

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between the EL TORO REUSE PLANNING AUTHORITY and RICHARD DIXON, as Chairperson of the El Toro Reuse Planning Authority and as an individual taxpayer of Orange County (collectively, "ETRPA"), the BOARD OF SUPERVISORS FOR THE COUNTY OF ORANGE and the COUNTY OF ORANGE (collectively, "the County") and MICHAEL S. GATZKE and GATZKE, DILLON & BALLANCE (collectively, "Gatzke") on January 5, 2001 (the "Effective Date"). The parties agree to the following terms and conditions:

### WHEREAS:

A. On October 7, 1998, ETRPA filed a complaint entitled El Toro Reuse Planning Authority et al. v. Board of Supervisors for the County of Orange et al., Orange County Superior Court No. 80-04-33 ("the Complaint"), against the County in which Gatzke was named as a Defendant, Respondent and Real Party in Interest ("the Litigation");

B. The Complaint alleges that the County violated Government Code Section 25203 by failing to obtain a required two-thirds vote of all of the members of the Board of Supervisors before hiring Gatzke to represent the County in three cases identified therein;

C. Both the County and Gatzke deny the material factual and legal allegations contained in the Complaint and maintain that the County's hiring of Gatzke was in compliance with all requirements of law; and

D. Each party wishes to avoid the costs of further litigation, and desires and intends to effect a final settlement of all claims brought in the Litigation.

### NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. This Agreement resolves claims which are denied and disputed. Nothing contained in this Agreement is intended to constitute an admission of liability on the part of any party, nor is any provision of this Agreement intended to constitute an admission that any claim of any party has or lacks merit.

2. The County shall not authorize Gatzke to represent the County in any new litigation matter, without a two-thirds vote of all the members of the Board of Supervisors authorizing that representation for said litigation, unless the Legislature of the State of California, after the effective date of this Agreement, adopts legislation that has the effect of repealing, modifying, or qualifying California Government Code Section 25203, and, in any such case, only on full compliance with any such legislative

enactment, or unless an appellate court construes Section 25203 as requiring less than such a vote. For purposes of this Agreement, “new litigation matter” is defined as any litigation in which Gatzke is not counsel of record for the County or any action in which the complaint is first filed after the Effective Date of this Agreement. For purposes of this Agreement, “new litigation matter” does not include a future appeal from an existing litigation matter in which Gatzke is currently counsel of record for the County. This limitation relates only to litigation matters, and does not constrain or relate to matters, activities or representation other than as counsel of record for the County.

3. Without admitting any liability, and in the interest of bringing this matter to a close, Gatzke’s liability insurer or Gatzke shall pay to ETRPA within ten days after the signature of this Agreement by the parties ETRPA’s taxable costs incurred in the Litigation.

4. ETRPA reserves the right to make a motion against the County to the Orange County Superior Court seeking to recover ETRPA’s attorney’s fees and costs incurred in the Litigation, with the exception of the taxable costs paid pursuant to Paragraph 3. Nothing in this Agreement shall be construed as barring such a motion by ETRPA, and nothing in this Agreement shall be construed as an admission or concession by the County as to any legal or factual issue related to such a motion or a waiver of any defenses the County may have to such motion. By entering into this Agreement, it is the intention of the parties to effectuate a good faith settlement of all issues in the Litigation, with the exception of ETRPA’s claim for an award of attorney’s fees against the County, upon which the parties have not reached agreement. If the court grants any such motion, any resulting obligation to pay such fees and costs shall be an obligation only of the County, and shall not directly or indirectly become an obligation of Gatzke.

5. A joint press release will be released by the parties in the form attached hereto as Exhibit A, announcing the settlement of the Litigation.

6. Except as specified in Paragraph 3 of this Agreement, and except as may be decided by the Court pursuant to a motion brought by ETRPA pursuant to Paragraph 4, each party shall bear its own costs, expenses and attorneys’ fees arising out of or connected with the Litigation.

7. Except with respect to the obligations of Gatzke and the County set forth in this Agreement, ETRPA waives and releases any and all claims, demands, liens, causes of action and/or rights to institute any form of legal action against Gatzke or the County, or any of their officials, officers, agents, employees, insurers and attorneys, with regard to the issues raised in the Litigation.

8. Except with respect to the obligations of ETRPA set forth in this Agreement, the County waives and releases any and all claims, demands, liens, causes of action and/or rights to institute any form of legal action against ETRPA, and any of its

officials, officers, agents, employees, insurers and attorneys, with regard to the issues raised in the Litigation.

9. Except with respect to the obligations of ETRPA set forth in this Agreement, Gatzke waives and releases any and all claims, demands, liens, causes of action and/or rights to institute any form of legal action against ETRPA, its members, affiliates, and any of their officials, officers, agents, employees, insurers and attorneys, with regard to the issues raised in the Litigation.

10. The terms of this Agreement shall be governed by the laws of the State of California.

11. This Agreement constitute the whole and only existing and binding agreement between the parties hereto on the subject matter hereof, superseding any prior understandings, whether written or oral. Other than the provisions expressly stated herein, there are no warranties, promises or representations of any kind, express or implied, upon which either party has relied in entering into this Agreement, or as to the future relations or dealings of the parties.

12. This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. Each party has been advised and represented by counsel in connection with the negotiation and preparation of this Agreement, and each shall be deemed its author for purposes of construction of it. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

14. Upon signature of this Agreement by the County and Gatzke, ETRPA shall dismiss the Litigation with prejudice and provide conformed and "filed" stamped copies of the dismissal to the County and Gatzke.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the dates below.

Dated: \_\_\_\_\_

RICHARD C. JACOBS  
ALAN W. SPARER  
HOWARD, RICE, NEMEROVSKI, CANADY,  
FALK & RABKIN  
A Professional Corporation

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

RICHARD C. JACOBS

Attorneys for Petitioners and Plaintiffs EL TORO  
REUSE PLANNING AUTHORITY and  
RICHARD DIXON

Dated: \_\_\_\_\_

LAURENCE M. WATSON, COUNTY COUNSEL  
DONALD H. RUBIN, DEPUTY

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

DONALD H. RUBIN

Attorneys for Respondents and Defendants BOARD  
OF SUPERVISORS FOR THE COUNTY OF  
ORANGE and COUNTY OF ORANGE

Dated: \_\_\_\_\_

JAMES P. COLLINS  
DOUGLAS A. GREER  
COTKIN, COLLINS & GINSBURG

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

DOUGLAS A. GREER

Attorneys for Respondents, Defendants and Real  
Parties In Interest MICHAEL S. GATZKE and  
GATZKE, DILLON & BALLANCE

Dated: \_\_\_\_\_

MICHAEL SCOTT GATZKE  
GATZKE, DILLON & BALLANCE

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

MICHAEL SCOTT GATZKE

Attorneys for Respondents, Defendants and Real  
Parties In Interest MICHAEL S. GATZKE and  
GATZKE, DILLON & BALLANCE

## **EXHIBIT A**

The El Toro Reuse Planning Authority (ETRPA), the County of Orange, and the law firm of Gatzke, Dillon & Ballance today announced the settlement of litigation brought by ETRPA involving the County's retention of the Gatzke law firm in certain litigation.

A copy of the Settlement Agreement is attached.

WD 112200/F-1170104/W6/865298/v1