

RESOLUTION NO. OB-22

RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY OF THE SCOTTS VALLEY REDEVELOPMENT AGENCY APPROVING THE SETTLEMENT AGREEMENT IN CITY OF SCOTTS VALLEY v. COUNTY OF SANTA CRUZ et al., SAN MATEO COUNTY SUPERIOR COURT CASE NUMBER CIV 467230 (the "Lawsuit")

WHEREAS, the Oversight Board for the Successor Agency of the Scotts Valley Redevelopment Agency ("Oversight Board") has been established to direct the Successor Agency of the Scotts Valley Redevelopment Agency ("Successor Agency") to take certain actions to wind down the affairs of the former Scotts Valley Redevelopment Agency ("Agency") in accordance with the requirements of Assembly Bill 26 ("ABx1 26"), also known as chapter 5, Statutes 2011, First Extraordinary Session, which added Part 1.8 and Part 1.85 of Division 24 of the California Health and Safety Code, and Assembly Bill 1484, also known as chapter 26, Statutes of 2012, which made certain revisions to the statutes added by ABx1 26; and

WHEREAS, Health and Safety Code Section 34179 (e) requires that all actions taken by the Oversight Board shall be adopted by resolution; and

WHEREAS, the County of Santa Cruz and the Santa Cruz County Redevelopment Agency, after being sued by the City of Scotts Valley, filed a cross-complaint against the City of Scotts Valley and the Community Development Agency of the City of Scotts Valley ("Scotts Valley Redevelopment Agency") in the Lawsuit regarding an agreement entitled "Agreement between the Community Development Agency of the City of Scotts Valley and the County of Santa Cruz pursuant to Community Redevelopment Law and Health and Safety Code Section 33000, et seq. and the City of Scotts Valley and the County of Santa Cruz", dated as of November 14, 1990 ("Pass-Through Agreement"); and

WHEREAS, the Successor Agency has approved a settlement of the Lawsuit that resolves the disputes regarding the Pass-Through Agreement, among other things, on behalf of the Scotts Valley Redevelopment Agency; and

WHEREAS, because the Scotts Valley Redevelopment Agency is a party to the Lawsuit, settlement of the lawsuit requires approval of the Oversight Board; and

WHEREAS, the settlement agreement is attached hereto as Exhibit A; and

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED by the Oversight Board for the Successor Agency of the Scotts Valley Redevelopment Agency as follows:

SECTION 1. The above Recitals are true and correct.

SECTION 2. The settlement agreement attached hereto as Exhibit A is approved.

PASSED, APPROVED and ADOPTED by the Oversight Board for the Successor Agency of the Scotts Valley Redevelopment Agency, this 18th day of February, 2015 by the following vote, to wit:

AYES: Bustichi, Clark, Kates, McPherson, Smith, Ziel

NOES: None

ABSENT: Dilles



Dene Bustichi, Chairperson of the Oversight Board for
the Successor Agency of the Scotts Valley
Redevelopment Agency

ATTEST:



Tracy Ferrara Secretary

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is executed on the dates set forth below by and among the CITY OF SCOTTS VALLEY ("City"), the SUCCESSOR AGENCY TO THE FORMER COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF SCOTTS VALLEY ("City RDA"), the COUNTY OF SANTA CRUZ ("County"), the SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE COUNTY OF SANTA CRUZ ("County RDA"), and MARY JO WALKER in her official capacity as the COUNTY AUDITOR-CONTROLLER ("Auditor"), collectively referred to herein as "the Parties". By way of this Agreement, the Parties intend to resolve all disputes among them as referenced below.

