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Paso Robles, CA 93447-0307

Vol 4072 pg 606-615

RESOLUTION NO: 92-117

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF EL PASO DE ROBLES  
AUTHORIZING THE MAYOR TO EXECUTE A  
COMPROMISE SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE BETWEEN THE CITY OF EL PASO de  
ROBLES AND JOHN C. MOORE, DBA AERO SERVICE

WHEREAS, the City has leased to John C. Moore, dba Aero Service, Parcels 27, 60, 61, 62 and 63 and fuel facilities at the intersection of Taxiways "C" and "D" of Parcel Map #PRAL 88-207; and

WHEREAS, the City and John C. Moore, dba Aero Service, have had disagreements concerning the interpretation of the current lease; and

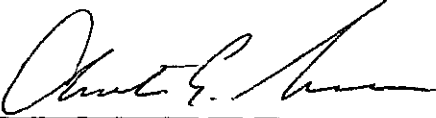
WHEREAS, John C. Moore, dba Aero Service, filed a complaint and the City filed a Cross-Complaint in San Luis Obispo Superior Court, Case No. 69232; and

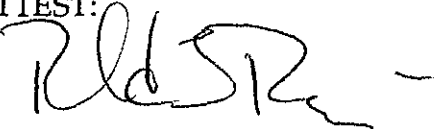
WHEREAS, the City and John C. Moore, dba Aero Service, have negotiated a Compromise Settlement Agreement,

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles authorizes the Mayor to execute the Compromise Settlement Agreement and Mutual Release between the City of El Paso de Robles and John C. Moore, dba Aero Service, attached to this resolution as Attachment "B".

PASSED AND ADOPTED THIS 21st day of July 1992 by the following roll call vote:

AYES: Heggarty, Macklin, Martin, and Picanco  
NOES: None  
ABSENT: None  
ABSTAIN: Iversen

  
Christian E. Iversen, Mayor

ATTEST:  
  
Richard J. Ramirez, City Clerk

## COMPROMISE SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS AGREEMENT made this 21st day of July, 1992, by and between JOHN C. MOORE, dba AERO SERVICE (herein called "MOORE"), and the CITY OF EL PASO DE ROBLES (herein called "CITY") is a compromise settlement and mutual release whereby the above-mentioned parties hereby extinguish their mutual rights and claims, arising from their disputes and differences as to any and all rights, duties and obligations each has in any way arising prior to the date hereof, including, but not limited to, the subject matter of the claims made in MOORE's Complaint and CITY's Cross-Complaint in San Luis Obispo Superior Court Case No. 69232.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, MOORE's dismissal with prejudice of the Complaint and CITY's dismissal with prejudice of the Cross-Complaint filed in San Luis Obispo Superior Court Case No. 69232, the parties acknowledge and agree to the following terms:

1. MOORE and CITY shall enter into an amendment to the Lease dated July 1, 1985, as modified by written Addendum dated July 1, 1987 (hereinafter collectively referred to as the "Lease") which shall include the following:

a. Authorize MOORE, at his sole expense, to remove the underground fuel storage facilities located on Parcel 28 of Parcel Map PRAL 88-207 and at the intersection of Taxiways "C" and "D".

b. Add Parcel 24 of Parcel Map PRAL 88-207 to the Lease for the remaining Lease term. Rent shall be at one-half (1/2) the market rate of \$881.10, for a maximum period of *ten (10) seven (7)* years or until a development plan has been submitted by MOORE and approved by CITY, whichever occurs first, *at which time the rent shall return to the full rate.* Rent for the entire Lease term shall be subject to the rent escalation clause contained in the Lease, **except during the first year.**

c. MOORE shall relinquish any and all right to administer tie down spaces except in the area which lies south of the concrete ramp and immediately east of Parcels 23 and 26 of Parcel Map 88-207 as shown on Exhibit "A" attached hereto and incorporated herein. ~~CITY shall be entitled to set and determine the amount charged for the tie down fees for said tie down spaces, but shall not be entitled to any portion of fees collected.~~ The areas described shall be exclusively administered by MOORE for the remainder of the Lease term.

d. CITY shall process a lot line adjustment which will move the western boundary of Parcel 23 of Parcel Map 88-207 fifty-three feet (53') further to the west as shown on Exhibit "B" attached hereto and incorporated herein. The rent for Parcel 23

shall be increased to reflect the increase in parcel size. The rent for Parcel 23 shall be increased pro rata based on current per square foot charges, to reflect the increase in parcel size.

