all respects be interpreted, enforced, and governed under the laws of the State of California.

19. Choice of Venue. The Parties agree that the exclusive venue for any action arising out of the breach of interpretation of this Agreement or other documents delivered pursuant to any provision thereof shall be the Superior Court of the State of California for Orange County.

20. Entire Agreement. This Agreement constitutes the entire understanding between and among the Parties hereto. Each Party acknowledges that no Party, agent, or representative of the other Party has made any promise, representation, or warranty, express or implied, not expressly contained in this Agreement that induced the other Party to sign this document.

21. Amendments. Both Parties agree that this Agreement shall not be amended or modified, unless mutually agreed and in a writing that is signed and dated by each Party.

22. Construction. Both Parties agree that this Agreement shall not be construed against any Party because that Party's representative drafted the Agreement or any portion of it.

23. Additional Acts. The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out this Agreement.

24. No Third Parties. This Agreement is solely for the benefit of the Parties hereto, which include the CMCEA and its members, and the City of Costa Mesa and Tom Hatch, and does not confer any benefits or privileges on any other person or entity.

25. No Oral Modifications or Waiver. No supplement, modification, or amendment to this Agreement shall be binding unless mutually agreed and executed in writing that is signed by all of the Parties. No waiver of any provision of this Agreement shall be binding unless mutually agreed and executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

26. Severability. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision hereof.

27. Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

28. Attorneys' Fees. Should either Party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.

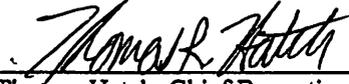
29. Gender and Number. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

30. Effective Date. This Agreement shall be effective as of the last date signed below by the Parties.

WHEREFORE, the undersigned having read the foregoing Settlement Agreement and General Release, and fully understanding it, and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

DATED: June 3, 2015

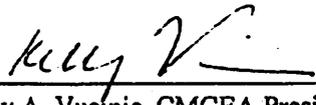
THOMAS HATCH



Thomas Hatch, Chief Executive Officer
City of Costa Mesa

DATED: _____, 2015

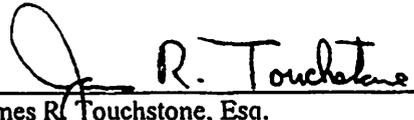
COSTA MESA CITY EMPLOYEE'S
ASSOCIATION



Kelly A. Vucinic, CMCEA President

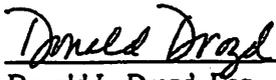
APPROVED AS TO FORM:

DATED: _____, 2015

By: 

James R. Touchstone, Esq.
Attorney for Defendants City of Costa Mesa
and Thomas Hatch

DATED: _____, 2015

By: 

Donald L. Drozd, Esq.
Attorney for CMCEA