

OVERSIGHT BOARD RESOLUTION NO. 2014-06

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY APPROVING A SETTLEMENT AGREEMENT AMONG THE CITY OF IRVINE, THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY, THE IRVINE COMMUNITY LAND TRUST, THE CALIFORNIA DEPARTMENT OF FINANCE, AND MICHAEL COHEN IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FINANCE

WHEREAS, the Oversight Board for the Successor Agency to the Dissolved Irvine Redevelopment Agency (the "Oversight Board") has been appointed pursuant to the provisions of Health and Safety Code Section 34179, and

WHEREAS, the Successor Agency to the Dissolved Irvine Redevelopment Agency ("Successor Agency") is a public agency pursuant to Health and Safety Code Section 34173; and

WHEREAS, the City of Irvine ("City") is a California municipal corporation operating under the laws of the State of California; and

WHEREAS, the Irvine Redevelopment Agency ("RDA") was a public body, corporate and politic, exercising governmental functions and previously exercised powers under the Community Redevelopment Law, Health and Safety Code Section 33000 et seq. ("CRL"); and

WHEREAS, the Irvine Community Land Trust ("Land Trust") a duly organized California nonprofit public benefit corporation, certified by the United States Internal Revenue Service as a public charity under Internal Revenue Code sections 501(c)(3) and 509(a)(3); and

WHEREAS, in January 2011, the Governor of California first proposed as part of the 2011-12 budget the possible dissolution of redevelopment agencies to cover an estimated \$25 billion shortfall. In June 2011, Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature ("ABx1 26") was enacted as a bill related to the 2011 Budget Act. In June 2012, Assembly Bill 1484 from the 2011-2012 Regular Session of the California Legislature ("AB 1484") was enacted as a bill related to the 2012 Budget Act. ABx1 26, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, dissolved all redevelopment agencies and redevelopment functions of community development commissions in California on February 1, 2012; and

WHEREAS, pursuant to Health and Safety Code Section 34173, added by ABx1 26 and amended by AB 1484, the Successor Agency assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code; and

WHEREAS, City and Successor Agency have filed the following three Sacramento Superior Court actions, all of which remain pending, against, *inter alia*, the California Department of Finance, and Michael Cohen in his official capacity as the Director of the California Department of Finance (collectively, "DOF"): (1) *City of Irvine v. Cohen*, case no. 34-2013-80001682 ("*Cohen Case*"), (2) *City of Irvine v. Matosantos*, case no. 34-2012-80001161, and (3) *Irvine Community Land Trust, et al. v. Ana J. Matosantos et al.*, Sacramento County Superior Court Case No. 34-2013-80001535 (the three cases are collectively referred to as the "Sacramento Actions"); and

WHEREAS, the Land Trust is also a petitioner in *Irvine Community Land Trust, et al. v. Ana J. Matosantos et al.*, Sacramento County Superior Court Case No. 34-2013-80001535.

WHEREAS, the City, Successor Agency, Land Trust, and DOF have reached a settlement of their disputes related to the Sacramento Actions, which settlement is set forth in the "Settlement Agreement" dated July 9, 2014, an executed copy of which is attached hereto as **Exhibit "A"** ("Settlement Agreement"); and

WHEREAS, the City, Successor Agency and DOF intend to jointly submit the Settlement Agreement to the Sacramento Superior Court in conjunction with a request that the court enter a stipulated judgment in the above-mentioned *Cohen* case which shall incorporate the terms of the Settlement Agreement ("Stipulated Judgment"); and

WHEREAS, pursuant to Health and Safety Code Section 34180, the Successor Agency has submitted the Settlement Agreement to the Oversight Board and requested its approval of the Settlement Agreement so that it may be valid and binding agreement; and

WHEREAS, this matter was considered by the Oversight Board at its special meeting of July 24, 2014.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Oversight Board hereby finds and declares that, as set forth in the Settlement Agreement, if the court approves the Stipulated Judgment, the Stipulated Judgment shall be recognized by the DOF as an enforceable obligation with a value of Two Hundred Ninety Two Million Dollars (\$292,000,000). Such sum shall be paid from

Redevelopment Property Tax Trust Fund ("RPTTF") moneys to the Successor Agency in the manner specified in the Settlement Agreement for payment to the City;

Section 3. The Oversight Board hereby approves the Settlement Agreement.

Section 4. The Secretary shall certify to the adoption of this Resolution.