- e. The total leased premises shall be identified as follows:

Parcels 19, 23, 24 and 28 of Parcel Map PRAL 88-207; and an underground fuel storage facility located at the intersection of Taxiways "C" and "D".

- f. All other terms and conditions of the Lease shall remain in full force and effect.

2. CITY agrees to reimburse MOORE by credit in an amount not to exceed \$3,807.28 through May 29, 1992 for the cost of electrical power furnished to lights on the Paso Robles Airport south ramp; the exact amount to be credited shall be determined based on a review of billings for said electrical power. CITY shall, at no cost to MOORE, install a separate electrical meter for lights on the south ramp and continue to pay monthly, until the electrical power is rerouted from MOORE's to the CITY's meter completed, its proportionate share of electrical power used.

3. CITY agrees to credit MOORE with the amount of One Thousand Nine Hundred Thirteen Dollars (\$1,913) for rent mistakenly paid on Parcels 62 and 63 of Parcel Map 80-167.

4. The parties agree to do all things necessary to implement and carry out the terms of this Compromise Settlement and Mutual Release.

5. Subsequent to the execution of the Lease amendment referenced in Paragraph 1, CITY shall consent to an assignment of the Lease from MOORE to Paso Robles Aero Service, Inc. MOORE agrees to remain personally liable on the Lease and to guarantee performance of all Lease duties and obligations.

6. Each of the above-mentioned parties on its behalf, and on behalf of its descendants, ancestors, dependents, heirs, executors, administrators, assigns, agents, servants, stockholders, employees, representatives, officers, directors, Council Members and successors, hereby fully releases and discharges the other party and its descendants, ancestors, dependents, heirs, executors, administrators, assigns, agents, servants, stockholders, employees, representatives, officers, directors and successors from all rights, claims and actions which each party now has against the other party in any way

arising prior to the date hereof, in any way arising from or in any way connected with the aforementioned lawsuits, or any claims in any way relating thereto, including those relating to the institution and prosecution of said lawsuits, and in any way arising from any business relationship insofar as either party may have any claim whatsoever of any kind against the other party, or its agents, servants, stockholders, employees, representatives, assigns, officers, directors, or successors, in any way arising from or relating to any prior conduct of each party.

7. This settlement is a compromise and shall never be treated as an admission of liability by either party for any purpose.

8. It is the intention of this Agreement that subsequent to the execution hereof by the parties, there can and will be absolutely no basis, whether known or not, for any claim or litigation between the parties hereto relating to any event, transaction, act or omission occurring prior to the date hereof.

9. This compromise settlement, notwithstanding Section 1542 of the California Civil Code which provides that "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor," shall be a full settlement of any and all said disputes, claims or causes of action. Such compromise settlement shall act as a release of any future claims that may arise from any prior disputes whether such claims currently are known, unknown, foreseen or unforeseen. The parties understand and acknowledge the significance and consequence of such specific waiver of Section 1542, and hereby assume full responsibility for all injuries, damages, losses or liability that they may hereafter incur from any prior disputes.

10. Each party hereto represents and warrants to each other party hereto that no portion of any claim, demand, cause of action or other matter released herein, nor any portion of any recovery or settlement to which one party might be entitled from another party, has been assigned or transferred to any other person or entity, either directly or by way of subrogation or operation of law. Each party hereby agrees to indemnify, defend and hold harmless each other party, and each of them, from all loss, cost, claim or expense (including, but not limited to, all expenses of investigation and defense of any such claim or action, including reasonable attorneys' and accountants' fees and expenses) arising out of any claim made or action instituted by any person or entity who claims to be the beneficiary of such assignment or transfer, and to pay and satisfy any judgment resulting from or any settlement of any such claim or action.

