

**PRE-LITIGATION SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS**

This Pre-Litigation Settlement Agreement and Release of all Claims (“Agreement” or “Settlement Agreement”) is entered into this __ day of _____, 2024 (“Effective Date”) by and among the City of San Luis Obispo (“City”), a charter city, and Southwest Voter Registration Education Project (“SVREP”), a Texas nonprofit corporation, (City and SVREP may be referred to individually herein as “Party” and collectively as the “Parties”), as full and complete settlement and compromise of the within matters, agree as follows:

WHEREAS, in or about February 2023, the City received a letter dated February 17, 2023 from attorney Kevin Shenkman of the law firm Shenkman & Hughes, PC, on behalf of SVREP and its members, asserting that the City’s at-large election system violates the California Voting Rights Act (“CVRA” Elections Code section 14025 et seq.) (“SVREP’s Claims”);

WHEREAS, SVREP and City have entered into a series of tolling agreements to toll the deadlines under Elections Code section 10010 (collectively “Tolling Agreement”);

WHEREAS, the Parties have met several times since February 2023 to, among other things, review data and discuss the relative merits of various election systems and the extent to which they might address SVREP’s Claims; and

WHEREAS, the Parties now desire to memorialize the terms of their agreement relative to the City’s election system and SVREP’s Claims,

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth below, and as full and complete compromise and settlement of any and all legally applicable claims, the Parties agree as follows:

1. CVRA Litigation

SVREP shall, promptly upon full execution of this Agreement, file a lawsuit against City in the San Luis Obispo Superior Court, alleging a single cause of action for violation of the CVRA (“CVRA Action”). City will not contest SVREP’s standing to file the lawsuit and waives any affirmative defense based on standing. The complaint shall be substantially in the form attached hereto as Exhibit A. Within five court days of filing the CVRA Action, City shall file an answer generally denying the allegations in the CVRA Action. The City’s answer shall be substantially in the form attached hereto as Exhibit B. Within five court days of filing the City’s Answer, SVREP shall file the Stipulation for Entry Judgment and Proposed Judgment, attached as Exhibit C, to affect the terms of this Agreement. In the event the San Luis Obispo Superior Court refuses to enter judgment in substantially the form attached as Exhibit C, this Agreement shall be null and void and the Parties shall meet and confer in good faith regarding the CVRA action.

2. Citywide Single-vote Voting and Education Period.

a. City’s Electoral System. Subject to change in accordance with this Agreement: the City may maintain an electoral system in which four City Council members are elected at-large and the office of mayor is directly elected by the voters; City Council members are elected every two years to staggered four-year terms, with term limits of two consecutive full terms; and the Mayor is elected every two years to a two-year term, with term limits of four consecutive full terms. City may at any time implement district-based elections, as that phrase is defined in the CVRA, for

the election of its four city council members in accordance with Section 5 of this Agreement and maintain an office of Mayor directly-elected by all the voters in the City.

b. Citywide Single-vote Voting for City Elections. The Parties agree that City shall conduct its 2026 elections for its City Council members and all City Council elections thereafter utilizing Citywide Single-vote voting – a system in which all voters citywide cast a single vote, regardless of the number of seats to be elected, and the two candidates receiving the most votes are elected. Unless the City’s method of election is modified pursuant to this Agreement prior to an election, the City shall conduct that corresponding election for its city council utilizing Citywide Single-vote voting.

c. Cooperation in Outreach, Education Efforts, and Candidate Development. The Parties shall reasonably cooperate with one another between the Effective Date and November 2026 in connection with efforts to educate voters regarding the Citywide Single-vote voting system, as well as efforts to encourage voter registration and turnout directed at historically marginalized communities within the City. SVREP shall reasonably assist City upon City’s request, by providing its know-how in connection with efforts to educate voters and encourage voter registration and turnout among historically marginalized communities. City will agree to conduct a Community Academy bi-annually (every other year) and will provide another candidate education and development offering bi-annually in years alternating with Community Academy. In consultation with SVREP, the City will provide reasonable support for participants (e.g. transportation, childcare, meals) to mitigate barriers to participation.

d. In the event the County Registrar of Voters declines for any reason to conduct the City Council elections using Citywide Single-vote voting consolidated with the statewide election, the Parties shall meet and confer in good faith regarding the CVRA Action.

