

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into as of February 12, 2017 by and among SEBASTOPOL HILLS ALLIANCE FOR RURAL PRESERVATION (“**SHARP**”), the CITY OF SEBASTOPOL (“**City**”), and KOWS COMMUNITY RADIO, a California nonprofit public benefit corporation, and ARNOLD LEVINE, in his capacity as KOWS Community Radio Board President (collectively “**KOWS**”) (hereinafter, SHARP, City, and KOWS, collectively referred to as “**Parties**”), with reference to and based upon the following:

RECITALS

A. On December 6, 2016 SHARP filed a petition for writ of mandate and complaint for injunctive relief in Sonoma County Superior Court, Case No. SCV 259843 (“**Action**”) challenging the City’s decision to allow KOWS to install a radio antenna, antenna tower, and related equipment and facilities at City-owned property known as the Pleasant Hill Reservoir site, located at 1281 Pleasant Hill Road (“**Project**”)

B. Since the filing of the Action, the Parties have engaged in settlement negotiations.

C. As a result of these settlement negotiations, the Parties believe that it would be in their respective best interests to settle their differences on the terms specified in this Agreement. Thus, the Parties have executed and delivered this Agreement in settlement, fully and forever, of all rights, duties, liabilities, claims, demands, damages, rights of action, and causes of action among said parties relating in any way to the Project and the allegations and claims in the Action.

AGREEMENT

Based upon the above recitals, it is mutually agreed upon by and among the Parties hereto as follows:

1. KOWS Application and Approval. Within ten (10) days of the effective date of this Agreement, KOWS shall withdraw its application and formally abandon any City approval for the Project, and the City shall vacate its approval for the Project.

2. Future Applications Prohibited. KOWS hereby agrees and affirms that it will never apply for permits for construction or use of a telecommunication facility at the Pleasant Hill Reservoir site or pursue or operate a telecommunication project at the Pleasant Hill Reservoir site; and that it will make good faith efforts to ensure that no entity affiliated with KOWS, or officer, program host or other person affiliated with KOWS (“**Affiliated Parties**”) applies for permits for construction or use of a telecommunication facility at the Pleasant Hill Reservoir site or pursues a telecommunication project at the Pleasant Hill Reservoir site. KOWS shall not provide any assistance or support, financial or otherwise, to Affiliated Parties for the siting, construction, or operation of a telecommunication project at the Pleasant Hill Reservoir Site.

3. KOWS Lease. The City hereby agrees that it will not execute the proposed lease with KOWS at the Pleasant Hill Reservoir site that was intended to allow KOWS to install and operate the Project.

4. Replacement of Trees. The City hereby agrees to replace any trees that fall, fail, or need to be removed at the Pleasant Hill Reservoir site, which were damaged by unpermitted trenching by KOWS' contractor, with irrigated 24" box tree specimens of the native western red cedar (*Thuja plicata*), coast redwood (*Sequoia sempervirens*), coast live oak (*Quercus agrifolia*) and/or deodar cedar (*Cedrus deodara*) as recommended in the December 7, 2016 arborist report prepared for the City by Becky Duckles.

5. Attorneys' Fees and Costs. All parties will bear their own attorneys' fees and costs associated with the City's administrative process in approving the Project and/or associated with the Action and no party shall have the right to recover any attorneys' fees or costs from any other Party under Code of Civil Procedure section 1021.5, or through any other statute, regulation, law, or legal theory.

6. Dismissal of Action.

a. Within fifteen (15) days of the effective date of this Agreement, SHARP shall file with the Sonoma County Superior Court the executed Stipulation and [Proposed] Order Dismissing Action Pursuant to Settlement Agreement and Reserving Trial Court Jurisdiction Pursuant to C.C.P. Section 664.6 ("Request for Dismissal"), attached hereto as Exhibit I. The Request for Dismissal requests that the Court reserve jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6 and the written stipulation of the Parties. SHARP shall diligently and in good faith pursue having the Request for Dismissal entered. Within ten (10) days of its entry, SHARP shall serve on all Parties notice of entry of the Request for Dismissal.

b. In the event the Court denies the Request for Dismissal described in Section 6.a, the Parties agree to renegotiate this Agreement in good faith in order to address any concerns the Court has with the Request for Dismissal.

c. In the event that the Court approves the order of dismissal but denies the Parties' request to reserve jurisdiction pursuant to Code of Civil Procedure section 664.6, this Agreement shall be enforceable by any Party consistent with California law.

7. Release. The Parties agree to release and forever discharge each other and their respective officers, directors, employees, agents, attorneys, legal successors and assigns, of any and all claims, actions, causes of action, obligations, liabilities, indebtedness, breach of duty, claims for writ of mandate, claims for injunctive relief and other equitable relief, suits, liens, losses, costs or expenses, including attorney's fees, of any nature whatsoever, whether known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen, that arise out of, are based upon, or relate in any way to the claims or factual assertions made in the Action. Notwithstanding this release, all Parties shall have the right to enforce the terms of this Agreement and to oppose or bring a legal challenge to any future actions by the City or KOWS related to the Pleasant Hill Reservoir site.

