

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“Agreement”) is entered between Petitioners and Plaintiffs, Paul and Dorothy Pressnall (“Plaintiffs”), and Respondent and Defendant City of Sutter Creek (“City”), regarding *Pressnall v. City of Sutter Creek*, Amador County Superior Court Case No. 11-CV-7458 (the “Action”). Collectively, the Plaintiffs and City are the “Parties” to this Agreement and each is, individually, a “Party” to this Agreement. This Agreement shall take effect immediately upon execution by the last Party to sign it (the “Effective Date”).

RECITALS

A. On June 4 2009, the City entered into an agreement entitled “Franchise for Solid Waste Collection, Disposal and Recycling Services,” with a private solid-waste collection and hauling service, ACES Waste Services, Inc. (“ACES”). The Franchise Agreement is for a term of five years and includes a provision allowing for extension of the Franchise Agreement for additional five years.

B. The Plaintiffs commenced the Action on August 31, 2011. Their complaint alleges the City violated Proposition 218 by approving solid-waste collection rates in 2009 and increasing such rates in 2010 and 2011 without following the procedures set forth in California Constitution Article XIID, Section 6(a)(1) and (2). The complaint alleges causes of action for mandamus, declaratory relief, and violation Proposition 218. It seeks issuance of a peremptory writ of mandamus, declaratory judgment, and injunctive relief.

C. The City filed an answer to the Plaintiffs’ complaint on November 4, 2011. The answer denies the material allegations of the Complaint and asserts various equitable defenses.

D. Without making any admissions, the Parties desire now to settle all existing and potential disputes arising out of the Action.

AGREEMENT

1. The Parties to this Agreement hereby incorporate the above-stated Recitals as material terms of this Agreement.

2. Beginning on the Effective Date, the City shall not increase or impose new solid waste fees or charges by contract or otherwise, by or through any City-designated franchisee, including but not limited to ACES, unless: (i) the City complies with the procedures set forth in Article XIID, Section 6(a)(1) and (2), of the California Constitution; and (ii) the City Council finds that a majority of owners of the parcels subject to the rate increase have not submitted written protests. For purposes of this

Agreement, the term “increase” shall have the same meaning as set forth for the term “increased” in Government Code section 53750(h). The provisions of Government Code sections 53755 and 53756 may, if duly authorized, apply to any fee or charge the City enables any franchisee to collect. Notwithstanding the foregoing, the City agrees that it will not assert that the next proposed increase on solid waste rates, fees, or charges does not need to comply with Art. XIID, Section 6(a)(1) and (2), of the California Constitution, based on Government Code section 53750(h)(2)(A) or (B).

3. The City shall pay costs and attorney fees to the Plaintiffs in the combined amount of \$12,500, payable to Krause Kalfayan Benink & Slavens, LLP and forwarded to the Plaintiffs’ counsel of record, within 15 days of the Effective Date.

4. In exchange for the foregoing covenants, the Plaintiffs agree to dismiss the Action with prejudice. The Plaintiffs, through their counsel of record, shall file a Request for Dismissal for the action within five court days of receipt of the attorney fees and costs required by the preceding paragraph. The Plaintiffs shall promptly serve notice of the Request for Dismissal on the City, through its counsel of record.

5. The Parties each warrant that he/she/it has not assigned or transferred, attempted to assign or transfer, and will not assign or transfer, any claim which was raised, or could have been raised, in connection with the Action. Should any controversy arise over any assignment or transfer of any claim in this Agreement, the Parties further agree that the Party who is alleged to have made such assignment or transfer shall fully indemnify the other Parties as to that controversy, including any legal action arising from it.

6. For and in consideration of the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged, each Party and his/her/its heirs, executors, administrators, predecessors, successors in interest, affiliates, partners, assigns, agents, officers and directors hereby forever generally, completely and mutually release and discharge the other, including, but not limited to, his/her/its heirs, executors, administrators, trustees, settlors, beneficiaries, issue, directors, officers shareholders, agents, predecessors, assigns, employees and attorneys, from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens, acts, costs, expenses, sums of money, suits, dues, actions and/or causes of action of every kind and nature in law, equity, or otherwise, known and unknown, matured and unmatured, suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and demands of every kind and nature, known and unknown, matured and unmatured, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, past, present, and after, arising out of or in any way related to their respective obligations, activities and/or dealings with one another arising out of or in any way related to or based upon the facts, circumstances or disputes claimed in, or related to, the subject matter of the Action.

