

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made by and between Town of Los Gatos (“Plaintiff”) and the County of Santa Clara (“County”) in recognition of the following facts (collectively, “Parties”):

A. On March 3, 2022, Plaintiff filed a Complaint for Actual Fraud, Breach of Contract, Breach of Implied Warranty, Breach of Covenant of Good Faith and Fair Dealing, and Negligence concerning its annexation of an unincorporated County roadway designated “Shannon Road No. 27” by the Santa Clara Local Agency Formation Commission (“LAFCO”), in the Superior Court for the State of California, County of Santa Clara Case No. 22CV395530 (“Action” or “Case No. 22CV395530”) against the County, Harry Freitas, Herbert Naraval, Ron Jackson, Dangkhua Vo, David Parks, and Steve Wilson. These defendants are hereinafter collectively referred to as the “County Defendants.”

B. In Case No. 22CV395530, Plaintiff also sued Granite Rock Company, Uretek USA, Inc., and the Local Agency Formation Commission of Santa Clara County. Granite Rock Company and Uretek USA, Inc. are hereinafter collectively referred to as the “Contractor Defendants.”

C. On June 22, 2022, Plaintiff filed a First Amended Complaint in Case No. 22CV395530 alleging Promissory Fraud, Fraud in Inducement, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, and Negligence.

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

E. 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.

F. On August 17, 2022, the County, Harry Freitas, and Herbert Naraval demurred to the First Amended Complaint in Case No. 22CV395530.

G. Plaintiff and the County Defendants desire now to settle and compromise all claims that were asserted or could have been asserted against each other in Case No. 22CV395530 and all other known and unknown claims that they have or may have against each other on the terms and conditions set forth below.

ACCORDINGLY, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. Dismissal of Action

Plaintiff will execute a Request for Dismissal with prejudice of its First Amended Complaint as to the County Defendants. Counsel representing Plaintiff will promptly deliver to counsel representing the County the executed Request for Dismissal with prejudice.

2. Payment to Plaintiff

Upon complete execution of this Agreement, along with delivery of an executed Request for Dismissal with prejudice of Case No. 22CV395530 as to the County Defendants, the County will deliver to counsel representing Plaintiff a check payable to the Town of Los Gatos in the amount of one million, five hundred thousand dollars (\$1,500,000). The County will not file the executed Request for Dismissal until the settlement check is delivered to Plaintiff. The County may issue Form 1099 paperwork or other reporting paperwork for this payment.

3. Mutual Release and Waivers

The County Defendants and Plaintiff each represent and warrant that he, she or it is the sole owner of all rights, claims, damages, actions causes of action, and suits at law or in equity that he, she or it may have against each other, and that he, she or it has not heretofore transferred, or agreed to transfer, any rights claims, damages, actions, causes of action, or suits at law or in equity that form the basis of this Agreement.

Except as to any claims Plaintiff against the Contractor Defendants, who receive no rights, interests or third-party beneficiary status under this Agreement, Plaintiff and County Defendants hereby release and forever discharge each other and all of their respective present and former departments, subdivisions, Board, Council, officers, directors, executives, agents, employees, attorneys, and each and all of their respective predecessors, transferees, successors, assigns, insurers, and sureties, from any and all liability, claims, demands and causes of action, including but not limited to any claims to invalidate Plaintiff's annexation of Shannon Road No. 27 and/or for attorney fees and costs, forming a part of, or arising of or relating to Case No. 22CV395530 and its subject matter. The mutual release applies to all matters, whether presently known or unknown, and apply to all actual or potential causes of action which may now be available or may discovered at a future date.

4. Waiver of Civil Code Section 1542

THE UNDERSIGNED PARTIES EACH ACKNOWLEDGE THAT THEIR LEGAL COUNSEL HAS ADVISED THEM OF AND THEY ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CODE SECTION 1542, WHICH 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 THE RELEASED PARTY.

Each of the undersigned parties acknowledge that they are generally releasing unknown claims and waives all rights they have or may have under Civil Code section 1542 or under any other similar statute or decisional or common law principle of any jurisdiction. Each of the undersigned parties acknowledge that if they have suffered, or in the future suffer, damages arising out of the matters released by this Agreement, they will not be able to make any claims for those damages.

5. No Admissions; General Release of No Evidentiary Effect

Plaintiff acknowledges and agrees that this Agreement is given and accepted as part of a compromise and settlement of disputed claims. Plaintiff further acknowledges and agrees that the acceptance of this Agreement by any of the County Defendants shall not be construed or deemed to be an admission of any fact, matter, or thing. Neither this Agreement nor any of its terms shall be offered or received as evidence in any proceeding in any forum as an admission of any liability or wrongdoing on the part of any of the County Defendants.

