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February 13, 2018

The Honorable Chief Justice Tani Gorre Cantil-Sakauye
and the Associate Supreme Court Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: City of San Diego's Amicus Curiae Letter in Support of Petition for Review of
City of Grass Valley et al v. Cohen
Supreme Court Case No. S246191
Third Appellate District Case No. C078981

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The City of San Diego ("San Diego") respectfully submits this amicus curiae letter in support of the petition for review ("Petition") filed by the City of Grass Valley ("Grass Valley") in the above-referenced case. San Diego urges this Honorable Court to grant the Petition in order to resolve issues of statewide importance implicated by the decision of the Third Appellate District ("Appellate Decision"). Consistent with California Rules of Court, Rule 8.500, this letter explains how San Diego has an interest in the outcome of this litigation and how this Honorable Court's review of the Appellate Decision is necessary to settle important legal issues.

I. SAN DIEGO HAS AN INTEREST IN THE OUTCOME OF THIS LITIGATION

Like Grass Valley, San Diego is a charter city. San Diego's voters approved the current local charter in 1931, together with various subsequent amendments. San Diego became a charter city, and has continued its long-standing status as a charter city, to exercise a meaningful level of independence from the State of California ("State") in handling municipal affairs and to provide adequately for the health, safety, and welfare of local citizens. San Diego also serves as the successor agency to the former Redevelopment Agency of the City of San Diego.

The Appellate Decision potentially threatens the independence and constitutional protections enjoyed by San Diego and hundreds of other cities in California, particularly charter cities, in two key respects. First, the Appellate Decision finds that a city within the State is a political subdivision of the State and is not empowered under the Contracts Clause of the Federal and State Constitutions to challenge any State action. Second, the Appellate Decision finds that Proposition 22, which added article XIII, section 24, subdivision (b) and article XIII, section 25.5, subdivision (a)(7) to the State Constitution, allows the State Legislature to

retroactively strip cities of title to assets lawfully received from then-operational redevelopment agencies. If not overturned or modified, the Appellate Decision could undermine the independence and constitutional protections afforded to San Diego under California law.

San Diego does not have any pending disputes with the State Department of Finance regarding the invalidation of city/agency contracts or the claw-back of fund/asset transfers. However, San Diego is very concerned that the Appellate Decision could have broader, adverse implications for cities in California that reach well beyond the context of resolving a post-redevelopment monetary dispute between Grass Valley and the State. For example, if left intact, the Appellate Decision could diminish San Diego's future ability to challenge any State action that seeks to either eviscerate contracts lawfully entered into by San Diego or confiscate San Diego's tax revenues and divert them to a State (i.e., non-local) purpose. The Appellate Decision could also frustrate the intent of local voters who have chosen to operate as a charter city and enjoy the "home rule" benefit of plenary power over municipal affairs.

II. REVIEW OF THE APPELLATE DECISION IS NECESSARY TO SETTLE IMPORTANT LEGAL ISSUES

The Petition raises two main legal issues of statewide importance, and on that basis, this Honorable Court should review the Appellate Decision.

The first legal issue is whether a city is permitted to claim that a State action violates the Contracts Clause of the Federal and State Constitutions. The State Constitution distinguishes between statutorily-created counties and voter-formed cities. Cal. Const., art. XI, §§ 1-2. Unlike counties, "[c]ities . . . are distinct individual entities, and are not connected political subdivisions of the state." *Otis v. City of Los Angeles* (1942) 52 Cal. App. 2d 605, 612. Charter cities are intended to enjoy heightened independence from the State and plenary power over municipal affairs. See Cal. Const., art. XI, § 5. The Appellate Decision attaches no significance to the important distinction between counties and cities, but instead relies on dicta in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231, 255 ("*Matosantos*"), to conclude that California courts lack authority to hear a constitutional Contracts Clause claim asserted by a city against the State. Review of the Appellate Decision is necessary to clarify the intended scope of the *Matosantos* dicta and other case law, such as *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal. 3d 1, 8 – not in the already-resolved context of the State Legislature's ability to dissolve redevelopment agencies, but in the context of a city's ability to raise Contracts Clause claims against the State.

The second legal issue is whether Proposition 22 prevents the State Legislature from retroactively stripping cities of title to assets lawfully received from then-operational redevelopment agencies. Passed by an overwhelming majority of voters in 2010, Proposition 22 restrains the State Legislature's ability to require a redevelopment agency to divert redevelopment tax increment revenue for the State's benefit and more generally restrains the State Legislature's ability to require any local agency to divert local tax revenue for the State's benefit. Cal. Const., art. XIII, § 24, subd. (b); art. XIII, § 25.5, subd. (a)(7). Charter cities have the power to impose taxes and to use local tax revenues for local purposes without the threat of seizure by the State, except in limited circumstances. *Johnson v. Bradley* (1992) 4 Cal. 4th 389,

399; *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal. App. 3d 929, 944-945; *West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal. 2d 516, 524. If not overturned or modified, the Appellate Decision could erode not only established case law safeguarding local tax revenue against unwarranted State confiscation, but also broad constitutional protections intended by California voters in passing Proposition 22. In sum, review of the Appellate Decision is necessary to clarify the intended scope of Proposition 22.

For the reasons set forth above and in the Petition, San Diego respectfully urges this Honorable Court to grant review of the Appellate Decision.

Sincerely yours,

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By



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