

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this "Agreement") dated for convenience of reference as of October 17, 2016, is between the City and County of San Francisco including the Office of the Treasurer and Tax Collector ("Treasurer/Tax Collector's Office") and the San Francisco Ethics Commission ("Ethics Commission") (collectively, the "City") on the one hand, and Mark Farrell for District 2 Supervisor 2010 and Mark Farrell (collectively, "Farrell") on the other hand. The City and Farrell are sometimes referred to below collectively as "Parties" and individually as a "Party."

RECITALS

The Parties make this Agreement with reference the facts and circumstances set forth below, and in recognition of the following:

- A. The California Fair Political Practices Commission ("FPPC") concluded that Mark Farrell did not authorize the actions of his former campaign consultant Chris Lee with respect to Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor ("CSV"), and that he was not aware of Mr. Lee's actions. The Ethics Commission concurs with the FPPC's conclusions. Mr. Farrell nevertheless acknowledges that he has the ultimate responsibility for the wrongful acts of Mark Farrell for District 2 Supervisor 2010 committee ("Farrell 2010 Committee") and its agents. In addition, the statute of limitations may impede any effort to bring an action under City law arising out of these actions or the litigation described below.
- B. On November 20, 2014, the FPPC approved a stipulation with CSV and Chris Lee, the campaign consultant for the Mark Farrell for District 2 Supervisor 2010 Committee ("FPPC Stipulation"). In the FPPC Stipulation, the FPPC found that Chris Lee improperly coordinated with CSV and fined Mr. Lee.
- C. The FPPC Stipulation expressly states that the FPPC's investigation did not uncover any evidence supporting the finding that Mark Farrell authorized Lee, as his agent, to coordinate with CSV. The FPPC found that Mark Farrell had no knowledge of, and did not authorize, the actions of Mr. Lee with respect to CSV.
- D. After the FPPC approved the FPPC Stipulation, on December 9, 2014, the Executive Director of the Ethics Commission issued a forfeiture letter to Mark Farrell (the "Forfeiture Demand").
- E. On June 5, 2015, the Executive Director proposed to rescind the Forfeiture Demand stating that there was no evidence before the Ethics Commission that established any fraudulent behavior by Farrell and that it was likely that the statute of limitations had lapsed. But at its June 5, 2015 meeting, the members of the Ethics Commission rejected the Executive Director's proposal.

F. On July 3, 2015, the Ethics Commission referred the matter to the San Francisco Bureau of Delinquent Revenue Collection, Treasurer/Tax Collector's Office.

G. On April 29, 2016, Farrell filed an action in the Superior Court for the State of California, County of San Francisco ("Court"), captioned as *Mark Farrell for District 2 Supervisor and Mark Farrell v. City and County of San Francisco, et al.*, Case No. CGC-16-551745, seeking vacation of the forfeiture demand and declaratory relief (the "Complaint").

H. On May 31, 2016, the City filed a cross-complaint against Mark Farrell pursuant to San Francisco Campaign and Government Conduct Code section 1.168(b) seeking to enforce the Forfeiture Demand ("Cross-Complaint"). The complaint and cross-complaint are jointly referred to as the "Litigation."

I. The Parties recognize and agree that it is in their mutual best interests to resolve their differences as set forth below, and have engaged in arm's-length negotiations in an effort to resolve the Forfeiture Demand and Litigation informally.

J. The Parties also recognize and agree that the agreements and releases set forth below represent the Parties' compromise of disputed matters to avoid the further disruption and expense of the Litigation.

K. The Parties wish to fully, finally, and completely resolve and dispose of all civil charges, claims, causes of actions, complaints, demands, liabilities, rights, obligations, losses, or damages of any kind, known or unknown, arising out of or relating to the Forfeiture Demand and the Litigation.

ACCORDINGLY, in view of the foregoing Recitals, and in consideration of the agreements and the releases set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. SETTLEMENT TERMS

1.01 Recitals Incorporated. The recitals set forth above, inclusive and alone, are incorporated by reference and made a material part of this Agreement.

1.02 Effective Date. This Agreement shall be effective as of the last date signed below.

1.03 Settlement Payment from Mark Farrell to the City. Mark Farrell agrees to pay the City the gross sum of twenty-five thousand dollars and no cents (\$25,000.00) (the "Settlement Payment") as full and final payment for all settled claims. The Settlement Payment shall be made within ten (10) business days of the Effective Date of this Agreement. The settlement amount shall be paid by check or money order made payable to the "City and County of San Francisco" and delivered to the following address:

San Francisco Ethics Commission
ATTN: Enforcement Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

1.04 Filing of Dismissal by City. Within ten (10) business days of receipt of the Settlement Payment from Mark Farrell as described above in Section 1.03, the City shall file with the Court a Request for Dismissal with prejudice of the Cross-Complaint.

