

## SETTLEMENT AND RELEASE AGREEMENT

Settlement and Release Agreement ("Agreement") is entered into as of \_ February 2018 effective ("Effective Date"), by and between Marcus Bush (Plaintiff); and Lemon Grove Councilmember Jerry Jones (Jones) and Lemon Grove City Manager Lydia Romero (Romero) (collectively Defendants). The Parties may be referred to individually as a Party or collectively as the Parties.

### RECITALS

This Agreement is made with reference to the following facts:

A. Marcus Bush is a former employee of Rick Engineering and performed community outreach work related to the Lemon Grove Downtown Specific Plan for Rick Engineering on behalf of the City of Lemon Grove.

B. In July 2017, Plaintiff made a comment on Facebook stating that Jones had "thinly veiled racist tendencies." At the time of the comment, Plaintiff had left full time employ at Rick Engineering and was working of a temporary agency on contract with Rick Engineering.

C. Jones responded to the comment by contacting Romero and inquiring about Plaintiff's work representing the City of Lemon Grove. Romero followed up on Jones' inquiry and Plaintiff's comment. After discussions with Romero, Rick Engineering ceased using Plaintiff under his temporary contract.

D. On October 4, 2017, Plaintiff filed an action against Defendants in US District Court for the Southern District of California entitled *Bush v. Jones* USDC Case No. '17CV2036 LAB MDD, claiming retaliation, and violation of his First Amendment Rights under 42 USC 1983.

E. Defendants denied all allegations.

F. On January 18, 2018, the parties and their counsel attended an Early Neutral Evaluation Conference before the Honorable Mitchell D. Dembin US Magistrate Judge. The parties tentatively settled the case at that hearing.

G. The Lemon Grove City Council approved the tentative settlement outline below at closed session on February 6, 2018.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for all other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1. Incorporation of Recitals:** The Recitals set forth above are true and correct and are set forth herein and included in the terms of this Agreement.

**2. Payment of Attorneys' Fees and Costs:**

2.1 City of Lemon Grove. The City of Lemon Grove shall pay fifteen thousand dollars (\$15,000) to Briggs Law Corporation for attorneys' fees and costs incurred by Plaintiff.

**3. Letters of Apology:**

3.4 Defendants. Jones and Romero agree to execute the letters of apology attached hereto as Exhibit A.

**4. Dismissals/Waivers:**

4.1 Plaintiff. Plaintiff will submit a Motion to Dismiss the entire District Court Action with Prejudice within five business days of the Effective Date of this Agreement. Defendants agree they will join in such motion. Plaintiff acknowledges that he is not "prevailing parties" in the District Court Action, as that term is defined in 42 U.S.C. § 1988 and California Code of Civil Procedure § 1032, *et. seq.*

**5. Release:**

5.1 Plaintiff. This Release constitutes a release of unknown and known claims and Parties hereby waives the provisions of California Civil Code §1542, or any other equivalent provision under the law of any other state or federal jurisdiction. Civil Code §1542 provides as follows:

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 OR HER SETTLEMENT WITH THE DEBTOR.

The Parties acknowledges that this Release constitutes a release of unknown claims and hereby knowingly and intentionally waives Section 1542 and all unknown claims that could have been raised any of them against the other, including those he or she did not know of or suspect to exist in his or her favor at the time of execution of this Agreement.

**6. No Admission:** It is understood and expressly agreed by the Parties that this is a compromise settlement of any and all potential claims. Parties shall not construe any actions taken in performance of this Agreement as an admission of liability, as such liability is expressly denied.

**7. Attorneys' Fees and Costs:** The Parties, and each of them, shall bear their own attorneys' fees and costs incurred in connection with the District Court Action, except

for the payment noted in paragraph 2.1, through and including fees incurred in connection with the negotiation and drafting of this Agreement.