RECITALS

- A. In or about June of 2007, the City filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Complaint") against the County and Mary Jo Walker in her official capacity as the County Auditor-Controller ("Auditor") regarding the computation and issuance of Tax Equity Allocation funds (referred to herein as "the TEA Case"). The City's Complaint alleged four causes of action: (1) traditional mandamus against the County and the Auditor for reimbursement of TEA funds; (2) declaratory relief against the County and the Auditor; (3) unjust enrichment against the County and the Auditor; and (4) money had and received against the County.
- B. In the TEA Case, the County and the County RDA filed a cross-complaint against the City, the City RDA, and John Chiang, in his official capacity as State Controller ("State Controller"). After a series of law and motion proceedings, in or about

- C. August 2008 the County and the County RDA filed their Second Amended Cross-Complaint, which is the County and the County RDA's operative pleading in the TEA Case.
- D. The Second Amended Cross-Complaint alleged six causes of action: (1) breach of contract-failure to eliminate financial harm-against the City; (2) breach of contract-failure to develop park-against the City RDA; (3) breach of contract-failure to provide affordable housing-against the City; (4) declaratory relief-against the City and the City RDA; (5) declaratory relief-against the City, the City RDA and the State Controller; and (6) traditional mandamus-against the State Controller.
- E. The Parties agreed to bifurcate two causes of action from the Complaint and Second Amended Cross-Complaint and address them at trial before proceeding with the remainder of the action: 1) the City's first cause of action against the County and the Auditor for a writ of traditional mandamus and 2) the County and the County RDA's sixth cause of action against the State Controller for a writ of traditional mandamus.
- F. The two bifurcated causes of action proceeded to trial on May 18, 2009. At the conclusion of the bifurcated trial, the trial court granted the City's petition, and issued an order requiring the County to pay TEA reimbursements to the City ("Court-Ordered TEA Reimbursements"). The trial court denied the County's petition. An appeal followed. On or about October 26, 2011, the Court of Appeal partially affirmed the trial court's decision. The TEA Case was then remanded to the trial court for further proceedings.

- G. The City contends that there has been no adjudication of the City's second, third or fourth causes of action in the TEA Case. The County and the County RDA contend that there has been no adjudication of the County/County RDA's first, second, third, fourth or fifth causes of action in the TEA Case. The Parties agree that two causes of action have been litigated in the TEA Case but disagree on what remains to be litigated.
- H. The Parties sought clarification from the trial court regarding the remaining causes of action in the TEA Case. The trial court concluded that there are at least two causes of action left to be tried but there could be as many as four. A second trial was scheduled in San Mateo County Superior Court for January 12, 2015 to resolve whatever remaining causes of action exist. That date was taken off calendar by the Court pending completion of this Agreement.

DEFINITIONS

The following definitions apply to this Agreement:

- A. "Annual TEA" means the Tax Equity Allocation that the San Mateo County Superior Court ordered the County and the Auditor to pay to the City for fiscal years 2012-13 and forward pursuant to the Order Directing Issuance of Writ of Mandate dated June 25, 2012 in the TEA Case;
- B. "Annual TEA Reimbursement" means reimbursement to the County for the Annual TEA that the County has paid and will pay to the City;
- C. "Court-ordered TEA" means the Tax Equity Allocation that the San Mateo County Superior Court ordered the County and the Auditor to pay to the City totaling

\$2,175,220 for fiscal years 2003-04 through 2011-12 pursuant to the Order Directing Issuance of Writ of Mandate dated June 25, 2012 in the TEA Case;

- D. "Court-ordered TEA Reimbursement" means reimbursement from the City RDA to the County for the Court-ordered TEA that the County has paid and will pay to the City;
- E. "ROPS" means Recognized Obligation Payment Schedule as defined in California Health and Safety Code section 34171(h). This schedule is the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period as provided in Health and Safety Code section 34177(m);
- F. "ROPS cycle" means the Recognized Obligation Payment Schedule for the six month periods of January 1 through June 30 and July 1 through December 31 as defined in Health and Safety Code sections 34177(l)(3) and 34177(m);
- G. "RPTTF" means Redevelopment Property Tax Trust Fund. Per Health and Safety Code section 34170.5(b), this fund is created and administered by the county auditor-controller to hold property tax revenues related to each former redevelopment agency for the benefit of the holders of former redevelopment agency enforceable obligations, as outlined in Health and Safety Code sections 34172(d) and 34182(c)(2).

