

**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**

THIS AGREEMENT (the "Agreement") is made and entered into this 12 day of November, 1991, by and between the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA (the "CIC") and the ALAMEDA UNIFIED SCHOOL DISTRICT (the "District").

Recitals

A. The City Council of the City of Alameda (the "City Council") adopted the Community Improvement Plan (the "Plan") for the Business and Waterfront Improvement Project (the "Project") pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) by Ordinance No. 2559 on June 18, 1991.

B. The District is a taxing agency with territory located within the boundaries of the Project (the "Project Area").

C. Pursuant to Article XVI, Section 16, of the California Constitution, Section 33670 et seq. of the Health and Safety Code and the Plan, increases in the assessed values of the property within the Project Area above the sum of the assessed values as shown on the 1990-91 assessment roll (the "Base Year Roll") will result in that portion of property taxes levied each year on such increases in assessed values being paid to the CIC as tax increments (but not including any amounts paid to affected taxing entities pursuant to Section 33676 of the Health and Safety Code) ("Tax Increments") to pay the principal of and interest on loans, monies advanced to or indebtedness incurred by the CIC to finance or refinance, in whole or in part, redevelopment in accordance with the Plan.

D. Section 33401 of the Health and Safety Code allows the CIC to make any payments necessary to alleviate any financial burden or detriment caused to any affected taxing agency by the Project.

E. Section 33445 of the Community Redevelopment Law provides that the CIC may, with the consent of the City Council, pay all or part of the cost of acquisition, installation, construction and renovation of publicly-owned buildings, facilities or

improvements if the City Council determines that such buildings, facilities or improvements are of benefit to the Project Area and that there are no other reasonable means of financing such buildings, facilities or improvements.

F. Section 33679 of the Community Redevelopment Law provides that prior to committing Tax Increment monies for the purpose of paying all or part of the value of land or the installation and construction of publicly-owned buildings, the City Council must prepare a summary of such proposed expenditures, hold a hearing and make certain specified findings.

G. Section 33678 of the Community Redevelopment Law provides that the allocation and payment of Tax Increment monies to the CIC shall not be deemed proceeds of taxes within the meaning of Article XIII-B of the California Constitution only if those Tax Increment monies are used for redevelopment activities which: (1) are redevelopment as defined in Sections 33020 and 33021 of the Community Redevelopment Law; (2) primarily benefit the project area; and (c) are not used for the payment of employee or contractual services, unless directly related to the purposes of Sections 33020 and 33021 of the Community Redevelopment Law.

H. The CIC has determined that because of the loss in property tax revenues that may be produced by a change of ownership or new construction that the District will incur due to the Project, certain actions as set forth below are necessary to alleviate the burden and detriment or potential burden and detriment to the District.

I. The purpose of this Agreement is to: (a) provide, through the District Housing Fund as defined in Section 3 hereof, for a procedure pursuant to which the CIC shall provide for payments to be made by the CIC to the District to reimburse and/or pay for, the cost of low- and moderate-income housing projects or programs carried out by the District which meet the requirements of the Community Redevelopment Law; and (b) provide, through the District Capital Outlay Fund as defined in Section 2 hereof, for a procedure pursuant to which the CIC shall provide for payments to be made by the CIC to the District to reimburse, and/or pay for, part or all of the cost of land and/or certain capital improvements, including school-related buildings, facilities and improvements incidental thereto, and improvements to existing buildings and facilities which are determined by the City Council and the CIC to meet the requirements of the Community Redevelopment Law.

J. In consideration of this Agreement determining the obligations of the CIC, the District is foregoing the right to contest the establishment of the Plan for the Project,

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including, but not limited to, filing a suit, and the CIC recognizes this as good and legal consideration.

Agreements

THE CIC AND THE DISTRICT HEREBY AGREE AS FOLLOWS:

Section 1. For the purposes of this Agreement, the following terms shall have the following meanings:

a. "Community Redevelopment Law" means the California Community Redevelopment Law as set forth in California Health and Safety Code Section 33000 et seq.

b. "Final EIR" means the Draft Environmental Impact Report on the Plan and the comments and responses thereto.

c. "Ordinance" means Ordinance No. 2559 adopted by the City Council on June 18, 1991, approving and adopting the Plan.

d. "Project" means the Business and Waterfront Improvement Project.

e. "Project Area" means the land area within the boundaries of the Project as shown and described in the Plan.

f. "Plan" means the Community Improvement Plan for the Business and Waterfront Improvement Project.

g. "Settlement Agreement" means the Settlement Agreement entered into between Clayton Guyton and Modessa Henderson and the City of Alameda executed by the City of Alameda on April 25, 1990, attached hereto as Exhibit A and incorporated herein by reference.

