

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and among Defendant the City of Mt. Juliet, Tennessee (“Mt. Juliet”), and Plaintiffs Chivanada, Daniel Yarzagaray, William Lofback, Riffs Hospitality, Eileen Maltese, and Mikey’s Pizza, LLC (each individually a “Settling Party” and collectively the “Settling Parties”) as of the Effective Date, defined below:

I. RECITALS

WHEREAS, Plaintiffs Chivanada, Daniel Yarzagaray, William Lofback, Riffs Hospitality, Eileen Maltese, and Mikey’s Pizza, LLC, have a lawsuit pending in the United States District Court for the Middle District of Tennessee, *Chivanada et al. v. City of Mt. Juliet, Tennessee*, Case No. 3:23-cv-1219 (“the Lawsuit”), in which Plaintiffs challenge the constitutionality of a provision of Mt. Juliet Ordinance 2023-31 that required mobile food vendors located outside of city limits to pay \$100 per day for a mobile food vendor permit (“Food Truck Permit Fee”);

WHEREAS, on January 8, 2024, Mt. Juliet’s Board of Commissioners repealed the \$100 per day fee for a mobile food vendor permit by adopting Ordinance 2024-05;

WHEREAS, Ordinance 2024-05 specifies that the provisions of the Ordinance will sunset on July 31, 2024;

WHEREAS, the City of Mt. Juliet, while denying any liability asserted in the Lawsuit, wishes to avoid the delay, expense, and uncertainty of litigation, and to reach an amicable resolution of any disputed matter, claim or controversy, known and unknown;

WHEREAS, Plaintiffs with the assistance of counsel, have reviewed and considered the relevant issues, concerns, and potential claims, have considered the delay, expense, and uncertainty of litigation, and desire to enter into this Agreement; and

WHEREAS, the Settling Parties have reached a settlement of any and all claims, counterclaims, demands, and / or causes of action that were asserted or could have been asserted in the Lawsuit relating to the Food Truck Permit Fee.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, undertakings, obligations, and commitments hereinafter set forth, and intending to be legally bound, the Settling Parties do hereby covenant and agree as follows:

II. TERMS AND CONDITIONS

1. City of Mt. Juliet’s Agreement. In exchange for the consideration provided by Plaintiffs under this Agreement, Mt. Juliet agrees as follows:

Payment. Within fifteen (15) business days from the Effective Date or the date the Board of Commissioners approves the resolution proposing settlement (the “Resolution”), the City of Mt. Juliet will issue the following:

- a check in the amount of \$5,000 to Beacon Center of Tennessee, for which a Form 1099-MISC will issue; and

2. Plaintiffs' Agreement. In exchange for the consideration provided by the City of Mt. Juliet under this Agreement, the adequacy and sufficiency of which Plaintiffs hereby acknowledges, Plaintiffs authorize their counsel of record to file an agreed order of dismissal of all claims, without prejudice, against all defendants in the Lawsuit within three (3) business days of delivery of the funds outlined in Paragraph 1 of the Agreement to Plaintiffs' counsel.

3. Releasees Defined. The term "Releasees" shall mean each Settling Party and, as applicable, each Settling Party's heirs; executors; administrators; representatives; predecessors; successors; assigns; agents; attorneys; consultants; its past, present, and future contractors; directors; officers; employees, including for the City of Mt. Juliet, and affiliates.

4. Mutual Release of Liability. In exchange for the consideration provided under this Agreement, each Settling Party, for himself or itself and for his or its Releasees, does hereby fully, finally, and forever release and discharge all other Settling Parties and his or its Releasees of and from any and all claims, counterclaims, actions, causes or rights of action, suits, debts, sums of money, liabilities, losses, covenants, contracts, agreements, promises, assertions, allegations, contentions, controversies, and demands of any kind or nature whatsoever, whether at law or in equity, relating to any act, omission or other matter, cause, or thing whatsoever in any way arising out of, in connection with, or relating to the application of the Food Truck Permit Fee. Given that Ordinance 2024-05 sunsets on July 31, 2024, this agreement shall not preclude Plaintiffs from bringing suit to challenge food truck permit fees that Mt. Juliet may choose to enact at a future time, nor does it preclude Plaintiffs from bringing suit against other restrictions on their food truck operations.

5. Board of Commissioners Approval. Nothing in this Agreement shall become binding on any party unless and until the City of Mt. Juliet Board of Commissioners approves the resolution that will be filed with the Board of Commissioners in conjunction with this Agreement and the Resolution becomes effective. Upon Board of Commissioner's approval of the Agreement, and regardless of changes to the Board of Commissioner's composition, the Agreement shall remain binding upon the Parties.

6. Tax Treatment. Plaintiffs acknowledge that no oral or written representation of fact or opinion has been made to them by the City of Mt. Juliet, or their attorneys regarding the tax treatment or consequences of any payment made under this Agreement. It is expressly understood that to the extent any liability or responsibility exists for Plaintiffs' federal, state, and local income or other taxes, such liability or responsibility rests solely with them.

7. Medical / Property Liens. Plaintiffs represent that neither TennCare, Medicare, nor any other person or entity holds a subrogation interest related to their interest in the Lawsuit. Furthermore, Plaintiffs agree to indemnify and hold harmless the City of Mt. Juliet from any liability in connection with any such liens or subrogation interests.

