

CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO CALIFORNIA EVIDENCE CODE
SECTIONS 1152, ET SEQ.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made by and between the Los Angeles Unified School District (“LAUSD”), on the one hand, and City of Commerce (“City”) on the other hand, a party named in the LAUSD Action referenced in Recital A. All of the foregoing parties to this Agreement may hereinafter collectively be referred to as the “Settling Parties” and individually as “Party.”

RECITALS

A. WHEREAS, on or about March 29, 2007, the LAUSD filed a lawsuit in the Superior Court of Los Angeles County captioned *LAUSD v. County of Los Angeles et al.*, BS 108180 (“the LAUSD Action”), in which that school district, among other things, (i) alleged it received a legally insufficient share of AB 1290 redevelopment pass-through payments, (ii) alleged that amounts it was entitled to, beginning with the relevant limitations period of FY 2003-04 through and continuing after the petition filing, were instead distributed, improperly, to among others, city Real Parties in Interests, and (iii) sought a writ of mandate compelling the County of Los Angeles and various former redevelopment agencies to pay the full amount of redevelopment pass-through payments owed to that district under Health and Safety Code sections 33607.5 and 33607.7 (“Pass-through Payments”);

B. WHEREAS, on or about July 7, 2010, Montebello Unified School District (“MUSD”) filed a lawsuit in the Superior Court of Los Angeles County captioned *MUSD v. County of Los Angeles et al.*, BS 127286 ; and on or about January 1, 2011, the Los Angeles Community College District (“LACCD”) filed a lawsuit in the Superior Court of Los Angeles County captioned *LACCD v. County of Los Angeles et al.*, BS 130308; and on or about June 4, 2012, Long Beach Unified School District (“LBUSD”) filed a lawsuit in the Superior Court of Los Angeles County captioned *LBUSD v. County of Los Angeles et al.*, BS 137598, and in each case the respective school district raised allegations and sought writ of mandate relief similar to that in the LAUSD Action;

C. WHEREAS, the lawsuits referenced in the preceding paragraphs and respectively brought by LAUSD, LACCD, MUSD, and LBUSD (collectively the “LEA Petitioners”) all posit the same legal theories as those raised in BS 108180 and all four lawsuits were formally related by the Superior Court (“Related Cases” or the “Litigation”);

D. WHEREAS, evidence was received, a trial took place and judgment issued in the LAUSD Action;

E. WHEREAS, the Court of Appeal reversed the trial court’s rulings, and issued two opinions in favor of appellant LAUSD regarding the proper calculation of redevelopment pass-through payments under Health and Safety Code §§ 33607.5 and 33607.7 (“Pass-through Payments”), which decisions are reported at *LAUSD v. County of Los Angeles* (2010) 181 Cal.App.4th 414 and *LAUSD v. County of Los Angeles* (2013) 217 Cal.App.4th 597 (the “Appellate Opinions”);

F. WHEREAS, the Superior Court has from time-to-time in the Related Cases also issued orders and rulings that were not subject of any appeal and are thus now the law of the case in the Related Cases;

G. WHEREAS, the LEA Petitioners and the County reached agreement regarding the proper methods for the calculation of Pass-through Payments to give effect to the rule of law announced in the Appellate Opinions and to the other orders and rulings of the Superior Court in the Related Cases (the “Calculation Methods”);

H. WHEREAS, the terms of these retrospective Calculation Methods were expressed in ‘EXHIBIT A TO SETTLEMENT AGREEMENT’ and ‘EXHIBIT B TO SETTLEMENT AGREEMENT’, filed in the Litigation on August 18, 2014, and City did not object to those Exhibits;

I. WHEREAS, the LEA Petitioners and the County thereafter met and conferred at length to determine whether a negotiated compromise could be reached to resolve all the Related Cases;

J. WHEREAS, the County expressed its preference to use its extant property tax computer software and hardware accounting system (the “County System”) to calculate Pass-through Payments in conformity with the Calculation Methods;

