

CONDITIONAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Conditional Settlement Agreement and Mutual Release (“Agreement”) is entered into by and between Petitioner and Plaintiff People’s Homeless Task Force (“PHTF”); and Respondents and Defendants County of Orange (“County”) and Orange County Board of Supervisors (“Board of Supervisors” or “Board”). PHTF, County, and Board of Supervisors are collectively referred to as the “Parties” and individually as a “Party” in this Agreement.

This Agreement is effective on the date of the last executed signature and is entered into based upon the following Recitals, Terms and Conditions:

RECITALS

A. WHEREAS, on April 9, 2019, PHTF filed a Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate titled *People’s Homeless Task Force v. County of Orange, Orange County Board of Supervisors*, Orange County Superior Court Case No. 30-2019-01062485-CU-CR-CJC (“Complaint”), against the County and the Board of Supervisors for alleged violations of (1) the First Amendment of the U.S. Constitution; 42 U.S.C. § 1983; (2) Article I, Sections 2 and 3 of the California Constitution; (3) the Ralph M. Brown Act, Cal. Gov. Code § 54950 et seq.; (4) Cal. Gov. Code § 26202; and (5) the California Public Records Act, Cal. Gov. Code § 6250 et seq. (“Action”). The Action arose out of allegations that (i) certain portions of certain rules contained in the Orange County Board of Supervisors’ Rules of Procedure violated the above constitutional provisions and statutes (facially and as applied), (ii) the County’s Records Management Policy violated Cal. Gov. Code § 26202, and (iii) certain actions by and practices of the Board of Supervisors were unconstitutional.

B. WHEREAS, PHTF amended its Complaint on or about October 28, 2019 pursuant to stipulation and leave of Court; and subsequently dismissed its Fourth Cause of Action (alleging violation of Cal. Gov. Code § 26202) on or about July 20, 2020.

C. WHEREAS, the Parties have recently reached a settlement in principle and, as such, County and Board of Supervisors have withdrawn a pending Motion Quashing Deposition Notices and/or Motion for Protective Order, PHTF has withdrawn pending deposition notices of members of the Board of Supervisors, and the Parties have jointly requested that the Court continue the May 3, 2021 trial date in this matter and set a status conference for February 2021, which the Parties will take off calendar upon the settlement of this Action.

D. WHEREAS, the Parties now desire, without admission of wrongdoing, fault or liability of any Party to any other Party, and solely for the purpose of resolving disputed claims in an economic and efficient manner, to settle the entire Action pursuant to the terms and conditions of this Agreement.

E. WHEREAS, settlement of the Action is to be conditional on the Board of Supervisors, at the public meeting to occur on January 12, 2021 or as soon as possible thereafter, approving recommended actions to (1) adopt a revised Speaker Request Form; (2) adopt revised instructions on the County website and on informational PowerPoint slides regarding the public’s permitted use of a pseudonym when completing a Speaker Request Form and when addressing

the Board; and (3) amend Rule 46 of the Orange County Board of Supervisors' Rules of Procedure. The proposed revisions to be considered by the Board of Supervisors are attached hereto as Exhibits A, B, C, and D, respectively.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the adequacy and sufficiency of which is acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The above Recitals form a material part of this Agreement, are true and correct, and are incorporated herein by this reference and made a part hereof.

2. **County's Police Power and Legislative Authority.** Because the County may not properly contract away either its police power or legislative authority, the Board of Supervisors will retain the final discretion after a public meeting to approve or reject the proposed revisions contained in Exhibits A, B, C, and D, respectively. Nothing in this Agreement is intended to have the effect of reducing, limiting or contracting away the Board's discretion or legislative authority at any time or in the future, except that the Board and the County must maintain the specific revisions provided for in Paragraph 3 of the Agreement, below, once approved by the Board, *until at least January 1, 2025*. Nothing herein, including Paragraphs 5 and 6 of the Agreement, below, shall be construed as a waiver of PHTF's rights to bring claims against the County or Board of Supervisors for any revisions related to those provided for in Paragraph 3 of the Agreement, below, or for any action taken by the County or Board of Supervisors on or after January 1, 2025, regardless of whether any such action relates to the claims and allegations made in the Complaint.

