

SETTLEMENT AGREEMENT
Authorizing
CERTAIN REAL AND PERSONAL PROPERTY EXCHANGES
By and Among
CITY OF ALAMEDA
HOUSING AUTHORITY OF THE CITY OF ALAMEDA
And
ALAMEDA UNIFIED SCHOOL DISTRICT

This Settlement Agreement (“Agreement”) is entered into as of March __, 2014 (“Effective Date”) by and among the City of Alameda (“City”), the Housing Authority of the City of Alameda (“Authority”) and the Alameda Unified School District (“District”). The City, the Authority and the District may be referred to herein collectively as the “Parties.”

Recitals

- I. The Parties enter into this Agreement to settle certain real and personal property disputes that arose from implementation of the following two separate agreements :
 - i. Agreement Between Alameda Unified School District and the City of Alameda dated March 28, 2000, relating to closure of the Alameda Naval Air Station and Fleet Industrial Supply Center (the “Mastick Agreement”); and
 - ii. Agreement Between the Community Improvement Commission of the City of Alameda and the Alameda Unified School District Pursuant to Health and Safety Code Section 33401 dated November 12, 1991, relating to redevelopment tax increment pass-through payments (the “Pass-Through Agreement”).

- II. The District has solicited financial support from the City to enable the District to renovate the Encinal High School swimming pool, which the City utilizes in connection with its Recreation and Parks Department programs. The City is willing to provide certain financial assistance for that renovation as part of this Agreement. As a result of the transactions set forth in this Agreement, the District will have the funds necessary to construct the Encinal High School pool renovations, which the District intends to begin as soon as practicable.

Mastick Agreement:

- III. The City and District entered in the Mastick Agreement to, among other matters, accomplish four key transactions:
 - i. Provide the District real property in order to meet certain public education facilities needs in connection with the United States Department of the Navy's conveyance to the City of property formerly operated as the Fleet Industrial Supply Center ("FISC") resulting from the closure of FISC;
 - ii. Provide the District real property in order to meet certain public education facilities needs in connection with the United States Department of the Navy's conveyance to the City of property formerly operated as the Naval Air Station Alameda ("NAS Alameda") resulting from closure of NAS;
 - iii. Resolve claims relating to conveyance of real property to the District under a public benefit conveyance at NAS Alameda; and
 - iv. Enable the District's conveyance of the former Mastick Elementary School site to the City and the City's conveyance of two (2) real property parcels to the District ("Tidelands Parcels").
- IV. The transfer described in Recital III (i) occurred to the Parties' satisfaction and, as a result of the successful implementation of related provisions in the Mastick Agreement; the District now owns and operates Ruby Bridges Elementary School.
- V. A part of the real property identified for conveyance to the District described in Recital III (ii) and comprising approximately 12 acres of land ("12 Acre Site") was conveyed to the City by the US Navy on June 4, 2013. The remainder of the 12 Acre Site is anticipated to be conveyed to the City in a later phase due to the Navy's continuing obligation to complete certain environmental clean-up activities. The City is to convey the property to the District within a reasonable period of time of the City obtaining title.
- VI. The City accepted conveyance from the District of the Mastick Elementary School site and converted the site to the Mastick Senior Center.
- VII. As a result of significant legal issues relating to title to the Tidelands Parcel, full consideration to the District for its conveyance of the Mastick Elementary School site has not been fulfilled. The City has completed significant environmental and planning analyses and has identified real property that more properly meets the District's needs for public education facilities. The City intends to substitute conveyance of the Tideland Parcels and the pending conveyance of the 12 acre site as contemplated by the Mastick Agreement with conveyance of

approximately twenty (20) acres of real property located at Alameda Point (“Alameda Point Property”).

- VIII. The Parties now seek to resolve the outstanding Mastick Agreement issues and have agreed to a mutually acceptable substitute consideration as set forth in this Agreement.

