

RELEASE OF ALL CLAIMS

Town of Los Gatos v. County of Santa Clara, et al.
Santa Clara Superior Court, Case No.: 22CV395530

This Release of All Claims (“AGREEMENT”) is entered into by and among the following parties (collectively the “SETTLING PARTIES” or “PARTIES” and individually as “SETTLING PARTY” or “PARTY”):

1. Plaintiff and Petitioner Town of Los Gatos, a public entity (“PLAINTIFF”); and
2. Defendant Uretek, USA, Inc. (“URETEK”);

RECITALS

On March 4, 2022, PLAINTIFF filed a Complaint for Damages, entitled “Town of Los Gatos v. County of Santa Clara; Harry Freitas; Herbert Naraval; Dangkhua Vo; Ronald Jackson; David Parks; Steve Wilson; Granite Rock, Uretek USA, Inc.; Does 1-25 inclusive as Defendants” in the Superior Court in and for Santa Clara County, case number 22CV395530. The Complaint alleged five causes of action against the Defendants: 1) Promissory Fraud; 2) Fraud in Inducement; 3) Breach of Contract; 4) Breach of Covenant and Fair Dealing; and 5) Negligence.

On June 6, 2022 PLAINTIFF filed a First Amended Complaint against the same named defendants, but which dismissed Ronald Jackson and added a Petition for Writ of Mandate against Local Agency Formation Commission of Santa Clara County as Respondent. The causes of action in the First Amended Complaint were as follows: 1) Promissory Fraud; 2) Fraud in Inducement; 3) Breach of Contract; 4) Breach of Covenant and Fair Dealing; and 5) Negligence and two Petitions for Writ of Mandate: 1) Invalidate Annexation of Shannon Road No. 27 and Compel Compliant with California Public Records Act.

On July 11, 2022, PLAINTIFF dismissed Dangkhua Vo, Steve Wilson, David Parks, and Ron Jackson without prejudice.

On August 16, 2022, PLAINTIFF and LAFCO stipulated to LAFCO’s non-participation in Case No. 22CV395530 subject to LAFCO agreeing to be bound to any stipulation between PLAINTIFF and some or all of the parties to Case No. 22CV395530.

On August 17, 2022, the County, Harry Freitas, and Herbert Naraval demurred to the First Amended Complaint in Case No. 22CV395530. On October 25, 2022, Granite Rock also demurred to the First Amended Complaint in Case No. 22CV395530. Neither of the demurrers have been heard yet and per agreement of the parties, no other responsive pleadings have yet been filed.

The Complaint, and any amended Complaints, are collectively referred to herein as the SUBJECT ACTION.

By and through these pleadings and this AGREEMENT, URETEK denies any liability to PLAINTIFF, or any other party whether named in the action or not, and continue to deny any liability to PLAINTIFF or any other party. THE PARTIES now desire to fully and forever settle each of the claims or disputes which exist between THE PARTIES and which arise out of the matters in controversy in the SUBJECT ACTION, and to cause the dismissal with prejudice of the claims between them in the SUBJECT ACTION.

Wherefore, in consideration of the conditions, covenants, and agreements contained herein, the SETTLING PARTIES do hereby agree as follows:

SETTLEMENT TERMS

1. PAYMENT TO PLAINTIFF

URETEK, by and through its liability insurance carrier, shall pay to PLAINTIFF FIFTEEN THOUSAND DOLLARS and NO CENTS (\$15,000.00).

Said Settlement is expressly conditioned on the prior execution of a written agreement by the COUNTY OF SANTA CLARA whereby the County on behalf of itself and its respective successors, assigns, insurers, agents, and all others who may claim through them or take any interest in the matters released herein (hereinafter "Related Persons and Entities"), fully and forever release, discharge, acquit and covenant not to sue URETEK, and each of its current, former or future officers, directors, managers, members, receivers, insurance carriers, reinsurers, joint venturers, sole proprietors, partners, stockholders, sureties, consultants, employees, agents, subcontractors, attorneys, experts, trusts, subsidiaries, parent corporations, affiliated entities and their heirs, spouses, successors and assigns of any such person or entity, from any and all known or unknown claims, obligations, liabilities, representations, warranties, costs, expenses, damages, attorneys' fees under statute or contract, damages, expert expenses, demands, rights, defense and indemnity claims (whether express, implied, or equitable), and causes of action, whether known or unknown, that arise from or are related in or in any manner connected with the Shannon Road No. 27, any contract, work, or action, which were claimed, stated, or which could have been claimed or stated in the SUBJECT ACTION.

