

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between the City of Elk Grove, a municipal corporation (“City”), on the one hand, and The People of California Ex Rel. Rob Bonta, Attorney General and The California Department of Housing and Community Development (collectively “Petitioners”), on the other hand. The City and Petitioners shall collectively be referred to as the “Parties.” The effective date of this Agreement is the date last executed.

RECITALS

WHEREAS, on May 1, 2023, Petitioners filed a petition for writ of mandate and complaint for declaratory and injunctive relief entitled *The People of California, et. al. v. The City of Elk Grove*, Sacramento Superior Court, Case No. 23WM000004 (“Action”) alleging violations of SB 35, the Housing Accountability Act (the HAA), the Nondiscrimination in Land Use Law, and the Affirmatively Furthering Fair Housing Law against the City.

WHEREAS, the City filed an answer to the Action, denying the claims asserted by Petitioners.

WHEREAS, the Parties desire to settle all present, past and future controversies, claims, causes of action or purported causes of action, defenses, and disputes, both real and potential, which Petitioners may have against the City with respect to the Action.

WHEREAS, based upon the foregoing recitals, which are incorporated herein by this reference as though set forth in full, and for valuable consideration, the receipt and adequacy of which is hereby acknowledged, it is agreed by and between the Parties hereto as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and mutual covenants set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

I. SETTLEMENT

1. Findings on Future Projects

- a. For a period of five years following the effective date of this Agreement, whenever the City disapproves any application for housing development that would include affordable or supportive housing, the zoning administrator, planning commission and/or city council must make factual findings, with analysis, that the disapproval is not materially inconsistent with the City’s obligation to affirmatively further fair housing pursuant to Government Code Section 8899.50¹ and that it is consistent with the City’s strategy to affirmatively further fair housing pursuant to Section 65583. If there is disagreement regarding the sufficiency of the findings, the Parties

¹ All statutory references are to the Government Code unless otherwise indicated.

agree to meet and confer in good faith for a period of not less than 30 days to resolve the matters set forth in this paragraph prior to seeking judicial relief.

- b. Consistent with Government Code Section 65589.5, the City agrees that an applicant's request for an incentive, concession, or waiver with respect to a particular standard shall not serve as an admission that a standard is objective.

2. Monthly Reports Regarding Affordable or Supportive Housing Projects

- a. For a period of five years following the effective date of this Agreement, the City shall provide the Department of Housing and Community Development ("HCD") with a copy of any preliminary application or full project application for a housing development that includes affordable or supportive housing within thirty (30) days of receipt of the application. The City shall notify HCD about the status of proposed housing projects that include affordable or supportive housing via a monthly report that includes the following information:
 - i. When the City receives a preliminary application or full project application;
 - ii. When a project applicant withdraws an application, reduces the density, reduces the number of units set aside as affordable for lower-income households, or changes the target population serviced by the project (e.g., a removal of any supportive housing services from the project);
 - iii. When the City denies an application for any reason or makes a determination of inconsistency or conflict with any applicable standard pursuant to Sections 65589.5 (HAA), 65913.4(c) (SB 35), 65912.114(a)(2) and 65912.124(a)(2) (AB 2011), or section 65651 (By-Right Supportive Housing);
 - iv. When the City denies a density bonus, incentive/concession, or waiver under Government Code section 65915 (Density Bonus Law).
- b. The monthly reports as provided for in section 2.a. shall be emailed to HCD at the following address: HAUportal@hcd.ca.gov. HCD may change the delivery address for monthly reports by providing the City not less than thirty (30) days' written notice of a new delivery address.
- c. The City agrees to meet with HCD to discuss the report upon request by HCD. The request for a meeting shall be made to the following contacts: Development Services Director. The City agrees to meet with HCD within two weeks of HCD's requests.
- d. The City shall maintain prominent links to the Housing Accountability Unit Portal on its Planning Department webpage and Planning Application webpage, with the following statement: "The California Department of Housing and Community Development accepts requests for reviews of potential violations of state housing laws via their online Housing Accountability Unit Portal accessible from their

webpage: <https://www.hcd.ca.gov/planning-and-community-development/accountability-and-enforcement.>”