**8. Representations:** The Parties, and each of them, acknowledge, warrant and represent that: (i) they have had a reasonable opportunity to consult counsel prior to execution of this Agreement; (ii) they have read and fully understand this Agreement and have executed this Agreement with full knowledge of its terms and their rights, and without fraud, duress, or undue influence of any kind; (iii) this Agreement contains those facts, representations and warranties upon which the Parties based their respective determinations to execute this document; (iv) except as set forth in this Agreement, the Parties do not rely on any statements, representations, or promises of the other Parties or any of their respective agents, representatives, or attorneys regarding the settlement provided for in this Agreement, the releases contained in this Agreement, any of the facts pertaining to the claims being released in this Agreement or any other matter whatsoever; (v) if they subsequently discover that any fact relied upon by them in entering into the releases set forth in this Agreement was untrue or that any fact was concealed from them, or that their understanding of the facts or of the law was in any way incorrect, they shall not be entitled to set aside this Agreement or the releases contained herein; (vi) they have full power to execute, deliver and carry out the terms and provisions of this Agreement on behalf of the Party for whom they sign, and have taken all actions necessary to authorize the execution, delivery and performance of this Agreement; and (vii) this Agreement is the product of negotiation between the Parties and shall be interpreted and construed according to its fair meaning and not strictly for or against any Party on the grounds that such party or such Party's attorney drafted this Agreement or any of its provisions.

**9. No Prior Transfer:** Each Party represents and warrants to the others that no third person or entity has any interest in the claims being settled and released, other than those set forth in this Agreement, and that none of the claims, nor any interest therein, has been sold, assigned, conveyed, or otherwise transferred.

**10. General Provisions:**

**10.1 Complete Agreement; Modifications:** This Agreement (i) constitutes the Parties' entire agreement, including all terms, conditions, definitions, warranties, representations, and covenants, with respect to the subject matter hereof, (ii) merges all prior discussions and negotiations between or among any or all of them as to the subject matter hereof, and (iii) supersedes and replaces all terms, conditions, definitions, warranties, representations, covenants, agreements, promises, and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may not be amended, altered, or modified, except by a writing signed by the Party to be bound. With regard to such amendments, alterations, or modifications, signatures by facsimile shall be as effective as original signatures. Any amendment, alteration, or modification requiring the signature of more than one Party may be signed in counterparts.

**10.2 Notice.** All notices required or provided under this Agreement shall be in writing and delivered in person or sent via facsimile or mail (first-class postage prepaid

and addressed) as provided in this section. Notice shall be effective on the date of personal delivery or, if sent via facsimile during normal business hours on the same business day, and on the next business day if sent after normal business hours. If notice is mailed, it shall be effective on the second day following the date of deposit in the U.S. Mail. Notices shall be addressed as follows unless a written change of address is provided as set forth herein:

Notice to City:

Lydia Romero, City Manager, or successor  
CITY OF LEMON GROVE  
3232 Main Street  
Lemon Grove, CA 91945  
Telephone: (619) 825-3800

With a copy to:

Deputy City Attorney  
Jacqueline S. Vinaccia  
Lounsbery Ferguson Altona & Peak LLP  
960 Canterbury Place, Suite 300  
Escondido, CA 92025  
Telephone: (760) 743-1201  
Facsimile: (760) 743-9926

Notice to Plaintiff:

Cory Briggs  
Briggs Law Corporation  
99 East "C" Street, Suite 111  
Upland California, 91786  
Telephone: (909) 949-7115  
Facsimile:

10.3 Further Acts: Each Party agrees to perform any further acts and execute and deliver any further documents reasonably necessary to carry out the transactions contemplated by this Agreement.

10.4 Severability: If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law if enforcement would not frustrate the overall intent of the Parties (as such intent is manifested by all provisions of the Agreement, including such invalid, void, or otherwise unenforceable portion).

10.5 Headings: The headings in this Agreement are inserted only as a matter of convenience, and in no way, define, limit, extend, or interpret the scope of this Agreement or of any particular provision hereof.

10.6 Gender, Number, and Tense: Throughout this Agreement, unless the context otherwise requires: (i) the masculine, feminine, and neuter genders each includes the other; (ii) the singular includes the plural, and the plural includes the singular; and (iii) the past tense includes the present, and the present tense includes the past.