K. WHEREAS, the LEA Petitioners agreed to consider the use of the County System, provided that the results generated by that system did not diverge substantially from the results that would obtain if the Calculation Methods were implemented using tax increment calculations outlined either by the California Association of Tax Managers, or by the California Attorney General in Opinion No. 10-101 (the “AGO Method”);

L. WHEREAS, the County proposed the outline of a global compromise that would permit a comprehensive settlement of the Litigation, pursuant to which the County would modify the operation of the County System to calculate prospective Pass-through Payments in accordance with the principles expressed in the AGO Method in exchange for the LEA Petitioners accepting the results generated by the extant County System for the purpose of calculating retrospective Pass-through Payments due in the fiscal years and bi-annual distributions under Part 1.85 of Division 24 of the Health and Safety Code (the “Redevelopment Dissolution Law”) preceding the date of this Settlement Agreement;

M. WHEREAS, in parallel with the negotiation of the settlement terms governing prospective Pass-through Payments, the County generated calculations of the retrospective liabilities to the LEA Petitioners, and the calculations allocating those liabilities among the Respondents and Real Parties in Interest in the Litigation including City (“affected taxing entities”), for review and consideration by the LEA Petitioners;

N. WHEREAS, the LEA Petitioners and County continued to negotiate towards a full settlement of the Litigation to ultimately use a modified County System as part of the calculation of retrospective settlement damages (the “Settlement Damages”);

O. WHEREAS, the LEA Petitioners and County made monetary concessions, nonmonetary accommodations, and compromises in process and procedure, and as to sources and timing of payment to LEA Petitioners of the overall Settlement Damages, as reflected in the terms of their settlement agreement;

P. WHEREAS, the LEA Petitioners, in order to secure a timely settlement of the Litigation, have substantially compromised their claims to full and complete payment of all damages they believe are owed to them;

Q. WHEREAS, in furtherance of this settlement of the Litigation, and in recognition of the good faith efforts made in its negotiation, LAUSD and City, have also agreed to compromise their respective positions regarding the amounts, process, sources, and timing of payment to LAUSD of Settlement Damages, as reflected in the terms of this Settlement Agreement;

R. WHEREAS, the County acknowledged the above described compromises and is willing to help effectuate payment by City of the compromised sums allocated under this Settlement Agreement as further set forth herein;

S. WHEREAS, LAUSD has compromised its ability to obtain the full and fair measure of the retrospective and prospective Pass-through Payments due to it under the law, but is nonetheless willing to enter into this Settlement Agreement in consideration for the agreement by City to effect payment of the sums due pursuant to this Settlement Agreement according to the procedure specified below, and in order to facilitate and expedite a global resolution of the Litigation; and

T. WHEREAS, City acknowledges the above described compromises, without admitting any fault or conceding any arguments or defenses, and the bases for the LEA Petitioners and County's and this settlement, and after negotiations with LAUSD is willing to enter into and pay the sums called for by this Settlement Agreement as further set forth herein;

NOW, THEREFORE, in consideration of the exchange of the mutual promises and covenants contained in this Settlement Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LAUSD and City, by the signatures of their authorized representatives below, hereby agree as follows:

1. The "Effective Date" means the latest date that (i) this Agreement is executed by LAUSD and ratified by its Board of Education, and (ii) this Agreement is executed by City and if necessary ratified by its City Council.

2. To effectuate the compromises described more fully in the Recitals above and in furtherance of the full resolution of the Litigation, the Settling Parties agree that LAUSD shall be paid **\$1,196.35** (the "Settlement Damages Amount") by City, in settlement only of LAUSD's claims (principal, and interest through March 31, 2017) against the City which arise from and are related to the failures of the City and Successor Agency to the City of Commerce Community Development Commission to make Pass-through Payments in any fiscal year covered under the relevant statute of limitations to the LAUSD Action, up to and including fiscal year 2015-16. City acknowledges that LAUSD has claims greater and other than the Settlement Damages Amount, which claims may be the liability of the Successor Agency and other affected taxing entities. City further agrees and understands that the County has made or shall make, in connection with the pass-through distribution due on January 2, 2017, any additional Pass-through Payments due to LAUSD arising from deposits of tax increment into the relevant Redevelopment Property Tax Trust Funds for the months of June, July, and August of 2016, and associated with fiscal year 2015-16, consistent with the County's extant practice of making final, "true up" Pass-through Payments and its extant methods for calculating such Pass-through Payments (i.e., the methods it used to calculate prior distributions of Pass-through Payments due from fiscal year 2015-16).