8. Release of Attorney Liens. Plaintiffs represent that no attorney or other person or entity holds a lien related to their interest in the Lawsuit. Furthermore, Plaintiffs agree to indemnify and hold harmless the City of Mt. Juliet from any liability in connection with any such liens.

9. No Admission of Liability for Damages. The Settling Parties understand that payment of the consideration described above is not an express or implied admission of responsibility or liability on the part of the City of Mt. Juliet or any of its employees and that the City of Mt. Juliet specifically denies all such claims for damages against it. Such consideration is being paid solely in order to compromise disputed claims so that the parties may forever avoid the expense, uncertainty, and hazard of litigation.

10. Covenant Not to Sue. Each of the Settling Parties agrees never to file, institute, direct, or maintain against any of the other Settling Parties (or their respective Releasees as provided herein) any suit, charge, claim, proceeding or action in or before any court, administrative agency, arbitral panel, or other body or tribunal asserting, directly or indirectly, any claim that is released and compromised by this Agreement. Nothing in this paragraph will prevent any Settling Party from being able to enforce the terms of this Agreement, if needed.

11. Assignment or Transfer. Each of the Settling Parties represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any other person or entity, in whole or in part, voluntarily, involuntarily, or by operation of law, any right, claim, interest, and property released or transferred pursuant to this Agreement, or any portion thereof, and that it has sole, complete and entirely unencumbered right, title and interest in and to the rights, claims, interests, and property released or transferred under this Agreement.

12. Consultation of Legal Counsel. Each Settling Party acknowledges and represents that: (i) it has had an opportunity to receive independent legal and other advice in this matter from counsel and advisors of its own choosing and is entering into this Agreement freely and voluntarily, wholly upon its own judgment, belief and knowledge; and (ii) except as expressly set forth herein, it does not rely and has not relied upon any warranty, inducement, or promise by any other Settling Party, or any of other Settling Party's agents, directors, officers, employees, representatives, or attorneys, with respect to the subject matter, basis, or effect of this Agreement.

13. Severability. If any provision of this Agreement is ever declared unenforceable, void, invalid, or voidable, then the parties intend that the validity, legality, and enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired and that the remaining provisions of this Agreement shall remain valid and enforceable as written to the maximum extent permitted by law.

14. Effect of Settlement Agreement and Release. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective heirs, legal representatives, executors, administrators, predecessors, successors, transferees, and assigns.

15. Choice of Law. This Agreement shall be governed and construed under the laws of the State of Tennessee.

16. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

17. Entire Agreement. This Agreement constitutes the entire agreement and understanding among the Settling Parties with respect to the subject matter hereof and fully supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, both written and oral, among the Settling Parties with respect to the subject matter covered hereunder.

18. Modification. Neither this Agreement, nor any term hereof, may be modified, canceled, amended, waived, or otherwise altered in any way, in whole or in part, except by way of a written agreement signed by the authorized representatives of the Settling Parties that specifically mentions this Agreement.

19. Waiver. No provision of, or breach or default under, this Agreement shall be deemed waived, in whole or in part, by the course of conduct of any Settling Party, and the failure of any Settling Party to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of any right arising hereunder or deprive such Settling Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

20. No Presumption. This Agreement has been drafted and reviewed jointly by the Settling Parties and their respective counsel, and no presumption in construction or interpretation shall be applied for the benefit of, or against, any of the Settling Parties.

21. Effectuating the Settlement Agreement and Release. The Settling Parties agree to execute all documents and to take all actions that may be necessary or appropriate to effectuate this Agreement.

22. Costs. Except as otherwise expressly set forth herein, the Settling Parties shall each bear their own costs and expenses, including attorney and other advisor fees, with respect to matters relating to the subject matter of this Agreement, including without limitation the preparation, execution, and implementation of this Agreement.

23. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Settling Party or Settling Parties are entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, as well as any other relief to which it or they may be entitled.

24. Authority. Each Settling Party represents and warrants that it has the power and authority to enter into this Agreement and to perform the obligations under this Agreement, and the Settling Parties represent that they have not assigned to any other person or entity nor pledged, encumbered, or granted any form of security interest in or to any of the claims, rights, actions, causes of action, or interests that are released and/or dismissed under this Agreement. In addition, any person signing this Agreement in a representative capacity for a Settling Party represents and warrants that he or she has authority and capacity to sign on behalf of such Settling Party and to make the covenants and promises set forth in this Agreement to bind such Settling Party.

25. Effective Date. This Agreement shall become effective upon the execution of this agreement by all of the Settling Parties.

IN WITNESS WHEREOF, the Settling Parties have executed this Agreement as of the date indicated above.

[signature pages to follow]

PLAINTIFFS

Daniel Yarzagaray
on behalf of himself and Chivanada

Dated: _____

William Lofback
on behalf of himself and Riffs Hospitality

Dated: _____

Eileen Maltese
on behalf of herself and Mikey's Pizza, LLC

Dated: _____

DEFENDANT CITY OF MT. JULIET, TENNESSEE

Gino Marchetti
City Attorney
Legal Representative for Mt. Juliet

Dated: _____