

## RELEASE OF CLAIMS AND SETTLEMENT AGREEMENT

WHEREAS Plaintiff/Counterdefendant Michael D. Gray ("Gray") filed a lawsuit against the City of Gautier, Mississippi ("the City"), and the City filed a counterclaim against Gray in the United States District Court for the Southern District of Mississippi, Civil Action No. 1:10cv00506(HSO)(JMR); and

WHEREAS, Gray and the City desire to resolve all claims and cease the litigation in Civil Action No. 1:10cv00506(HSO)(JMR) pursuant to the terms of this Release of Claims and Settlement Agreement ("Agreement");

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

1. Gray hereby:
  - A. Agrees to the entry of a Stipulation of Dismissal, with prejudice, as well as an Order of Dismissal, with prejudice, as to the City, in the United States District Court for the Southern District of Mississippi, Southern Division, Civil Action No. 1:10cv00506(HSO)(JMR), in which he is the Plaintiff/Counterdefendant, and the City is the Defendant/Counterplaintiff, with all parties to bear their own costs.
  - B. Releases, acquits and forever discharges the City, and its officers, agents, servants, successors, employees, past employees, insurers, and liability plans from any and all claims, actions, causes of action, rights, demands, debts, damages, (specifically including, but not limited to punitive damages) or accounting of whatever nature, whether known or unknown, arising prior to the date of this Agreement, including, but not limited to, any damages, claims or penalties to which Plaintiff/Counterdefendant claims he may have been entitled under federal, state or local law, whether common law or statutory, or the United States Constitution, or the Mississippi Constitution, relating to or arising from the facts giving rise to the aforesaid cause of action. Plaintiff/Counterdefendant, his heirs and assigns, further agree to release and relinquish any and all claims Plaintiff/Counterdefendant has or may have had in the past under federal, state or local law, whether common law or statutory, or constitutions dealing with any actions taken by any employee or agent of the City in connection with the events which form the subject matter of Civil Action No. 1:10cv00506(HSO)(RHW). Notwithstanding the general release of all claims language set forth herein, it is understood that

Plaintiff/Counterdefendant Gray is not releasing or waiving any claim that is based on future acts including any now-unknown latent work injury/disease.

- C. Agrees to pay the City a total of Ten Thousand Dollars (\$10,000.00) to be paid according to the following terms:
  - i. One Hundred Dollars (\$100.00) per month from October, 2012 through December, 2012;
  - ii. Ten percent (10%) of his net pay beginning January, 2013;
  - iii. Beginning January, 2013, Gray will furnish the City Manager pay statements every three months showing the net amount of his compensation for the prior three month period;
  - iv. All payments to be made to the City's City Manager on or before the 15<sup>th</sup> of the month in which the payment is due; and
  - v. Any amounts received by Gray in payments from his retirement account will be subject to the ten percent (10%) payment referred to in 1(C)(ii) above.
- D. Agrees that he will not appeal the Court's grant of summary judgment against him in Civil Action No. 1:10cv00506(HSO)(JMR).
- E. Expressly agrees that the terms and conditions set forth in this Agreement shall remain confidential and that he will communicate to no one other than his own attorneys, members of his immediate family, accountant, and/or in response to a disclosure compelled in connection with tax preparation, credit application, and/or in response to subpoena and/or official inquiry by any federal or state tax authority.

2. The City hereby:

- A. The City, by and through its undersigned duly authorized counsel, hereby agrees to provide a neutral reference to any prospective employers of Gray. This neutral reference will consist only of the dates of Gray's employment with the City and his position with the City at the time of his termination.
- B. Agrees to the entry of a Stipulation of Dismissal, with prejudice, as well as an Order of Dismissal, with prejudice, as to Gray, in the United States District Court for the Southern District of Mississippi, Southern Division, Civil Action No. 1:10cv00506(HSO)(JMR), in which Gray is Plaintiff/Counterdefendant and the City is Defendant/ Counterplaintiff, with all parties to bear their own costs.

- C. Releases, acquits and forever discharges Gray from any and all claims, actions, causes of action, rights, demands, debts, damages, (specifically including, but not limited to punitive damages) or accounting of whatever nature, whether known or unknown, arising prior to the date of this Agreement, including, but not limited to, any damages, claims or penalties to which Defendant/Counterplaintiff claims it may have been entitled under federal, state or local law, whether common law or statutory, or the United States Constitution, or the Mississippi Constitution, relating to or arising from the facts giving rise to the aforesaid cause of action. Defendants/Counterplaintiffs further agree to release and relinquish any and all claims the City and its officers, agents, servants, successors, employees, past employees, insurers, and liability plans from any and all claims, actions, causes of action, rights, demands, debts, damages, (specifically including, but not limited to punitive damages) or accounting of whatever nature, whether known has or may have had in the past under federal, state or local law, whether common law or statutory, or constitutions dealing with any actions taken by any employee or agent of the City in connection with the events which form the subject matter of Civil Action No. 1:10cv00506(HSO)(RHW).
- D. Expressly agrees that the terms and conditions of this Agreement shall remain confidential and that the City will communicate to no one except its attorneys, accountant, and/or in response to disclosure(s) compelled in connection with tax preparation, credit application, and/or in response to subpoena and/or official inquiry by any federal or state tax authority.

3. Gray and the City (jointly referred to as “the Parties”) have denied, and continue to deny, any liability whatsoever regarding the allegations and claims against them in Civil Action No. 1:10cv00506(HSO)(JMR), and it is understood by the Parties that entry into this Agreement that it does not constitute, nor shall it be construed as, an admission by either Party of any violation whatsoever of any rights secured by the United States Constitution or any local, state or federal law. The Parties have agreed to the settlement reflected herein for the sole purpose of avoiding additional litigation costs stemming from claims that likely lack merit. The Parties understand and agree that this financial settlement is in full accordance and satisfaction of said claims, and in lieu of all related rights and remedies.

4. The Parties have negotiated this Agreement with full knowledge of its contents and effect. Each party to this Agreement expressly authorized the negotiation and execution of

this Agreement. In authorizing this Agreement's execution, no party has acted upon any promise, representation, assumption or understanding which is not expressed in this Agreement's written terms.

5. If at any time after the execution of this Agreement, it is established that either Gray or the City violated its terms, the other party shall have the right to seek appropriate relief including, but not limited to, a permanent injunction restraining the other from further violations, recovery of the amount of consideration paid, damages and costs including reasonable attorneys' fees.

6. In the event of any dispute arising under this Agreement, it is agreed that Mississippi law, and federal law, where applicable, will control the interpretation, validity, enforceability and effect of this Agreement without regard to the place of execution or the place of performance. Since this Agreement resolves claims made under federal and state law, and such claims were brought in the United States District Court for the Southern District of Mississippi, Southern Division, the Parties stipulate the United States District Court for the Southern District of Mississippi, Southern Division, has continuing jurisdiction to decide any dispute concerning a violation of its terms.

7. Gray acknowledges that before signing this Release of Claims and Settlement Agreement, he has read it, and fully understands its terms, content, and effect.

8. This Agreement represents the Parties' entire Agreement and this Agreement cancels and supersedes any and all previous written or oral agreements, representations, assumptions or understandings between them.

IN WITNESS WHEREOF, the parties have executed this Release of Claims and Settlement Agreement on this the \_\_\_ day of \_\_\_\_\_, 2012.