3. Additional Housing Site

No later than July 1, 2025, the City shall identify a site in a Highest Resource Area (as defined by the California Tax Credit Allocation Committee Opportunity Map) with equivalent development capacity (as determined through the site suitability analysis consistent with Government Code section 65583.2) to the site located at 9252 Elk Grove Blvd and which is not currently identified in the City’s housing element for low-income housing development and not currently zoned to accommodate housing for lower income households, and rezone the site to accommodate development of housing for lower income households pursuant to Government Code section 65583.2, subdivision (c)(3). The site shall be determined at the City’s discretion, provided that the site meets the above-referenced criteria. In the event that the additional site is not identified and rezoned by the above-referenced deadline, the Parties agree to meet and confer in good faith for a period of not less than 30 days to resolve the matters set forth in this paragraph prior to seeking judicial relief.

4. Settlement Payment

Within 30 days of full execution of this Agreement, the City shall provide payment of \$150,000 (“Settlement Payment”) made payable to the California Department of Justice. The Settlement Payment shall constitute full and complete payment for any and all attorneys’ fees, expert fees, and costs incurred by Petitioners as a result of the Action. The City shall not be responsible for, and Petitioners shall not be entitled to, the payment of any further attorneys’ fees, expert fees, costs, damages, or interest related to the Action. Petitioners shall provide the City with payment instructions within five (5) days of the execution of the Settlement Agreement.

II. DISMISSAL

Petitioners shall dismiss the Action, in its entirety, with prejudice, within five (5) days of receipt of the Settlement Payment set forth above.

III. RELEASE

a. For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby release, waive and discharge each other, and their affiliated entities, and each of their respective officers, officials, supervisors, employees, agents, volunteers, contractors and attorneys from any and all alleged and actual claims, damages, fees, costs, remedies, causes of action, demands, and other liabilities (collectively, “Claims”) which the Parties now have or may have, arising out of or in any way related to the Action. The foregoing release and waiver (“Release”), applies to all Claims, whether retrospective, current, or prospective, known or unknown, foreseeable or unforeseeable related to the Action. The Release is made by the Parties for themselves, their agents, assigns and related entities.

b. Except as otherwise provided in this Settlement Agreement, it is the intention of the Parties that the Release shall be effective as a bar to all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, costs,

interest, expert fees, and attorneys' fees, of every character and kind, known or unknown, existing or contingent related to the Action; and in furtherance of such intention, the Parties expressly waive any and all rights conferred upon it by the provisions of California Civil Code Section 1542, which reads as follows:

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.

IV. NECESSARY ACTS

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Settlement Agreement.

V. NO ADMISSION OF LIABILITY OR WRONGDOING

Nothing herein shall constitute or be construed as an admission or concession by the Parties of: (i) liability of any nature; or (ii) the truth of any allegations made between the Parties, which the Parties expressly deny. Neither this Agreement nor the terms or contents thereof shall be admissible in any court, administrative proceeding, arbitration, or other dispute resolution proceeding except to the extent necessary to enforce the rights and/or obligations arising under this Agreement.

VI. AUTHORITY TO SIGN

Each Party warrants that the individuals who have signed this Settlement Agreement on behalf of that Party have the legal power, right, and authority to so sign and thereby bind that Party and its representatives, successors and assigns.

VII. ENTIRE AGREEMENT; AMENDMENTS

This Settlement Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes any prior negotiations, discussions, oral or written communications, or agreements between the Parties. The terms of this Settlement Agreement may only be modified or amended by an instrument in writing executed by all Parties.

