

RESOLUTION NO. 87-110

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIDGECREST AUTHORIZING THE MAYOR TO SIGN A SETTLEMENT AGREEMENT BY AND AMONG THE CITY OF RIDGECREST, THE RIDGECREST REDEVELOPMENT AGENCY, AND THE COUNTY OF KERN.

WHEREAS, the City of Ridgecrest, the Ridgecrest Redevelopment Agency, and the County of Kern are desirous to settle the lawsuit filed by the County of Kern on January 15, 1987; and

WHEREAS, the City of Ridgecrest, and the Redevelopment Agency have programmed and established uses for the tax increment revenue generated by the Ridgecrest Redevelopment Plan and are not able to utilize these funds until the lawsuit is settled; and

WHEREAS, the affected agencies have negotiated for the past year to find an appropriate settlement to the issue of tax increment sharing and have developed an acceptable multi-year agreement;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Ridgecrest that the Mayor is hereby authorized to sign the Settlement Agreement attached hereto as Exhibit "1".

APPROVED AND ADOPTED THIS 10th day of November, 1987, by the following vote:

AYES: Mayor Mower, Councilmembers Wiknich, Condos and Corlett.

NOES: None.

ABSTAIN: None.

ABSENT: Councilmember Bergens.

Michael R. Mower

Michael R. Mower, Mayor

ATTEST:

Joyce M. Taft, Deputy

Joyce M. Taft, City Clerk

SETTLEMENT AGREEMENT

This Agreement made and entered into this _____ day of _____ 1987, by and among the CITY OF RIDGECREST, a municipal corporation (hereinafter "CITY"), the RIDGECREST REDEVELOPMENT AGENCY, a Community Redevelopment Agency created by the City of Ridgecrest pursuant to the California Community Redevelopment Law (hereinafter "AGENCY"), and the COUNTY OF KERN, a political subdivision of the State of California (hereinafter "COUNTY"),

W I T N E S S E T H:

WHEREAS:

(a) Following a joint public hearing held by CITY and AGENCY, on November 19, 1986, CITY, with the adoption of its Ordinance No. 86-37, adopted the Redevelopment Plan for the Ridgecrest Redevelopment Project Area prepared and submitted by AGENCY; and

(b) Said redevelopment plan proposed funding the construction of several public facilities with tax increment financing; and

(c) In adopting said ordinance CITY found and determined that the effect of the tax increment financing provided for in said redevelopment plan would not cause a significant financial burden or detriment on any taxing agency deriving revenues from the project area; and

(d) On January 15, 1987, the COUNTY filed an action entitled County of Kern v All Persons, etc., et al., (Kern County Superior Court Number 197677), challenging the validity of CITY's action of adopting said redevelopment plan on the basis that, among other items, the plan would cause a significant financial burden or detriment on taxing agencies deriving revenues from the project area; and

(e) Within certain enumerated parameters, Health & Safety Code Section 33401 empowers AGENCY to pay to any taxing agency with territory located within a project area, any sum which, in the Agency's determination, is necessary and appropriate to alleviate any financial burden or detriment caused to such taxing agency by a redevelopment project; and

(f) AGENCY has determined that said redevelopment plan would cause a significant financial burden or detriment to COUNTY and to alleviate this financial burden it is necessary and appropriate that AGENCY make payments to COUNTY pursuant to the terms of this agreement; and

(g) In consideration of AGENCY making payments to COUNTY pursuant to the terms of this agreement, COUNTY is willing to

dismiss its action challenging the validity of said redevelopment plan; and

(h) It is the parties' intention that with the execution of this agreement and the dismissal of Kern County Superior Court Case No. 197677 that all claims, demands and disputes between themselves arising from the adoption of said redevelopment plan will be settled;

NOW, THEREFORE, COUNTY, CITY and AGENCY mutually agree as follows:

Section 1. Definitions

a. "Redevelopment Plan" refers to the Redevelopment Plan for the Ridgecrest Redevelopment Project Area adopted by CITY November 19, 1986, and incorporated herein by this reference as if set forth in full. The plan calls for the development of certain public improvements (as described in Exhibit "C" of the Redevelopment Plan and herein referred to as "redevelopment projects") over the next forty years, to be financed with tax increment revenues (Health and Safety Code Section 33676). The base year of the plan is tax year 1986-87 using March 1, 1986, lien date values.

b. "Project Area" refers to the redevelopment project area as described in Exhibit "B" of the Redevelopment Plan.

c. "Proceeds of taxes subject to limitation" shall have the same meaning as in Article XIII B of the California Constitution and those laws implementing Article XIII B. i.e. Proceeds of taxes (all tax revenues and the proceeds from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne in providing the regulations, product, or service, (ii) the invest of tax revenues, and (iii) subventions received from the state, other than pursuant to Section 6 of Article XIII B of the California Constitution) subject to the appropriations limit (commonly referred to as the "Gann limit") prescribed in Article XIII B of the California Constitution. Proceeds of taxes subject to limitation shall not include legally allowable exclusions and impounds.

d. "County property tax" shall mean that portion of tax increment revenue that, absent the redevelopment plan, would have otherwise been allocated to the COUNTY, provided COUNTY's estimated proceeds of taxes subject to limitation is below its appropriation limit established pursuant to Article XIII B of the California Constitution.