Pass-Through Agreement

- IX. The City and Authority, together as successors to the Community Improvement Commission of the City of Alameda (“Redevelopment Agency”), and the District are parties to the Pass-Through Agreement to mitigate the financial impact to the District resulting from the diversion of certain real property tax revenues (commonly known as “Tax Increment Revenues”) to the City’s Redevelopment Agency.
- X. The California Legislature passed, and Governor Jerry Brown signed, ABx1 26 and AB 1484 which effectively ended redevelopment activities in California and set in place a complex process for dissolving redevelopment agencies and terminating Tax Increment Revenues.
- XI. As a result of ABx1 26 and AB 1484, continued implementation of the Pass-Through Agreement is uncertain and within the control of the State of California Department of Finance (“DOF”) and County of Alameda Auditor-Controller.
- XII. The DOF recently determined that an account accumulated pursuant to the Pass-Through Agreement totaling approximately \$4.6 Million (the “Housing Asset Fund”) held by the Authority (as the successor housing agency) in trust for the District is a “housing asset” as defined in AB1484. As such, those housing asset funds are restricted and may only be used to provide affordable housing for the residents of the City of Alameda.
- XIII. The Authority desires to utilize the Housing Asset Fund as expeditiously as possible to avoid any future attempts by the State of California to take those funds for other State purposes. To facilitate use of the Housing Asset Fund for eligible projects, the City, District and Authority intend to enter into the transactions set forth in this Agreement which will result in the Authority being able to provide additional affordable housing for the residents of the City of Alameda.
- XIV. The District maintains that other future revenues identified in the Pass-Through Agreement should continue to flow to the District. Nothing in this Agreement is intended to waive the District’s right, title, or interest in the payments under the Pass-Through Agreement that occur after June 30, 2012

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements set forth below, the adequacy of which is mutually acknowledged by the parties, the parties agree as follows.

Agreement

1. Satisfaction of Obligations and Termination of Mastick Agreement. Upon recordation of the deeds as described in Section 3 below, the City and District acknowledge and agree that all obligations of each party to the other pursuant to the Mastick Agreement shall be satisfied and complete and the Mastick Agreement shall terminate and be of no further force and effect.
2. District Assignment to Authority of Housing Asset Fund for Affordable Housing Purposes. Within twenty (20) business days of the Effective Date, the District shall execute and deliver to the Authority an assignment of the District's rights to the Housing Asset Fund and release all claims relating thereto to all funds collected on or before June 30, 2012 ("Assignment Agreement"). The District shall authorize the Authority to use the Housing Asset Fund to provide affordable housing for the residents of Alameda.
3. Property Deeds, Exchanges and Sales.
 - 3.1. City Conveys Alameda Point Property to Authority. Within sixty (60) business days of the Effective Date, the City shall execute and deposit into Escrow (described in Section 7 below), quitclaim deeds conveying approximately twenty (20) acres of real property located at Alameda Point ("Alameda Point Property") to the Authority. A map generally depicting the location of the Alameda Point Property is attached hereto as Exhibit "A".
 - 3.2. Authority Conveys Alameda Point Property to District. The Authority agrees to convey the Alameda Point Property and other consideration to the District. In exchange for the Alameda Point Property, the District shall provide the Assignment to the Authority for the Housing Asset Fund (which is comprised of tax increment funds collected on or before June 30, 2012 plus accrued interest which interest continues to accrue) and enter into a purchase and sale agreement with the Authority for the real property located at 2437 Eagle Street in Alameda, CA, and commonly known as the Island High School Site.
 - 3.3. Exchange and Purchase and Sale Agreement Relating to Island High School Site.
 - 3.3.1. The District owns the Island High School Site in fee simple. The District intends to exchange the Island High School Site with the Authority for the Alameda point Property and \$1,200,000. The Authority intends to use the Island High School Site for future

development of affordable housing. The District and Authority shall enter into a separate Exchange and Purchase and Sale Agreement for consummation of this exchange, purchase and sale.

3.3.2. It is understood and agreed among the Parties that the Authority is not in a position to acquire the Island High School Site without access to the Housing Asset Fund. It is further understood and agreed among the Parties that the District considers the exchange and sale of the Island High School Site to the Authority to be a key component of the consideration it is receiving pursuant to this Agreement.