3. Meet and Confer and Dispute Resolution

a. Meet-and-Confer. Within ninety (90) days following the certification of the 2026 and 2028 City Council elections, if those elections are conducted utilizing Citywide Single-vote voting, the Parties shall meet and confer concerning the corresponding election and results. Specifically, the parties will work cooperatively to determine whether the election(s) demonstrated that Citywide Single-vote voting as implemented by City in the previous election(s) positively impacted the facts (set forth below), which the parties agree are relevant to analysis of a CVRA violation as alleged in the CVRA Action.

b. Relevant Facts. Citywide Single-vote voting shall be deemed to have positively impacted the relevant facts if the Latino-preferred candidate, if any, was elected in the corresponding election(s). If the Latino-preferred candidate was not elected in both of the elections, the Parties shall also consider as a relevant fact under the totality of the circumstances whether the Latino-preferred candidate would have been elected in those elections in District 1 of the SVREP demonstration single-member district map attached hereto as Exhibit D. The Parties shall endeavor to openly exchange information, data and analyses in the course of their meet and confer process, subject to protections as confidential settlement discussions from third party disclosure and admission as evidence in a later action against the City. Following the 2028 election, the City will bring forward for consideration at a public meeting an agenda item regarding implementation of by-district elections, if the relevant facts demonstrate that the Latino-preferred candidate was not elected using Citywide Single-vote voting in the 2026 and 2028 elections and that the Latino-preferred candidate would have been elected in those elections in District 1 of the SVREP demonstration single-member district map, attached hereto as Exhibit D. In the event the City

Council declines to proceed with implementation of district-based elections for City Council seats based on the relevant facts set forth herein, then SVREP may initiate CVRA litigation against the City to compel the City to implement district-based elections without the need for further demand by SVREP and without regard to the safe harbor provisions of the Elections Code, provided that SVREP shall only be entitled to recover attorneys' fees, in addition to those provided under this Agreement, that are incurred on and after any date on which the City Council, after the public meeting contemplated herein, declines to implement district-based elections as contemplated herein.

c. Initiation of Dispute Resolution. If the Parties are not able to agree, following the 2028 elections, whether the Citywide Single-vote voting implemented by City in the 2026 and 2028 elections is positively impacting the relevant facts, as set forth in subsection 3(b), the Parties shall promptly refer their disagreement to be decided through a judicial reference. The referee shall issue a written decision. The parties shall meet and confer in good faith regarding judicial reference procedures.

d. Selection of Referee. The Parties have selected Bernard N. Grofman a professor at the University of California, Irvine, to serve as Referee. In the event, for whatever reason, Professor Grofman is unavailable or unwilling to serve as the Referee, then the Parties select Nathaniel Persily, a professor at Stanford Law School, to serve as Referee. In the event, for whatever reason, Professor Persily is unavailable or unwilling to serve as the Referee, then the Parties select Christian Grose to serve as Referee. In the event, for whatever reason, Christiain Grose is unavailable or unwilling to serve as the Referee, then the Parties shall meet to identify a suitable Referee by mutual consent. If the Parties are unable to reach mutual consent, the California Superior Court (County of San Luis Obispo) shall appoint the Referee.

e. Cost of Referee. The cost of the Referee shall be borne by the City. The fees and expenses of the Referee shall not exceed \$50,000.00.

4. Attorneys' Fees and Expenses.

- a. City shall pay SVREP's reasonable attorneys' fees and expenses for work up to the entry of the judgment contemplated in Section 1 above, consistent with Elections Code section 14030 and/or Code of Civil Procedure section 1021.5, in the amount of \$75,000.00. This amount is in full satisfaction of SVREP's claims for attorneys' fees, costs, and expenses, including expert fees and expenses, up to the entry of judgment contemplated in Section 1, above.
- b. City shall also pay SVREP's attorneys' fees and expenses associated with monitoring and evaluating the 2026 and 2028 elections and the effectiveness of Citywide Single-vote voting in those elections up to a maximum of \$10,000.00 for each election.
- c. In the event of a dispute pursuant to Section 3 of this Agreement and the Referee decides that SVREP is the prevailing party in such dispute, City shall also pay SVREP its reasonable attorneys' fees and expenses associated with the Dispute Resolution in an amount not to exceed \$200,000.00, as well as any attorneys' fees and expenses incurred in determining the amount of such reasonable attorneys' fees and expenses, if contested by the City. SVREP shall provide documentation of its reasonable attorneys' fees and expenses. In the event the Referee recommends remedial action, but the City Council declines to voluntarily implement that remedial action, thus necessitating presentation of the Referee's recommendation to the Superior Court, the cap on fees

and expenses expressed in this subparagraph shall apply only to those fees incurred up to the date of the Council action declining to implement the Referee's recommendation, and this agreement shall not limit any subsequent action by SVREP to recover all reasonable attorneys' fees, as determined by the court, incurred by SVREP from the date of the Council action through the date of conclusion of the judicial reference proceedings before the superior court.