TERMS OF AGREEMENT

Accordingly, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. The City and the County will work cooperatively to obtain a stipulated judgment from the San Mateo County Superior Court that includes all the terms of this Settlement Agreement regarding the TEA case (“TEA Judgment”).
2. The City RDA agrees to include the following enforceable obligations on the ROPS:
 - a) Attorney fees related to the TEA Case for both the City and the County;
 - b) The Annual TEA Reimbursement for fiscal years 2015-16 and forward, for the portion of the TEA applicable to the City RDA, to reimburse the County for the Annual TEA payments made by the County to the City; and
 - c) The Court-ordered TEA Reimbursement to reimburse the County for TEA payments made by the County to the City.
3. After issuance of the TEA Judgment, the City will claim \$477,000 in TEA Case-related attorney fees incurred by the City on the City RDA ROPS.
4. After issuance of the TEA Judgment, the County will claim \$630,000 in TEA Case-related attorney fees incurred by the County and/or the County RDA on the City RDA ROPS.
5. The City RDA will place the City’s attorney fees claim and the County/County RDA’s attorney fees claim (hereinafter “Attorney Fees”) on the first available City RDA ROPS after the TEA Judgment is entered to the extent that RPTTF funds are available. The City will continue to place the Attorney Fees on every subsequent City RDA ROPS until the Attorney Fees are paid in full. The Parties agree that the Attorney Fees will be reimbursed by the City RDA to the City and the County/County RDA during the first month of each ROPS cycle (January and July). At any time the

City RDA distributes Attorney Fees to the City and the County/County RDA, the Attorney Fees shall be distributed in equal shares, until the Attorney Fees are paid in full. The party with the greater amount of Attorney Fees will, therefore, be paid in full last.

6. The TEA Judgment will specify the amount of the Attorney Fees and specifically state that the Attorney Fees shall not be considered interagency loans by the Department of Finance of the State of California.
7. The Parties agree that the Attorney Fees will be paid in full before the Court-ordered TEA Reimbursements are paid. However, Annual TEA Reimbursements shall be paid concurrently with the Attorney Fees.
8. The Annual TEA Reimbursement will be included on the City RDA ROPS for only that portion of the TEA applicable to the City RDA. The City RDA will place the Annual TEA Reimbursement on its first available ROPS after entry of the TEA Judgment and will continue to place the Annual TEA Reimbursement on all future City RDA ROPS until the last Annual TEA Reimbursement has been paid to the County. Each Annual TEA Reimbursement will be paid by the City RDA to the County during the first month of each ROPS cycle (January and July). The portion of the Annual TEA applicable to the City RDA will be calculated by the County during the fiscal year in which the Annual TEA payment is made to the City, by computing the difference between the actual Annual TEA payment made and what the Annual TEA payment would have been if the RDA did not exist. Every ROPS beginning with the ROPS immediately after entry of the TEA Judgment will include

reimbursement to the County for the amount of the Annual TEA payment applicable to the City RDA which has been paid to the City but not yet reimbursed to the County, and will continue, reimbursing the County for one Annual TEA payment on each ROPS, until such time that the Annual TEA Reimbursement is caught up to the point that reimbursement will occur no later than sixteen months after the associated TEA payment to the City was made by the County. The Annual TEA reimbursement will have top funding priority over all other reimbursements including Attorney Fees, the prior year Court-ordered TEA, and the City's interagency loans. These other reimbursements can run concurrent with the Annual TEA Reimbursements, but they cannot displace the Annual TEA Reimbursement, other than possibly delaying the Annual TEA reimbursement by no more than one ROPS cycle to allow the City to maximize its interagency loan reimbursements.

9. Beginning with the ROPS cycle during which all the Attorney Fees have been reimbursed if RPTTF funds are available, or the next ROPS cycle if RPTTF funds were not available on the previous ROPS, the City RDA will place the Court-ordered TEA Reimbursements totaling \$2,175,220 on the City RDA ROPS to the extent that RPTTF funds are available. The City will continue to place the Court-ordered TEA Reimbursements on every subsequent ROPS until the \$2,175,220 is paid in full. The Parties agree that the Court-ordered TEA Reimbursements will be paid by the City RDA to the County during the first month of each ROPS cycle (January and July).
10. The Parties recognize that the Department of Finance ("DOF") may review every City RDA ROPS cycle in which an action is performed pursuant to this Agreement,

and that the DOF may challenge an action taken pursuant to this Agreement. The parties will undertake reasonable efforts to defend the validity and enforceability of this Agreement if challenged or if the DOF disallows any payment hereunder. If the DOF successfully challenges any action taken pursuant to this Agreement or successfully disallows any payment hereunder, and that challenge or decision to disallow results in a negative financial consequence to any party to this Agreement, the Parties agree that they will, in good faith, engage in further negotiations to amend this Agreement as appropriate to resolve any issues between them that are created as a result of the successful DOF challenge or decision to disallow payment.