3.3.3. The District and the Authority agree that upon recordation of the deed for the Alameda Point Property and execution of the Assignment Agreement between the District and Authority, the District and the Authority shall be contractually obligated to complete the exchange and purchase and sale of the Island High School Site at the value established by the mutually-agreed-upon third party appraiser.

3.4 Condition of Title. The Parties acknowledge that the City obtained title to the Alameda Point Property from the US Navy on June 4, 2013, as part of a military base closure transaction. The City represents and warrants that it has provided or made otherwise available to the District information relating to the environmental and other regulatory conditions of the Alameda Point Property. The District has had the opportunity to conduct due diligence it deemed appropriate to satisfy itself as to the suitability of the Alameda Point Property for its potential future uses and the City makes no representations in that regard. The Parties acknowledge and agree that the Alameda Point Property is being conveyed and accepted "as is". Any development of the Alameda Point Property is subject to the requirements of the Economic Development Conveyance memorandum of Agreement dated June 6, 2000 as amended on July 31, 2001 and January 18, 2012 and as may be amended in the future.

4. District Rescission of Deed From City to District of Tidelands Parcels. Within twenty (20) business days of the Effective Date, the District shall execute and deposit into Escrow, a rescission of deed mutually acceptable to the District and the City rescinding the City's Grant Deed to the Tidelands Parcels which is generally depicted in the map attached as Exhibit "B."

5. Funding of Encinal High School Pool Renovations. Within twenty (20) business days of the Effective Date, the City shall place \$750,000 into an escrow account available for the District to use for costs related to the Encinal High School Pool Renovations project. The City and District shall cooperate with each other to establish the escrow fund and mutually acceptable withdrawal procedures. The

City and the District acknowledge and agree that the combination of this \$750,000 contribution and other cash consideration being received by the District pursuant to this Agreement will support the District in constructing the planned Encinal High School Pool Renovations. It is further understood and agreed between the City and the District that no withdrawal will be made from this escrow fund by the School District until the School District has expended \$1.15 million of School District funds toward the Encinal High School Pool Renovations project.

6. City's Property Management Services for Alameda Point Property.

6.1. The City currently manages property it owns and property it leases through a Lease in Furtherance of Conveyance with the United States government at Alameda Point. Upon the District's acceptance of the Authority's conveyance of the Alameda Point Property the City shall continue managing the District's Alameda Point Property at its current level of service for a period not to exceed ten (10) years from the date of the District's acceptance of the deed from the Authority.

6.2. The City's obligation to provide these services shall terminate earlier than the ten (10) year period for any portion of the Alameda Point Property that the District conveys, exchanges, leases, develops, renovates, or improves.

6.3. In the event that other than minor repairs are needed at the Alameda Point Property, the City will be responsible for advancing needed funds on the condition that the District reimburses the City for any such advancements at a subsequent sale or transfer of the affected property or at commencement of improvements of the affected property by the District for its own account. The City and District will enter into a mutually acceptable Indemnity Agreement whereby the District will provide the City evidence of general liability insurance covering possible incidents at the Alameda Point Property for a maximum amount of \$1 million.

7. Escrow. Within ten (10) business days of the Effective Date, escrow ("Escrow") shall be opened with First American Title Company, Pleasanton, CA ("Escrow Agent") by depositing this Agreement with the Escrow Agent. The Parties shall provide the Escrow Agent with Joint Escrow Instructions as to recordation of documents and delivery of necessary documents and funds to the individual parties. The following documents must be executed for Escrow to close:

- 7.1. Fully executed Assignment Agreement;
- 7.2. Fully executed quitclaim deeds for the Alameda Point Property
- 7.3. Fully executed grant deed for the Island High School site;
- 7.4. Fully executed Indemnity Agreement;

- 7.5. Evidence that \$750,000 has been deposited by the City into an escrow fund mutually acceptable to the City and the District; and
- 7.6. Wire transfer of funds from the Authority to the District in the amount of the purchase price established by the Exchange and Sale Agreement.

The Parties agree to execute, deliver, and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder, or other instruments as may reasonably be required by Escrow Holder, in order to consummate the transaction contemplated by this Agreement.

