

TOLLING AGREEMENT BETWEEN THE CITY OF EUREKA AND THE COUNTY OF HUMBOLDT

This Tolling Agreement (the “Agreement”) is entered into by and between City of Eureka (“City”) and County of Humboldt (“County”). Each party is referred to individually as a “Party” and collectively as the “Parties”, and agree as follows:

1. **Recitals.**

This Agreement is made with reference to the following recital of essential facts:

1.1 A dispute has arisen between the City and County regarding the County’s calculation and payment of the property tax revenues it has received and now owes under state law to the City as its allocable share of property tax revenues for Fiscal Year 2020–2021 (“City’s allocable share”).

1.2 The City claims that the County has undercalculated and underpaid the City for City’s allocable share and has threatened a lawsuit to advance this claim (“Claim”).

1.3 The County denies liability for the City’s Claim and has made an estimate of the payment to be made for City’s allocable share to avoid litigation while it undergoes a more detailed evaluation and assessment of the City’s Claim.

1.4 The Parties have analyzed the issues and have each considered the uncertainties of litigation, the benefits to be obtained under a proposed tolling agreement, the costs, risks and delays associated with going forward in litigation at this

time and have agreed to extend the time in which legal action must be commenced with respect to the Claim, subject to the terms and conditions set forth below.

2. **Terms of Agreement.**

2.1 The County agrees to release and pay the amount of four million five hundred six thousand three hundred forty-eight dollars and forty-one cents (\$4,506,348.41) to the City within 30 days of full execution of this Agreement. This amount represents the County's best estimate of the City's allocable share not paid as of this date. The Parties enter into this Agreement acknowledging this estimate may be less than, greater than, or the same as, the City's allocable share and thus may or may not satisfy in full the City's Claim but will at least partially satisfy it.

2.2 The County shall make a final determination as promptly as it is able to do so. Upon making this determination the County will notify the City of this final number. If the payment under section 2.1 above is less than the final amount the County determines the City is owed, the County will promptly pay the difference. If the payment is greater than the final amount determined by the County, the City agrees that the County may offset the difference under Government Code Section 907 against other sums owed the City in the current and future fiscal years.

2.3 The Parties hereby agree that the running of any applicable statutes of limitations and any other defenses based on the passage of time on any and all claims, causes of action, and defenses relating in any manner to the Claim, which were

not already barred by any applicable statute of limitations or passage of time as of the date of this Agreement, shall be tolled for the duration of this Agreement and shall not be included when computing any statute of limitations or other time based defense for the Claim.

2.4 Based on this agreement and understanding, the City covenants and agrees not to sue the County for matters relating to or arising from the City's Claim until the County gives the notice required by section 2.2 above or the City gives the notice required by section 2.8 below. The claims tolled herein do not include any claims based upon or arising out of the rights and obligations created by this Agreement.

2.5 Nothing in this Agreement shall be construed as a release or waiver of the City's rights to make any claims against the County for property tax revenues to be paid to the City for any years preceding or following Fiscal Year 2020–2021.

2.6 The City and County, respectively, deny any wrongdoing or any liability on each of their parts. The entry into and execution of this Agreement shall not be construed as admission of any liability or unlawful or wrongful act by either Party. This Agreement shall not be admissible as evidence of any liability or wrongdoing in any court or proceeding. Notwithstanding the above, however, this Agreement shall be admissible in any proceeding as to any dispute arising out of or relating to this Agreement or its interpretation, breach, or enforcement.

2.7 This Agreement is enforceable under Section 664.6 of the Code of Civil Procedure or any other applicable law.

2.8 City reserves the right to notify the County of its intent to terminate this Agreement on 45 days' written notice to County Counsel. Should the City do so, it may assert any remaining claim after the expiration of the 45-day notice period in any forum with jurisdiction of the matter.

3. **Effectiveness.**

This Agreement shall become effective when it has been executed by all Parties to this Agreement.

4. **Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures by facsimile or electronic communication shall be considered originals.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

CITY OF EUREKA

DocuSigned by:
By: Susan Seaman
B50C295BA04C4CB...
SUSAN SEAMAN
MAYOR

Date: 6/30/2022

APPROVED AS TO ADMINISTRATION:

DocuSigned by:
By: Miles Slattery
FF64475F9A1C4B0...
MILES SLATTERY
CITY MANAGER

Date: 6/30/2022

APPROVED AS TO FORM:

DocuSigned by:
By: Autumn E. Luna
0E676762E28D4CF...
AUTUMN E. LUNA
CITY ATTORNEY

Date: 6/30/2022

ATTEST:

DocuSigned by:
By: Pamela J. Powell
B77F97744FBC42C...
PAMELA J. POWELL
CITY CLERK

Date: 6/30/2022

COUNTY OF HUMBOLDT

DocuSigned by:
By: Elishia Hayes
9CBF7D42B0F64DE...
ELISHIA HAYES
COUNTY ADMINISTRATIVE OFFICER

Date: 6/30/2022