

SETTLEMENT AGREEMENT

California Department of Finance v. City of Merced, et al.,
Sacramento Superior Court, Case No. 34-2016-80002485

PARTIES

This Settlement Agreement (“Agreement”) is entered into by the City of Merced (“City”), the Merced Designated Local Authority (“Merced DLA”), Merced County Auditor-Controller Lisa Cardella-Presto (“Auditor-Controller”), and the California Department of Finance (“Finance”), collectively, the “Parties.”

RECITALS

A. The litigation resolved by this Agreement relates to the wind down of the Redevelopment Agency for the City of Merced (RDA) pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature (“AB x1 26”) and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature (“AB 1484”) (AB x1 26 and AB 1484, collectively the “Dissolution Law”).

B. Following the dissolution of the RDA, Merced DLA submitted its Due Diligence Review (DDR) for other funds and accounts (OFA) on January, 15, 2015, and its DDR for Low and Moderate Income Housing Fund (LMIHF) on May 15, 2015.

C. Finance issued letters dated December 4, 2015, identifying a balance of over \$13,158,141 million in the two DDRs combined. After a meet and confer about the determinations, Finance issued letters dated January 8, 2016, revising but largely upholding the determinations and calculating a new balance of \$13,035,007 for the two DDRs.

D. The City and Merced DLA subsequently remitted \$3,014,796.17 to the Auditor-Controller, leaving a \$10,020,210.83 balance.

E. After an extensive meet and confer about Finance’s determinations, Finance issued a letter dated August 25, 2016, requiring the City and Merced DLA to either remit the full \$10,020,210.83 balance or agree to a payment plan with Finance by October 24, 2016. Neither the City nor Merced DLA remitted the DDR balance or reached agreement with Finance on a payment plan.

F. Finance filed a Petition for Writ of Mandate on November 15, 2016, entitled *California Department of Finance v. City of Merced, et al.*, Sacramento County Superior Court Case No. 34-2016-80002485 (“Action”), alleging that the City and Merced DLA had a clear, present, and ministerial duty to remit the \$10,020,210.83 balance in accordance with California Health and Safety Code sections 34179.6 and 34179.9.

E. The superior court granted the petition, and on September 15, 2017, Finance filed notice of entry of the superior court’s order, the peremptory writ of mandate, and the judgment. In the course of this litigation, the Parties agreed that the \$10,020,210.83 balance should be reduced to reflect that the City had remitted \$491,815 in unencumbered bond proceeds. The remaining

balance is \$9,528,395.83.

F. The City appealed the judgment on October 12, 2017. The Third Appellate District of the Court of Appeal issued an opinion on March 22, 2019, directing the superior court to recall the writ and modify the judgment to specify the exact dollar amount of the unencumbered bond proceeds within the DDR balance. The Third Appellate District affirmed the judgment as modified.

G. The California Supreme Court denied the City's petition for review on June 19, 2019, and the Third Appellate District issued a remittitur to the superior court on June 27, 2019. On July 15, 2019, the superior court directed the parties to prepare a modified proposed judgment.

H. Notwithstanding the Court's decision in the Action, and without admission of fault or wrongdoing, the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to, or in any way relating to the Action by entering into this Agreement.

AGREEMENT

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

1. **Principal Terms:** The Parties agree to the following resolution of the litigation:

(a) The City will remit the \$9,528,395.83 DDR balance to Merced DLA pursuant to the following schedule:

- \$2,000,000 by no later than October 1, 2019,
- \$2,000,000 by no later than July 1, 2020,
- \$1,250,000 by no later than July 1, 2021,
- \$1,250,000 by no later than July 1, 2022,
- \$1,250,000 by no later than July 1, 2023,
- \$1,250,000 by no later than July 1, 2024, and
- \$528,395.83 by no later than July 1, 2025.

(b) Within five business days of receipt, the Merced DLA will remit to the Auditor-Controller all DDR funds received from the City under this Agreement, except that Merced DLA will retain from the City's first payment unencumbered bond proceeds in the amount of \$280,359 to be utilized as provided in the Dissolution Law.