8. Waiver of Civil Code Section 1542. The foregoing release is intended to extend to all such claims, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

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 SETTLEMENT WITH THE DEBTOR.

9. Notices. Any notice or document shall be sent to the address of the recipient set forth below and shall be deemed delivered (i) when received if personally delivered, (ii) upon receipt when sent by email to the email set forth below, or (iii) the next business day if timely deposited with a recognized delivery service that guaranties following business day delivery. Any party may change its address by notifying the other party in accordance with this Section but such changes shall only be effective at the time of actual receipt of such notice.

SHARP:

Bob Jenkins
1411 Pleasant Hill Road
Sebastopol, CA 95472
rhjenkins1@gmail.com

With a copy to:

Tamara S. Galanter
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Galanter@smwlaw.com

City:

City Manager
P.O. Box 1776
Sebastopol, CA 95473
lmclaughlin@cityofsebastopol.org

With copy to:

Meyers Nave
Attn: Ed Grutzmacher
555 12th Street, Suite 1500
Oakland, CA 94607
egrutzmacher@meyersnave.com

KOWS:

KOWS Community Radio
P.O. Box 1073
Occidental, CA 95465

10. Enforcement. Any Party may file a motion to enforce the Agreement pursuant to Code of Civil Procedure section 664.6. Prior to filing such a motion, the Party claiming a breach of the Agreement shall provide the other Parties no less than thirty (30) days' notice, and within that thirty (30) day period, shall meet and confer with the other Parties and attempt to resolve the dispute informally before filing the motion. The prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees in addition to any other relief to which it may be entitled.

11. Consultation with Counsel. Each party acknowledges that it has specifically reviewed with counsel the meaning and effect of the release contained in Section 7, the language from Civil Code section 1542 quoted in Section 8, that each party's attorneys have fully explained the impact of these provisions, and that each party knowingly accepts the risks associated with these provisions.

12. Execution Not an Admission. This Agreement is strictly for the purposes of compromising a dispute. By entering into this Agreement, no party hereto admits that the claims or contentions of the other were or are valid or meritorious. Each party hereto has in the past denied and continues to deny the claims, assertions, allegations and contentions of the others.

13. Advice of Counsel. The undersigned and each of them hereby declare and represent that, in effecting this Agreement, each has received full legal advice as to its respective legal rights, and each hereby certifies that he, she, or it has read all of this Agreement and fully understands the same.

14. Applicable Law. The Parties hereby agree that this Agreement is made, executed, entered into, and intended to be performed within the State of California and that this is a California agreement and is to be construed as such.

15. Additional Documents and Instruments. Each of the Parties hereto agrees to execute and deliver to each of the other Parties hereto all additional documents, instruments, and agreements required to take such additional actions as are required to implement the terms and conditions of this Agreement.

16. No Assignment. The Parties represent that they have made no assignment of the claims released herein, and that no signature other than those set forth below is required to effectuate this Agreement, including the release set forth herein. Each party shall indemnify each other party, defend, and hold it harmless from and against any claims based upon or arising in connection with any prior assignment or transfer, or any such purported assignment or transfer, or any claims or other matters released or assigned herein.

17. Binding on Successors and Assigns. The Parties agree that the obligations and benefits arising out of the Agreement, including, but not limited to, the release set forth herein, and

each of the terms of this Agreement, shall be binding upon and shall inure to the benefit of any successors and assigns of the Parties.

18. Integration. This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements among the Parties, whether written or oral. Each of the Parties acknowledges representation by counsel throughout all of the negotiations that preceded the execution of this document and the document has been executed with the consent, and upon the advice, of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce another party to execute this instrument.

19. Warranty of No Undue Influence. The Parties hereby warrant and represent that they are not aware of any duress, menace, fraud, coercion, or undue influence that has caused any party to enter into this Agreement. Each of the Parties hereby warrants and represents that it is not aware of any acts or conduct by which, in executing this Agreement, the mind of any of the Parties hereto has been overcome by the will of another person.

20. Authorization. Each person executing this Agreement warrants that he or she has full authorization to execute this Agreement on behalf of the entity that he or she is signing on behalf of, and further represents that all necessary approvals have been obtained to execute and implement this Agreement.

21. Construction of Agreement. This Agreement shall be construed as if it were drafted by all Parties.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument.

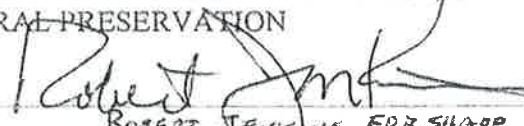
23. Amendment. This Agreement may not be amended in any respect without the written consent of all the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement.