////
////

Section 2. Division and Distribution of Taxes within Project Area.

a. As provided by Health and Safety Code Section 33670(a), that portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to December 19, 1986, shall be allocated to and when collected shall be paid to the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid; and

b. that portion of the levied taxes each year in excess of the amount described in subdivision "a" above (hereinafter referred to as "incremental property tax revenue") shall be allocated to and when collected shall be paid into a special fund of AGENCY to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by AGENCY to finance or refinance, in whole or in part, said redevelopment project. Unless and until the total assessed valuation of the taxable property in the redevelopment project area exceeds the total assessed value of the taxable property in said project area as shown by the last equalized assessment roll referred to in subdivision "a" above, all of the taxes levied and collected upon the taxable property in said project area shall be paid to the respective taxing agencies. When such loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in said project area shall be paid to the respective taxing agencies as taxes on all other property are paid.

Section 3. Payments by AGENCY to COUNTY.

a. During the first 25 years of said redevelopment plan, beginning with revenue received in tax year 1987-88, AGENCY shall annually pay COUNTY 59.453% of County property tax (as defined in Section "1.d." of this agreement).

b. During years 26 (commencing with tax year 2013-14) through and including year 40, AGENCY shall annually pay COUNTY one hundred percent (100%) of County property tax (as defined in Section "1.d." of this agreement).

c. In any year that COUNTY estimates its proceeds of taxes subject to limitation will exceed its Gann limit, payment by AGENCY to COUNTY shall be reduced. The amount of the reduction in AGENCY's payment shall be determined by COUNTY. Each year prior to August 30th, COUNTY shall notify AGENCY: 1) whether COUNTY estimates its proceeds of taxes subject to

limitation will exceed its Gann limit, and 2) if COUNTY's proceeds of taxes subject to limitation is estimated to exceed its Gann limit, the amount by which AGENCY may reduce its payment to COUNTY.

d. In determining the amount of the reduction in AGENCY's payment, COUNTY shall consider the impact of such a payment reduction on the payments to be made by other redevelopment agencies with which it has similar agreements and to the extent COUNTY determines it to be in the interest of the entire County shall determine AGENCY's reduction on the basis of the following formula:

Assessed value of real property within AGENCY's redevelopment area	=	reduction in AGENCY's payment
Assessed value of real property within all redevelopment areas within Kern County		total amount by which County exceeds its Gann limit

In no event shall the amount of the reduction in the payments made to COUNTY by all the redevelopment agencies within the COUNTY exceed the amount by which COUNTY determines its proceeds of taxes subject to limitation will exceed its Gann limit.

e. All payments made by AGENCY to COUNTY shall be accomplished by the Auditor-Controller making adjustments to amount of taxes apportioned to AGENCY and COUNTY. The Auditor-Controller shall annually (by December of each year) provide to the AGENCY a report of how the estimated amount of the payments were calculated and the basis for any adjustments subject to this agreement.

f. It is the intent of the parties that for purposes of calculating the amount of tax increment revenues required to be set aside for low- and moderate-income housing pursuant to Health and Safety Code Section 33334.2, the amount to be paid to the COUNTY pursuant to this agreement shall not be deemed to have been received by the AGENCY and no portion thereof shall be required to be set aside for low- and moderate-income housing; provided, however, that if any authority of competent jurisdiction determines that the AGENCY's obligation to set aside amounts for low- and moderate-income housing must include that portion of the tax increment revenues paid to the COUNTY, that amount payable to the COUNTY under this agreement shall be reduced on a pro-rata basis and such amount shall be set aside for low- and moderate-income housing together with any other amounts set aside by the AGENCY. AGENCY shall be responsible for the payment of any and all amounts that should have been set

aside for low- and moderate-income housing from the amount paid to the COUNTY but were not pursuant to this provision, should it be determined that any such amount that should have been set aside for low- and moderate-income housing in previous tax years is in arrears and must be paid from the then current or subsequent year payment(s) to COUNTY.

g. AGENCY shall reimburse the Auditor-Controller of COUNTY for the costs incurred by the Auditor-Controller in determining the assessed value of the property in the Project Area as shown upon the assessment roll last equalized prior to the effective date of CITY's Ordinance No. 86-37. However, AGENCY's payment to COUNTY (pursuant to Section 3.a. above) in tax year 1987-88 shall be reduced by the amount reimbursed the Auditor-Controller for determining the assessed value of the property in the Project Area as shown upon the assessment roll last equalized prior to the effective date of CITY's Ordinance NO. 86-37.