- 8. Further Cooperation. The Parties agree that each shall cooperate fully with the others to implement this Agreement and shall execute, acknowledge and deliver each to the others any documents as may be reasonably necessary or proper to discharge full performance of this Agreement.
- 9. Notices. Any notices required under this Agreement shall be in writing and may be emailed with written confirmation from the receiver, personally delivered, or sent by certified or registered US mail. Notices confirmed by email shall be deemed received upon the date of written confirmation. Notices personally delivered shall be deemed received on the date delivered. Notices sent by US mail shall be deemed received three (3) calendar days after deposit in the US mail. For any notice to conform to the requirements of this Agreement, it must be addressed as follows:

To the City:

City Manager
City of Alameda
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
Email: jrusso@alamedaca.gov
Phone: 510-747-4700

With a copy to:

City Attorney
City of Alameda
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501
Email: attorney@alamedaca.gov
Phone: 510-747-4750

To the Authority:

Executive Director
Housing Authority
701 Atlantic Avenue
Alameda, CA 94501
Email: mpucci@alamedahsg.org
Phone: 510-747-4320

With a copy to:

Jennifer Bell, Esq.
Goldfarb and Lipman LLP
1300 Clay St., 11th Floor
Oakland, CA 94612
Email: jbelle@goldfarblipman.com
Phone: 510-836-6336 exr.621

To the District:

Superintendent
Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
Email: kvital@alameda.k12.ca.us
Phone: 510-337-7101

With a copy to:

Catherine G. Boskoff, Esq.
Orbach Huff Suarez & Henderson
LLP
One Kaiser Plaza, Ste. 1485
Oakland, CA 94612
Email: cboskoff@ohslegal.com
Phone: 510-379-4092

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to enforce this Agreement shall only be brought and maintained in the County of Alameda Superior Court, State of California. Each party expressly waives its right, under part II, title IV of the California Code of Civil Procedure to cause any such actions or proceedings to be instituted or prosecuted elsewhere.
11. Counterparts. This Agreement may be signed in more than one counterpart with all required signatures taken together constituting one fully executed document.
12. Specific Performance. The Parties do not waive the right of specific performance if permitted by law. The Parties expressly recognize that specific performance shall be available to enforce performance of this Agreement.
13. Waiver. No waiver of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by the Parties of any remedy provided in this Agreement or at law shall not prevent the exercise by that entity of any other remedy provided in this Agreement or at law or in equity.
14. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors. This Agreement may be not assigned by any of the parties. There are no third party beneficiaries.
15. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or the intention of the Parties.
16. Disputes. A dispute which cannot be resolved by the Parties' representatives shall be submitted to non-binding mediation prior to any legal action being initiated. The mediator's fees shall be divided equally between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

CITY OF ALAMEDA

Approved as to Form:

By: _____
John A. Russo
City Manager

By: _____
Janet C. Kern
City Attorney

ALAMEDA HOUSING AUTHORITY

Approved as to Form:

By: _____
Michael T. Pucci
Executive Director

By: _____
Jennifer Bell, Esq.

ALAMEDA UNIFIED SCHOOL DISTRICT

Approved as to Form:

