

SETTLEMENT AGREEMENT

PARTIES TO AGREEMENT: Christian Valley Park Community Service District (hereinafter “CVPCSD”), and _____ (hereinafter “Board Member”) correctively “parties”.

WHEREAS, Board Member was on the Board of Directors of CVPCSD from _____ until _____;

WHEREAS, CVPCSD is governed under Gov. Code § 61047(a), which sets the maximum compensation rate at \$100 for each meeting attended by a Board Member, or each day in which a Board Member is engaging in official duties, up to six days per month, and;

WHEREAS, CVPCSD has determined that it has overpaid the Board Members, in that they received more than \$100 for each meeting attended by a Board Member; and

WHEREAS, CVPCSD has the ability to increase their reimbursement over \$100 per meeting and/or days engaged in official service pursuant to Gov. Code § 61047 under the terms of Water Code § 20201. However, even though the CVPCSD Board Members believed in good faith they were proceeding forward correctly, they are now aware the increases were in error and overpayments were made. CVPCSD now seeks reimbursement for this overpayment, and;

WHEREAS, on February 11, 2020 CVPCSD was made aware of a potential overpayment due to inconsistency in the bylaws and on March 31, 2020 the CVPCSD became further aware of a potential overpayment is violation of California law, and began to diligently investigate the matter, including retaining district council to advise on the matter, and;

WHEREAS, in *People v. Union Oil Co.* (1957) 48 Cal. 2d 476 (Union Oil) the Court "held that a claim for recovery of public moneys paid out through mistake is a civil claim which is subject to CCP section 338(d)." That case held (at page 482) that a civil action to recover overpayments of public funds was subject to the mistake statute (formerly numbered Code Civ. Proc., § 338, subd. 4), which has the statute of limitation at three years, and;

WHEREAS, Attorney General Opinion No. 17-101 (2020) allows the District Board to approve settlement agreements if they observe requirements for disclosure and recusal set forth in Government Code section 1091, subdivision (b)(15), which governs this situation. This means that Board Members will have to recuse themselves from voting on their own settlement agreement, and;

WHEREAS, Attorney General Opinion No. 17-101 (2020) also finds that a settlement agreement for overpayment is not required to collect the full amount owed, if there can be a justification for a reduced amount. Here, the cost of litigating to collect would cost more than is owed CVPCSD, which means it is appropriate for CVPCSD provide a reduced reimbursement if the Board Members are willing to voluntarily pay and not require litigation.

AGREEMENT: The parties hereby agree to settle this dispute in its entirety on the terms set forth below:

1. Board Member shall reimburse CVPCSD the following amount \$_____. This constitutes 100% the amount of overpayment from February 11, 2020 until present, and 55% from November 1, 2017 until February 10, 2020.
2. Board Member shall make monthly payments of \$_____ (minimum of \$25/month) until the amount is paid off.

Costs: All parties will bear their own attorney fees and all other costs involved in this dispute.

Waiver of 1542 Rights: Section 1542 of the California Civil Code provides “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 settlement with the debtor.” Despite this provision, each party waives the right to any future claims or any other rights under section 1542.

No Admission of Liability: Signing this Settlement Agreement or complying with its terms does not constitute an admission of liability on behalf of any party.

Representative Capacity: Each person signing this Settlement Agreement in a representative capacity warrants he or she has full authority to bind the principal to this Settlement Agreement.

Binding Agreement: It is the intent of the parties that this Settlement Agreement be binding and enforceable. Pursuant to Evidence Code § 1123, this document is admissible to prove the parties’ agreement.

Integration: This Settlement Agreement represents the complete understanding between the parties. No other promises or agreements shall be binding or modify this Settlement Agreement unless signed by the parties.

Future Attorney Fees: In the event of a dispute or litigation arising out of this Settlement Agreement, or the settlement contemplated hereby, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs.

Cooperation on Documents: The parties agree further documents may need to be prepared and executed to consummate this Settlement Agreement and agree to cooperate in this process.

SIGNATURES OF PARTIES

_____, Board Member

Date

Rolando De La Torre, Board Chair

Date

APPROVED AS TO FORM

Margaret E. Long, CVPCSD Counsel

Date