6. Covenant Not to Sue

Plaintiff covenants and agrees that it will forever refrain from instituting any action or proceeding against the County Defendants that arises out of, is or may be, in whole or in part, based upon, related to, or connected with the subject matter of this Agreement. Plaintiff understands that the release contained in this Agreement is a complete defense to any action or other proceeding against the County Released Parties existing at the present time or in the future.

7. Fees and Costs Already Incurred

Each Party shall be responsible for its own costs and attorney fees incurred.

8. Proceedings to Enforce Agreement

In any proceeding at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorney fees incurred in the enforcement proceeding by the prevailing Party (including, without limitation, such costs, expenses and fees on any appeals) and if such prevailing Party shall recover judgment in any action or proceeding, such costs, expenses, including those of expert witnesses, and attorney fees shall be included in and as part of the judgment.

9. Representations and Warranties

Each Party hereby represents, warrants, and agrees as follows:

A. None of the Parties have made any statement or representations regarding any fact relied upon in entering into this Agreement, and each Party does not rely upon any statement, representation, or promise of any other Party executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

B. Each Party has made such investigation of the facts pertaining to this settlement and this Agreement, and of all the matters pertaining thereto, as it deems necessary.

C. Each Party has read this Agreement and understands its contents.

D. In entering into this Agreement and the settlement provided for herein, each Party assumes the risk of any misrepresentation, concealment, or mistake. If a Party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue,

or that any fact was concealed from it, or that its understanding of the facts or the law was incorrect, the Party shall not be entitled to any relief in connection therewith including, without limitation, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding, regardless of any claims of misrepresentation, concealment of fact, or mistake of law or fact.

E. Each Party has investigated all claims and facts pertaining to this Agreement as it deems necessary. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is its intention to fully, finally, and forever settle and release all such matters and claims that now exist, may exist, or have existed between Plaintiff and the County Defendants. In furtherance of such intention, the Agreement shall be and remain a full and complete release of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts.

F. Each Party hereby acknowledges that it has been represented by counsel of its choice throughout the negotiations that preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement. Each Party acknowledges and agrees that it has executed this Agreement voluntarily, without coercion or duress of any kind, and on the advice of its independent counsel.

G. Plaintiff and/or its attorney cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, its provisions shall not be construed for or against either party based on which party drafted them.

10. Integration

Each party covenants and agrees that the terms of this Agreement are contractual, and not mere recital, and constitute a fully binding and complete agreement between Plaintiff and the County Defendants with regard to its subject matter. This Agreement supersedes any and all prior or contemporaneous agreements, representations and understandings of or between the parties, and each Party warrants that it is not relying on any such prior representations. Each Party understands and agrees that the terms of this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular except by a writing duly executed by an authorized representative of the Plaintiff and an authorized representative of the County.

11. Severability

If any portion or provision of this Agreement is found to be illegal, invalid, unenforceable, nonbinding, or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

12. Non-Assignment

Plaintiff warrants and represents that there has been no assignment, sale, or transfer, by operation of law or otherwise, of any claim, right, or interest released herein. Plaintiff agrees to defend, indemnify, and hold harmless the County Released Parties from any claim, liability, or

expense that may be incurred as a result of the assertion of any such claim, right, or interest by any person by reason of any such assignment, sale, or transfer.

13. Governing Law and Forum

This Agreement shall be deemed to have been entered into in Santa Clara County, California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by California law. The parties agree that the Superior Court of the State of California, County of Santa Clara shall retain jurisdiction over this matter to enforce this Agreement.

14. Additional Acts

The parties hereto agree to perform such acts and to execute such documents as are necessary to carry out the provisions and purposes of this Agreement.

15. Contract Execution

This Agreement may be executed in counterparts with the same force and effectiveness as though executed in a single document. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed agreement, or an electronically signed agreement, has the same force and legal effect as an agreement executed with an original ink signature. The term "electronic copy of a signed agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed agreement in a portable document format. The term "electronically signed agreement" means an agreement that is executed by applying an electronic signature using technology approved by the County.

Dated: March ____, 2023

By _____
Its: _____

COUNTY OF SANTA CLARA

Dated: March ____, 2023

By: _____
James R. William, County Counsel,
County of Santa Clara

Dated: March ____, 2023

By: _____
Approved as to Form and Legality,
Deputy County Counsel, County of
Santa Clara

ATTORNEY'S CERTIFICATE

This Agreement was executed under my direction and advice, and I explained the terms and conditions to my clients in a manner it/they could reasonably understand.

Attorney for Plaintiff

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