Section 2. Subject to the conditions, modifications and limitations set forth in Sections 3, 4, 5, 6 and 8, and after the CIC has set aside any monies annually required to be set aside for the purposes of increasing and improving the supply of low- and moderate-income housing pursuant to Section 33334.2 of the Health and Safety Code, the CIC agrees during the life of the Plan to annually deposit an amount equal to four percent (4%) of the Tax Increments in a special fund of the CIC (the "District Capital Outlay Fund") for use by the District for projects which meet the requirements of the Community Redevelopment Law.

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The District agrees that the CIC may defer the annual amounts to be deposited in the District Capital Outlay Fund for the first seven (7) fiscal years (July 1 through June 30) in which the CIC receives Tax Increments (the "Deferral Period"). The total amount deferred during the Deferral Period, plus simple interest on the deferred amount at a rate

of seven percent (7%) per annum shall be deposited in the District Capital Outlay Fund in ten (10) annual equal installments (the "Deferral Payments") commencing with the first fiscal year following the Deferral Period. Commencing on the first fiscal year following the Deferral Period, interest on the unpaid balance of the principal of the amount deferred during the Deferral Period shall accrue at the simple interest rate of five percent (5%) per annum, and shall be payable to the District in ten (10) equal installments with the above Deferral Payments.

Section 3. The CIC agrees to deposit in a special fund of the CIC an amount equal to eight percent (8%) of the Tax Increments for use by the District for increasing and improving the supply of low- or moderate-income housing (the "District Housing Fund"). The District's use of the monies in the District Housing Fund shall be subject to and in accordance with the terms of this Agreement, the Settlement Agreement, the City's Housing Element of the General Plan, and all the requirements in the Community Redevelopment Law applicable to the CIC's low- and moderate-income housing fund established pursuant to Section 33334.3. The District Housing Fund may be used primarily for low- and moderate-income District employees provided the District has determined that such priority use is in accordance with this Agreement, all applicable terms and conditions of the Settlement Agreement and all laws. In addition and notwithstanding the other provisions in this Agreement pertaining to the District Housing Fund, until such time as the City of Alameda has met its share of the regional housing need as determined by the Association of Bay Area Governments for low- and very low-income housing for the period ending April 1, 1995, the District's use of the District Housing Fund shall be subject to the Settlement Agreement.

a. Any funds that are repaid to the District from District Housing Funds expended for low-income and very low-income housing during the period the Settlement Agreement is in effect shall be used only for low-income and very low-income housing (and to the extent permitted by law, at least 50 percent shall be used for very low-income housing) for the life of the Plan.

b. The District shall prepare an annual report on the District Housing Fund in accordance with the provisions of Section VII of the Settlement Agreement.

In the event the establishment of the District Housing Fund is challenged and invalidated, the CIC's annual deposit of funds into the District Capital Outlay Fund in Section 2 hereof shall be increased from four percent (4%) of the Tax Increments to six and one-quarter percent (6.25%) of the Tax Increments, commencing with the date of the invalidation.

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Section 4. The District agrees to investigate the feasibility of levying and implementing a non-residential development impact fee. If, as a result of the District's investigation, the District levies and implements a fee in the full amount authorized by law (currently 26 cents per square foot), the total amount of monies to be deposited under Section 2 hereof shall be made by the CIC. In the event the District does not levy and implement a development impact fee, the CIC shall not be required to deposit and pay to the District the monies in Section 2 hereof. In the event the District levies and implements a fee in an amount less than 26 cents per square foot, the annual amount to be deposited and paid to the District in Section 2 hereof shall be reduced in the same proportion as the 26 cents per square foot fee is reduced. Nothing in this Section 4 shall prohibit the District from hearing appeals as to the amount of the impact fee on or its applicability to development of a specific parcel pursuant to Section 53080 of the Government Code, or from granting favorable decisions to appellants on these matters. As long as such decisions are based on reasonable evidence and do not in any way affect the District's general authority to levy and collect impact fees throughout the District, the amount to be deposited and paid to the District shall not be reduced pursuant to the terms of this Section 4. In the event the District's levying of the fee set forth in this Section 4 is challenged in court, the CIC agrees to support the District's position on the fee by initiating the filing of an amicus brief. The District agrees to pay the CIC's costs and fees incurred for the preparation and filing of the amicus brief.