PASSED AND ADOPTED by the Oversight Board at a special meeting held on the 24th day of July, 2014.


MARIAN BERGESON, CHAIR

ATTEST:


MELINDA NEUMANN, SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF IRVINE)

I, MELINDA NEUMANN, Secretary to the Oversight Board, hereby certify that the foregoing resolution was duly adopted at a special meeting of the Oversight Board, held on the 24th day of July 2014.

AYES: 5 BOARDMEMBERS: Bergeson, Compton, Dunn, Dolleschel,
Landers

NOES: 0 BOARDMEMBERS:

ABSENT: 2 BOARDMEMBERS: Fitzsimons, Fogarty

ABSTAIN: 0 BOARDMEMBERS:



MELINDA NEUMANN, SECRETARY

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“**Agreement**”) is made and entered into by and between Petitioners and Plaintiffs City Of Irvine (“**City**”), the Successor Agency to the Dissolved Irvine Redevelopment Agency (“**Successor Agency**”), and the Irvine Community Land Trust (“**Land Trust**”) (collectively, “**Petitioners**”), on the one hand, and, on the other hand Respondents and Defendants California Department Of Finance (“**DOF**”) and Michael Cohen in his official capacity as the Director of the California Department of Finance (collectively, “**Respondents**”). Petitioners and Respondents are sometimes collectively referred to as the “**Parties**.”

RECITALS

A. City, and Successor Agency have filed the following two Sacramento Superior Court actions, both of which remain pending, against Respondents, (1) *City of Irvine v. Cohen*, case no. 34-2013-80001682 (“*Irvine v. Cohen Case*”), (2) *City of Irvine v. Matosantos*, case no. 34-2012-80001161 (“*Irvine v. Matosantos Case*”); in addition, Land Trust, City, and Successor Agency have filed a petition, which remains pending, against Respondents in *Irvine Community Land Trust v. Matosantos*, case no. 34-2013-80001535 (“*Land Trust Case*”) (the *Irvine v. Cohen Case*, the *Irvine v. Matosantos Case*, and the *Land Trust Case* are collectively referred to as the “**Sacramento Actions**”).

B. The Sacramento Actions relate to the wind down of the Irvine Redevelopment Agency (“**RDA**”) pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature (“**AB x1 26**”) in conjunction with the decision of the California Supreme Court in *Community Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231 (“*CRA v. Matosantos*”), and as amended by Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature (“**AB 1484**”) (AB x1 26 and AB 1484, collectively the “**Dissolution Act**”).

C. Under AB x1 26, as interpreted by *CRA v. Matosantos*, the RDA was dissolved on February 1, 2012. Following the dissolution of the RDA, the Successor Agency submitted a series of Recognized Obligation Payment Schedules (“**ROPS**”) to Petitioners in accordance with the Dissolution Act. In those ROPS, Petitioners claimed that three separate agreements are enforceable obligations under the Dissolution Act. Respondents’ disapprovals of those three agreements as enforceable obligations under the Dissolution Act are the subjects of the Sacramento Actions.

D. The three separate ROPS items at issue in the Sacramento Actions are: (1) The Purchase and Sale and Financing Agreement (“**PSFA**”), originally dated August 14, 2007 and allegedly reentered on June 12, 2012, by and between the RDA and the City, with an alleged value of approximately Eight Hundred Twelve Million Dollars (\$812,000,000); (2) the Amended and Restated Development Agreement (“**ARDA**”), dated December 27, 2010, which is an alleged obligation of the former RDA to construct the Orange County Great Park with an alleged value of approximately One Billion Four Hundred Million Dollars (\$1,400,000,000); and (3) the Redevelopment Affordable Housing Funds Grant Agreement (“**Land Trust Agreement**”), dated

February 8, 2011, between the RDA and the Land Trust with an alleged value of approximately Seven Hundred Thirty One Million Dollars (\$731,000,000).

E. The City and the Successor Agency allegedly re-entered into the PSFA on June 12, 2012. That action was approved by the Oversight Board to the Successor Agency to the Dissolved Irvine Redevelopment Agency by Resolution 2012-11 on June 14, 2012. DOF claims that as a valid post-finding of completion enforceable obligation pursuant to Health & Safety Code section 34191.4, the One Hundred Thirty Four Million Dollar (\$134,000,000) principal amount on the PSFA loan is entitled to repayment at an interest rate of thirty two one hundredths of one percent (0.32%) per year. Petitioners claim that the PSFA loan should be treated as a valid reentered agreement pursuant to Health & Safety Code section 34178 and should bear interest at nine percent (9%) per year.

