COUNTY OF SANTA CRUZ

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February 18,2004

Agenda: March 2,2004

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Re: County of Santa Cruz v. Redevelopment Agency of the City of Santa Cruz,
Santa Cruz Superior Court No. CV 146818

Dear Members of the Board:

This is to submit the final executed Settlement Agreement in the above-entitled matter. The amount and terms of the settlement are within settlement authority previously approved by the Board, and have been accepted by all parties to the action.

IT IS THEREFORE RECOMMENDED that the Board accept this Settlement Agreement and future payments to the County by the City of Santa Cruz as a complete resolution of this matter.

very truly yours,

DANA McRAE, COUNTY COUNSEL

By _____
JULIA HILL
Assistant County Counsel

RECOMMENDED:

_____
SUSAN A. MAURIELLO
County Administrative Officer

cc: Auditor
Susan A. Mauriello, CAO
Erik Schapiro

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SETTLEMENT AGREEMENT
AND
RELEASE OF CLAIMS

This Settlement Agreement and Release is entered into this 12th day of February, 2004 between the REDEVELOPMENT AGENCY OF THE CITY OF SANTA CRUZ (the "Agency"), and the COUNTY OF SANTA CRUZ (the "County").

Recitals

This Settlement Agreement and Mutual Release is premised on the following facts, intentions and understandings:

A. The County and the Agency have entered into several agreements since 1984 through which the Agency makes payments to the County from tax increment revenue from its redevelopment projects (the "Pass-Through Agreements"). The agreements are those listed in page 3 of the County's Complaint.

B. The above-mentioned Pass-Through Agreements direct the County Auditor-Controller to pay the County directly from the Agency's allotted tax increment the amounts agreed upon in the respective Pass-Through Agreements.

C. On April 9, 2003, the County informed the Agency that the County Auditor-Controller had not allocated sufficient tax increment to the County under the Pass-Through Agreements and had allocated to the Agency more than its share for the preceding four years. In total, the County believes that it has misallocated $312, 830.72 to the Agency.

D. A dispute has arisen between the parties over who should bear the financial responsibility for the misallocation of tax increment. The Agency has already spent or otherwise committed the money that the County Auditor-Controller allocated to it, relying on him to make the calculations correctly. The County has claimed that it does not have the ability to waive the payment since it is a contractual obligation.

E. The County filed a breach of contract suit against the Agency on July 9, 2003, Santa Cruz County Superior Court Case No. CV 146818 (the "Action") for the purpose of recovering the misallocated tax increment.

F. The parties to this Agreement have agreed to settle all claims, demands and disputes between themselves arising out of the misallocation of tax increment as explained above by making and executing this Agreement.

Agreements

NOW, THEREFORE, for and in consideration of the mutual promises as hereinafter set forth, the parties hereto agree as follows:

Section 1. The amount claimed by the County is hereby reduced from $312, 830.72 to $249,411.98.

Section 2. The Agency will pay one half of this amount (the "First Installment") not later than June 30,2004, and the balance (the "Second Installment") not later than June 30,2005. The principal amount will not bear interest.

Section 3. Not later than fifteen (15) business days following receipt of the First Installment, the County will make a payment to the Agency, to be deposited in the Agency's Low and Moderate Income Housing Fund, in the amount of $24,941.20. Not later than fifteen (15) business days following the receipt of the Second Installment, the County will pay to the Agency an additional $24,941.20, also to be deposited in the Agency's Low and Moderate Income Housing Fund. The foregoing payments to the Agency by the County will not be credited against or otherwise deducted from tax increment revenues allocable to the Agency, either currently or in the future.

Section 4. The Agency and the County agree to mutually release each other of any and all claims, demands, causes of action, liens, damages, loss, costs, attorneys' fees or expenses relating to the specific misallocation of tax increment which is the subject of this Agreement. This release is binding on and for the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, wherever the context requires or admits. The parties acknowledge that there is a risk that subsequent to the execution of this Agreement, they may incur injury, loss, damage, costs, attorneys' fees or expenses, or any of these, which is in some way caused by or connected with the persons, entities and/or matters referred to above, or which is unknown and unanticipated at the time this Agreement is signed, or which is not presently capable of being ascertained. Nevertheless the parties acknowledge that this Agreement has been negotiated and agreed upon in light of that realization and the parties hereby expressly waive any rights they may have in such unsuspected claims. In doing so, the parties have had the benefit of counsel, have been advised of, understand and knowingly and specifically waive their rights under California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO THE 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 SE-TTLEMENT WITH THE DEBTOR."

Section 5. Upon the execution of this Agreement, the County shall cause the Action to be dismissed, with prejudice, by filing a request for dismissal with the Superior Court.

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Section 6. This Agreement is the result of a compromise and shall not at any time for any purpose be considered as an admission of liability or responsibility on the part of any party herein released.

Section 7. Each party warrants and represents that in executing this Agreement, that party has relied upon legal advice from an attorney; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained by an attorney; and each party fully understands the terms of this Agreement. Each party further acknowledges and represents that, in executing this Agreement, the party has not relied on any inducements, promises, or representations made by any other party except for those considerations expressly set forth herein.

Section 8. Each party shall bear its own costs and attorneys' fees.

Section 9. The parties do hereby agree that, in consideration of the execution of this Agreement, they do hereby covenant and agree not to initiate any litigation or any other action with regard to any claim or rights relating to the specific misallocation of Agency's tax increment as explained in the recitals of this Agreement except for any acts or conditions to be completed by either party under the terms herein.

Section 10. This Agreement contains the entire agreement between the parties. This Agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California.

Section 11. All parties and their counsel have had a full opportunity to review this Agreement. Should any dispute arise as to the interpretation of any term or provision herein, this Agreement shall be deemed to have been drafted by all the parties herein, and shall not be construed against any one party as the sole drafter of this Agreement.

Section 12. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

This Agreement shall be effective as of the date first set forth hereinabove which shall be the date this Agreement is signed by the Agency and the County.

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