Section 5. In the event the amount of funds received by the District from the State is reduced as a result of the District receiving monies from the CIC pursuant to Sections 2 and 3 of this Agreement, the amount of funds payable by the CIC to the District pursuant to Sections 2 and 3 of this Agreement shall be reduced by the amount of the State's reduction.

Section 6. The CIC's obligation to make payments to the District from the District Capital Outlay Fund pursuant to Section 2 hereof and from the District Housing Fund pursuant to Section 3 hereof is subject to the following conditions:

a. Prior to March 1st of each fiscal year within which the CIC is obligated to deposit monies in the applicable funds, the District shall present to the CIC a list of prioritized housing programs and projects and a list of capital improvement projects which the District has found are required by the financial burden or detriment caused by the Project or are projects which benefit the Project Area.

b. Prior to July 1st of each fiscal year within which the CIC is obligated to deposit monies in the applicable funds, the CIC and the City Council shall hold a public

hearing on the capital improvement projects in accordance with Section 33679 of the Community Redevelopment Law and shall also review the proposed housing projects or programs. The CIC's review of the proposed capital improvement and housing projects under this Agreement shall be limited to whether the projects meet the requirements under the Community Redevelopment Law and the terms and conditions of this Agreement and, as to the District Housing Fund, the Settlement Agreement and the City's Housing Element of the General Plan. The CIC shall approve those projects which meet the applicable requirements of the Community Redevelopment Law, including, but not limited to, Sections 33334.2, 33334.3, 33401, 33445, 33678 and 33679, and the terms and conditions of this Agreement, the Settlement Agreement and the City's Housing Element, which approval shall not be unreasonably withheld. The determinations specified in this paragraph shall not be deemed to give the CIC any additional regulatory authority to approve the capital improvement or housing projects other than the authority it possesses under the Community Redevelopment Law or as expressly provided under this Agreement.

c. The District Housing Fund shall be subject to the requirements in Community Redevelopment Law Sections 33334.10 and 33334.12 regarding "excess surplus." Commencing in the fifth year after the year in which funds are initially deposited in the District Housing Fund and each year thereafter, the Agency shall inform the District of the amount which would constitute the District's "excess surplus." The District's "excess surplus" shall be based on the proportion by which the amount required to be deposited in the District Housing Fund bears to the total amount required to be deposited in the CIC's Low and Moderate Income Housing Fund. In the event Section 33334.2 of the Community Redevelopment Law is amended to change the percent of Tax Increment monies that the CIC must set aside for low- and moderate-income housing, the District's Excess Surplus shall be recalculated accordingly, such that the District's Excess Surplus shall be eight percent (8%) of the Tax Increments divided by the percentage of Tax Increments required to be set aside for low- and moderate-income housing by the CIC. At the time of execution of this Agreement, the District's proportionate share of the CIC's Low- and Moderate-Income Fund is forty percent (40%) (the "District's Excess Surplus"). In the event the District does not submit eligible housing projects or programs that comply with the terms of this Agreement within four (4) years from any time at which the amount of the District Housing Fund exceeds the District's Excess Surplus, the District's Excess Surplus shall be returned to the CIC. Any land purchased by the District from District Housing Fund proceeds is an asset of the District Housing Fund. In the

event the District purchases land with District Housing Fund monies and does not commence construction of housing units in accordance with the terms and conditions of this Agreement within five years of such purchase, the District agrees that the land, as an unused asset of the District Housing Fund, shall revert and be conveyed to the CIC for low- and moderate-income housing purposes, at no cost to the CIC. This condition must be enforceable against the District through recordation of covenants or restrictions against the applicable property which runs with the land.

