

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 8th day of November, 2016 by and between Plaintiff Mark Jordan ("Plaintiff") and Defendant City of Antioch ("City") concerning *Jordan v. City of Antioch et al.*, Contra Costa Superior Court Case No. 16-00372 (the "Legal Action") Hereafter, Plaintiff and the City may be referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Plaintiff filed the Legal Action on February 26, 2016. The action challenges the City's practice of annually transferring an amount equaling: (i) one percent of its Police Department budget from the City water enterprise fund ("Fund 611"), and (ii) one percent of its Police Department budget from the City sewer enterprise fund ("Fund 621") to the City's General Fund. Plaintiff alleges these annual transfers violate Proposition 218 (specifically, section 6 of Article XIID of the California Constitution).

B. The City has sequestered the funds that it budgeted to be transferred from Fund 611 and 621 to the General Fund in Fiscal Years 2016 and 2017 pending the outcome of this litigation. In other words, such funds have not yet been transferred to the General Fund.

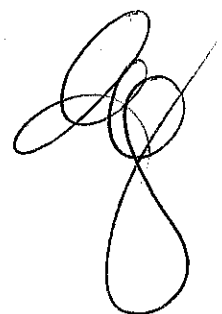
C. The City filed an Answer to the Plaintiff's Complaint on April 1, 2016. The City denied that the above-described annual transfers violate Proposition 218.

D. The Parties participated in a mediation on October 19, 2016 before retired Judge Scott Snowden. At mediation, the Parties reached a settlement that they now wish to reflect in this Agreement.

### AGREEMENT

1. **Incorporation of Recitals.** The above recitals are incorporated as material terms of this Agreement.

2. **Refund of Funds to City Enterprise Accounts.** Within 15 days of execution of this Agreement, the City shall transfer from the General Fund to the enterprise funds for the Water and Sewer Enterprises (i.e., Funds 611 and 621, respectively), the following sums for Fiscal Years 2013, 2014, and 2015, which represent 25% of the total amounts transferred from those funds (but prorated 60%-40% to Fund 611 and 621 respectively) in those years:

A handwritten signature in black ink, appearing to be the name 'Mark Jordan', written in a cursive style.

<u>Year</u>	<u>Amount Returned to Fund 611</u>	<u>Amount Returned to Fund 621</u>	<u>Total Amount Returned</u>
2013	\$72,300	\$48,200	\$120,500
2014	\$77,100	\$51,400	\$128,500
2015	\$86,400	\$57,600	\$144,000

The City shall refrain from transferring from Funds 611 and 621 for Fiscal Years 2016 and 2017 a sum equaling 40% of the total amounts that it budgeted to be transferred but have not yet occurred (but prorated 60%-40% to Fund 611 and 621 respectively). The amounts to be retained in Funds 611 and 621 (i.e. that it shall refrain from transferring) shall be as follows:

<u>Year</u>	<u>Amount Retained in Fund 611</u>	<u>Amount Retained in Fund 621</u>	<u>Total Amount Retained</u>
2016	\$153,120	\$102,080	\$255,200
2017	\$163,200	\$108,800	\$272,000

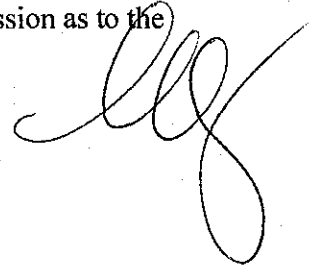
**3. Dismissal of Legal Action and Absence of "1542" Releases.** Within 10 days after the City's counsel communicating to the Plaintiff's counsel that the foregoing transfers and retentions have been completed, and provided adequate proof of such transfers and retentions has been provided to Plaintiff's counsel, Plaintiff shall file a Request for Dismissal of the Legal Action.

The Parties recognize that upon dismissal of the Legal Action, they shall have resolved only the disputes as alleged in the operative complaint concerning the fiscal years described in the preceding paragraph (i.e. 2012-2017.) By this agreement, the Parties do not intend to enter into, nor in fact enter into, any releases under California Civil Code section 1542. Nor do the Parties express any intent to enter into, or in fact enter into, any releases as concerns the application of Proposition 218 to transfers from Funds 611 and 621 in Fiscal Year 2018 or thereafter.

**4. Council Agenda Item.** This Agreement shall be placed on the City Council's agenda at the first meeting following City Council approval and shall be subject to public comment. Plaintiff Mark Jordan shall have up to 10 minutes to comment on the Agreement.

**5. Attorneys' Fees and Costs.** Within 15 days of execution of this Agreement, the City shall pay the Plaintiff's counsel the sum of \$75,000 as attorney's fees and costs. Payment shall be made to Krause Kalfayan Benink & Slavens, LLP and delivered to 550 West C Street, Suite 530, San Diego, CA 92101. No further attorney's fees or costs shall be paid to or by either party.

**6. No Admission.** Nothing in this Agreement shall be deemed an admission as to the validity of any claims, defenses, or facts asserted in the Lawsuit.



7. **No Modification.** No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by the Parties.

8. **Entire Agreement; Successors and Assigns.** The Parties agree that this Agreement sets forth the final, entire agreement between them relating to the subject matter hereof; that this document merges and supersedes all prior discussions, agreements, understandings, representations, and all other communications between them relating to the subject matter of this Agreement; and that it shall be binding on their successors and assigns by merger or other transaction; their assignees; and their officers, directors and shareholders.

9. **Legal Representation.** The Parties affirm that they have been represented by counsel of their own choosing regarding the preparation and negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. No Party is relying on any statement of another Party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

10. **California Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Should any part of this Agreement be found to be invalid, the validity of any remaining parts or provisions shall not be affected thereby.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement shall be binding upon the receipt of facsimile or electronic signatures.

SO AGREED.

MARK JORDAN

By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF ANTIOCH

By: \_\_\_\_\_

Wade Harper, Mayor

Date: \_\_\_\_\_

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**MARK JORDAN**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF ANTIOCH**

By:  \_\_\_\_\_  
Wade Harper, Mayor

Date: 11/10/16