

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is made and entered into by and between the City of Calistoga, a municipal corporation (“City”) and the County of Napa County, a political subdivision of the State of California (“County”) and is effective as of the date of full execution by the parties as indicated below (“Effective Date”). City and County are also collectively referred to herein as “the Parties.”

**RECITALS**

A. Pursuant to state law, the County charges cities within the County a property tax administration fee for assessing, collecting, and allocating property tax revenues.

B. A dispute has arisen between the City and County (the “Administrative Fee Dispute”) regarding how County treated property tax revenue diverted from the County’s Educational Revenue Augmentation Fund pursuant to Revenue & Taxation Code sections 97.68 and 97.70 (“Diverted Revenue”) as a form of property tax, subject to the property tax administration.

C. The legal issues germane to the diverted revenue were the subject of ongoing litigation recently decided by the Supreme Court of California in *City of Alhambra v. County of Los Angeles*, Supreme Court of California, Case No. S185457, in which the Supreme Court held that Diverted Revenue paid to cities was exempt from the property tax administration fee, and that counties had incorrectly included such revenue in the calculation of property tax administration fees due from cities (the “Administrative Fee Litigation”).

D. Pending the outcome of the aforementioned litigation, County Auditor-Controller had no authority to revise the property tax administration fee calculation until the Administrative Fee Litigation was resolved. Auditor agreed to hold the diverted revenue from City’s Property Administrative Fee for fiscal years 2009-2010 and 2010-2011 in reserve. Auditor placed the diverted revenue in a separate interest bearing account.

E. In light of the Supreme Court’s ruling in the Administrative Fee Litigation, the Parties desire to enter into this Settlement Agreement, going back three years, in order to completely and finally resolve the Administrative Fee Dispute. This Settlement Agreement authorizes the refund of collections, with interest, from the fiscal year 2008-2009 fee and the release of the diverted revenue held in reserve, including all interest earned, for fiscal years 2009-2010 and 2010-2011. The property tax administration fee for fiscal year 2011-2012 will be calculated using the revised methodology.

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the mutual promises and covenants set forth below, City and County agree as follows:

**1.0 Compromise and Settlement.**

The Parties to this Agreement, in consideration of the promises and concessions made by each Party, agree that the foregoing recitals are true and correct, and agree to mutually compromise and settle the Administrative Fee Dispute upon all of the terms and conditions in this Agreement.

**2.0 Current Year and Future Collection.**

Commencing with fiscal year 2011-2012, and each year thereafter, the County will cease collection of property tax administrative fee on the Diverted Revenue unless and until authorized by statute or subsequent court order to collect same.

**3.0 Payment.**

In consideration of the release set forth below, the County agrees to pay to the City the Diverted Revenue as described in Exhibit "A" attached hereto and incorporated herein. In Consideration of the release set forth below, City agrees to release County from payment of any property tax administration fees collected before fiscal year 2008-2009.

Total Amount Due: \$22,713.71

**4.0 Release and Discharge.**

4.1 In consideration of the payment set forth in Section 3.0, City/Town, for itself, its elected and appointed officers, employees, agents, administrators, successors and assigns, does hereby release, acquit and forever discharge the County, its elected and appointed officials, officers, employees, agents, administrators, successors and assigns, from and against any and all past, present or future claims, demands, obligations, actions, causes of action, subrogation rights, reimbursement rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract, or any other theory of recovery, which said parties now have, or which may hereafter accrue or otherwise be acquired or asserted on account of, or may in any way grow out of the Administrative Fee Dispute, including, without limitation, any and all known or unknown claims for damages, tax or fee refunds, interest, breach of contract, or any and all known or unknown claims for subrogation and/or reimbursement which have resulted or may result from the alleged acts or omissions of the County, its elected or appointed officials, officers, employees, agents, administrators, successors or assigns related to the Administrative Fee Dispute. This release shall be a fully binding and complete settlement between the parties.

4.2 It is understood and agreed to by the Parties hereto that this settlement is not to be construed as an admission of liability on the part of County, by whom liability is expressly denied and that this Agreement is entered into solely to resolve the Administrative Fee Dispute and avoid the time and expense of litigation.

4.3 The City acknowledges and agrees that the release and discharge set forth above is a general release and expressly waives any and all claims for damages related to the Administrative Fee Dispute which exist as of this date, whether known or unknown. The parties further agree they have agreed to exchange payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact and mutually assume the risk that the facts or law may be other than they believe and which facts, if known, would materially affect their decision to enter into this Settlement Agreement. The parties hereby acknowledge and expressly waive any and all rights based upon the provisions of California Civil Code Section 1542, which reads as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known to him or her, must have materially affected his or her settlement with the debtor.”**

#### 5.0 **Attorney Fees.**

Each Party hereto shall bear all attorney fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement, the incidents described in the above Recitals and referred to herein, and all related matters.

#### 6.0 **Representation of Comprehension of Document.**

6.1 In entering into this Settlement Agreement, each Party represents that they have relied upon the advice of their attorney, who is the attorney of their own choice, concerning the legal consequences of this Settlement Agreement, that the terms of this Settlement Agreement have been completely read and explained to them by their attorney, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by each Party.

6.2 The Parties declare and represent that each Party and counsel for each Party has reviewed and revised, or had the opportunity to revise, this Agreement and therefore the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment of it.

6.3 The Parties further declare and represent that no promise, inducement or agreement not herein expressed has been made to the other Party, that the Parties are not executing this Agreement in reliance on any promises, representations, or inducements other than those contained herein, that the terms of this release are contractual and not a mere recital, and that the parties sign this release voluntarily, free of any duress or coercion.

**7.0 Warranty of Capacity to Execute Agreement.**

The City represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, that it has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it, and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

**8.0 Governing Law.**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

**9.0 Additional Documents.**

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

**10.0 Entire Agreement and Successors in Interest.**

This Settlement Agreement contains the entire agreement between County and City/Town, with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. This Settlement Agreement may be modified only by an agreement in writing executed in the same manner as this Settlement Agreement.

**11.0 Captions.**

All captions to the provisions of this Settlement Agreement are solely for the convenience of the Parties, are not a part of the Agreement, and shall not be used to interpret or determine the validity of this Agreement or any of its provisions.

**12.0 Counterpart Execution.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an

original and said counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the County of Napa a political subdivision of the State of California, has authorized the execution of this Agreement in duplicate by the Chair of the Board of Supervisors and attestation by the Clerk of the Board, and the City of Calistoga, a municipal corporation, has authorized the execution of this Agreement in duplicate by its \_\_\_\_\_, and attestation by \_\_\_\_\_, its City Clerk.

County of Napa

DATED: \_\_\_\_\_

\_\_\_\_\_  
Brad Wagenknecht, Chair  
Napa County Board of Supervisors

ATTEST:

By: \_\_\_\_\_  
Gladys Coil, Clerk of the Board

City of Calistoga

DATED: \_\_\_\_\_

\_\_\_\_\_  
Richard Spitler, City Manager

ATTEST:

By: \_\_\_\_\_  
Amanda Davis, Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

Minh Tran, County Counsel

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney

By: \_\_\_\_\_  
Susan B. Altman  
Deputy County Counsel