3. **Discretionary Approval of Revisions to Speaker Request Forms, County Website, Informational PowerPoint Slides, and Rule 46.** This Agreement is conditioned upon the Board of Supervisors' discretionary approval of the below recommended actions at a future public meeting ("Conditions Precedent"):

a. A revised Speaker Request Form in the form attached hereto as Exhibit A and incorporated herein by reference, expressly stating that a member of the Public may use a pseudonym when completing a Speaker Request Form and addressing the Board of Supervisors.

b. Revised instructions on the County website (e.g., <https://board.ocgov.com/addressing-board>), in the form attached hereto as Exhibit B and incorporated herein by reference, expressly stating that a member of the public may use a pseudonym when completing a Speaker Request form and addressing the Board of Supervisors.

c. Revised informational PowerPoint slides used by the County to inform members of the public attending public meetings of the Board as to how they can participate in the meeting and address the Board of Supervisors, in the form attached hereto as Exhibit C and incorporated herein by reference, expressly stating that a member of the public may use a pseudonym when completing a Speaker Request form and addressing the Board of Supervisors.

d. Revisions to Rule 46 of the Board Rules of Procedure, in the form attached hereto as Exhibit D and incorporated herein by reference, (1) eliminating the requirement that all remarks and questions be addressed to the Board as a whole, (2) eliminating the requirement that a speaker must obtain the Chair's permission to ask questions of individual Board or staff members, and (3) adding express language permitting members of the public to comment on, question or criticize policies, procedures, programs, or services of the County, acts or omissions of the Board, or the positions, statements, votes, actions or omissions of individual members of the Board.

4. **Settlement of All Claims.**

a. Within 30 days of the date that this Agreement is executed by the Parties, the Board of Supervisors will consider the recommended actions outlined in Paragraph 3, above.

b. Within 30 days of the date of the Board of Supervisors' approval of the recommended actions outlined in Paragraph 3, above, the County shall pay \$75,000 (seventy-five thousand dollars) ("Settlement Amount") by check made payable to Kirkland & Ellis LLP, and mailed or delivered to Kirkland & Ellis LLP c/o Zachary Byer, 555 South Flower Street, Suite 3700, Los Angeles, California, 90071 to reimburse PHTF for its incurred attorneys' fees and costs.

c. The Settlement Amount represents full payment of all attorneys' fees and costs PHTF may claim from the County and the Board of Supervisors incurred in this Action, and shall constitute the County's and the Board of Supervisors' entire, maximum, and only financial obligation to PHTF under this Agreement.

d. Within 15 days of receiving the Settlement Amount from the County and the implementation of the recommended actions outlined in Paragraph 3, above, PHTF shall execute and file a Request for Dismissal of the Action, in full and with prejudice.

5. **Mutual Release of Claims.** If the Conditions Precedent are satisfied, the Parties agree to release their respective claims against one another as follows: Except for those obligations created by or arising out of this Agreement, the Parties, each on behalf of itself, its principals and agents, and its successors and assigns, hereby release and forever discharge one another, and all of their respective governing boards, board members, predecessors, successors, assigns, parents, subsidiaries, divisions, affiliated and related entities, officers, directors, members, employees, shareholders, agents, partners, attorneys, insurance carriers and all persons acting by or through them or on their behalf or in concert with them, from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, debts, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, that are directly related to or directly arising from the claims and allegations that were the subject of the Complaint in the Action (collectively "Claims"). Nothing herein shall be construed as a waiver of any Party's rights to bring claims against another Party under the constitutional and statutory provisions upon which the claims in the Action were brought that are not directly related to or directly arising from the claims and allegations that were the subject of the Complaint. Moreover, the Parties expressly agree that

nothing herein shall be construed as a waiver of any Party's rights to bring claims against another Party accruing on or after January 1, 2025, regardless of whether those claims in any way relate to or arise from the claims and allegations that were the subject of the Complaint.

6. **Waiver of Civil Code Section 1542.** If the Conditions Precedent are satisfied, the Parties acknowledge and agree that the release of the Claims provided for in this Agreement shall extend to any and all Claims accruing before January 1, 2025, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, legal or equitable, and expressly waive and relinquish any and all rights the Parties may have under California Civil Code Section 1542, which provides that:

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.

