COUNTY REQUIRMENTS FOR COMPENSATION AGREEMENTS

1. Compensation Agreements are required for (1) property designated for future development pursuant to a project in an approved redevelopment plan; and (2) in instances when a property designated as a public/governmental use has been required by the DOF to require a compensation agreement.
2. List all parties to the agreement and execute one form of the agreement for all parties:
   1. Sample Language: *“This Agreement, dated for reference purposes as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ is entered into by and among the ABC City Successor Agency (successor in interest to the dissolved ABC City Redevelopment Agency), the City of ABC, County of San Bernardino, the County of San Bernardino Flood Control District, the County of San Bernardino Free Library, the County of San Bernardino Superintendent of Schools, the 456 Elementary School District, the 123 Elementary School District, the Anywhere Community College District, the Anywhere Joint Union High School District, the XYZ Unified School District, the Resource District, and the Utilities Agency.”*
3. Identify whether the property is classified as a future development or vacant governmental use site in the Long Range Property Management Plan. If known, include the intended future use and purpose of this site.
4. Add language describing the property(ies). For example: “Under the approved LRPMP, *the Successor Agency is authorized to transfer approximately \_\_\_\_-acres of real property located* *at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, assessor's parcel number(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and further described in Exhibit A incorporated herein by reference (the "Property") to the City, subject to the terms of this Agreement.”*
5. Identify whether affected taxing entities and their respective tax rate distributions Redevelopment Project Area or Agency-wide. Contact the Auditor-Controller’s Office for calculated distributions.
6. If it is your intent to request reimbursement for costs associated with the transfer of the property, use the definition of “Disposition Proceeds” provided below.
   1. *Sample Language: "Disposition Proceeds" means, with respect to the Property, any Temporary Rental Income PLUS the gross purchase price and other compensation, if an, actually received by the City from the Developer in consideration for the disposition of the Property pursuant to the DDA pursuant to Section 5(a) or the FMV Retention Value payment made pursuant to Section 5(d) LESS any proceeds of sale that are restricted by virtue of the source of funds (e.g. grant funds or proceeds of bonds) that were used for the original acquisition or improvement of the Property, and less the sum of the City's actual costs for the following items (but only to the extent paid from City funds and not from funds provided by the Successor Agency, a Developer, or another separate entity), each to be substantiated and documented in reasonable detail in the Disposition Proceeds Statement for the Property:*
      * 1. *the City's actual costs, not to exceed an average of One Thousand Dollars ($1,000) per month, for normal maintenance, management and insurance of the applicable Property from the date the Property is transferred by the Successor Agency to the City pursuant to Section 4 to the date the Property is disposed of by the City to the Developer pursuant to the DDA pursuant to Section 5(a) or to the date the City makes the FMV Retention Value payment pursuant to Section 5(d); plus*
        2. *the City's actual costs of any capital improvements or repairs to maintain the Property in a safe and lawful condition incurred from the date the Property is transferred by the Successor Agency to the City pursuant to Section 4 to the date the Property is disposed of by the City to the Developer pursuant to the DDA pursuant to Section 5(a) or to the date the City makes the FMV Retention Value payment pursuant to Section 5(d);*
        3. *the City's actual costs of site preparation, including hazardous materials remediation and pollution legal liability insurance premiums, if any, required to be paid by the City under the DDA for the applicable Property to prepare the Property for disposition, but only to the extent the Property is disposed of by the City to the Developer pursuant to the DDA pursuant to Section 5(a); plus*
        4. *the City's actual costs, to pay third party vendors for appraisal, legal, real estate consultant and marketing, title company, title insurance and to the extent applicable any other costs related to Developer selection, DDA preparation and approval, and closing costs for disposition of the Property but only to the extent the Property is disposed of by the City to the Developer pursuant to the DDA pursuant to Section 5(a); plus*
        5. *any broker's commissions payable by the City pursuant to the DDA for the Property but only to the extent the Property is disposed of by the City to the Developer pursuant to the DDA pursuant to Section 5(a).*
7. Include how the property will be disposed by the City: The County requires language similar to this example:
   1. *“Within a time frame determined by the City to yield a financially feasible and marketable development and in accordance with the procedures and requirements set forth herein, the City shall use diligent good faith efforts to select a Developer for the Property, negotiate and obtain approval and execution of the DDA for the Property, and dispose of the Property to the Developer in accordance with the DDA in order to obtain the Disposition Proceeds for distribution through the Escrow Agent to the Taxing Entities pursuant to Section 6 and to enable development of the Property in accordance with the Redevelopment Plan and LRPMP. As required by Government Code Section 52201, the purchase price payable to the City for each Property under the applicable DDA shall be an amount that is determined to be not less than the Property's fair market value at highest and best use, or the Property's fair reuse value at the use and with the covenants and conditions and development costs authorized by the DDA.*
   2. *By not later than the date of first published notice of the Board of Supervisors public hearing for the DDA (the "DDA Public Hearing Notice"), the City shall provide each Taxing Entity with a copy of the DDA Public Hearing Notice (including the date, time and location of the public hearing and the location at which the proposed DDA may be inspected and copied), and a statement setting forth the proposed purchase price to be paid to the City under the proposed DDA.*
   3. *Upon the execution of the DDA for each Property, the City shall transmit a copy of the executed DDA to the other Parties.*
   4. *Notwithstanding anything to the contrary, any time prior to a Transfer of the Property under a DDA, the City may at its sole and absolute discretion, elect to retain the Property, or any portion thereof, to perform development activities funded from the City's own funds under the City's auspices. If the City elects to retain the Property pursuant to this Section 5(d), the City must pay to the Taxing Entities the higher of: (i) the current fair market value of the property retained by the City or (ii) the fair market value, as of the 2011 tax lien date, of the Property or such portion thereof retained by the City (the "FMV Retention Value"). The appraisals required under this section shall be performed by an independent certified Member of Appraisal Institute (MAI) appraiser or other qualified real estate appraiser approved by the Successor Agency's Oversight Board. The appraisal shall be based upon the best available sales prices of comparable properties sold in the market area during the preceding six (6)-month period or such other time period deemed appropriate by the appraiser. The appraisal shall utilize a date of value that is no more than sixty (60) calendar days from the date the City makes the payment under this Section 6(d) (the "FMV Compensation Date"). At least thirty (30) calendar days prior to the Net Proceeds Disposition Date, the City shall provide each Taxing Entity with a copy of the appraisal, and a statement setting forth the FMV Retention Value to be paid by the City (the "Notice of FMV Payment").”*
8. The County requires that the Disposition Proceeds will be distributed through escrow, not the Auditor-Controller-Tax Collector’s office.
   1. Sample Language: “*Distribution of Disposition Proceeds. At the Close of Escrow for the Property, the City shall remit any Temporary Rental Income (if any) and the Developer shall remit the Disposition Proceeds to the Escrow Agent for immediate distribution by Escrow Agent to the Taxing Entities.*