DATED: Febr, 10, 2017

SEBASTOPOL HILLS ALLIANCE FOR
RURAL PRESERVATION

By:



ROBERT JENKINS FOR SHARP

Its:

COORDINATOR / AUTHORIZED REPRESENTATIVE

APPROVAL AS TO FORM:

SHUTE, MIHALY & WEINBERGER LLP

By: 
Tamara S. Galanter
Attorneys for Petitioner
SEBASTOPOL HILLS ALLIANCE FOR RURAL PRESERVATION

2/12/17

DATED: Feb 8, 2017

CITY OF SEBASTOPOL

By: 

Its: City Manager


APPROVAL AS TO FORM:

MEYERS, NAVE, RIBACK, SILVER
& WILSON

By: 
Edward Grutzmacher
Attorneys for Respondent
CITY OF SEBASTOPOL

DATED: Feb 8, 2017

KOWS COMMUNITY RADIO, a California
Nonprofit Public Benefit Corporation and
ARNOLD LEVINE, in his capacity as KOWS
Community Radio Board President

By: 
Arnold Levine

Its: PRESIDENT
President
In Pro Per

EXHIBIT 1

1 TAMARA S. GALANTER (State Bar No. 142532)
ALLISON A. JOHNSON (State Bar No. 307732)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, California 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
Galanter@smwlaw.com
5 Johnson@smwlaw.com

6 Attorneys for Petitioner and Plaintiff
Sebastopol Hills Alliance for Rural Preservation
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SONOMA**
10

11 SEBASTOPOL HILLS ALLIANCE FOR
RURAL PRESERVATION,

12 Petitioner and Plaintiff,

13 v.
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15 CITY OF SEBASTOPOL; CITY
COUNCIL OF THE CITY OF
SEBASTOPOL; and DOES 1 through 20,

16 Respondents and Defendants.
17

18 KOWS COMMUNITY RADIO;
ARNOLD LEVINE, in his capacity as
19 KOWS Community Radio Board
President; and DOES 21 through 40,
20

21 Real Parties in Interest.
22

Case No.

**STIPULATION AND [PROPOSED]
ORDER DISMISSING ACTION
PURSUANT TO SETTLEMENT
AGREEMENT AND RESERVING
TRIAL COURT JURISDICTION
PURSUANT TO C.C.P. SECTION 664.6**

Assigned for All Purposes to
Hon. Nancy C. Shaffer

Trial Date: None set
Action Filed: December 6, 2016

23 **RECITALS**

24 WHEREAS, the parties to this case are SEBASTOPOL HILLS ALLIANCE FOR
25 RURAL PRESERVATION (“SHARP”), the CITY OF SEBASTOPOL (“City”), and KOWS
26 COMMUNITY RADIO and ARNOLD LEVINE, in his capacity as KOWS Community Radio
27 Board President (collectively “KOWS”) (hereinafter, SHARP, City, and KOWS, collectively
28 referred to as “Parties”); and

1 WHEREAS, the Parties have entered into a Settlement Agreement (the "Agreement"), a
2 copy of which is attached hereto as Exhibit 1; and

3 WHEREAS, the Agreement provides for the dismissal of the entire action with prejudice;
4 and

5 WHEREAS, the Agreement provides that within the time period(s) set forth therein, the
6 City and KOWS will comply with their obligations under the Agreement; and

7 WHEREAS, the Agreement provides that a condition precedent to its effectiveness is the
8 trial court entering an order reserving jurisdiction to enforce the Agreement pursuant to Code of
9 Civil Procedure section 664.6; and

10 WHEREAS, the Court is authorized to reserve jurisdiction to enforce the Agreement
11 pursuant to Code of Civil Procedure section 664.6 upon written request of the Parties as
12 provided in *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439-441.

13
14 **STIPULATION**

15 THEREFORE, it is hereby STIPULATED and jointly requested by the Parties that the
16 action be dismissed with prejudice and that the Court reserve jurisdiction to enforce the
17 Agreement pursuant to Code of Civil Procedure section 664.6 and this written stipulation of the
18 Parties. This stipulation may be executed in counterparts and filed with facsimile or PDF
19 signatures.

20 DATED: _____ SHUTE, MIHALY & WEINBERGER LLP

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22
23 By: _____
TAMARA S. GALANTER

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25 Attorneys for Petitioner and Plaintiff
26 SEBASTOPOL HILLS ALLIANCE FOR
27 RURAL PRESERVATION

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DATED: _____

MEYERS, NAVE, RIBACK, SILVER & WILSON,
Inc.

By: _____
EDWARD GRUTZMACHER

Attorneys for Respondents
CITY OF SEBASTOPOL and CITY COUNCIL
OF THE CITY OF SEBASTOPOL

DATED: _____

KOWS COMMUNITY RADIO and ARNOLD
LEVINE, in his capacity as KOWS Community Radio
Board President

By: _____
ARNOLD LEVINE

In Pro Per

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ORDER

This Court hereby reserves jurisdiction to enforce the Agreement of the Parties pursuant to Code of Civil Procedure section 664.6 and the written stipulation of the Parties, and the action is hereby dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____

HON. NANCY C. SHAFFER
JUDGE OF THE SUPERIOR COURT

855809.1