General Provisions

11. The City and the City RDA hereby release, dispose, and forever discharge the County, the County RDA, and the Auditor, including their respective officers, directors, board of supervisors, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, subdivisions, sections, offices, successors and assigns, and each of them, from any and all claims, complaints, demands, causes of action, obligations, damages, costs, expenses, liens, attorney fees, warranties, rights and liabilities of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, which have arisen in connection with the TEA Case. This release applies to all of the events and/or incidents alleged to have occurred in the TEA Case and to any cause of action or claim in any forum based on such allegations. However, the Parties reserve as an express exception to this release any claim associated with the TEA Case that could result from a DOF challenge to an

action by one of the Parties in performance of this Agreement that results in a negative financial consequence to a Party, as outlined in Paragraph 10 of this Agreement. Once all of the obligations and duties of the Parties called for in this Agreement have been successfully performed without successful challenge by the DOF, this exception will terminate, and this paragraph shall operate as a full and complete release of any and all claims associated with the TEA Case.

12. The City and the City RDA also expressly waive all "unknown claims" against those persons and entities mentioned in the previous paragraph as to the facts and circumstances concerning the allegations set forth in the TEA Case. The City and the City RDA are represented by their own attorneys at the time of executing this release. The City and the City RDA and their attorneys have spent considerable time examining the occurrences and transactions that are the subject of this release, and based upon that examination the City and the City RDA expressly waive and relinquish their rights under Civil Code section 1542 as to all claims arising out of the operative facts which form the basis for the allegations against the County, the County RDA, and the Auditor related to the TEA Case. Section 1542 reads 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 City and the City RDA hereby completely and unequivocally waive the provisions of Civil Code section 1542 as it applies to the facts set forth in the TEA Case. However, the City and the City RDA reserve as an express exception to this release any “unknown claims” associated with the TEA Case that could result from a DOF challenge to an action by one of the parties in performance of this Agreement that results in a negative financial consequence to the City and the City RDA, as outlined in Paragraph 10 of this Agreement. Once all of the obligations and duties of the Parties called for in this Agreement have been successfully performed without successful challenge by the DOF, this exception will terminate, and this paragraph shall operate as a full and complete release of any and all “unknown claims” by the City and the City RDA associated with the TEA Case.

13. The County, the County RDA and the Auditor hereby release, dispose, and forever discharge the City and the City RDA, including their respective officers, directors, board of supervisors, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, subdivisions, sections, offices, successors and assigns, and each of them, from any and all claims, complaints, demands, causes of action, obligations, damages, costs, expenses, liens, attorney fees, warranties, rights and liabilities of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, which have arisen in connection with the TEA Case. This release applies to all of the events and/or incidents alleged to have occurred in the TEA Case and to any cause of action or claim in any forum based on such allegations. However, the County, the County RDA and the Auditor reserve as

an express exception to this release any claim associated with the TEA Case that could result from a DOF challenge to an action by one of the parties in performance of this Agreement that results in a negative financial consequence to the City and the City RDA, as outlined in Paragraph 10 of this Agreement. Once all of the obligations and duties of the Parties called for in this Agreement have been successfully performed without successful challenge by the DOF, this exception will terminate, and this paragraph shall operate as a full and complete release of any and all claims associated with the TEA Case.