*No later than five (5) business days after the Disposition Proceeds Receipt Date, the Escrow Agent shall disburse the Disposition Proceeds among the Taxing Entities in proportion to their shares of the base property tax (the "Property Tax Percentage Shares"), as determined by the Auditor-Controller pursuant to Health and Safety Code Section 34188. The attached Exhibit C shows, for illustrative purposes only, the Property Tax Percentage Shares of the Taxing Entities that would have applied to a distribution by Project Area (OR Agency-wide) under this Section 6 had the distribution been made on January 1, 20\_\_, as provided by the Auditor-Controller.*

1. The County requires that Educational Revenue Augmentation Funds (ERAF) will be distributed by the County Superintendent of Schools.
   1. Sample Language: *“ERAF is entitled to a distribution pursuant to Section 6 of a portion of the Disposition Proceeds from the disposition of each Property. There is no need for a separate signatory to execute this Agreement on behalf of ERAF because the ultimate beneficiaries of any distribution of Disposition Proceeds to ERAF are themselves Taxing Entities that are signatories to this Agreement. ERAF proceeds are to be distributed by the San Bernardino County Superintendent of Schools.”*
2. The County requires the notification all taxing entities prior to land disposition.

Sample Language: “*By not later than the date of first published notice of the City Council public hearing for the DDA (the "DDA Public Hearing Notice"), the City shall provide each Taxing Entity with a copy of the DDA Public Hearing Notice (including the date, time and location of the public hearing and the location at which the proposed DDA may be inspected and copied), and a statement setting forth the proposed purchase price to be paid to the City under the proposed DDA.”*

1. Include requirement to send a fully executed original of the compensation agreement to the County of San Bernardino.
2. Include signature pages for all taxing entities.
3. If there will be a deduction for net costs associated with the disposition of the property, provide a “Disposition Proceeds Statement” to the taxing entities and allow a minimum 5-day review period for taxing entities to review the statement for accuracy.
4. Include the following exhibits:

Exhibit A: Property Legal Description

Exhibit B: List of Addresses for Notice Purposes

Exhibit C: Illustrative Taxing Entities Property Tax Percentage Shares

Exhibit D: Notice of Compensation Agreement

Exhibit E: Release of Notice of Compensation Agreement

1. A Notice of Compensation Agreement and a Release of Notice of Compensation Agreement will be required to be recorded by the County. This document will ensure that if or when the property is sold in the future, proceeds are distributed among the taxing entities. A sample Notice of Compensation Agreement and Release are on the following pages as Exhibits D and E.

