

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (**Settlement Agreement**) is entered into between the County of Santa Clara, a political subdivision of the State of California (**County**), and the City of San José, a municipal corporation (**City**), each a "Party" and collectively referred to herein as the "Parties," based upon the following understandings:

- A. In 1994, the County received a variety of funds to construct the new County Children's Shelter (**Shelter**) at 4525 Union Avenue in the City of San José (**Property**), which is comprised of an administrative building, a gymnasium, class rooms and other structures, and six residential cottages with 132 beds, for the assessment and temporary shelter of abused and neglected children removed from their homes. The County used private donations, State funds, and a City loan of 20% Housing Funds in the amount of \$1.5 million (**City Loan**). As a requirement of the City loan, the County accepted affordability restrictions requiring the County to operate and maintain 132 beds for very low income people on the Property.
- B. In 1999, the City offered the County an \$800,000 grant of tax exempt bond proceeds to reduce the principal of the City Loan to \$700,000, conditioned on the extension of the affordability restrictions to 34 years. This grant, the City Loan, and all documentation supporting these transactions (loan agreement, grant agreement, promissory note and affordability restrictions are collectively referred to as the **City Obligations**).
- C. The City Obligations require the County to use the property as a Shelter and in accordance with recorded affordability covenants. Additionally, because the source of the City's grant was tax exempt tax increment bond proceeds, the Internal Revenue Service requires that a portion of the sales proceeds be reinvested in a governmental purpose or used to repay the bonds.
- D. The County has changed the manner in which it houses abused and neglected children pending resolution of legal process, thereby reducing the need for residential quarters beyond 24 hours. The County solicited bids for the sale of the Shelter property in an effort to relocate the remaining intake and assessment function to a smaller site and to reimburse the original funding partners. The highest bid was submitted by a private party. In order to accept the bid, the County must resolve the City Obligations and obtain the City's agreement to remove the affordability restrictions from title.
- E. No litigation has been filed by the Parties to this Agreement against each other. The Parties have settled the City Obligations, subject to the terms of this Agreement set forth below.

I. Each of the Parties to this Agreement neither admits nor denies any facts, claims or positions asserted by the other party.

II. The Parties to this Agreement wish to reach full and final settlement of the City Obligations and to avoid litigation with each other.

NOW, THEREFORE, for value received and in consideration of the covenants and conditions set forth herein, the Parties agree as follows:

1. The County will pay Five Million One Hundred and Twenty-Six Thousand dollars (\$5,126,000) to the City, or if requested by City, to a project developer or escrow agent for a project, at the close of escrow for the County's sale of the Shelter, which closing will not occur before September 30, 2012 (**Closing Date**). **The parties' respective obligations under this Agreement are conditioned on the close of escrow for the County's sale of the Shelter.** At or prior to the Closing Date, City will execute such documents as the title company may require to cause the title company to remove City encumbrances on title that reference or relate to the City Obligations on the Closing Date, including but not limited to, reconveyance, rescission or termination of the City's interest in the County's property through the recorded affordability restrictions, City loan or City grant.
2. In addition to the payment in paragraph 1, County will pay half of the City's cost of Bond Counsel fees reasonably necessary to review the existing tax exempt bond documents and, if necessary, prepare an opinion, up to a maximum County obligation of Five Thousand dollars (\$5,000). The parties will comply with advice of Bond Counsel regarding the action required by the County to fulfill the Governmental Use requirements arising from the change in use of the Shelter (**Bond Counsel Direction**). The County will provide City with a written statement regarding the cost of development of the Shelter project (**County Tax Exempt Bond Statement**), for City Bond Counsel's use in determining the amount of the Shelter sales proceeds that must be invested in another qualifying government project; County will fully defend, indemnify, and hold City harmless of and from any claims, suits or losses resulting from (i) City bond counsel's reasonable reliance on the County Tax Exempt Bond Statement, or (ii) County's failure to comply with Bond Counsel Direction.
3. In addition to the payments in paragraphs 1 and 2, the County will consider the Donner Lofts housing developer's application for the use of \$3,100,000 in Mental Health Services Act fund for use in a qualifying affordable housing project, and, if approved by County in accordance with County's applicable processes and procedures, County will submit application to the State for review and approval. If the State does not approve the application, or does not approve the full allocation, the County will pay up to an additional One Million Three Hundred and Fifty thousand dollars (\$1,350,000) to the City or project developer, within 30 days of the State award decision or the Closing Date, whichever occurs later.

4. Upon satisfaction of the conditions in paragraphs 1 through 3, the Parties, on behalf of themselves and their respective officers, employees, agents, predecessors and successors in interest, and related and affiliated entities, hereby fully and finally release and discharge each other, and each of their respective employees, officers, consultants, officials, attorneys, administrators, agents, board members, representatives, successors and assigns, from any and all liabilities, claims, demands, rights, damages, costs, expenses, attorneys' fees, experts and consultants' fees, losses, arbitrations, actions or causes of action, of any kind or nature, known or unknown, asserted or unasserted, suspected or unsuspected (**Claims**), arising out of, or in any way connected with or resulting from, the City Obligations.
5. The release described above is a full and final release applying to all losses, including but not limited to, damages, costs, expenses, attorneys' fees and experts' fees, arising out of or in any way connected with the above-described matters. It is the intention of the Parties that the release will be effective as a bar to each and every claim, demand, and cause of action based upon the above-described matters, and the Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code which states 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.

Notwithstanding section 1542 of the California Civil Code, this Agreement will be given full and final effect according to each of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action. The Parties agree that this waiver is an essential and material term of this Agreement, and, without such waiver, this Agreement would not have been entered into.

5. The Parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequences of this Agreement. Each of the signers of this Agreement represents that he or she is duly authorized to execute this Agreement on behalf of the Party for which he or she is signing. Each of the Parties represents that each of the persons executing this Agreement on its behalf has full and complete legal authority to do so and thereby bind that Party.
6. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, any rule of construction to the effect that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Agreement.

7. Each Party to this Agreement shall bear its own costs and attorneys' fees arising out of the City Obligations and all conduct related thereto, except as expressly provided herein.

This Agreement contains the entire agreement between the Parties, and supersedes all prior and contemporaneous agreements. Time is of the essence in this Agreement. The terms and provisions of this Agreement are all contractual in nature and not mere recitals. This Agreement is executed without reliance upon any representation by any entity or person except as expressly set forth in this Agreement. The signer of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the Parties. This Agreement may be signed in counterparts, each full set of which shall constitute a fully enforceable original and all of which shall constitute one and the same agreement. Facsimile signatures shall be effective as originals.

Dated: \_\_\_\_\_, 2012

City of San City of San José

By \_\_\_\_\_

Approved as to Form:

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S. Shasta Greene, Deputy City Attorney

Dated: April 30, 2012

County of Santa Clara

By Jeffrey V. Smith  
Jeffrey V. Smith, County Executive

Approved as to Form and Legality:

Katherine Harasz  
Katherine Harasz, Deputy County Counsel