

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement"), is entered between the CITY OF GRASS VALLEY, a charter city ("City"), and the COUNTY OF NEVADA, a political subdivision of the State of California ("County"), (collectively "Parties," individually a "Party").

Background

- A. When a city annexes unincorporated county territory, the city and county are required to enter into a property tax-sharing agreement to allocate between them property taxes paid by the owners of the annexed land. The city and county may enter a master tax-sharing agreement to govern a range of annexations. (Rev. & Tax. Code § 99.)
- B. The City and the County entered into a master tax-sharing agreement on October 9, 2001 which governs annexations to the City (the "MTSA").
- C. The MTSA provides for the sharing of various tax revenues, including sales taxes, between the City and the County when properties annex to the City. The tax sharing formulas are complex and vary based on the nature of the tax at issue and the area being annexed.
- D. Under the MTSA, the City receives a share of sales taxes from the California Department of Tax and Fee Administration for all properties in its incorporated area and pays the County its share of sales taxes under the MTSA based on calculations provided by a consultant.
- E. Section 6(A) of the MTSA governs the Glenbrook Area, an area defined as the 2001 Annexation Parcels in the map attached hereto as Exhibit A, entitled the "Glenbrook Annexation Area").
- F. Under that section 6(A), the percentages of tax revenue allocated between the City and County are dependent on the percentage of the Glenbrook Area that has annexed to the City. Under the Agreement, the City receives the highest percentages of tax allocations when the City's annexation of the Glenbrook Area is complete.

- G. The City and County conducted an audit of all sales tax revenues that are allocated between them under the MTSA. The audit determined that the consultant erred in calculating the County's share of sales tax revenue from the Glenbrook Area and other tax-sharing areas for each fiscal year from 2007–2008 to 2015–2016 resulting in underpayments of this revenue from the City to the County (the "Underpayments").
- H. A dispute has arisen between the City and the County with respect to (a) the amount of sales tax revenue that is owed by the City to the County under the MTSA due to the Underpayments; and (b) whether or not annexation of the Glenbrook Area is "complete" within the meaning of the MTSA.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually stipulate, warrant, and agree as follows:

TERMS OF SETTLEMENT

1. **Reimbursement for Underpayments.** Within thirty (30) days after this Agreement is effective as provided below, the City shall pay \$500,000 to the County as reimbursement for the Underpayments.
2. **Completion of Glenbrook Area Annexation.** For purposes of allocating sales tax revenues pursuant to subparagraphs, 4 (base sales and use taxes) and 5 (sales and use tax increment) of Section 6(A) of the MTSA, the Parties agree the annexation of the Glenbrook Area to the City will be deemed complete for purposes of these subsections as of June 30, 2023, and the remaining base and incremental sales tax sharing formulas will be applied to all taxable transactions in the portion of the Glenbrook area annexation the City has annexed to date, consisting of 391 acres. Property taxes in the Glenbrook Basin shall be allocated as they have been to date.
3. **Effective Date.** This shall be effective when fully executed by both Parties.

SETTLEMENT RELEASES

4. Release of All Claims.

- 4.1 **DEFINITION OF "CLAIMS."** As used in this section 4, "Claims" means all past, present, and future claims arising from or related to (a) the amount of sales tax revenue that is owed by the City to the County arising out of, connected with, or related to the MTSA due to the Underpayments; and (b) whether

or not annexation of the Glenbrook Area is deemed “complete” within the meaning of the MTSA, whether the injuries are known or unknown, suspected or unsuspected, or anticipated or unanticipated, as well as all liabilities, claims, demands, damages, and costs arising from or related to such injuries, whatever the theory of recovery, and whether known or unknown, suspected or unsuspected, anticipated or unanticipated, fixed or contingent, or matured or unmatured.

- 4.2** CITY’S RELEASE AND DISCHARGE. The City accepts the settlement terms and conditions set forth herein in compromise of all actions, claims or liabilities arising from the Claims, and the City fully, finally, unconditionally, and forever discharges and releases the County and its elected officials, appointed officials, officers, employees, contractors, agents, attorneys, administrators, assigns, and insurers — and anyone else acting on their behalf — from all the Claims.
- 4.3** COUNTY’S RELEASE AND DISCHARGE. The County accepts the settlement terms and conditions set forth herein in compromise of all actions, claims or liabilities arising from the Claims, and the County fully, finally, unconditionally, and forever discharges and releases the City and its elected officials, appointed officials, officers, employees, contractors, agents, attorneys, administrators, assigns, and insurers — and anyone else acting on their behalf — from all the Claims.
- 4.4** MUTUALLY REOPENED NEGOTIATIONS. City and County agree not to seek or request any re-opening of the MTSA unless both parties mutually agree in writing to do so. In the event of an unknown and unanticipated occurrence (“Occurrence”) related to the allocation of property tax revenues pursuant to this Agreement, either Party reserves the right to submit a Claim, which shall not be deemed an impermissible “Claim” under this Section 4. For purposes of this Agreement, an Occurrence shall be deemed any error, condition, or event pertaining to the calculation and allocation of property tax revenues within the Glenbrook Annexation area that if known at the time of the negotiation of this Agreement would have resulted in a material change in the distribution of property taxes. In the event of such an Occurrence, either Party may elect to reopen negotiations related solely to the resolution of the identified Occurrence, and the Parties shall be bound by the Dispute Resolution Procedures set forth in Section 4.6.

