

## SETTLEMENT AGREEMENT

This Agreement is made and entered into this 4<sup>th</sup> day of August 2011, by and between the undersigned, Prairie Mountain Publishing Company LLP, doing business as the *Loveland Daily Reporter-Herald*, and Ken Amundson (hereinafter, collectively, “the *Reporter-Herald*”), on the one hand, and the City of Loveland, Colorado and William D. Cahill (hereinafter, collectively “the City”), on the other:

WHEREAS, the City filed a Petition in the Larimer County District Court, Case No. 10-CV-925, (“the Action”), in which it sought certain declaratory relief with respect to a series of executive sessions the Loveland City Council (“Council”) held on August 20, 24 and 26 and September 7, 2010, (collectively, “Executive Sessions”) and named as respondent in the Action the *Reporter-Herald* (but not Ken Amundson);

WHEREAS, the City sought such declaratory relief for guidance from the Court as to whether any or all of the Executive Session audio recordings were subject to public inspection under the Colorado Open Meetings Law (“COML”) or the City’s Charter;

WHEREAS, in the Action, the *Reporter-Herald* (including Ken Amundson) counterclaimed against the City and asserted various violations of the COML by the Council in conducting the Executive Sessions, and asked the Court to order the public release of all twelve (12) hours of the audio recordings of the Executive Sessions;

WHEREAS, the parties subsequently filed cross-motions for judgment on the pleadings (and the City filed, in the alternative, a Motion for Summary Judgment);

WHEREAS, by Order dated June 10, 2011 (“June Order”), Judge Devin Odell ruled on the parties’ cross-motions for judgment on the pleadings finding that the Council

conducted all ten (10) hours of the August 20 and 24 executive sessions in compliance with the COML and therefore the Court decided that the ten (10) hours of audio recordings of those two executive sessions were not subject to public inspection under the COML;

WHEREAS, in the June Order the Court also ordered the City to provide the Court with the two (2) hours of the audio recordings of the Council's August 26 and September 7 executive sessions for the Court's *in camera* review;

WHEREAS, following that *in camera* review, Judge Odell entered an Order dated July 1, 2011, ("July Order") finding that forty (40) minutes of the Council's August 26 executive session were conducted in violation of the COML and, as a result, the Court ordered the City to produce for public inspection the audio recording of that forty (40) minutes of the August 26 executive session ("Forty Minute Recording");

WHEREAS, the Court further ruled in the July Order that the remaining one (1) hour and twenty (20) minutes of the recorded August 26 executive session were conducted in compliance with the COML and therefore the Court decided that the audio recording of that remaining one (1) hour and twenty (20) minutes was also not subject to public inspection under the COML;

WHEREAS, the July Order directed the *Reporter-Herald* to file and serve its Bill of Costs and Application for an Award of its Attorneys' Fees within fifteen days;

WHEREAS, the *Reporter-Herald* obtained an extension of time, without objection by the City, to serve and file its Bill of Costs and Application for Award of its Attorneys' Fees on or before August 18, 2011;

WHEREAS, the parties desire to settle and compromise all of their claims and causes of action that were asserted or could have been asserted by them in the Action;

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, the parties to this Agreement hereby agree as follows:

1. On or before August 11, 2011, the City shall provide to the *Reporter-Herald* a CD-ROM containing the Forty Minute Recording as ordered by the Court on pages 2-3 of the July Order.

2. On or before August 11, 2011, the City shall pay to the *Reporter-Herald*, through its attorneys, the sum of Twenty-Five Thousand Dollars (\$25,000.00), as payment in full of the *Reporter-Herald's* attorneys' fees and costs it incurred in preparing and litigating the Action.

3. Within two (2) business days of satisfaction of the conditions set forth above in paragraphs 1 and 2, the parties through their counsel, shall file with the Court a Notice of Stipulated Dismissal with Prejudice, pursuant to C.R.C.P. 41(a)(1), indicating that each party shall bear its own costs and attorneys fees, other than as set forth herein.

4. This Agreement is for purposes of settlement and compromise only, and nothing contained herein shall be deemed an admission of any liability by any party, or an admission with respect to the merits of any claim or defense in the Action. The June and July Orders shall remain undisturbed by this Agreement.

5. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

6. The parties have jointly participated in the drafting of this Agreement; no party shall be deemed to be the draftsman of this Agreement.

7. The undersigned parties each certifies that they have read the entire Agreement and fully understand and approve of the terms hereof and have voluntarily executed this

Agreement with full knowledge of its meaning and effect. The undersigned agree that no other promise, oral or written, exists between them for purposes of settlement of this litigation. The parties further affirm they have consulted with, and relied upon, the advice of counsel of their choosing in executing this Agreement.

8. This Agreement may be executed in one or more counterparts, any of which need not contain the signatures of more than one party, but all signed counterparts taken together will constitute one and the same Agreement. A facsimile signature will be deemed valid as an original signature.

**THE CITY:**

City of Loveland, Colorado

By: William D. Cahill  
William D. Cahill, City Manager

William D. Cahill  
William D. Cahill

ATTEST:

Lissa H. Andrews  
City Clerk



APPROVED AS TO FORM:

John R. Duval  
John R. Duval  
Loveland City Attorney

**THE REPORTER-HERALD:**

Prairie Mountain Publishing Company LLP, d/b/a the *Loveland Daily Reporter Herald*

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

*Albert J. Manzi*  
Albert J. Manzi

\_\_\_\_\_  
Ken Amundson

*President + CEO*  
*Prairie Mountain Publishing*

APPROVED AS TO FORM:

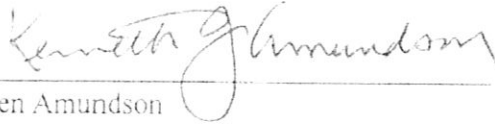
*Steven D. Zansberg*  
\_\_\_\_\_  
Steven D. Zansberg, Esq.

Counsel for Prairie Mountain Publishing Company and Ken Amundson

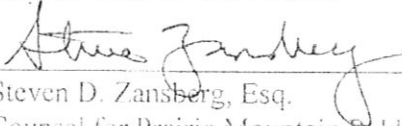
**THE REPORTER-HERALD:**

Prairie Mountain Publishing Company L.P. d/b/a the *Loveland Daily Reporter Herald*

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

  
\_\_\_\_\_  
Ken Amundson

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Steven D. Zansberg, Esq.  
Counsel for Prairie Mountain Publishing Company and Ken Amundson