7. It is the intention of the Parties hereto that this Agreement shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, and obligations, costs, expenses, attorneys’ fees, damages, losses, claims,

liabilities, and demands of whatsoever nature, character, or kind, known or unknown, suspected or unsuspected, with the exception of the Parties' rights and obligations under this Agreement. All of the Parties hereto acknowledge that they are familiar with Section 1542 of the California Civil Code and expressly waive the benefits thereof. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

8. The Parties acknowledge they have received the advice of counsel regarding the advisability of all releases provided for within, including the waiver of California Civil Code section 1542. The Parties are aware that, following execution of this Agreement, they may discover claims or facts in addition to or different from those they now know or believe to be true in relation to the matters addressed in this Agreement. Nonetheless, it is their intention to fully and finally settle and release all claims they have or may have against each other, except as reserved herein.

9. The Parties acknowledge they have read this Agreement, have had the opportunity to have the Agreement explained to them by counsel of their choice, are aware of its content and legal effect, and are signing this Agreement freely and voluntarily.

10. This Agreement shall be effective upon its full execution. Each of the undersigned represents that he/she has the authority to bind the Party on whose behalf that he/she has executed this Agreement. The Agreement may be executed in counterparts and in duplicate originals. If so executed, then upon proof of execution of at least one copy, the Agreement shall be effective from the date of the last signature. If executed in duplicate, each duplicate copy shall be valid as an original copy.

11. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party.

12. This Agreement constitutes the entire agreement between the Parties. No modification of this Agreement shall be valid unless in writing and signed by the Parties. The Parties shall not be bound by any representation, warranty, promise, or statement unless it is specifically set forth in this Agreement.

13. This Agreement is made and is enforceable in accordance with the provisions of Code of Civil Procedure Section 664.6 and the Parties agree that the Court shall retain jurisdiction for that purpose after dismissal of the Action. This Agreement

shall be admissible in any proceeding for its enforcement or interpretation in accordance with Evidence Code Section 1123.

14. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable. Furthermore, the place of performance shall be the County of Amador, State of California in the event of litigation.

15. This Agreement shall bind the heirs, personal representatives, successors, and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns.

16. If a legal action or proceeding is filed or commenced to enforce or interpret this Agreement, the prevailing party shall be entitled to recovery from the non-prevailing party his/its reasonable attorneys' fees together with any costs of suit, whether or not such action or proceeding proceeds to judgment.

17. The Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.

18. Failure of any of the Parties to insist upon the strict observance of, or compliance with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a waiver of any of the Parties' right to insist upon such observance or compliance with the other terms of this Agreement.

19. The City's covenant set forth in Paragraph 2 of this Agreement shall become void, and of no further effect, if the California Supreme Court rules, in a published opinion, that local agencies are not required to follow the procedures set forth in Article XIIIID, Section 6, of the California Constitution when approving contractual rate increases with franchisee solid-waste (refuse) and/or recycling services. This agreement shall also become void, and of no further effect, if the Third District Court of Appeals holds the same in a published opinion, and the case in which it so rules either is not further appealed to the Supreme Court, or the Supreme Court denies a petition for review. For purpose of this paragraph, the effective date of any Supreme Court or Third District Court of Appeal case shall be the date remittitur in the action is issued.

[Signatures on next page]

IT IS SO AGREED.

PAUL AND DOROTHY PRESSNALL


By: Paul Pressnall

April 24, 2012
Dated


By: Dorothy Pressnall

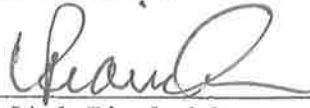
April, 24, 2012
Dated

Approved as to form:


By: Eric J. Benink

April 25, 2012
Dated

CITY OF SUTTER CREEK


By: Linda Rianda, Mayor

April 30, 2012
Dated

Approved as to form:


By: Derek P. Cole
City Attorney

May 7, 2012
Dated