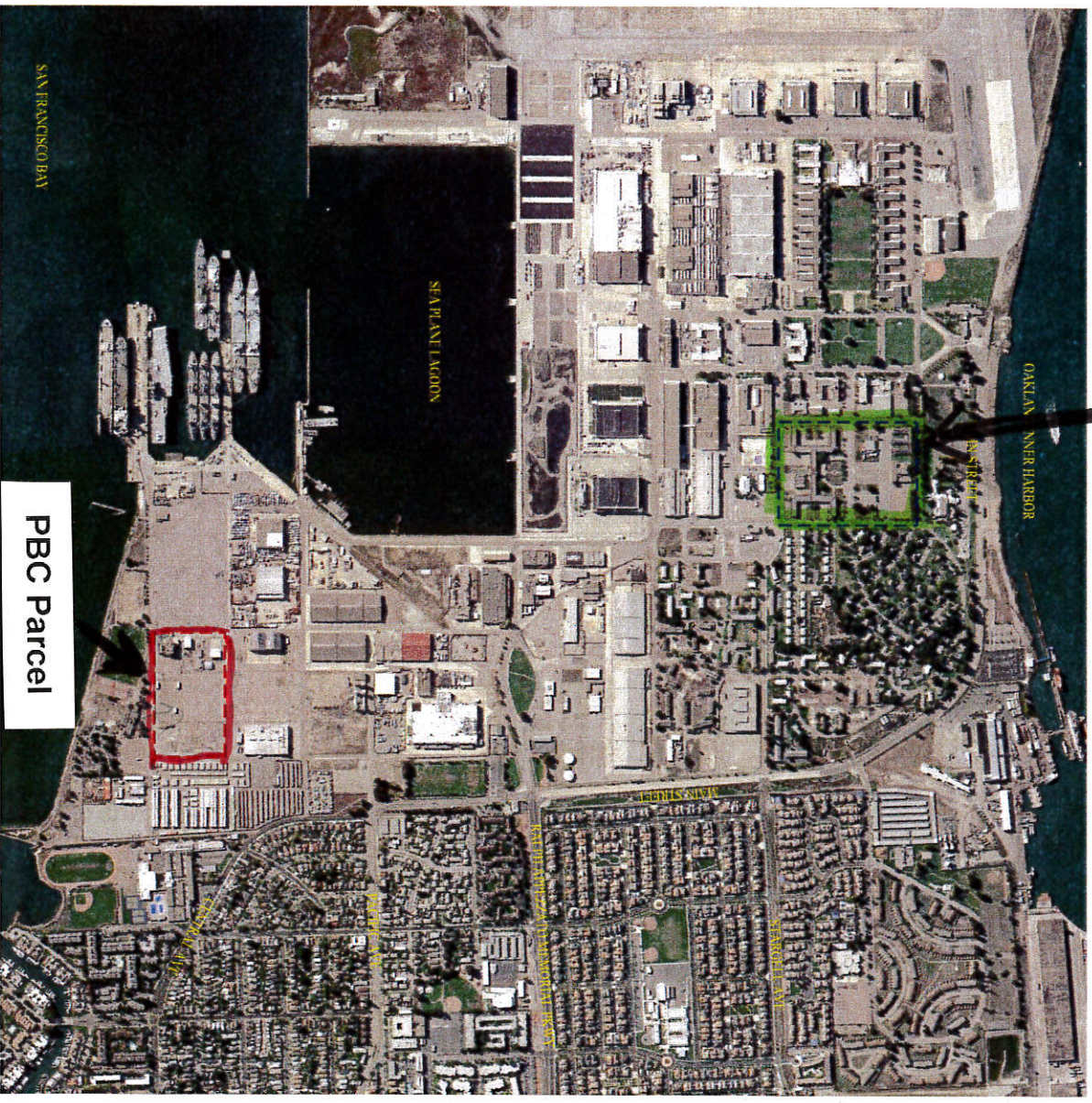
By: _____
Kirsten Vital
Superintendent


By: _____
Catherine G. Boskoff, Esq.


Exhibits:

- A – Map generally depicting the 20-acre Alameda Point Property
- B – Map generally depicting the Tidelands Parcel

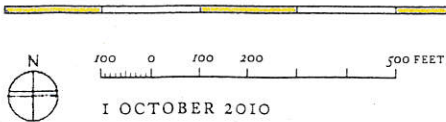
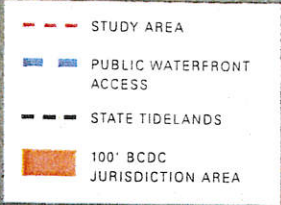
Exchange Property




SCALE: 1" = 400' PHOTO DATE: OCTOBER, 2011


Cartoon, Barbee & Gibson, Inc.
1115 WASHINGTON STREET, SUITE 100
SAN FRANCISCO, CALIFORNIA 94102
TEL: 415.774.1100 FAX: 415.774.1101
WWW.CARTOONBARBEE.COM

ALAMEDA POINT
CITY OF ALAMEDA ALAMEDA COUNTY CALIFORNIA



Site Constraints