1.05 Filing of Dismissal by Farrell. Within five (5) business days of the filing of the dismissal of the Cross-Complaint as described above in Section 1.04, Farrell shall file with the Court a Request for Dismissal with prejudice of the Complaint.

1.06 Removal of Forfeiture Demand From City Records. Within five (5) business days of the filing of the dismissal of the Complaint as described in Section 1.05, the City, Ethics Commission and Treasurer/Tax Collector's Office shall update any public records reflecting Farrell's indebtedness related to the Forfeiture Demand, including but not limited to any list maintained by the Treasurer/Tax Collector's Office of delinquent revenues.

2. MUTUAL RELEASE PROVISIONS

2.01 Specific Release of Farrell by the City. Effective upon receipt of the Settlement Payment from Mark Farrell as described above in Section 1.03 and dismissal of the Complaint as described above in Section 1.05, the City fully and forever releases and discharges Farrell and each of Farrell's current and former predecessors, successors, and each of its current and former directors, officers, employees, attorneys, contractors, subcontractors, agents, and representatives of each of the foregoing entities (the "Released Farrell Parties") from any and all civil and administrative charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, injuries, liens, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, that the City ever asserted or could have asserted against Farrell that arise out of, are in any way related to, or that are based on the allegations in the Forfeiture Demand, Complaint, Cross-Complaint, or the subject matter of the Litigation (the "City Released Claims"), other than the Non-Released Claims contained in Section 2.04 below. The San Francisco City Attorney's Office further agrees that it will not bring any claim against the Released Farrell Parties for any of the City Released Claims, either on behalf of the City and County of San Francisco, the People of the State of California, or otherwise.

2.02 Specific Release of the City and County of San Francisco by Farrell. Effective upon dismissal of the Cross-Complaint as described above in Section 1.04, Farrell fully and forever releases and discharges the City, including, without limitation, its Ethics Commission, Treasurer/Tax Collector's Office and City Attorney's Office, and the City's agents (collectively, the "Released City Parties"), from any and all civil and administrative charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses,

injuries, liens, debts and expenses (including attorneys' fees and costs actually incurred) that Farrell ever asserted or could have asserted against the Released City Parties that arise out of, are in any way related to, or that are based on the allegations in the Forfeiture Demand, Complaint, Cross-Complaint, or the subject matter of the Litigation (the "Farrell Released Claims").

2.03 Waiver of Civil Code Section 1542. With respect to the City Released Claims and the Farrell Released Claims, as defined in this Agreement, the Parties intend that the mutual releases set forth in Sections 2.01 and 2.02 shall bar all civil and administrative actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, specified to be so barred. In furtherance of this intention, with respect to the City Released Claims and the Farrell Released Claims, the Parties expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, or by any similar statute applicable in any jurisdiction in which this Agreement may be implemented, to the extent that any such statutes may be applicable. California Civil Code Section 1542 provides as follows:

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

The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was separately bargained for. Each of the Parties understands and acknowledges the significance and consequences of this waiver of California Civil Code Section 1542 and confirms that it has either discussed or been given an opportunity to discuss such matters with counsel of choice.

Each of the Parties further agrees that there is a risk that, subsequent to the execution of this Agreement, each Party and/or its successor may incur or suffer loss, damage, or injuries that are in some way caused by the City Released Claims or the Farrell Released Claims referred to above, but which are unknown and unanticipated at the time this Agreement was signed. Each of the Parties understands and acknowledges that it is releasing, for itself and its successors, all such claims by executing this Agreement.

2.04 Specific Release of Requirement to Amend Campaign Reports. Effective upon the Effective Date of this Agreement, the City and the Ethics Commission release Farrell from any campaign reporting obligations pursuant to San Francisco Campaign and Government Conduct Code section 1.100 et seq. and California Government Code section 81000 et seq. which may in whole or in part arise from any acknowledgments, express or implied, made in the Agreement.

2.05 Non-Released Claims. The Parties acknowledge that the releases in Section 2 do not in any way relieve the Parties of the obligation to abide by the terms of this Agreement nor impair their ability to enforce this Agreement as provided in Section 3.10.

3. MISCELLANEOUS PROVISIONS

3.01 Fair, Adequate, and Reasonable Settlement. Each of the Parties believes this settlement is fair, adequate, and reasonable, and arrived at this Agreement in arm's-length negotiations, taking into account all relevant factors, present and potential.

3.02 Authority. The Parties represent and warrant to each other that the person executing this Agreement on its behalf has full authority and capacity to execute this Agreement and to give the releases and other promises contained in this Agreement. If this representation is false or inaccurate, and any claim or matter is asserted against a party by anyone who is the assignee or transferee of such a claim or matter, then the Party who assigned or transferred such claim or matter shall fully indemnify, defend, and hold harmless the Party against whom such claim or matter is asserted and its successors from and against such claim or matter.