10.7 Assignment/No Third-Party Beneficiaries: No Party may assign its rights under this Agreement without the prior written consent of the other Parties hereto. This Agreement, and each and every provision hereof, is for the exclusive benefit of the Parties and not for the benefit of any third party.

10.8 Successors and Assigns: Except as explicitly provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors, and permitted assigns.

10.9 Extension Not a Waiver: No delay or omission in the exercise of any power, remedy, or right herein provided, or otherwise available to any Party, shall impair or affect the right of such Party thereafter to exercise the same. Any extension of time or other indulgence granted to a Party hereunder shall not otherwise alter or affect any power, remedy, or right of any other Party, or the obligations of the Party to whom such extension or indulgence is granted, except as specifically waived.

10.10 Time of Essence: Time is of the essence as to each and every term, condition, obligation, and provision hereof.

10.11 Counterparts: In the event this Agreement is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one agreement.

10.12 Applicable Law, Venue: This Agreement is executed pursuant to, intended to be performed under, and shall be governed in its interpretation and effect, by the laws of the State of California. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state and federal courts located in San Diego, California, with proper venue of any state court action being Central San Diego County. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, precluding the possibility of litigation between the Parties, or any of them, with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this paragraph.

THE UNDERSIGNED HEREBY CERTIFY THAT EACH OF THEM HAS READ ALL OF THIS SETTLEMENT AGREEMENT AND RELEASE AND IN WITNESS WHEREOF THEY HAVE EXECUTED THIS AGREEMENT ON THE FOLLOWING DATES.

PLAINTIFF

DATED: 2/15/18

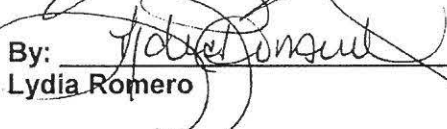
By:   
\_\_\_\_\_  
Marcus Bush

DEFENDANTS

DATED: 2/13/18

By:   
\_\_\_\_\_  
Jerry Jones


DATED: 2/13/18

By:   
\_\_\_\_\_  
Lydia Romero

APPROVED AS TO FORM:

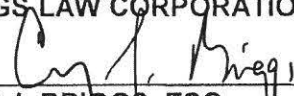
LOUNSBERY FERGUSON ALTONA & PEAK,  
LLC

DATED: 2/13/18

By:   
\_\_\_\_\_  
JACQUELINE S. VINACCIA, ESQ.  
Attorney for Jerry Jones and Lydia Romero

DATED: 2/19/2018

BRIGGS LAW CORPORATION

By:   
\_\_\_\_\_  
CORY J. BRIGGS, ESQ.  
Attorney for Marcus Bush



# CITY OF LEMON GROVE

"Best Climate On Earth"

## Office of the City Council

February 13, 2018

Marcus Bush

Dear Marcus:

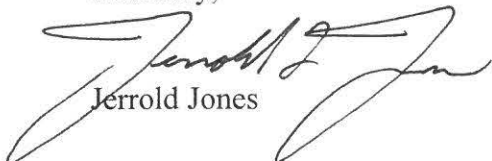
I am sorry that my response to your July 31, 2017 Facebook post created an uncomfortable position between you and Rick Engineering. It was never my intent that you should not work with Rick Engineering.

I understand that you were exercising your First Amendment Right to criticize me as a public official, while you were in a position representing the City of Lemon Grove.

In retrospect, I wish I had contacted you directly to develop a better understanding of your concerns, help you understand my concerns, and work out our differences face to face.

I respect your right to disagree with my political positions and decisions. While the nature of your language concerned me, neither you nor your personal opinions, as a private citizen, are "poison".

Sincerely,

  
Jerrold Jones





# CITY OF LEMON GROVE

"Best Climate On Earth"

## Office of the City Manager

February 13, 2018

Marcus Bush

Dear Marcus:

I apologize that this situation with Councilmember Jones caused any problems for you at Rick Engineering.

I respect your right to criticize public officials on public platforms and social media.

I contacted Rick Engineering to make sure that any work you did on behalf of the City would not be adversely affected by your personal opinions about Councilman Jones. It was never my intention that your employment be adversely affected.

Sincerely,

  
Lydia Romero