14. The County, the County RDA and the Auditor also expressly waive all "unknown claims" against those persons and entities mentioned in the previous paragraph as to the facts and circumstances concerning the allegations set forth in the TEA Case. The County, the County RDA and the Auditor are represented by their own attorneys at the time of executing this release. The County, the County RDA, the Auditor and their attorneys have spent considerable time examining the occurrences and transactions that are the subject of this release, and based upon that examination the County, the County RDA and the Auditor expressly waive and relinquish their rights under Civil Code section 1542 as to all claims arising out of the operative facts which form the basis for the allegations against the City and the City RDA related to the TEA Case. Section 1542 reads 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 County, the County RDA and the Auditor hereby completely and unequivocally waive the provisions of Civil Code section 1542 as it applies to the facts set forth in the TEA Case. However, the County, the County RDA and the Auditor reserve as an express exception to this release any “unknown claims” associated with the TEA Case that could result from a DOF challenge to an action by one of the parties in performance of this Agreement that results in a negative financial consequence to the City and the City RDA, as outlined in Paragraph 10 of this Agreement. Once all of the obligations and duties of the Parties called for in this Agreement have been successfully performed without successful challenge by the DOF, this exception will terminate, and this paragraph shall operate as a full and complete release of any and all “unknown claims” by the County, the County RDA and the Auditor associated with the TEA Case.

15. This Agreement is a compromise settlement of disputed claims and by executing this Agreement the Parties do not admit any wrongdoing, liability or fault in relation to the matters alleged in the TEA Case, or identified in the Recitals herein, and each party does not concede that any opposing party is entitled to any recovery arising from the allegations in the TEA Case.
16. In entering into this Agreement, the Parties represent that they have read all of the terms of this Agreement and that the terms of this Agreement are fully understood and voluntarily accepted by them. The City and the City RDA acknowledge that they

have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17. The effective date of this Agreement shall be the date by which it is signed by all Parties.
18. This Agreement sets forth the entire understanding of the Parties in connection with the subject matter herein. None of the Parties have made any statement, representation or warranty in connection with this Agreement that has been an inducement for the others to enter into this Agreement, except as is expressly set forth in this Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.
19. The Parties each represent and warrant that they fully understand that if the facts with respect to which this Agreement is executed should be found hereafter to be different from the facts now believed to be true by any party, each of them expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall be and remain effective notwithstanding such differences in facts.
20. The Parties pledge to execute all documents necessary to carry out the terms of this Agreement.

21. Except for the Attorney Fees declared above in paragraphs 3 and 4 of this Agreement, the Parties agree that they will each bear their own attorney fees and costs arising from the TEA Case, including the negotiation of this Agreement.
22. This Agreement shall be governed by the laws of the State of California.
23. In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement shall be enforced and shall remain in full force and effect.
24. Any party to this Agreement may enforce the Agreement by filing a motion under any procedure permitted by law, including but not limited to a motion under Code of Civil Procedure section 664.6. The prevailing party in any such enforcement action, or in any action that results from a breach of this Agreement, shall be entitled to attorney fees and costs.
25. All Parties agree to cooperate fully and to execute any and all supplementary documents, and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.
26. In the event changes in the law regarding former redevelopment agencies are enacted, they will be followed by the Parties in effectuating the terms of this Agreement as long as doing so does not result in material financial changes to any Party to this Agreement.
27. By their signatures below, the Parties herein acknowledge that they have read the terms of this Agreement, understand the terms thereof, and are fully agreed thereto.

DATED:

CITY OF SCOTTS VALLEY

By: STEPHEN ANDO
Its: City Manager

DATED:

SUCCESSOR AGENCY TO THE FORMER CITY
OF SCOTTS VALLEY COMMUNITY
DEVELOPMENT AGENCY

By:
Its:

DATED:

COUNTY OF SANTA CRUZ

By: GREG CAPUT
Its: Chairperson, Board of Supervisors
COUNTY OF SANTA CRUZ

DATED:

By: MARY JO WALKER
Its: Auditor-Controller

DATED:

SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY OF THE
COUNTY OF SANTA CRUZ

By:

Its:

Approved as to form:

DATED:

OFFICE OF THE CITY ATTORNEY

KIRSTEN POWELL

Attorney for the City of Scotts Valley and the
Successor Agency to the Former City of Scotts
Valley Community Development Agency

DATED:

OFFICE OF THE COUNTY COUNSEL,
SANTA CRUZ COUNTY

DANA McRAE

County Counsel, Attorney for the County of Santa
Cruz, the Successor Agency to the Former
Redevelopment Agency of the County of Santa
Cruz and Mary Jo Walker, the Auditor-Controller of
the County of Santa Cruz