

SETTLEMENT AGREEMENT & MUTUAL RELEASE

This Settlement Agreement and Release ("Agreement") is made by and between the City of Escondido, a California municipality, the City Council of the City of Escondido, (collectively "City"), and Building Industry Association of San Diego County, a California non-profit corporation ("BIA"). The City and BIA shall collectively be referred to herein as the "Parties".

RECITALS

WHEREAS, on February 26, 2021, BIA filed a petition for writ of mandate and complaint for declaratory relief entitled *Building Industry Association of San Diego County v. City of Escondido, et al.*, San Diego County Superior Court, Case No. 37-2021-00008423-CU-MC-CTL ("Action"). BIA's Action was filed to seek judicial review and challenge the City's adoption of City Ordinance 2020-24 ("the Ordinance") and other local policies to require that applicants for new residential development must agree either to vote to annex into a new "Mello-Roos Community Facilities District ["CFD"] for Services" ["CFD (Services) 2020-1,"] or to establish an "alternative funding mechanism" acceptable to the City requiring payment of special taxes, fees, or other forms of charges to the City ostensibly to offset alleged fiscal impacts on certain of the City's generally available public services;

AND WHEREAS, the City filed a Demurrer to the Action;

AND WHEREAS, following a hearing in the San Diego Superior Court, the City's Demurrer was over-ruled and the City was directed to file its Answer to the Action;

AND WHEREAS, the City filed its Answer, which generally denied the allegations of the Petition and Complaint, and asserted several affirmative defenses;

AND WHEREAS, the City subsequently considered various alternatives as potential sources of revenue to fund the types of general public services, and during this time, the Parties entered into a series of stipulations (with Court approval) providing for the litigation to be temporarily suspended, in order to provide opportunities for the Parties to explore potential alternative funding mechanisms and the concomitant possibilities for settlement of the issues raised in this Action;

AND WHEREAS, the Parties explored settlement possibilities in good faith, but the Parties did not reach any agreement as to a mutually acceptable revenue mechanism to replace the requirements of Ordinance No. 2020-24. Nevertheless, the Parties continued to pursue discussions that might allow for the resolution of this Action by mutual agreement and releases;

AND WHEREAS, the Parties now desire to settle all present, past and future controversies, claims, causes of action or purported causes of action, defenses, and disputes, arising from the City's disputed adoption of Ordinance 2020-24, both real and potential. The City, by its Council, has agreed to pursue local legislative action to repeal and rescind said Ordinance and to repeal any related policies or requirements that applicants for new residential development must agree either to vote to annex into a new "Mello-Roos Community Facilities District ["CFD"] for Services" ["CFD (Services) 2020-1,"] or to establish an "alternative funding mechanism" acceptable to the

City requiring payment of special taxes, fees, or other forms of charges to the City ostensibly to offset alleged fiscal impacts on certain of the City's public services. BIA by its governing Board and officers have agreed, in return, to diligently pursue the voluntary dismissal of this Action against all Parties, with prejudice, as soon as the City's actions to rescind and repeal the disputed Ordinance and policies become final.

The Parties now seek to document in this Settlement Agreement and Mutual Release, and confirm their respective agreements, including the terms and conditions for settlement and mutual release of all claims, defenses, counter-claims or other liabilities arising in connection with this Action.

NOW, THEREFORE, in consideration of the mutual promises and mutual covenants set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. RECITALS

The Recitals are incorporated into and are made a part of this Agreement. The purpose of this Agreement is to resolve, in their entirety, all of the disputes arising from or related to the Action and the Ordinance, and any and all claims which exist between the Parties including, but not limited to, all allegations and contentions of the Parties as set forth in the Petition, Answer, pleadings, claims, petitions or correspondence in relation thereto. This Agreement shall finally and fully settle the disputes between the Parties as to the Action and the Ordinance.

2. CITY'S SETTLEMENT OBLIGATIONS

In consideration of this Agreement, the City agrees to promptly initiate and diligently pursue appropriate local legal actions leading to the complete rescission of said Ordinance and to repeal any related policies or requirements that require, as a condition of development approval, applicants for new residential development must agree either to vote to annex into a new "Mello-Roos Community Facilities District ["CFD"] for Services" ["CFD (Services) 2020-1,"] or to establish an "alternative funding mechanism" acceptable to the City requiring payment of special taxes, fees, or other forms of charges to the City ostensibly to offset alleged fiscal impacts on certain of the City's generally-available public services.

The City agrees to initiate such rescission action within 45 days from the date of execution of this Agreement, and to complete such rescission of the disputed Ordinance and policies within 90 days of the date of execution of this Agreement.

The City further agrees as material consideration for this Agreement that it will not take any action to replace or reinstate the Ordinance, or similar requirements that new developments establish an "alternative funding mechanism" acceptable to the City requiring payment of special taxes, fees, or other forms of charges to the City to offset alleged fiscal impacts on certain of the City's public services without first giving sixty (60) day's notice to the BIA of the intent to adopt a similar ordinance and thereafter meeting and conferring in good faith with the BIA to identify

the basis and computation for any such fees or charges. The City Council affirmatively states it does not at this time intend to replace or reinstate the Ordinance or similar funding obligations on developers but cannot legally bind the actions of future city councils.

The Parties acknowledge that this Agreement is not intended to impair the City's discretion or its exercise of its police power authority. The Parties further acknowledge and agree that in the event the City does not complete the rescission of the disputed Ordinance and policies in a timely manner as described above, for any reason, then this Agreement shall become null and void as to its remaining unexecuted terms. BIA shall be entitled to resume or re-file its litigation and shall be free to pursue any claims related to the Action, including claims for legal fees and costs against the City.