The Settlement Payment shall be tendered by check to PLAINTIFF's counsel within 30 calendar days after full execution of this Agreement and full execution of the written agreement by the County of Santa Clara, whichever is later. Payment shall be made by check payable to "Town of Los Gatos" and delivered to Gabrielle Whelan, Town Attorney, at 110 East Main Street, Los Gatos, CA 95030.

2. DISMISSAL OF COMPLAINT AND CROSS-COMPLAINTS

Within 10 days of full execution of this Agreement, and payment to PLAINTIFF, PLAINTIFF shall cause to be filed a dismissal with prejudice of the complaint against URETEK.

Thereafter, PLAINTIFF shall provide URETEK with a copy of the endorsed filed dismissal, in accordance with California Rules of Court, Rule 1.1390.

3. RELEASE OF ALL CLAIMS BY PLAINTIFFS

In consideration for the settlement to PLAINTIFF, and in consideration for each Settling Parties' agreement to bear their own fees and costs in the SUBJECT ACTION, PLAINTIFF hereby fully and forever releases and discharges URETEK, and each of its respective affiliated and subsidiary companies, all of its respective owners, principals, shareholders, partners, joint venturers, officers, directors, servants, employees, predecessors, heirs, successors, and insurers, of and from each and every claim, demand, action, cause of action, loss, cost, expense or element of damage, of every kind and character, whether known or unknown, contingent or certain, past, present or future, which arises out of, relates to, or in any way concerns any of the following matters:

All claims raised by, alleged by, or made by, or which could have been raised by, alleged by, or made by, PLAINTIFF in the SUBJECT ACTION.

In entering into this AGREEMENT and the release provided for herein, PLAINTIFF intends to, and hereby does, waive all rights or benefits which PLAINTIFF may have had under California Civil Code Section 1542, which provides:

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.

PLAINTIFF acknowledges that there is a risk that the damages which PLAINTIFF believes it may have suffered, or will suffer, may later turn out to be other than, or a different character from, or greater than, those damages now known, suspected, or believed to be true. Further, other facts on which the PLAINTIFF may be relying upon in entering into this Agreement, may later turn out to be other than, or different from, those now known, suspected, or believed to be true.

PLAINTIFF further acknowledges that in entering into this settlement and the release provided for in this Agreement, PLAINTIFF have expressly agreed to accept the risk of such possible unknown damages, claims, demands, actions or causes of action. PLAINTIFF acknowledges, represents, and warrants, that in waiving all rights or benefits which it may have had under California Civil Code Section 1542, PLAINTIFF have had the advice of counsel, and it further represents, warrants and agrees that this Agreement shall remain in full force, and in effect, notwithstanding the occurrence of any such possible changes or differences in material facts.

4. PARTIES TO BEAR THEIR OWN FEES AND COSTS

The PARTIES expressly agree to bear their own costs of suit, consultants' fees, experts' fees, attorneys' fees, and other costs and expenses, of any kind or character, arising out of or

relating in any way to the Subject Action, or to the claims released by this AGREEMENT. In the event any dispute between the Settling Parties with respect to this AGREEMENT, the prevailing Settling Party shall be reimbursed for its reasonable costs and expenses by the Party not prevailing, including, without reasonable attorneys' and experts' fees and costs incurred in connection with such litigation or other proceeding and/or any appeal thereof. Such costs, expenses and fees shall be included in and made a part of any judgment recovered by the prevailing Settling Party.

6. STIPULATION TO JUDICIAL ENFORCEMENT OF AGREEMENT

Each Party to this Agreement acknowledges, stipulates and agrees that the settlement, which is the subject matter of this Agreement and which is reflected herein, is enforceable pursuant to the provisions of Code of Civil Procedure section 664.6. Any motion to compel enforcement, or to enter judgment pursuant to the terms of this Agreement, may be heard before any judge of the Superior Court of the State of California.

7. BENEFIT OF COUNSEL AND EXPERTS

PLAINTIFF represents and warrants that during the course of the negotiations leading to the settlement reflected herein, it had the benefit of counsel. PLAINTIFF further represents that this AGREEMENT is executed voluntarily, with full knowledge of its significance.

PLAINTIFF further represents and warrants that during the course of the negotiations leading to the settlement reflected herein, it had the benefit of advice from experts and consultants as it has deemed necessary.