3. The Settling Parties intend that upon the Effective Date, the terms of this Settlement Agreement regarding Settlement Damages allocated to and payable by City shall supersede in its entirety the terms of the retrospective Calculation Method denominated "EXHIBIT A TO SETTLEMENT AGREEMENT" with respect to retrospective liabilities.

4. The full and final Settlement Damages Amount shall be paid as follows:

A. City shall pay all of its Settlement Damages Amount by issuing a warrant, check, or draft payable to LAUSD, of the entire Settlement Damages Amount within 30 calendar days of the Effective Date. In the event the entire amount is not paid by the thirtieth (30th) day after it is due, simple interest shall be charged and due directly from City on the late payment from the date due, until paid, at the rate of 7% per annum. In the event that interest is due with respect to a late payment, the amount paid thereon will first be credited to unpaid accrued interest, and thereafter to the principal amount owing;

B. If there is a default by City on any payment due to LAUSD under this Settlement Agreement, LAUSD also shall have the right to enforce payment of all amounts not paid, and any accrued interest, by noticed motion filed in the LAUSD Action, under Code of Civil Procedure section 664.6, notwithstanding any dismissal of the LAUSD Action subsequent to the entry of this Settlement Agreement or a final Judgment is entered in the LAUSD Action or that Action is otherwise settled or concluded.

C. LAUSD shall provide City, through its counsel listed below, with the name and address of the person to whom payment is to be sent if payment is to be made by check or draft, or complete and accurate wire instructions if payment is to be made by wire transfer.

5. City acknowledges that County and LEA Petitioners have agreed upon a Direct Payment Process more fully described in the form of Exhibit D which was approved by the Court, and said Process would accommodate under certain circumstances a Respondent/Real Party in Interest's payment of retrospective settlement damages over time in installments. City has deliberately decided instead to pay its Settlement Damages Amount as described in paragraph 4.

6. All amounts paid to LAUSD pursuant to this Settlement Agreement shall be acknowledged and reported as negotiated settlement damages under Code of Civil Procedure section 1095 in all official communications, reports, and accounts.

7. In order to effectuate the compromises described more fully in the Recitals above and in furtherance of the full resolution of the Litigation, the Settling Parties agree that, commencing with the payment of Pass-through liabilities arising from the 2016-17 fiscal year and in all succeeding years, the calculation and distribution of the redevelopment pass-through payments required to be made to all local education agencies in Los Angeles County under Health and Safety Code sections 33607.5 or 33607.7 shall be done in accordance with the AGO Method (for section 33607.5 project areas in so-called Tiers 2 and 3, and for section 33607.7 project areas in so-called Tiers 1, 2 and 3) and otherwise as described more fully in substantially the form of Exhibit C, which is attached to and hereby incorporated by reference into this Settlement Agreement. The terms of Exhibit C, as to the above-referenced Tiers and projects, shall supersede the terms of Exhibit B when the County Auditor-Controller calculates pass-through payments in Adjusted Base Tiers, i.e., tiers in which pass-through payments are calculated by reference to an Adjusted Base Year, beginning in FY 2016-17.

8. City consents to, and will execute if reasonably necessary, the Writ of Mandate Regarding Prospective Relief attached hereto as Exhibit E which was submitted to the Court in order to

effectuate this Settlement Agreement. It is contemplated that upon full performance of this Settlement Agreement the need for a retrospective writ as to the City will be unnecessary.