VIII. NO INTERPRETATION AGAINST DRAFTER; ADVICE OF COUNSEL

This Settlement Agreement is to be construed fairly and not in favor of or against any Party regardless of which Party or Parties drafted or participated in the drafting of its terms. Each Party acknowledges it has had the opportunity to receive independent legal advice with respect to the advisability of making this Settlement Agreement and with respect to the meaning of California Civil Code Section 1542, and that it is freely and voluntarily entering in this Settlement Agreement and understands this Settlement Agreement in its entirety.

IX. NO WAIVER

The failure to insist upon strict compliance with any of the covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of any rights or powers hereunder at any other time or times.

X. NO THIRD PARTY BENEFICIARIES

The Parties acknowledge that there are no express or implied third-party beneficiaries to this Settlement Agreement. No person or entity not a signatory hereto shall have any rights or causes of action against any Party hereto as a result of that Party's performance or nonperformance of any obligation hereunder.

XI. APPLICABLE LAW, JURISDICTION AND VENUE

This Agreement shall, in all respects, be interpreted, enforced, and governed exclusively by and under the laws of the State of California. The sole and exclusive jurisdiction and venue for the litigation of any dispute arising under this Agreement shall be in the Superior Court of California, County of Sacramento. Pursuant to California Code of Civil Procedure Section 664.6, the Parties each hereby agree, consent to, and will request that the Superior Court of California, County of Sacramento retain jurisdiction over the Action and the Parties (notwithstanding any dismissal) for the purpose of enforcing the Agreement until its terms have been performed in full. The Parties will file a request for continuing jurisdiction of the Court, signed directly by the Parties, prior to or concurrent with the request for dismissal. Notwithstanding California Evidence Code Section 1152, the terms of this Agreement are admissible in an action to enforce its terms pursuant to California Code of Civil Procedure Section 664.6.

XII. SEVERABILITY

If any term or provision of this Settlement Agreement shall be held invalid or unenforceable, the remainder of this Settlement Agreement shall remain in full force and effect.

XIII. CAPTIONS

Any captions to, or headings of, the paragraphs or subparagraphs of this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation or determination of the validity of this Settlement Agreement or any provisions hereof.

XIV. EACH PARTY TO BEAR OWN COSTS

Except as otherwise provided herein, each Party shall bear its own legal expenses and costs incurred related to the Action, and in the preparation and review of this Settlement Agreement.

XV. SUCCESSORS AND ASSIGNS

This Settlement Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, representatives, agents and related entities of the respective Parties.


XVI. COUNTERPART EXECUTION

This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. This Settlement Agreement may be executed on counterpart signature pages and may be signed by fax or scanned email signature.

IN WITNESS WHEREOF, each Party has executed this Settlement Agreement on the date which appears next to its/his signature below.

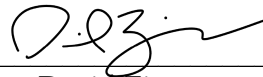
Dated: September 3, 2024

THE PEOPLE OF CALIFORNIA EX REL.
ROB BONTA, ATTORNEY GENERAL

By: 
Name: Matthew T. Struhar
Title: Deputy Attorney General


Dated: September 3, 2024

THE CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT

By: 
Name: David Zisser
Title: Assistant Deputy Director

Dated: 8/16/2024 | 3:47 PM PDT

CITY OF ELK GROVE

By: 
Name: Jason Behrmann
Title: City Manager

APPROVED AS TO FORM

Dated: August 16, 2024	<p>BEST BEST & KRIEGER LLP</p> <p>By: </p> <p>SCOTT W. DITFURTH Attorneys for Respondent CITY OF ELK GROVE</p>
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Dated: September 3, 2024

OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL

By: 

MATTHEW T. STRUHAR

Attorneys for Petitioners

THE PEOPLE OF CALIFORNIA EX REL.
ROB BONTA, ATTORNEY GENERAL,
and THE CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT

APPROVED AS TO FORM:

By: Jonathan P. Hobbs
Jonathan P. Hobbs, City Attorney