(c) Subject to charging administrative fees and costs permitted by law (including, but not limited to, California Health and Safety Code section 34182, Revenue and Taxation Code section 95.3, and SB 2557), the Auditor-Controller will distribute all DDR funds received under this Agreement to the taxing entities, consistent with California Health and Safety Code sections 34179.5 and 34179.6. The term "taxing entities" is as defined in California Health and Safety Code section 34171, subdivision (k).

(d) The City and Merced DLA may accelerate payment of any remaining balance

without penalty.

(e) The City and Merced DLA agree not to file any lawsuit or assert any claim against Finance with respect to the DDR funds remitted under this Agreement. This Agreement does not preclude Merced DLA from listing any item on a Recognized Obligation Payments Schedule (ROPS).

2. Claims Disputed: The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of the Action, and by executing this Agreement, none of the Parties admits wrongdoing, liability, or fault in connection with either the Action or the allegations asserted in the Action.

3. Mutual Release: The Parties specifically and mutually release and discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns from all obligations, damages, costs, expenses, liens, attorney fees of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, pertaining to the Action.

4. Successors and Assigns: This Agreement shall be binding upon the Parties' respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, departments, divisions, sections, successors and assigns.

5. Assumption of Risk: The Parties each represent that they fully understand that if the facts pertaining in any way to the Action are later found 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 remain effective notwithstanding such differences in facts. The Parties also each represent that this Agreement was entered into under the laws in existence as of the effective date, and agree that this Agreement shall remain effective notwithstanding any future changes in the law.

6. Independent Advice of Counsel: The Parties each represent that they know and understand the contents of the Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations and with respect to the execution of this Agreement.

7. Entire Agreement: No promise, inducement, understanding, or agreement not expressed has been made by or on behalf of the Parties, and this Agreement contains the entire agreement between the Parties related to the Action.

8. Indemnity: Each Party represents that it has not assigned, transferred, or purported to assign or transfer to any person or entity any matter released herein. The respondents in the Action also agree to indemnify and hold harmless the petitioners in the Action and their successors and assigns against any claims, demands, causes of action, damages, debts, liabilities,

costs or expenses, including, but not necessarily limited to, attorney fees, arising out of or in connection with the Action.

9. Amendments in Writing: This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by the Parties. 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.

10. Construction: The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.

11. Additional Acts: The Parties agree to take such actions and to execute such documents as are necessary to carry out the terms and purposes of this Agreement.

12. Attorneys Fees: The Parties shall each bear their respective attorney fees and costs incurred in the litigation.

13. Enforcement: The Parties agree that, in any proceeding to enforce the terms of this Agreement, a court shall have the authority to award equitable relief, including but not limited to specific performance, and the Parties consent to the awarding of such equitable relief, including but not limited to specific performance. If any Party to this Agreement files a lawsuit to enforce or interpret this Agreement, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees and costs.

14. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.

15. Counterparts: This Agreement may be executed by facsimile and in counterparts, each of which is deemed an original and all of which shall constitute this Agreement.

16. Effective Date: The date on which the last counterpart of this Agreement is executed shall be the effective date of this Agreement.

17. Authority to Execute: Each Party represents that they have the authority to enter into and perform the obligations necessary to provide the consideration described in this Agreement. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

This Agreement consists of Recital Paragraphs A - H and Paragraphs 1 - 17.