EXHIBIT A

LEGAL DESCRIPTION

The land is situated in the State of California, ABC City, and is described as follows:

APN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHBIT B

LIST OF ADDRESSES FOR NOTICE PURPOSES

[Note- Insert addresses of all taxing entities that are parties to this agreement.]

|  |  |
| --- | --- |
| **TAXING ENTITY** | **ADDRESS** |
| County - General Fund |  |
| County Flood Control District |  |
| County Free Library |  |
| County Superintendent of Schools |  |
| 456 Elementary School District |  |
| 123 Elementary School District |  |
| Anywhere Joint Union High School District |  |
| Anywhere Community College |  |
| XYZ Unified School District |  |
| Resource Conservation District |  |
| Utilities Agency |  |

EXHIBIT C

ILLUSTRATIVE TAXING ENTITIES PROPERTY TAX PERCENTAGE SHARES

The County Auditor-Controller calculates the property tax percentage shares for each taxing entity at the RDA project level and RDA Successor Agency level on an annual basis for various calculations and disbursements the County Auditor-Controller is required to perform for the dissolution process. The City plans to utilize the property tax percentage shares for taxing entities at the [Select one; RDA project level or RDA Successor Agency level].

The property tax percentage share that would apply to the taxing entities for distributions under Section 6 of the Compensation Agreement, had such distribution been made on January 1, 20\_\_ at the [Select one; project or agency] level, are outlined below for administrative purposes only.

Property Tax Percentage Shares.

|  |  |
| --- | --- |
| **TAXING ENTITY/FUND** | **PROPERTY TAX SHARE** |
| County - General Fund | 16.89% |
| Educational Revenue Augmentation Fund | 21.73% |
| County Flood Control District | 2.70% |
| County Free Library | 1.39% |
| County Superintendent of Schools | 0.91% |
| 456 Elementary School District | 4.24% |
| 123 Elementary School District | 2.44% |
| Anywhere Joint Union High School District | 6.84% |
| Anywhere Community College | 4.15% |
| XYZ Unified School District | 24.52% |
| Inland Empire Joint Resource Conservation District | 0.19% |
| Utilities Agency | 14.00% |
|  |  |
| **TOTAL** | **100%** |

EXHIBIT D

NOTICE OF COMPENSATION AGREEMENT

**RECORDING REQUESTED BYAND WHEN RECORDED MAIL TO:**

ABC City

Department of Community Development and Housing

123 Address

ABC City, CA 92000

Attn: Community Development and Housing Director

No fee for recording pursuant to

Government Code Sections 6103 and 27383

(Space above this line for Recorder's Use)

**NOTICE OF COMPENSATION AGREEMENT**

**RELATED TO REAL PROPERTY**

(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Site/Address.)

**NOTICE IS HEREBY GIVEN,** that the ABC City Successor Agency (the "Successor Agency"), the County of San Bernardino, the County Flood Control District, the County Free Library, the County of San Bernardino Superintendent of Schools, the Anywhere Joint Union High School District, the 123 School District, the 456 Elementary School District, the Anywhere Community College District, XYZ Unified School District, , Resource District, and the Utilities Agency (collectively, along with the City, the "Taxing Entities") entered into that certain Compensation Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Compensation Agreement"), with reference to that certain real property located in the ABC City located at , at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, assessor's parcel number(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and further described in Exhibit A incorporated herein by reference (the "Property").

The Successor Agency is the successor in interest to the dissolved ABC City Redevelopment Agency (the "Former RDA"). Upon the Former RDA's dissolution title to the Property transferred to the Successor Agency. As authorized under the "Redevelopment Dissolution Statutes (Part 1.8 and 1.85 of Division 24 of the Health and Safety Code), the Successor Agency has prepared, and the California Department of Finance has approved, a Long Range Property Management Plan ("LRPMP").

Under the approved LRPMP, the Successor Agency is authorized to transfer the Property to the City, subject to the terms of the Compensation Agreement. Substantially concurrently herewith, in conformance with the terms of the LRPMP, the Successor Agency is transferring title to the Property to the City (in its capacity as owner of the Property, the City shall be referred to as the "Owner"). As designated in the LRPMP, the City will retain the Property for [a governmental purpose as allowed under Health and Safety Code Section 34181 OR to future development for a project in approved redevelopment plan as allowed under Health and Safety Code Section 34191.5(c)(2)].

Among other requirements, the LRPMP requires the City to execute the Compensation Agreement with the Taxing Entities providing for a contingent payment of Disposition Proceeds (as defined in the Compensation Agreement) upon the Owner's subsequent disposition of the Property, under specified conditions.

The Compensation Agreement includes certain obligations related to the Property, including without limitation and as further described in the Compensation Agreement:

1. A requirement for the Owner to provide the Taxing Entities with notice of the DDA Public Hearing Notice pursuant to Section 5(a) or the Notice of FMV Payment pursuant to Section 5(b), which notices shall include the information required under the Compensation Agreement.