Section 4. AGENCY's Use of Tax Increment Funds.

a. During the first three years (1987-88 through 1989-90) of the redevelopment plan, all of the incremental property tax revenue received by AGENCY attributable to County property tax (as defined in Section "1.d." of this agreement), except that amount required by Health and Safety Code Section 33334.2 et. seq., to be set aside for low- and moderate-income housing, shall be used by AGENCY solely and exclusively to provide design and construction financing for the Civic Center project described in the redevelopment plan or other project(s) designated by AGENCY, including the repayment of any indebtedness incurred with respect to administrative expenses of the AGENCY.

b. Subsequent to the first three years of the redevelopment plan, AGENCY shall use the portion of the revenue it receives from County property tax (as defined in Section "1.d." of this agreement) that is in excess of the amount of said revenue received by AGENCY in the third year of the redevelopment plan, except that portion required by Health and Safety Code Section 33334.2 et. seq., to be set aside for low- and moderate-income housing, solely and exclusively to provide financing for the design, acquisition, construction, remodel, rehabilitation, and/or improvement of those components of the redevelopment project, or those additional projects approved by COUNTY, that directly benefit the COUNTY's mission and operations. The scheduling of those projects that benefit the COUNTY's operations shall be within the sole discretion of COUNTY. The manner in which such projects are designed and constructed shall be determined by COUNTY. Title to all such projects shall vest with COUNTY. AGENCY's sole responsibility with respect to such projects is to provide funding for their acquisition, design, and/or construction. On or before June 1st of each year COUNTY

shall notify AGENCY which component or components of the redevelopment plan and/or additional projects, that directly benefit the COUNTY's operations, shall be financed by AGENCY during that year.

c. Should AGENCY fail to use all of its tax increment revenue, except that portion required by Health and Safety Code Section 33334.2 et. seq. to be set aside for low- and moderate-income housing, to finance the civic center project or such other project(s) as designated by AGENCY during the first three years of the plan, as described in paragraph "a" above, that portion of AGENCY's tax increment revenue received from the portion of tax increment revenue that absent the redevelopment plan would have otherwise been allocated to COUNTY, shall be used to finance activities that directly benefit the COUNTY's operations, as described in paragraph "b" above.

Section 5. Amendment of Laws. In the event that amendments, additions, repeals, or modifications are made to the State Constitution or laws (including, but not limited to, those constitutional and statutory provisions relating to the Gann limit, tax increment financing, or redevelopment agencies and projects) that will significantly increase or decrease tax revenue received by COUNTY, CITY or AGENCY absent this Agreement the parties hereto shall in good faith renegotiate this agreement in order that its purpose (redevelopment of the project area by the AGENCY without creating a substantial burden on the COUNTY) may continue.

Section 6. Audits. Each party to this Agreement shall have the right to audit, at its own expense, any and all records relating to activities undertaken pursuant to this Agreement.

Section 7. Dismissal of Superior Court Case No. 197677. Following adoption by AGENCY of a resolution containing the findings required by Health and Safety Code Section 33401 and upon execution of this Agreement by all parties COUNTY shall dismiss the action entitled County of Kern vs All Persons, etc., et al., Kern County Superior Court Number 197677.

Section 8. Amendments. This Agreement represents the entire understanding of the parties. This Agreement may not be modified or altered except upon the written consent of all parties.

Section 9. Indemnification. Each party hereto shall indemnify and hold the other parties harmless from claims, damages, causes of action and liability arising from the acts of its own officers, agents, and employees.

////
////

Section 10. Cooperation. Each of the parties hereto pledges its mutual cooperation in undertaking the activities described in this Agreement.

IN WITNESS WHEREOF, COUNTY, CITY, and AGENCY have caused this Agreement to be executed by their respective authorized officers as of the day and year first written above written.

CITY OF RIDGECREST

Michael R. Mower

Michael R. Mower, Mayor

"CITY"

RIDGECREST REDEVELOPMENT AGENCY

Michael R. Mower

Michael R. Mower, Chairman

"AGENCY"

COUNTY OF KERN

Chairman, Board of Supervisors

"COUNTY"

APPROVED AND RECOMMENDED
City Administrator

Damon B. Edwards

Damon B. Edwards

APPROVED AS TO FORM
Stradling, Yocca, Carlson & Roth

David McEwen

APPROVED AS TO CONTENT
County Administrative Officer

By Scott Jones, Sr. Deputy

TC/fd/87.1020.12

APPROVED AS TO FORM
Office of County Counsel

By Tom Clow, Deputy