F. The Parties have concluded that it would be in their mutual best interests, and in the public interest, to settle all disputes raised in the Sacramento Actions between Petitioners and Respondents according to the terms described in this Agreement, which shall be incorporated fully by reference into a stipulated judgment to be approved by the Court pursuant to Code of Civil Procedure section 664.6. By this Agreement, the Parties intend to fully and completely resolve any and all remaining disputes between the Parties pertaining to, or in any way relating to, the Sacramento Actions.

TERMS OF AGREEMENT

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

1. City, Successor Agency, and Respondents (the “Cohen Case Parties”) will jointly submit a stipulated judgment to the Court for approval in *Irvine v. Cohen Case* (“Stipulated Judgment”). This Agreement will be attached to the Stipulated Judgment as Exhibit A, and incorporated fully therein by reference. It is the intent of the Cohen Case Parties, and therefore the Cohen Case Parties shall jointly request to the Court in the *Irvine v. Cohen Case*, that the court retain jurisdiction over the Cohen Case Parties until performance in full of the terms of this settlement (as memorialized in this Agreement and the Stipulated Judgment).

2. The Cohen Case Parties agree to expeditiously jointly submit a motion to the Court for the approval of the Stipulated Judgment in the *Irvine v. Cohen* action, and the Cohen Case Parties shall remain bound to proactively seek (or, in the case of the Land Trust, not oppose) court approval of the Stipulated Judgment *even if* a change in law (by legislation, by promulgation of administrative rules, or by appellate or supreme court precedent) or the dissemination of persuasive authority (by administrative interpretation, release of superior court tentative or final decisions, or release of unpublished appellate decisions, or other statements or comments from superior or appellate court judges) occurs after the execution of this Agreement but prior to Court action on the request for approval of the Stipulated Judgment.

3. If the Court does not enter a Stipulated Judgment pursuant to the terms of this Agreement, this Agreement shall be null and void *ab initio*, without further action of any Party.

Petitioners may then elect not to dismiss the Sacramento Actions and, instead, proceed to prosecute them.

4. If the Court approves the Stipulated Judgment, Respondents shall recognize the Stipulated Judgment as an enforceable obligation with a value of Two Hundred Ninety Two Million Dollars (\$292,000,000), which shall be paid from Redevelopment Property Tax Trust Fund ("RPTTF") moneys to the Successor Agency. Such funds shall be paid from the Successor Agency to the City in satisfaction of the PSFA loan (the "**Stipulated Judgment Enforceable Obligation**"). DOF shall continue to abide by the Stipulated Judgment Enforceable Obligation, by approving payment by the Orange County auditor-controller of the full amount of RPTTF over to the Successor Agency, less the withholding of Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) per year described in paragraph 8 below, until such time as the Two Hundred Ninety Two Million Dollars (\$292,000,000) in RPTTF is fully paid over to the Successor Agency for payment to the City on the PSFA loan. No interest shall be paid on this sum. The total amount paid shall be Two Hundred Ninety Two Million Dollars (\$292,000,000) regardless of the time it takes to receive the payments.

5. Petitioners shall never again claim on any future ROPS or otherwise that the PSFA loan is an enforceable obligation of the former RDA; instead, the Stipulated Judgment shall be the item claimed, and recognized by Respondents, on future ROPS. Petitioners shall also never again claim on any future ROPS that the ARDA or Land Trust Agreement is an enforceable obligation of the former RDA.

6. Respondents shall never claim, in response to any future ROPS submission or otherwise, that the Stipulated Judgment is not an enforceable obligation under the Dissolution Act.

7. Petitioners shall request the dismissal with prejudice of the *City of Irvine v. Matosantos Case* in its entirety, and *Land Trust Case* in its entirety, within five (5) business days of the Court signing and entering the Stipulated Judgment in the *City of Irvine v. Cohen Case*.