11. This Agreement and its terms and conditions shall be governed by the laws

and construed solely in accordance with the laws of the State of California. The parties hereto agree that all disputes or controversies arising out of this Agreement, and any claim for relief or other legal proceeding filed to interpret or enforce the respective rights of the parties hereunder, shall be filed in the San Luis Obispo County Superior or Municipal Court, State of California.

12. No failure or delay on the part of any party to exercise any right hereunder, nor any other indulgence of such party, shall operate as a waiver of any of its rights hereunder, nor shall any single exercise by any party of any right hereunder preclude any other or further exercise thereof. The rights and remedies herein provided are cumulative and not exclusive of any right or remedies provided by law.

13. Each party hereto acknowledges that it has relied wholly upon his or its own judgment, belief and knowledge of the existence, nature and extent of each claim, demand or cause of action that it may have against another which is hereby released and that it has not been influenced to any extent in entering into this Agreement by any representations or statements regarding any such claim, demand or cause of action made by any other party hereto. Each party acknowledges that it is executing and delivering this Agreement after having received from legal counsel of its own choosing legal advice as to its rights hereunder and the legal effect hereof.

14. Each party hereto shall bear its own attorneys' fees, expenses and costs incurred in connection with the action filed in San Luis Obispo Superior Court No. 69232, the disputes related thereto, and the preparation of this Agreement. In the event any litigation, arbitration or other proceeding is brought for the interpretation or enforcement of this Agreement, or because of an alleged dispute, default, misrepresentation or breach in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, costs and expenses actually incurred in connection therewith, in addition to any other relief to which he, it or they may be entitled.

15. This Agreement constitutes the entire understanding between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior agreements and understandings, whether written or oral, between the parties hereto pertaining to the subject matter hereof.

16. No changes in, additions to, or modifications of this Agreement shall be valid unless set forth in writing executed by all parties hereto.

17. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective parties and their heirs, executors, administrators, agents,

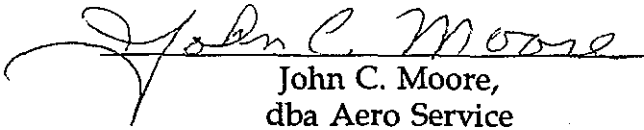
representatives, successors and assigns.

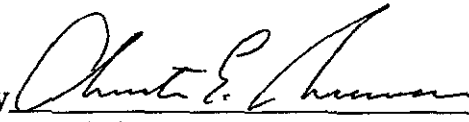
18. The parties hereto agree to execute such additional documents and perform such further acts as may be reasonably necessary to effectuate the purpose of this Agreement.

19. This Agreement may be executed in counterpart, each of which shall be deemed an original, but both of which shall constitute one and the same instrument.

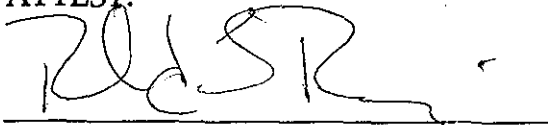
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY OF EL PASO DE ROBLES

  
John C. Moore,  
dba Aero Service

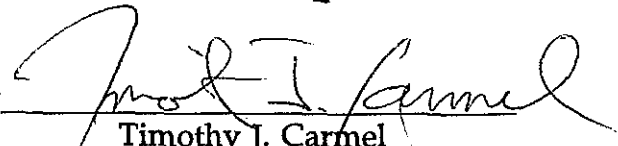
By   
Christian E. Iversen, Mayor

ATTEST:

  
Richard J. Ramirez, City Clerk

APPROVED AS TO FORM:

LYON & PICQUET

By   
Timothy J. Carmel  
Deputy City Attorney