DATED: 8/6/19

CITY OF MERCED

By [Signature]

Its [Signature]

DATED: _____

MERCED DESIGNATED LOCAL AUTHORITY

By _____

Its _____

DATED: _____

MERCED COUNTY AUDITOR-CONTROLLER

By _____

Its _____

DATED: _____

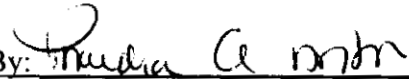
CALIFORNIA DEPARTMENT OF FINANCE

By _____

Its _____

Approved as to Form:

PHAEDRA A. NORTON

By: 

Phaedra A. Norton
Attorney for Petitioner and Plaintiff City of Merced

Approved as to Form:

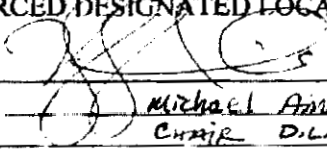
XAVIER BECERRA
Attorney General of California

By: _____

R. Matthew Wise
*Attorneys for Respondent and Defendant California
Department of Finance*

DATED: 8-15-19

MERCED DESIGNATED LOCAL AUTHORITY

By 

Its Michael Amabile
Chair D.L.A.

DATED: _____

MERCED COUNTY AUDITOR-CONTROLLER

By _____

Its _____

DATED: _____

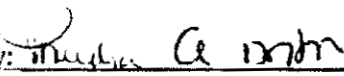
CALIFORNIA DEPARTMENT OF FINANCE

By _____

Its _____

Approved as to Form:

PHAEDRA A. NORTON

By: 

Phaedra A. Norton
Attorney for Petitioner and Plaintiff City of Merced

Approved as to Form:

XAVIER BECERRA
Attorney General of California

By: _____

R. Matthew Wise
*Attorneys for Respondent and Defendant California
Department of Finance*

DATED: _____

MERCED DESIGNATED LOCAL AUTHORITY

By _____

Its _____

DATED: 8-8-19

MERCED COUNTY AUDITOR-CONTROLLER

By Lisa Cardella-Presto

Its Merced County Auditor-Controller

DATED: _____

CALIFORNIA DEPARTMENT OF FINANCE

By _____

Its _____

Approved as to Form:

PHAEDRA A. NORTON

By: Phaedra A. Norton

Phaedra A. Norton
Attorney for Petitioner and Plaintiff City of Merced

Approved as to Form:

XAVIER BECERRA

Attorney General of California

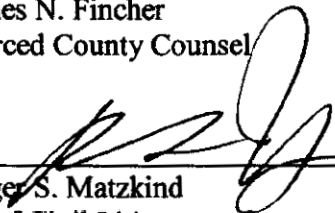
By: _____

R. Matthew Wise

*Attorneys for Respondent and Defendant California
Department of Finance*

Approved as to Form:

James N. Fincher
Merced County Counsel

By: 

Roger S. Matzkind
Chief Civil Litigator

*Attorney for Lisa Cardella-Presto, Merced County
Auditor-Controller*

DATED: _____

MERCED DESIGNATED LOCAL AUTHORITY

By _____

Its _____

DATED: _____

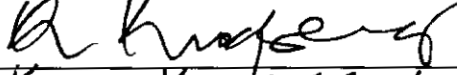
MERCED COUNTY AUDITOR-CONTROLLER

By _____

Its _____

DATED: August 6, 2019

CALIFORNIA DEPARTMENT OF FINANCE

By 

Its KARI KROGSGAARD
CHIEF COUNSEL

Approved as to Form:

PHAEDRA A. NORTON

By: _____

Phaedra A. Norton

Attorney for Petitioner and Plaintiff City of Merced

Approved as to Form:

XAVIER BECERRA

Attorney General of California

By: _____

R. Matthew Wise

*Attorneys for Respondent and Defendant California
Department of Finance*

DATED: _____

MERCED DESIGNATED LOCAL AUTHORITY

By _____

Its _____

DATED: _____

MERCED COUNTY AUDITOR-CONTROLLER

By _____

Its _____

DATED: _____

CALIFORNIA DEPARTMENT OF FINANCE

By _____

Its _____

Approved as to Form:

PHAEDRA A. NORTON

By: _____

Phaedra A. Norton

Attorney for Petitioner and Plaintiff City of Merced

Approved as to Form:

XAVIER BECERRA

Attorney General of California

By: R. Matthew Wise

R. Matthew Wise

*Attorneys for Respondent and Defendant California
Department of Finance*