8. Unless the Successor Agency directs otherwise, all RPTTF shall be applied to the Stipulated Judgment line item on the ROPS until the Stipulated Judgment is fully paid; provided, however, that Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) of RPTTF funds will be paid over to the taxing entities each fiscal year pursuant to Health & Safety Code section 34183(a)(4) until the Stipulated Judgment Enforceable Obligation is satisfied. Once the Stipulated Judgment Enforceable Obligation is satisfied, the limitation on residual payments to taxing entities will be lifted. The Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) per year will be sent to the taxing entities from the first RPTTF distribution that occurs each fiscal year (as specified in Paragraph 4, above); if there are insufficient funds in the first RPTTF distribution to send the full Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) per year from RPTTF to the taxing entities, the necessary remaining funds shall come from the second RPTTF distribution. If in a given year there is less than Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) available for this distribution of RPTTF payments to the taxing entities, the taxing entities shall receive whatever funds are available, and

the Successor Agency shall not receive any funds toward the satisfaction of the Stipulated Judgment during that year.

9. Upon receipt of RPTTF monies for payment of approved enforceable obligations in each ROPS period, the Successor Agency shall prioritize, pursuant to direction of the City as to any city-RDA loans, repayment of the Two Hundred Ninety Two Million Dollars (\$292,000,000) so that it is paid prior to, following, or concurrent with the other enforceable obligations payable under Health and Safety Code section 34183(a)(2)(C), including those qualifying as enforceable obligations pursuant to section 34191.4.

10. The Successor Agency and City agree that they will not challenge the determination of State Controller's Office in its April 28, 2014 audit with regard to the Five Million Five Hundred Thousand Dollar (\$5,500,000) interest payment made by the RDA to the City in March 2011. The City will return the Five Million Five Hundred Thousand Dollars (\$5,500,000) to the Successor Agency which will then submit it to the county auditor-controller, both of which shall occur within five (5) business days of the Court signing and entering the Stipulated Judgment. The county auditor-controller will thereafter distribute said funds to the taxing entities. Except as stated elsewhere in this paragraph, this Agreement and Stipulated Judgment does not resolve any other possible disputes between Petitioners and the State Controller's Office with respect to the April 28, 2014 audit.

11. The Parties shall each bear their respective attorney fees and costs incurred in the litigation, provided, however, that nothing in this agreement abridges the Successor Agency's rights (if any) to recover its legal fees under the Dissolution Act.

12. The Agreement and Stipulated Judgment do not constitute, nor shall they be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of the Sacramento Actions, and by executing this Agreement, none of the Parties admits wrongdoing, liability, or fault in connection with either the Sacramento Actions or the allegations asserted in the Sacramento Actions. Respondents do not admit that Petitioners are entitled to any recovery. This Agreement does not reflect in any way on the merits of the claims asserted by Petitioners or the defenses asserted by the Respondents in the Sacramento Actions.

13. The Parties hereby specifically and mutually release and forever discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns, and each of them, 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 Sacramento Actions.

14. The Parties each represent and warrant that they fully understand that if the facts pertaining in any way to the Sacramento Actions 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 and Stipulated Judgment shall remain effective notwithstanding such differences in facts.

15. This Agreement and Stipulated Judgment shall be binding upon the Parties' respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, departments, divisions, sections, successors and assigns, and each of them.

16. The Parties each represent that they know and understand the contents of the Agreement and Stipulated Judgment and that this Agreement and Stipulated Judgment have 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 and the Stipulated Judgment.

17. Except as indicated in the following sentence, no promise, inducement, understanding, or agreement not herein expressed has been made by or on behalf of the Parties, and this Agreement and the Stipulated Judgment contain the entire agreement between the Parties related to the Sacramento Actions. Notwithstanding the foregoing, the Parties acknowledge that the City, Successor Agency, and the Land Trust have entered into, and will abide by, a *Dismissal Agreement In Connection with State of California Department of Finance Settlement Negotiations* ("Dismissal Agreement"), which sets forth certain obligations with regard to the disposition of the funds paid to the Successor Agency pursuant to the Stipulated Judgment; provided, however, that nothing in the Dismissal Agreement is binding upon the Respondents. Additionally, the City, Successor Agency, and Land Trust's obligations under this Agreement and the Stipulated Judgment are separate and distinct from their obligations under the Dismissal Agreement.

18. Each Party represents and warrants that it has not assigned, transferred, or purported to assign or transfer to any person or entity any matter released herein. Petitioners also agree to indemnify and hold harmless Respondents 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 any such transfer, assignment, or purported transfer or assignment.

19. It is expressly understood and agreed that this Agreement and the Stipulated Judgment may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by the Parties or by authorized representatives of the Parties. The Parties agree that they will make no claim at any time or place that this Agreement and the Stipulated Judgment have been orally altered or modified or otherwise changed by oral communication of any kind or character.