The Parties expressly waive and release any and all rights and benefits which they have, or may have, under Civil Code Section 1542. Each of the Parties understands, acknowledges and agrees that it may later discover facts in addition to, or different from, those which it now knows or believes to be true as to the Claims or the subject matter of this Agreement, but it is the intention of each of the Parties, through and in accordance with this Agreement and with the advice of counsel, to fully, finally and forever settle and release any and all Claims directly related to or directly arising from the claims and allegations that were the subject of the Complaint in the Action. The releases of the Claims provided for under this Agreement shall be, and are to remain in effect as, full and complete releases of any and all Claims directly related to or directly arising from the claims and allegations that were the subject of the Complaint in the Action notwithstanding the discovery of any additional claims or facts relating to such releases prior to January 1, 2025. Nothing herein shall be construed as a waiver of any Party's rights to bring claims against another Party under the constitutional and statutory provisions upon which the claims in the Action were brought that are not directly related to or directly arising from the claims and allegations that were the subject of the Complaint. Moreover, the Parties expressly agree that nothing herein shall be construed as a waiver of any Party's rights to bring claims against another Party accruing on or after January 1, 2025, regardless of whether those claims in any way relate to or arise from the claims and allegations that were the subject of the Complaint.

7. **Notices.** Any notices required or permitted to be given under this Agreement, or by law, shall be provided via electronic mail with confirmation of receipt documented, and overnight delivery, e.g., Federal Express, with confirmation of receipt.

Notification to PHTF shall be made to:

David I. Horowitz, P.C.
Zachary W. Byer
William L. Smith
Kirkland & Ellis LLP

555 South Flower Street, Suite 3700
Los Angeles, CA 90071
david.horowitz@kirkland.com
zachary.byer@kirkland.com
william.smith@kirkland.com

Notifications to the County shall be made to:

Rebecca S. Leeds, Senior Deputy County Counsel
333 West Santa Ana Boulevard, Suite 407
Santa Ana, CA 92701-1379
rebecca.leeds@coco.ocgov.com

8. **Entire Agreement/Modifications.** This Agreement contains the entire agreement and understanding between the Parties and supersedes any and all prior agreements, arrangements or understandings of any kind or nature between the Parties with regard to the subject matters hereof. The Agreement may not be amended or modified except by written agreement signed by all Parties.

9. **Attorneys' Fees and Costs for Action.** Except as stated in Paragraph 4, above, the Parties shall each be responsible for payment of their own fees and costs incurred in connection with the Action, including for the negotiation, drafting and implementation of this Agreement.

10. **Attorneys' Fees and Costs for Enforcement of Agreement.** In the event any Party to this Agreement brings an action to enforce or interpret any provision of this Agreement, or is required to defend any action or proceeding the defense to which is based upon any provision of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

11. **Mutual Drafting/Titles.** The Parties and signatories hereto, and each of them, agree and acknowledge that the terms and language of this Agreement have been jointly drafted by all Parties and that the provisions of this Agreement are to be construed without regard to which Party or its counsel may have drafted the same. Headings and titles are used throughout this Agreement solely for the convenience of the Parties and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

12. **Counterparts.** The Agreement may be signed in counterparts and faxed, or email signatures shall be considered the same as original signatures.

13. **Warranty of Authority.** Each signatory to the Agreement warrants that he/she is duly authorized by the Party he/she represents, to sign the Agreement on that Party's behalf.

The undersigned agree to the terms of this Agreement:

County of Orange and Orange County Board of Supervisors

Dated: 1/04/2021, 2020

By: Leon Page

Title: County Counsel, County of Orange

People's Homeless Task Force

Dated: 12/30, 2020

By: [Signature]

Title: SECRETARY

Approved as to Form:

Zachary W. Byer 12/30/2020
Zachary W. Byer
Kirkland & Ellis LLP
Attorney for People's Homeless Task Force

Approved as to Form:

Rebecca S. Leeds 1/4/21
Rebecca S. Leeds, Senior Deputy County Counsel
Attorney for County of Orange and Orange
County Board of Supervisors

EXHIBIT A



ORANGE COUNTY BOARD OF SUPERVISORS SPEAKER REQUEST FORM

Date: _____

Agenda Item No: _____ Non-Agenda Public Comments: _____

Name: _____ Organization: _____
(Optional – Alias/Pseudonym May Be Used) (Optional)

Disclosure of the information below is optional but would enable the Supervisors or County Staff to reach you, if necessary.

Address: _____ City/St/Zip: _____
(Optional) (Optional)

Phone Number: _____ E-Mail Address: _____
(Optional) (Optional)

Updated 1/12/21

The Orange County Board of Supervisors welcomes your comments.