4.5 **KNOWN AND UNKNOWN CLAIMS.** The Parties have read California Civil Code section 1542 (“Section 1542”) and understand that Section 1542 gives them the right not to release existing Claims of which they are not now aware, unless they voluntarily choose to do so. Both Parties nevertheless hereby voluntarily waive Section 1542, and each Party elects to assume all risks for Claims against the other Party that now exist in its favor, whether known or unknown. Section 1542 reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4.6 **DISPUTE RESOLUTION.** If a dispute under this Settlement Agreement arises, or either Party believes that a breach of this Settlement Agreement has occurred, the Parties shall meet and confer within seven days of one Party receiving a written request for a meeting from the other Party to determine whether a breach has occurred and to develop a mutually agreed plan to resolve the dispute, including implementation dates. If the Parties fail to meet and confer, or the meet and confer does not resolve the issue, after at least seven days have passed after the meet and confer did occur or should have occurred, any Party shall be entitled to all rights and remedies under the law, including filing a lawsuit with the Superior Court for the State of California, County of Sacramento.

MISCELLANEOUS TERMS AND CONDITIONS

5. **Attorney Fees and Costs.** Each of the Parties shall bear its own attorney fees, costs, expert fees, and other expenses in connection with the negotiations leading to this Agreement.
6. **No Assignment.** Each Party represents and warrants that, before signing this Agreement, it has not assigned or transferred, or purported to assign or transfer, any claim, demand, right, lien, cause of action, or other matter that is the subject of this Agreement.

7. **Binding on Assignees and Successors.** This Agreement binds and inures to the benefit of the Parties and to their respective assignees, predecessors, and successors.
8. **Compromise of Disputed Claims.** By entering into this Agreement, the Parties do not admit any fact, matter, or liability. This Agreement may not be used as evidence of such an admission.
9. **Exclusive Remedy.** The rights and remedies provided by this Settlement Agreement are the sole and exclusive rights of the Parties against one another relating to the subject matter of this Agreement. However, this section 9 does not limit the Parties' rights and remedies in connection with enforcing this Agreement or any warranties or representations within it.
10. **Severability.** If a court with jurisdiction rules that any provision of this Agreement is invalid, unenforceable, or contrary to law or public policy, then the Parties wish the court to interpret it as follows:
 - 10.1 By modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision.
 - 10.2 By holding that the rest of this Agreement will remain in effect as written.
 - 10.3 By holding that the provision will remain as written in any circumstances other than those in which it is held to be unenforceable.
 - 10.4 By holding this Agreement unenforceable in its entirety if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this Agreement.
11. **Waiver.** A Party's failure to insist on compliance with any term, covenant, or condition in this Agreement will not constitute a waiver of that term, covenant, or condition. A Party's waiver or relinquishment of any right or power in this Agreement at any one time or times will not constitute a waiver or relinquishment of any right or power at any other time or times.
12. **Time of Essence.** Time is of the essence in the performance of this Agreement.

13. **Good-Faith Cooperation.** The Parties agree in good faith to execute any documents and perform any acts necessary to effectuate or evidence this Agreement and to carry out the manifest purpose of this Agreement.
14. **Survival of Claims and Rights.** None of the releases set forth in this Agreement releases any claims or rights arising out of this Agreement or any breach of it.
15. **Signing Authority.** Each person who signs this Agreement for a Party represents for the benefit of every other Party that he or she has actual authority to do so and to bind his or her principal to this Agreement.
16. **Governing Law.** This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in Civil Code section 1654 (construction against the drafter) will not apply.
17. **No Presumption against Drafter.** The Parties agree and acknowledge that each had an opportunity to consult with counsel of its choosing in reviewing and drafting this Agreement, each has fully read and understands it, and each has voluntarily entered into it. Any uncertainty or ambiguity shall not be construed for or against either of the Parties based on attribution of drafting to any Party or otherwise.
18. **Counterparts.** The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same document. Delivery of signatures and signed counterparts may be accomplished by e-mail transmission of pdf files with the same effect as exchange of wet-signed originals.
19. **Notices.** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided shall be hand delivered or sent by U.S. Mail, postage prepaid, and addressed as follows:

Office of the County Administrative Officer
County of Nevada
950 Maidu Avenue, Suite 220
Nevada City, CA 95959

City Manager
City of Grass Valley
125 East Main Street
Grass Valley, CA 95945

- 20. **No Amendments.** No amendments or modifications to this Agreement may be made except by a writing signed by each of the Parties.
- 21. **Integration and Modification.** This Agreement sets forth the Parties' entire understanding regarding the matters set forth above and is intended to be a final, complete, and exclusive expression of those matters. It supersedes all prior and contemporaneous agreements, representations, and negotiations regarding those matters—whether written, oral, express, or implied—and may be modified only by another written agreement signed by all Parties.

IN WITNESS WHEREOF, this agreement has been executed by the Parties, effective as of the date of the final signature to this Agreement.

DATED: 11/19/19

COUNTY OF NEVADA

By: 
Alison Lehman
County Executive Officer

Attest:

By: 
Julie Patterson Hunter, Board Clerk

DATED: 11/20/2019

CITY OF GRASS VALLEY

By: 
Lisa Swarthout, Mayor

Attest:

By: 
Kristi Bashor, City Clerk

[signatures continue]

Approved as to form:

DATED: 11/19/19

COUNTY OF NEVADA

By: 
Katharine L. Elliott, County Counsel

DATED: 11/20/19

CITY OF GRASS VALLEY

By: 
Michael G. Colantuono, City Attorney