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

21. Each Party represents that they have the authority to enter into and perform the obligations necessary to provide the consideration described in this Agreement and the Stipulated Judgment.

22. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

23. The Parties recognize and acknowledge that terminology, the number of ROPS cycles per year, and/or other mechanical aspects of the wind-down of redevelopment pursuant to the Dissolution Act (as it may be amended from time to time), may change during the term of this Agreement. To address those changes, the Parties agree that their intent under this Agreement and the Stipulated Judgment is that the City receive, on an annual basis, all of the available RPTTF (or its functional equivalent), less Four Million Three Hundred Eighty Thousand Dollars (\$4,380,000) per year, until such time as the full Two Hundred Ninety Two Million Dollars (\$292,000,000) has been paid over to the Successor Agency for distribution by the Successor Agency to the City in satisfaction of the PSFA.

24. The Parties agree to take such further actions as are necessary to accomplish the delivery of the consideration provided for under this Agreement. In furtherance of the foregoing, upon the submittal to DOF of a resolution of the Oversight Board to the Successor Agency to the Dissolved Irvine Redevelopment Agency approving this Agreement, DOF shall within five (5) business days approve such resolution. Further, if such resolution has been submitted to DOF prior to the Court's entry of the Stipulated Judgment, the Court's entry of the Stipulated Judgment shall constitute DOF's approval of such resolution. If the Oversight Board does not approve this Agreement within ninety (90) days of the date this Agreement is last signed by any Party, this Agreement shall be null and void *ab initio*, without further action of any Party. Petitioners may then elect not to dismiss the Sacramento Actions and, instead, proceed to prosecute them.

25. If any Party to this Agreement or Stipulated Judgment files a lawsuit to enforce or interpret this Agreement or Stipulated Judgment, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees for which the Party was invoiced and that the Party paid.

26. This Agreement may be executed in two or more counterparts, each of which will be an original and all of which shall constitute a part of this Agreement.

This Agreement consists of Recital Paragraphs A - F and Paragraphs 1 – 26.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

CITY OF IRVINE

DATED: July 9, 2014


By: Dr. Steven Choi
Mayor

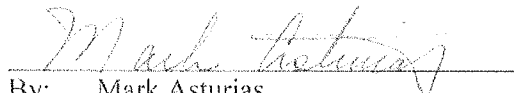
SUCCESSOR AGENCY TO THE DISSOLVED IRVINE
REDEVELOPMENT AGENCY

DATED: July 9, 2014


By: Dr. Steven Choi
Director

IRVINE COMMUNITY LAND TRUST

DATED: July 9, 2014


By: Mark Asturias
Executive Director


DEPARTMENT OF FINANCE AND MICHAEL COHEN,
AS DIRECTOR OF THE DEPARTMENT OF FINANCE

DATED: _____

By: Kari Krogseng
Assistant Chief Counsel

Approved as to form:

RUTAN & TUCKER, LLP



Jeffrey T. Melching
Attorneys for Petitioners City of Irvine and Successor Agency

[SIGNATURES CONTINUE, AND CONCLUDE, ON FOLLOWING PAGE]

CITY OF IRVINE

DATED: _____

By: _____
Dr. Steven Choi
Mayor

SUCCESSOR AGENCY TO THE DISSOLVED IRVINE
REDEVELOPMENT AGENCY

DATED: _____

By: _____
Dr. Steven Choi
Director

IRVINE COMMUNITY LAND TRUST

DATED: _____

By: _____
Mark Asturias
Executive Director

DEPARTMENT OF FINANCE AND MICHAEL COHEN,
AS DIRECTOR OF THE DEPARTMENT OF FINANCE

DATED: July 9, 2014

By: _____
Kari Krogseng
Kari Krogseng
Assistant Chief Counsel

Approved as to form:
RUTAN & TUCKER, LLP

Jeffrey T. Melching
Attorneys for Petitioners City of Irvine and Successor Agency

[SIGNATURES CONTINUE, AND CONCLUDE, ON FOLLOWING PAGE]

HENSLEY LAW GROUP



David King
Land Trust Special Counsel

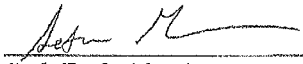
CALIFORNIA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Seth E. Goldstein
Deputy Attorney General
Attorneys for Respondents

HENSLEY LAW GROUP

David King
Land Trust Special Counsel

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