- Completed speaker request form must be deposited prior to the Board's consideration of the Consent Calendar, the Clerk's reading of the agenda item, the opening of the public hearing, or prior to the start of the public comments portion of the meeting.
- Member of the public may address the Board on up to three occasions, with three minutes allotted to the speaker per occasion.
- When you are called to speak, please step up to the podium. It is requested that you clearly state your name and city of residence for the record. You may provide a pseudonym or alias instead of your real name.
- Please note the light on the podium. The colored lights on the podium indicate:
 - **Green** – Your time has begun; you are limited to three (3) minutes (unless different time limits are set by the Chair).
 - **Yellow** – You have 1 minute to summarize your comments.
 - **Red** – Your time is up.
- Please address your comments to the Board. However, you may comment on, question, or criticize the actions of the Board as a whole, as well as those of individual members of the Board. See Board of Supervisors Rules of Procedure, Rule 46.
- Keep your comments brief, to the point, and do not repeat prior testimony so all persons who wish to speak have an opportunity to do so.
- Power Point and video presentations must be arranged in advance of the meeting by contacting the Clerk of the Board at 714-834-2206.

EXHIBIT B

Addressing the Board

The Orange County Board of Supervisors welcomes your comments.

To share your comments at a Board of Supervisors meeting, follow the steps below:

1. Check the calendar of Board of Supervisors meetings [here](#).
2. Get directions to the Hall of Administration [here](#), where Board of Supervisors meetings are held.
3. Park in one of the available lots in the Orange County Civic Center area, posted [here](#).



4. Enter the Hall of Administration building and proceed to the Board Hearing Room on the first floor.
 - You will go through a security screening that includes a metal detector.
 - You will need to dispose of any liquids before entering the Board Hearing Room.

5. Take a speaker request form located by the agendas in the Board Hearing Room, and fill it out. You may use an alias or pseudonym when filling out the form.
6. Deposit your completed form in the box adjacent to the podium prior to the beginning of the Consent Calendar, the reading of the individual agenda items, the opening of the public hearing and/or the beginning of Public Comments.
7. Each member of the public may address the Board on up to three occasions during each regular or special meeting. Three minutes are allowed per occasion, unless otherwise indicated by the Clerk.
8. When you are called to speak, please step up to the podium. Please clearly state your name and city of residence for the record. An alias or pseudonym may be used.
9. Please note the light on the podium. The colored lights on the podium indicate:
 - Green - Your time has begun; you are limited to three minutes (unless different time limits are set by the Chair).
 - Yellow - You have one minute to summarize your comments.
 - Red - Your time is up.
10. Please address your comments to the Board. However, you may comment on, question, or criticize the actions of the Board as a whole, as well as those of individual members of the Board. See Board of Supervisors Rules of Procedure, Rule 46.
11. Keep your comments brief, to the point, and do not repeat prior testimony so all persons who wish to speak have an opportunity to do so.
12. If you have documents for the Board, please bring 10 copies and hand them to the Clerk of the Board staff when you approach the podium. Power Point and video presentations must be arranged in advance of the meeting by contacting the Clerk of the Board at 714-834-2206.
13. If you have special needs, the Clerk of the Board can assist you. If you have questions or to make requests for accommodation, please call the Board Services Division 72 hours prior to the meeting at 714-834-2206.

EXHIBIT C



WELCOME TO TODAY'S MEETING

**Orange County
Board of Supervisors**



GENERAL INFORMATION

- **Please turn off or silence your mobile phone.**
- **Signs, posters, banners or other hazardous objects that actually disrupt the meeting shall be prohibited in the Board Room.**
- **Any large object/container that may be deemed hazardous object which could impair the safety of individuals in the event of an emergency will be prohibited in the Board Room.**



GENERAL INFORMATION

- **Standing in the aisles is not allowed. If needed, additional seating in the Commission Room will be opened.**
- **Please exit the Boardroom by the same side door where you entered. All other doors are emergency exits and have alarms.**
- **Please see the Clerk of the Board or the Deputy Clerk, seated next to the podium, if you have any questions or need assistance.**



BOARD AGENDA

- **Copies of today's agenda and a listing of any changes to the agenda are available on both side walls and at the back of the room.**
- **The agenda provides brief descriptions of all items.**
- **Agenda staff reports & supporting documents can be viewed in the office of the Clerk of the Board, Hall of Administration, 4th Floor, Room 465, and are available online at www.ocgov.com/gov/bos/agenda.**
- **The Chair can change the order of items on the agenda.**