9. LAUSD and City will each bear their own legal fees and costs in connection with the LAUSD Action.

10. Except for any obligations created by, or breaches of, this Settlement Agreement, LAUSD, for itself, its Board of Education, officers, directors, Board members (past and present), managers, administrators, agents, employees, representatives, attorneys, divisions, departments, beneficiaries, predecessors, successors and assigns, hereby releases and forever discharges City, its past and present governing boards, board members, directors, and each of its affiliates and other related entities, and its respective predecessors, successors and assigns (excluding however the City of Commerce Community Development Commission and the Successor Agency to the City of Commerce Community Development Commission, except as to amounts actually paid to LAUSD pursuant to this Settlement Agreement), and its respective past and present officers, directors, attorneys, agents, employees, representatives, insurers and reinsurers from any and all claims, demands, causes of action, liabilities, damages, obligations, duties, responsibilities, costs, attorneys' fees and expenses of any nature or amount, whether known or unknown, suspected or unsuspected, including claims for breach of contract, breach of the implied covenant of good faith and fair dealing, statutory or regulatory violations, or punitive, exemplary or extra-contractual damages of any type, arising out of, based upon, or relating in any way to the LAUSD Action. This release does not waive, limit, exclude or otherwise hinder LAUSD from recovering funds being held in impound by the County of Los Angeles, including amounts impounded on behalf of City.

11. Except for any obligations created by, or any breaches of, this Settlement Agreement, City, for itself, its officers, directors, agents, employees, parent companies, subsidiaries, affiliates and other related entities, representatives, attorneys, predecessors, successors and assigns, do hereby release, acquit and forever discharge LAUSD, its past and present Board of Education, officers, directors, Board members, managers, administrators, agents, employees, representatives, attorneys, divisions, departments, beneficiaries, predecessors, successors and assigns from any and all claims, demands, causes of action, liabilities, damages, obligations, duties, responsibilities, costs, attorneys' fees and expenses of any nature or amount, whether known or unknown, suspected or unsuspected, including claims for breach of contract, breach of the implied covenant of good faith and fair dealing, statutory or regulatory violations, or punitive, exemplary or extra-contractual damages of any type, arising out of, based upon, or relating in any way to the LAUSD Action.

12. Each Settling Party expressly waives any and all rights and benefits under California Civil Code § 1542, which states:

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.

Each of the Settling Parties acknowledges that it is represented by counsel and has been specifically advised by counsel of the consequences of this waiver. Each of the Settling Parties further acknowledges that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Settlement Agreement, but it is their intention to now fully and finally settle all disputes, known or unknown, that currently exist, in

accordance with and subject to this Settlement Agreement, notwithstanding the discovery or existence of any such additional or different facts.

13. Each of the Settling Parties represent and warrant that as of the Effective Date, they have not assigned, conveyed or otherwise transferred, or purported to assign, convey or transfer, any of the claims, demands, causes of action, rights, or obligations released pursuant to this Settlement Agreement.

14. The Settling Parties intend this Settlement Agreement to be a permanent and binding accord and resolution (except as set forth elsewhere in this Settlement Agreement) of their rights and obligations with respect to the LAUSD Action which arise from and are related to the failures of the City and Successor Agency to the City of Commerce Community Development Commission to make Pass-through Payments in any fiscal year covered under the relevant statute of limitations to the LAUSD Action, up to and including fiscal year 2015-16. This Settlement Agreement will be enforceable at law and admissible as evidence in any future arbitration, judicial or administrative proceedings for purposes of enforcing this Settlement Agreement. The Settling Parties intend that this Settlement Agreement may be enforced through and under the authority of the Superior Court in the pending LAUSD Action, and after a final Judgment is entered in the LAUSD Action, or that action is otherwise settled or concluded, pursuant to California Code of Civil Procedure § 664.6. To effect this right of enforcement, the Settling Parties shall execute and file in the LAUSD Action a Stipulation to Retain Jurisdiction before final Judgment is entered or before the Court approves a final settlement of all claims lodged in that Action.