2. A requirement that the Owner provide the Taxing Entities and the County Auditor-Controller a Disposition Proceeds Statement including the information required under Section 6 of the Compensation Agreement.

3. A requirement for the Owner remit the Disposition Proceeds to the Escrow Agent for distribution to the Taxing Entities in proportion to their Property Tax Percentage Shares base property tax as determined by the City using data from the County's Auditor-Controller and require the Escrow Agent to distribute the funds pursuant to Health and Safety Code Section 34188 and the Compensation Agreement.

A complete copy of the Compensation Agreement is maintained in the Office of the City Clerk, and is available to review at 123 Address, ABC City, CA between 9 a.m. and 5 p.m.

In the event of any conflict between this Notice of Compensation Agreement Related to Property (the "Notice") and the Compensation Agreement, the terms of the Compensation Agreement shall prevail.

This Notice may only be amended or terminated with the written agreement of the Owner and the City.

Upon the earlier of satisfaction of the requirements of the Compensation Agreement as outlined in Section 6(c) of the Compensation Agreement, or earlier termination of the Compensation Agreement pursuant to Section 7 of the Compensation Agreement, the City shall release this Notice (the "Release"), by the execution and recordation of a release in substantially the form attached hereto as Exhibit B, incorporated herein by reference.

This Notice is being recorded and filed by the Owner of the Property, and shall be indexed against the Owner's interest in the Property and the City.

***[Remainder of Page Left Intentionally Blank.]***

IN WITNESS WHEREOF, the Owner and the City have entered into this Notice as of the first date written above.

**CITY:**

ABC CITY, a municipal corporation OR California charter city

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED AS TO LEGAL FORM:

City Counsel

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |  |
| --- | --- | --- | --- |
| |  |  | | --- | --- | |  |  | | **CITY:**  ABC CITY, a political subdivision of the State of California |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***ALL SIGNATURES MUST BE NOTARIZED***]

STATE OF CALIFORNIA )

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

)

CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name:

Notary Public

EXHIBIT A

Legal Description

The land is situated in the State of California, ABC City, and is described as follows:

APN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit E

Form of Release Agreement

**RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:**

ABC City

Address

Attn: Community Development and Housing Director

No fee for recording pursuant to

Government Code Sections 6103 and 27383

(Space above this line for Recorder's Use)

**Form of Release Agreement**

**RELEASE OF NOTICE OF COMPENSATION AGREEMENT**

**RELATED TO REAL PROPERTY**

(\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Site/ADDRESS)

This Release of Notice of Compensation Agreement Related to Real Property is made as of [INSERT DATE] (the "Notice"), by the ABC City, in its capacity as a taxing entity (the "City") and in its capacity as the owner of that certain real located ADDRESS, in the ABC City, and further described in Exhibit A incorporated herein by reference.

**RECITALS**

A. The ABC City Successor Agency (the "Successor Agency"), the County of San Bernardino, the County Flood Control District, the County Free Library, the County of San Bernardino Superintendent of Schools, the XYZ Fire Protection District, the Anywhere Community College District, XYZ Unified School District, the Anywhere Joint Union High School District, the 123 School District, the 456 Elementary School District, Resource District, and the Utilities Agency (collectively, along with the City, the "Taxing Entities") entered into that certain Compensation Agreement, dated [INSERT DATE] (the "Compensation Agreement"), with reference to the Real Property.

B. In connection with the Compensation Agreement, the Owner and the City executed the Notice, which was recorded against the Real Property in the Official Records of the ABC City as Instrument No. [INSERT RECORDING NUMBER] on [INSERT DATE].

C. The City has determined that the Owner has fulfilled its obligations under the Compensation Agreement and desires to release the Notice from the Owner's interest in the Real Property.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

The City hereby releases the Owner (and its successors) and the Real Property from any and all obligations owed to the City under the Notice.

In granting this Release, the City hereby expressly waives and relinquishes all rights and benefits afforded by California Civil Code Section 1542, as well as any similar law, statute, provision or policy in any other jurisdiction subsequently adopted in the State of California, and the City understands and acknowledges the significance of such specific waiver of California Civil Code Section 1542, which reads as follows:

"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."

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Initials

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it.

This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

This Agreement may be signed by the different parties hereto in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

**[Signatures on following page]**

IN WITNESS WHEREOF, the parties have executed this Release as of the day first above written.

**CITY**:

ABC CITY, a political subdivision of the State of California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED AS TO LEGAL FORM:

City Counsel

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***ALL SIGNATURES MUST BE NOTARIZED***]

STATE OF CALIFORNIA )

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

)

CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name:

Notary Public

EXHIBIT A

Legal Description

The leased land is situated in the State of California, ABC City, and is described as follows: