

RESOLUTION NO. 3650-2013

RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN THE CITIES OF FORT BRAGG, UKIAH, AND THE COUNTY OF MENDOCINO REGARDING THE CITIES' DEMAND THAT THE COUNTY REFUND OVERCHARGED PROPERTY TAX ADMINISTRATION FEES AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

WHEREAS, in April 2013, the City of Fort Bragg, in conjunction with the City of Ukiah and the City of Willits, filed an action against the County of Mendocino in Mendocino County Superior Court (Case No. SCUJ CVPT1362029); and

WHEREAS, the cities made demands upon the county to comply with Revenue and Taxation Code Sections 97.75 and 95.3 as interpreted in City of Alhambra v. County of Los Angeles (2012) 55 Cal. 4th 707, 712 to calculate each City's proportionate share of the actual, incremental costs to implement the vehicle license fees swap and the Triple Flip and to recalculate each City's Property Tax Administration Fee (PTAF) for the fiscal years on and after FY 2006/07; and

WHEREAS, the City of Fort Bragg had demanded that the County repay the full \$80,830.62 that the County Auditor overcharged Fort Bragg for PTAF for six years; and

WHEREAS, to avoid further litigation and expenditure of time and effort, Fort Bragg, Ukiah and the County have agreed to settle this matter as memorialized in a "Settlement Agreement and Mutual Release" which is attached as "Exhibit A,"; and

WHEREAS, the County has agreed to repay to Fort Bragg the total sum of \$73,216.00 on or before September 2, 2013; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the Settlement Agreement and Mutual Release between the Cities of Fort Bragg, Ukiah and the County of Mendocino ("Exhibit A") and authorizes the City Manager to execute the same.

The above and foregoing Resolution was introduced by Councilmember Hammerstrom, seconded by Councilmember Kraut, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 26th day of August, 2013, by the following vote:

AYES: Councilmembers Deitz, Hammerstrom, Kraut, and Mayor Turner.
NOES: None.
ABSENT: Councilmember Courtney.
ABSTAIN: None.



DAVE TURNER,
Mayor

ATTEST:



Cynthia M. VanWormer, MMC
City Clerk

“EXHIBIT A”

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement” or “Settlement Agreement”) is entered into as of August __, 2013, by and between the Cities of Fort Bragg (“Fort Bragg”), Ukiah (“Ukiah”) and the County of Mendocino (the “County”) with respect to the following facts:

A. Fort Bragg, in conjunction with the City of Ukiah and the City of Willits (collectively, the “Cities”) filed an action against the County entitled City of Ukiah, City of Fort Bragg and City of Willits v. County of Mendocino, Mendocino County Superior Court Case No. SCUK CVPT1362029 (the “Action”).

B. The Cities made demands upon the County to comply with Revenue and Taxation Code Sections 97.75 and 95.3 as interpreted in City of Alhambra v. County of Los Angeles (2012) 55 Cal. 4th 707, 712 to calculate each City’s proportionate share of the actual, incremental costs to implement the vehicle license fees swap and the Triple Flip and to recalculate each City’s Property Tax Administration Fee (“PTAF”) for the fiscal years on and after fiscal 2006/2007. The Cities demanded a refund in an amount representing the difference between the PTAF actually charged and the corrected PTAF.

C. To avoid further litigation and expenditure of time and effort, Fort Bragg, Ukiah (“parties” as used herein) and the County have agreed to settle this matter. This Agreement memorializes that settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, agreements and representations set forth below, the parties hereto agree as follows:

1. On or before September 2, 2013, the County shall pay to Fort Bragg the total sum of \$73,216 (Seventy-Three Thousand Two Hundred Sixteen Dollars) ("Fort Bragg Settlement Payment"). On or before the same date, the County shall pay to Ukiah the total sum of \$172,988.00 (One Hundred Seventy-Two Thousand, Nine Hundred and Eighty Eight Dollars)("Ukiah Settlement Payment"). Upon receipt of the Fort Bragg Settlement Payment and the Ukiah Settlement Payment, Fort Bragg and Ukiah shall file a Request for Dismissal with Prejudice of the entire action.

2. Except for the obligations arising under this Agreement, Fort Bragg and Ukiah release the County and its agents, representatives, and attorneys, from any and all claims, liability, demands, debts, damages, expenses and causes or potential causes of action, past, present, or future, known or unknown, suspected or unsuspected, at law or in equity, of any kind or nature whatsoever, relating to or arising out of the subject matter of the Action ("Released Claims") that Fort Bragg or Ukiah have or may have, based on acts or omissions of County and its officials or employees occurring on or before April 17, 2013 against the County.

3. Except for the obligations arising under this Agreement. The County hereby releases Fort Bragg and Ukiah and their officers, directors, agents, representatives, and attorneys, from any and all claims, liability, demands, debts, damages, expenses and causes or potential causes of action, past, present, or future, known or unknown, suspected or unsuspected, at law or in equity, of any kind or nature whatsoever, that the County has or may have, now or hereafter, against Fort Bragg and Ukiah relating to or arising out of the subject matter of the Action ("Released Claims").

4. The parties to this Agreement acknowledge and agree that the Releases set forth herein include both known and unknown claims with respect to those matters that are to be released. The parties acknowledge and agree that they are aware of and have been advised by their respective, separate counsel of California Civil Code Section 1542, which provides as follows, and they each expressly waive their rights under Civil Code Section 1542 with respect to the matters released:

“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 by him or her, must have materially affected his or her settlement with the debtor.”

5. Each party hereto acknowledges and agrees that it has not assigned or transferred, or purported to have assigned or transferred, voluntarily, involuntarily, or by operation of law, any of the Released Claims.

6. Each party hereto acknowledges and agrees that it has been represented by independent counsel of its own choice throughout all negotiations which have preceded the execution of this Agreement and that it has executed this Agreement after consultation with such independent counsel.

7. The parties hereto acknowledge and agree that:

(a) This Agreement contains the entire agreement and understanding concerning the subject matter between them and supersedes and replaces all prior negotiations, proposed agreements and agreements, written and oral;

(b) There have been no inducements or representations upon which this Agreement has been entered into except as set forth in this Agreement; and

(c) No term of this Agreement may be amended, modified or canceled except by written agreement signed by each of them.

8. Other than the representations made herein, each of the parties to this Agreement acknowledges that if the facts with respect to which this Agreement is executed are found hereafter to be different from what they now believe those facts to be, each expressly accepts and assumes the risks of such possible differences and agrees that this Agreement shall be, and shall remain, effective, notwithstanding such differences.

9. The parties each agree to promptly execute and deliver such documents that are reasonably required to be executed by a party to effectuate this Agreement.

10. Any individuals executing this Agreement on behalf of entities represent and warrant that they are unconditionally authorized to execute this Agreement on behalf of those entities.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement, and each of their respective successors, assigns, and representatives.

12. This Agreement is entered into as a good faith settlement, and it is not an admission of liability or wrongdoing by any party and shall not be construed or used against any party as evidence thereof.

13. The prevailing party in any lawsuit or other legal proceeding brought as a result of a breach by any party to this Agreement or to enforce any party's rights under this Agreement or pertaining to the subject matter of this Agreement shall be entitled to recover its costs, including reasonable attorneys' fees, incurred therein.

14. This Agreement may be executed in counterparts, which, when executed by all of the parties hereto, shall taken together, constitute this Settlement Agreement.

15. This Agreement has been made in and shall be interpreted in accordance with the laws of the State of California

THIS AGREEMENT HAS BEEN FULLY READ, UNDERSTOOD AND IS VOLUNTARILY SIGNED BY MY HAND.

DATED: August ___, 2013

COUNTY OF MENDOCINO

By _____

Name: _____

Title: _____

DATED: August ___, 2013

CITY OF FORT BRAGG

By _____

Name: Linda Ruffing

Title: City Manager

DATED: August ___, 2013

CITY OF UKIAH

By _____

Name: Jane Chambers

Title: City Manager

THE ABOVE AGREEMENT HAS BEEN READ AND THE TERMS THEREOF EXPLAINED TO OUR RESPECTIVE CLIENTS, AND THE FORM OF THE SAME HAS BEEN HEREBY APPROVED AS TO FORM BY COUNSEL AS FOLLOWS:

DATED: August __, 2013

COUNTY COUNSEL

By: _____
THOMAS R. PARKER
Attorney for Respondent
County of Mendocino

DATED: August __, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____
DAVID WARNER
City Attorney
Attorneys for Petitioner City of Fort Bragg

DATED: August __, 2013

RAPPORT AND MARSTON

By: _____
DAVID J. RAPPORT
Attorneys for Petitioner Cities of Fort Bragg and
Ukiah