3. BIA'S SETTLEMENT OBLIGATIONS

BIA by its governing Board and officers agree to diligently pursue and file with the San Diego Superior Court a Request for Dismissal of this entire Action against all Parties, with prejudice, as soon as the City's actions to rescind and repeal the disputed Ordinance and policies (described above) become final (and not subject to referendum or other appeal action)

4. MUTUAL WAIVERS OF CLAIMS FOR FEES OR COSTS

The Parties mutually agree that neither of them shall claim or seek to recover any attorney fees, or costs of this Action, by any means, and that all Parties have agreed to bear their own legal fees and costs relating to this Action, and upon the final rescission of the disputed Ordinance, agree to waive and release all such claims, or potential claims for attorney fees or costs of litigation.

5. MUTUAL RELEASE

(a) In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, and except as to the rights, duties and obligations of the Parties as set forth in this Agreement, the Parties hereby release, and fully and finally and forever discharge each other, and each of their associates, owners, predecessors, successors, heirs, executors, administrators, assigns, agents, directors, officers, partners, employees, representatives, lawyers, and all persons acting by, through, under, or in concert with them or any of them (hereinafter collectively called "Additional Releases") of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), existing or as the law may change, including, without limitations, Claims which either Party may now have against each other, arising from or related to the Action and the Ordinance. This Agreement shall not affect the rights of either Party to make claims against the other for future acts.

(b) Except as otherwise provided in this Agreement, it is the intention of the Parties that the Release shall be mutually effective as a bar to all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, and attorneys' fees, of every character and kind, known or unknown, existing or contingent, latent or patent; and in furtherance of such intention, the Parties expressly waive any and all rights conferred upon them by the provisions of California Civil Code Section 1542, which 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.

(c) It is the intention of the Parties that the releases entered into as part of this Agreement shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon them by the provisions of Section 1542 of the California Civil Code. The Parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. The Parties expressly agree that the release provisions herein contained shall be given full force and effect in accordance with each and all of their express terms and provisions, including but not limited to those terms and provisions relating to unknown or unsuspected claims, demands and causes of action herein above specified. The Parties assume the risk of the foregoing and of the subsequent discovery or understanding of any matter, fact or law which if now known or understood would in any respect have affected this Agreement.

6. NECESSARY ACTS

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

7. AUTHORITY TO SIGN

Each Party warrants that the individuals who have signed this Agreement on behalf of that Party have the legal power, right, and authority to so sign and thereby bind that Party and its heirs, personal representatives, successors and assigns and any person or entity that may otherwise be entitled to grant the Release.

8. ENTIRE AGREEMENT; AMENDMENTS

This Agreement is the entire agreement between the Parties concerning the subject matter hereof, and supersedes any prior negotiations, discussions, oral or written communications, or agreements between the Parties. The terms of this Agreement may only be modified or amended by an instrument in writing executed by all Parties.

9. GOVERNING LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in the County of Riverside, California.

10. NO INTERPRETATION AGAINST DRAFTER; ADVICE OF COUNSEL

This Agreement is to be construed fairly and not in favor of or against any Party regardless of which Party or Parties drafted or participated in the drafting of its terms. Each Party acknowledges it has had the opportunity to receive independent legal advice with respect to the advisability of making this Agreement and with respect to the meaning of California Civil Code Section 1542, and that they are freely and voluntarily entering in this Agreement and understand this Agreement in its entirety.

11. NO ADMISSION OF LIABILITY

The Parties agree and mutually acknowledge that this Agreement is for settlement purposes only. The Parties deny any wrongdoing in connection with the facts alleged in the Action. Neither this Agreement nor any action taken pursuant to this Agreement shall constitute an admission of any wrongdoing, fault, violation of law, or liability of any kind on the part of any of the Parties. The Parties agree that this Agreement shall be inadmissible as evidence of liability in any forum or proceeding.

12. NO WAIVER

The failure to insist on any one occasion upon strict compliance with any of the covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of any rights or powers hereunder at any other time or times.

13. NO THIRD PARTY BENEFICIARIES

The Parties acknowledge that there are no express or implied third party beneficiaries to this Agreement. No person or entity not a signatory hereto shall have any rights or causes of action against any Party hereto as a result of that Party's performance or nonperformance of any obligation hereunder.

14. NO PRIOR ASSIGNMENTS.

The Parties represent and warrant that they have not sold, assigned or transferred, or purported to sell, assign or transfer, and shall not hereafter sell, assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, rights, actions, or causes of action released pursuant to this Agreement.

15. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

16. CAPTIONS

Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provisions hereof.

17. EACH PARTY TO BEAR OWN COSTS

Except as otherwise provided herein, each Party shall bear its own legal expenses and costs incurred in the preparation and review of this Agreement.

18. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, personal representatives, executors, estate, heirs, agents and related entities of the respective Parties.

19. COUNTERPART EXECUTION

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. This Settlement Agreement may be executed on counterpart signature pages and may be signed by fax or scanned email signature.

{Signatures on following page}

IN WITNESS WHEREOF, each Party has executed this Agreement on the date which appears next to its/his signature below.

Dated: _____

BUILDING INDUSTRY ASSOCIATION OF
SAN DIEGO COUNTY

By: _____
Name: Lori Holt Pfeiler
Title: Chief Executive Officer

Dated: _____

CITY OF ESCONDIDO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____

RUTAN & TUCKER LLP

By: _____

David P. Lanferman
Attorneys for Building Industry Association
of San Diego County

Dated: _____

CITY ATTORNEY

By: _____

Michael R. McGuinness,
Attorney for
CITY OF ESCONDIDO and
THE MAYOR AND CITY COUNCIL OF
THE CITY OF ESCONDIDO