3.03 Voluntary Agreement. Each of the Parties acknowledges that the Agreement has been fully read, reviewed and understood by its authorized signatory and that each Party signs the same freely and voluntarily.

3.04 Independent Advice of Counsel. Each of the Parties represents and declares that, in executing this Agreement, it has relied solely upon its own judgment, belief and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of his or her rights and claims. The Parties acknowledge that they have executed this Agreement without fraud, duress or undue influence.

3.05 Entire Agreement/Construction and Interpretation. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the settlement of their disputes that are the subject of this Agreement, and it supersedes and replaces all prior negotiations, proposed agreements and agreements related to such disputes. Each of the Parties acknowledges that no other party, nor any agent, representative or attorney of any other party, has made any promise, agreement, covenant, representation or warranty whatsoever, express or implied, concerning the subject matter of this Agreement that is not contained in this Agreement.

3.06 Inurement. The Agreement shall inure to the benefit of and be binding upon each of the Parties and its respective agents, partners, joint venturers, officers, directors, trustees, attorneys, representatives, assigns, subsidiaries, parent companies, and predecessor or successor companies.

3.07 Waiver and Amendment. No breach of any provision of this Agreement can be waived except by a writing executed by all of the Parties to this Agreement. Waiver of any breach shall not be deemed to be a waiver of any other breach of the same

or any other provisions of this Agreement. This Agreement may not be modified, amended, supplemented or terminated except by a written agreement executed by the Parties in interest at the time of amendment.

3.08 Representation and Covenant Not to Sue. The City—including, without limitation, the Ethics Commission, Treasurer/Tax Collector's Office and the City Attorney's Office—represents and agrees that it has not filed or pursued, and that they will not file or pursue, any charges, suits, complaints, grievances, administrative proceedings, or other actions that assert, arise out of, or are in any way related to the Forfeiture Demand or Released Claims other than this Litigation.

3.09 Attorneys' Fees and Costs. Each of the Parties agrees to bear its own fees and costs in connection with the negotiating and execution of this Agreement and in connection with the Forfeiture Demand and Litigation.

3.10 Governing Law. This Settlement Agreement is being executed in the State of California, and shall be deemed to be made under, and shall be interpreted in accordance with, the laws of the State of California. The Parties agree that any lawsuit to enforce this Settlement Agreement shall be filed in the Superior Court of California for the County of San Francisco.

3.11 Headings. Captions, section headings and numbers have been set forth in this Agreement for convenience only and are not to be used in construing this Agreement.

3.12 Further Assurances. Following the execution of this Agreement, the Parties agree to take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to effectuate the intention of this Agreement.

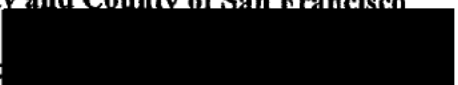
3.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument. The Parties will accept facsimile of the signature pages provided that the original signature pages are mailed to the other Party's counsel immediately after those pages are signed.

IN WITNESS OF THIS AGREEMENT, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

PLEASE READ THIS DOCUMENT CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A SPECIFIC RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS ARISING FROM THE FORFEITURE DEMAND AND LITIGATION AS DEFINED IN THIS AGREEMENT.

DATE: 10/17/16

AGREED AND ACCEPTED
City and County of San Francisco

By: 
Paul Renne
San Francisco Ethics Commission

By: _____
Jose Cisneros
Office of the Treasurer & Tax Collector

DATE: 10/15/16


AGREED AND ACCEPTED
Mark Farrell for District 2 Supervisor
2010 and Mark Farrell

By: 

Approved as to Form and Content:


Dated: 10/17/16

DENNIS J. HERRERA
CITY ATTORNEY

By: 
Daryl J. Eisenberg
Attorneys for the City and County of San Francisco

Dated: 10/15/16

THE SUTTON LAW FIRM, LLC

By: 
James R. Sutton
Attorneys for Mark Farrell for District 2
Supervisor 2010 and Mark Farrell

Consented to:

Dated: _____

By: _____
Ben Rosenfield

AGREED AND ACCEPTED
City and County of San Francisco

DATE: _____

By: _____
Paul Renne
San Francisco Ethics Commission

By: _____
Jose Cisneros
Office of the Treasurer & Tax Collector

AGREED AND ACCEPTED
Mark Farrell for District 2 Supervisor
2010 and Mark Farrell

DATE: _____

By: _____
Mark Farrell

Approved as to Form and Content:

Dated: _____

DENNIS J. HERRERA
CITY ATTORNEY

By: _____
Sara J. Eisenberg
Attorneys for the City and County of San
Francisco

Dated: _____

THE SUTTON LAW FIRM, LLC

By: _____
James R. Sutton
Attorneys for Mark Farrell for District 2
Supervisor 2010 and Mark Farrell

Consented to:

Dated: _____

By: _____
Ben Rosenfeld