PLAINTIFF further represents and warrants that in entering into this AGREEMENT and the releases reflected herein, it has not relied upon any opinion, conclusion, recommendation or estimate provided by any other Party to this AGREEMENT, nor by any other expert or consultant retained by or on behalf of any other Party.

8. WARRANTY OF CAPACITY AND AUTHORITY

PLAINTIFF represents and warrants that the person who executes this AGREEMENT is competent to execute this AGREEMENT on behalf of PLAINTIFF, or that he or she is competent, and has the express authority of the person or entity on whose behalf he or she is signing, to execute this Agreement on behalf of such other person or entity.

9. GOOD FAITH SETTLEMENT STIPULATION

The Parties stipulate that the settlement reflected herein is made in good faith and satisfies all of the requirements of a "good faith settlement" as reflected in California Code of Civil Procedure sections 877 and 877.6.

10. COOPERATION OF PARTIES

Each of the Parties hereto agrees to cooperate with each other to do everything necessary to accomplish the purpose and intent of this AGREEMENT.

13. BINDING NATURE OF AGREEMENT

This AGREEMENT shall be binding upon, and shall inure to the benefit of, each Party hereto, each Party's respective subsidiaries and affiliated companies, and all of their respective owners, principals, shareholders, partners, joint venturers, officers, directors, servants, employees, predecessors, heirs, insurers and sureties.

14. NO ADMISSION OF FAULT, LIABILITY OR WRONGDOING

Each Settling Party acknowledges that such Party is entering into this Agreement voluntarily, solely for the purpose of bringing the subject claims to a conclusion, and to avoid further costs, risks and expenses associated with continued litigation. This Agreement is the result of a compromise, and by entering into this AGREEMENT, or by agreeing to pay any sum of money or to provide any other form of consideration for the execution of this AGREEMENT, no Party is admitting any fault, liability or wrongdoing, or any matter of fact, nor shall this Agreement ever be construed as such or as evidence or proof of the existence of any damages at the Subject Property.

15. ENTIRE AGREEMENT

This AGREEMENT contains the entire agreement of the Parties with respect to the matters covered hereby and supersedes any oral or written understandings or agreements between the Parties with respect to the subject matter of this AGREEMENT. No person or Party is authorized to make any representations or warranties except as set forth herein, and no agreement, statement, representation or promise by any Party hereto which is not contained herein shall be valid or binding. Each Party acknowledges that it has not relied upon any warranties, representations, statements or promises by any of the other Parties herein released, or any of their agents or consultants, except as may be expressly set forth herein.

16. CHOICE OF LAWS

This AGREEMENT shall be construed in accordance with the laws of the State of California.

17. COPIES OF AGREEMENT

A copy, or electronic copy, of a Party's designated representative(s)' executed signature page of the Agreement shall be deemed to have the same force and effect as an originally executed signature. A copy, electronic copy such as via email, of the fully executed AGREEMENT shall be deemed to have the same force and effect as the original.

18. SEVERABILITY

If any provision, or any part of any provision, of this AGREEMENT is, for any reason, held to be invalid, unenforceable, or contrary to any public policy, law, statute or regulation, then

the remainder of this AGREEMENT shall not be affected thereby, and shall remain valid and fully enforceable.

19. NO THIRD-PARTY BENEFICIARIES

Except as otherwise specifically provided herein, no persons or entities other than the Parties are intended to be, or should be construed to be, a beneficiary of any of the provisions of this AGREEMENT.

20. AMENDMENTS OR MODIFICATIONS TO AGREEMENT

No modification or amendment to this AGREEMENT shall be of any force or effect unless in writing and executed by all Parties affected thereby or their counsel.

21. CONSTRUCTION OF AGREEMENT

This AGREEMENT and each of the provisions hereof, has been reached as the result of negotiations between the Parties and their respective attorneys. The Parties expressly acknowledges and agrees that this AGREEMENT shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be employed in the interpretation of this AGREEMENT.

22. SETTLEMENT FUNDS AND WAIVER OF STATUTORY NOTICE REQUIREMENTS

The notice requirements of Business & Professions Code § 6149.5 regarding written notice to claimants upon payment of settlement funds are hereby waived for all purposes and as to all parties herein, and as to their respective liability insurers.

23. EFFECTIVE DATE OF AGREEMENT

The Parties agree that the date of this AGREEMENT is the date that the AGREEMENT is fully executed. The undersigned acknowledges that it has read the foregoing Agreement, understand it, and sign it of their own free will.

Dated: _____

PLAINTIFF TOWN OF LOS GATOS