15. By entering into this Settlement Agreement, the Settling Parties do not intend to make, nor shall they be deemed to have made, any admission of any kind, including but not limited to any admission as to the merits or validity of any claims or defenses or legal arguments in the LAUSD Action. The Settling Parties are entering into this Settlement Agreement solely as a business decision for the purposes of settling certain disputed claims and to avoid the cost and uncertainty of litigation with respect to these disputes. This Settlement Agreement is the product of informed negotiations and compromises of previously stated legal and factual positions conducted under among other things California Evidence Code § 1152. This Settlement Agreement shall not be used in any proceeding to create, prove, or interpret any obligations under, or terms and conditions of, any rule of law at issue in the LAUSD Action.

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

17. This Settlement Agreement may be executed in two or more counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. The Settling Parties agree to enter into any other agreements or execute any other documents necessary to effectuate any provision of this Settlement Agreement.

18. This Settlement Agreement constitutes the Settling Parties' entire agreement and supersedes and replaces all prior written and oral agreements regarding the subject matter of this Settlement Agreement. This Settlement Agreement may not be modified except by a writing executed by the duly authorized representatives of all of the Settling Parties. Each Settling Party acknowledges that no other party or agent or attorney of any other party has made any promise, representation or warranty, express or implied, which is not expressly contained in this Settlement Agreement.

19. This Settlement Agreement reflects the joint drafting efforts of all Settling Parties. If any dispute, disagreement or controversy arises regarding this Settlement Agreement, the Settling Parties shall be considered joint authors, and no provision shall be interpreted against any Settling Party because of authorship. Each Settling Party has been fully informed as to the meaning and intent of this Settlement Agreement and has been advised by independent counsel of its choosing in that regard.

20. Any statements, communications or notices to be provided pursuant to this Settlement Agreement shall be sent by Federal Express or other overnight delivery service, or personal delivery to the attention of the Settling Parties as indicated immediately below, until such time as notice of any change of person to be notified or change of address is forwarded to all Settling Parties:

(A) For LAUSD:

John Walsh
Deputy Chief Financial Officer
Los Angeles Unified School District
333 South Beaudry Avenue, Room 26-208
Los Angeles, CA 90017

With a copy to:

Robert C. Pearman, Esq.
Sanders Roberts LLP
1055 West 7th Street, Suite 3050
Los Angeles, California 90017

(B) For City of Commerce:

City Administrator
CITY OF COMMERCE
2535 Commerce Way
Commerce, California 90040

With a copy to:

John Lam, Esq.
Alvarez-Glasman & Colvin
13181 Crossroads Pkwy. North
Suite 400 - West Tower
City of Industry, CA 91746

21. The individuals signing this Settlement Agreement, and the Settling Parties on whose behalf such individuals are signing, hereby represent and warrant that they are empowered and authorized to sign this Settlement Agreement on behalf of and to bind the Settling Party on whose behalf they have signed this Settlement Agreement. Each Settling Party agrees to defend, indemnify, and hold harmless the other from all loss, damage or cost arising from any breach of the foregoing representation and warranty, including attorneys' fees and costs of prosecuting the action or proceeding to enforce the foregoing representation and warranty.

[SIGNATURE PAGES FOLLOW]

Dated: _____

LOS ANGELES UNIFIED SCHOOL
DISTRICT

By: _____
Name: John Walsh
Title: Deputy Chief Financial Officer

Dated: _____

CITY OF COMMERCE, a municipal corporation

By: _____
Name: Hon. Oralia Rebollo
Title: Mayor

Dated: _____

ATTEST

By: _____
Name: Lena Shumway
Title: City Clerk

APPROVED AS TO FORM:

Dated: _____

SANDERS ROBERTS LLP

Attorneys for LOS ANGELES UNIFIED SCHOOL
DISTRICT

By: _____
Name: Robert C. Pearman, Esq.

Dated: _____

ALVAREZ-GLASMAN & COLVIN

Attorneys for CITY OF COMMERCE

By: _____
Name: John Lam, Esq.