CONSENT CALENDAR

- **Matters on the Consent Calendar are routine and will all be approved by one motion.**
- **A Board member may ask that a specific agenda item be “pulled” from the Consent Calendar in order to be heard for separate action.**
- **No action may be taken by the Board on off-agenda items unless authorized by law.**



IF YOU WISH TO SPEAK

- **Complete a Speaker Request Form and deposit it in the box to the left of the podium. Blank forms are located with the agendas on both sides and the rear of the room.**
- **We request that you provide your name (or alias/pseudonym) on your Speaker Request Form as it facilitates calling speakers to the podium.**
- **Speaker Request Forms must be deposited prior to the Board's consideration of the Consent Calendar, the Clerk's reading of the agenda item, the opening of the public hearing, or prior to the start of the public comments portion of the meeting.**



IF YOU WISH TO SPEAK

On Speaker Request Form:

- **Check 'Public Comments' to address the Board of Supervisors on any matter that is within the subject matter jurisdiction of the Board.**
- **Check 'Public Hearing Item No.' and identify the item (by agenda item) to address the Board on a Public Hearing item.**



TIME LIMITS

- **Member of the public may address the Board on up to three occasions, with three minutes allotted to the speaker per occasion.**
- **The Chair retains the authority, in his or her discretion, to further reduce time allotted for each individual speaker if the number of persons desiring to speak would prevent the Board from accomplishing its business in a reasonably efficient manner.**
- **Please step up to the podium when you are called to speak and state your name and city of residence. You may provide a pseudonym or alias instead of your real name. Speak clearly into the microphone and watch the timer so you know how much time you have remaining.**



TIME LIMITS

- **The timer on the podium will indicate how much time you have to speak.**
- **A 'green' light will come on when you come to the podium.**
 - **Green light indicates your time has begun.**
 - **Yellow indicates you have one (1) minute to summarize your comments.**
 - **Red light means your time is up.**



WHEN YOU ARE CALLED TO SPEAK

- **No action may be taken by the Board on off-agenda items unless authorized by law.**
- **Please address your comments to the Board. However, you may comment on, question, or criticize the actions of the Board as a whole, as well as those of individual members of the Board. See Board of Supervisors Rules of Procedure, Rule 46.**
- **If you have any documents to be distributed to the Board, please hand them to the Deputy Clerk sitting next to the podium at the time you are called to speak.**



WHEN YOU ARE CALLED TO SPEAK

- **Please be courteous to all attending and speaking at today's meeting.**
- **See the Clerk of the Board or the Deputy Clerk, seated next to the podium, if you have any questions or need assistance.**

Thank you for attending today's meeting.

EXHIBIT D

Rule 46 Addressing the Board

At the appropriate time, the Chair or the Clerk will call the names of members of the public desiring to address the Board. In order to facilitate the orderly conduct of the meeting, the speaker, after approaching the lectern, is requested to announce his or her name and city of residence for the record.

All remarks and questions shall be addressed to the Board. However, nothing herein shall preclude a member of the public from commenting on, questioning, or criticizing the policies, procedures, programs, or services of the County, the acts or omissions of the Board, or the positions, statements, votes, actions or omissions of individual members of the Board. However, each person who addresses the Board shall refrain from making personal, impertinent, slanderous or profane remarks to any member of the Board, staff or the general public. Any person who makes such remarks, or who utters loud, threatening, personal, or abusive language, or who engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Board meeting shall, at the discretion of the Chair, or a majority of the members, be ruled “out of order” and directed to end his or her remarks and be seated. If such conduct thereafter continues so as to disrupt the orderly conduct of the public’s business, the Chair shall order the person removed from the meeting room. Aggravated cases may be prosecuted on appropriate complaint signed by the Chair, a member of the Board or any other County representative. It is the policy of the Board to encourage free speech at its meetings in accordance with these rules. No sanction will issue under this rule based on the content of a person’s speech; rather, a speaker may be sanctioned as described herein only if a speaker’s conduct actually disrupts the orderly conduct of the meeting or interferes with the Board’s ability to accomplish its business.

For purposes of this Rule, “disruption” of a Board meeting may include, but is not limited to, speaking beyond the time limits set by these Rules or the Chair, by being unduly

repetitious, by engaging in an extended discussion of irrelevancies, by violating the requirements of Rule 44, or by failing to yield to the Chair.