- d. Payment of the attorneys' fees and costs shall be made in the form of a check or wire transfer to Shenkman & Hughes PC at 28905 Wight Rd., Malibu, CA 90265 no later than 30 days following the corresponding agreement on the amount of attorneys' fees and expenses or Referee determination of that amount.
- e. The payments provided for in this Agreement do not extinguish SVREP's attorneys' right to claim attorneys' fees and expenses pursuant to Elections Code §10010(f) in the event the City adopts a by-district election system in response to a notice pursuant to Elections Code § 10010(e) from others who are not parties to this Agreement. It is the intent of the parties that the attorneys for SVREP will be deemed first in right under Elections Code § 10010(f)(2) to the fullest extent permitted by law.
- f. Other than as set forth above, the Parties shall bear their own attorneys' fees and expenses relating to this Agreement and the subject matter thereof.

5. Notwithstanding anything to the contrary herein, City may at any time implement district-based elections, as that phrase is defined in the CVRA, for the election of its city council members and maintain a directly elected office of mayor. In the event that City chooses to implement district-based elections, rather than Citywide Single-vote voting, in either the 2026 or 2028 elections, or both, the provisions of Sections 2 and 3, above, with regard to that election, and the provisions in Section 4 concerning fees and costs associated with monitoring and evaluating the 2026 and/or 2028 elections, shall be inapplicable.

6. The Parties acknowledge and agree that any and all matters, claims and causes of action arising on or before the date of the execution of this Settlement Agreement which any Party has, has had, may have or may have had against the other Parties, including but not limited to SVREP's Claims against the City, are hereby fully compromised and settled except to the extent specifically identified in this Agreement.

7. Each Party waives and releases the other Parties from any and all rights, claims, causes of action, demands, liabilities, obligations, contracts, damages, penalties, complaints, charges, grievances, and duties, whether legal, equitable or contractual, asserted or not asserted, known or unknown, suspected to exist or not suspected to exist, which that Party now has, may have, claims to have or may claim to have against the other Parties arising prior to or on the date of this Settlement Agreement.

8. Each Party has read and understands the following statutory language of Section 1542 of the California Civil Code:

“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.”

Having been so apprised, the Party elects to waive the benefits of Section 1542, and further elects to and does assume all risks for any and all claims, whether known or unknown, suspected or not suspected, arising from the subject matter of this Settlement Agreement, including but not limited to the matters released herein, and knowingly and voluntarily releases the other Parties from any and all liability and claims arising out of such matters.

9. Except as explicitly stated herein, including in Sections 3(e) and 4, the Parties shall bear all of their own costs, expenses and attorneys' fees incurred in connection with the CVRA Action, the negotiation of this settlement agreement, and the completion of the Meet and Confer and Referee process set forth in Section 3 of this Agreement and as agreed in the parties' meet and confer regarding judicial reference procedures.

10. No part of this Settlement Agreement may be amended, modified or waived in any way unless such amendment, modification or waiver is set forth in a later writing signed by all the Parties. A modification, amendment or waiver of any one provision of this Settlement Agreement shall not be deemed to be a modification, amendment or waiver of any other provision of this Settlement Agreement.

11. The provisions of this Settlement Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns.

12. The Parties acknowledge and agree that this Settlement Agreement is a complete expression of all of their agreements and understandings concerning the subject matter hereof, and that any prior or contemporaneous agreements, understandings or representations of the parties, whether express or implied, are no longer of any force and effect.

13. If a court of competent jurisdiction finally holds that any provision of this Settlement Agreement is invalid, illegal, or unenforceable, that holding shall not affect the validity of the other provisions of this Settlement Agreement, which shall remain in full force and effect, and this Settlement Agreement shall be construed as if the offending provision(s) had not been contained herein.

14. The laws of the State of California, without giving effect to its conflict of law provisions, shall govern any dispute, claim, action or proceeding relating to or arising out of this Agreement. Venue shall be in San Luis Obispo County.

15. This Settlement Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any purpose.

16. Electronic Signing: Each Party agrees that the other Parties may use an electronic signature technology, e.g., DocuSign, to expedite the execution of this Agreement.

Dated:

City of San Luis Obispo

By _____
Whitney McDonald,
City Manager, City of San Luis Obispo

Dated:

Southwest Voter Registration Education Project

By _____

Lydia Camarillo
President Southwest Voter Registration Education
Project

APPROVED AS TO FORM:

Dated:

Nielsen Merksamer Parrinello Gross & Leoni, LLP

By _____

Marguerite Mary Leoni
Special Attorneys for City of San Luis Obispo

Dated:

J. Christine Dietrick
City Attorney, City of San Luis Obispo

Dated:

Shenkman & Hughes

By _____

Kevin I. Shenkman
Attorneys for Southwest Voter Registration Education
Project