Section 7. The CIC's obligation to make payments to the District from the District Housing Fund pursuant to Section 3, above, is subject to all the requirements in the Community Redevelopment Law pertaining to the CIC's low- and moderate-income housing fund established pursuant to Section 33334.3, including, but not limited to, the following conditions:

a. Pursuant to Section 33334.3(b), any interest earned by the District Housing Fund and any repayments or other income to the District for loans, advances or grants of any kind from the District Housing Fund shall accrue to and become a part of the District Housing Fund.

b. Expenditures for District planning and administration of the District's housing projects shall not be disproportionate to the amount spent for actual housing production, improvement or subsidy.

c. District Housing Fund monies must be used within the City limits, and they may only be used outside the Project Area upon adoption of a resolution by the CIC and the City Council that such use will be of benefit to the Project Area.

d. District Housing Fund monies must be spent on housing which is available at affordable housing cost to persons and households whose incomes do not exceed the low- and moderate-income levels, as defined in Section 50093 of the Health and Safety Code.

e. The District Housing Fund may be used for any of the purposes permitted under the Community Redevelopment Law including, but not limited to, the provision of subsidies to, or for the benefit of, very low income households, lower income households or persons and families of low- or moderate-income to the extent those households cannot obtain housing at affordable costs on the open market.

f. Pursuant to Section 33334.3(f), any new or substantially rehabilitated housing assisted from the District Housing Fund must remain affordable for the longest feasible time, but not less than the periods of time set forth in that section, and must be enforceable against the original owner and successors in interest by the District through

recordation of covenants or restrictions against the applicable property which run with the land.

g. Within five (5) months after the end of each fiscal year in which monies have been disbursed from the District Housing Fund to the District, the District shall provide the CIC with a report on the status and use of the District Housing Fund monies disbursed to the District in compliance with the applicable requirements of Section 33080.4 of the Community Redevelopment Law. This will enable the CIC to include this information within its annual report to be filed with the Controller within six (6) months after the end of the CIC's fiscal year pursuant to Section 33080 of the Community Redevelopment Law.

h. At the end of forty (40) years, or any longer period of time required by Section 33334.3 pursuant to Section 7(f), the District shall have no further obligation to the CIC and/or the City to maintain the capital acquisitions made through the District Housing Fund and the use and disposition of all remaining assets, acquisitions (real and personal), and improvements shall be subject to the sole discretion of the governing board of the District to use, lease, or dispose of as it deems to be in the best interests of the District.

i. The District shall have the sole and absolute right to implement with the requirements of this section in any legal manner, including, but not limited to, the right and power to enter into agreements with other public or private entities, including but not limited to non-profit corporations or joint powers agencies. However, no agreement shall, or shall be deemed to, relieve the District of any obligation or requirement of this Agreement. The District agrees to consult with the CIC prior to entering into any such agreement which would entail a third party's involvement in carrying out the District's responsibilities and obligations related to the expenditure of monies from the District Housing Fund.

j. The District agrees to defend and hold the CIC and City harmless in any action brought against the CIC and/or the City with regard to the expenditure of funds by the District from the District Capital Outlay Fund and/or the District Housing Fund. Notwithstanding the provisions in this subsection j, the CIC agrees to defend the CIC and/or the City with regard to its approval of the projects based on its determinations made pursuant to subsection b of Section 6 that the projects meet the requirements of the Community Redevelopment Law, this Agreement, the Settlement Agreement and the City's Housing Element.

Section 8. In no event shall payments be made to the District by the CIC:

a. The receipt of which would cause the District to violate the expenditure limitation for the District under Article XIII-B of the California Constitution; or

b. For purposes other than those specified in Section 33401 of the Community Redevelopment Law and not in violation of any other provision of the Community Redevelopment Law or the laws of the State of California.

Section 9. This Agreement shall constitute an indebtedness of the CIC incurred in carrying out the Project and a pledging of Tax Increments from the Project to repay such indebtedness under the provisions of Article XVI, Section 16, of the California Constitution and Sections 33670-33677 of the Health and Safety Code.

Section 10. The District agrees to authorize the CIC to subordinate its interest herein and to allow the CIC to pledge all or any portion of the Tax Increments otherwise payable to the District under this Agreement in order to secure the repayment of CIC indebtedness incurred for the Project; provided the CIC demonstrates, to the reasonable satisfaction of the District, its ability to make payments due to the District under the terms of this Agreement. Nothing in this Agreement shall give the District the right to approve CIC indebtedness, except as the CIC may request the District to subordinate its rights to payments under this Agreement.

Section 11. The District agrees not to file or engage in any litigation to directly or indirectly test or challenge the validity of the Project, the Plan, the Final EIR on the Plan, the Ordinance or this Agreement. If the District should engage in any such litigation, this Agreement shall become null and void.

Section 12. In the event litigation is initiated attacking the validity of the Plan, the Final EIR on the Plan, the Project or the Ordinance, the effect of this Agreement shall be suspended and the CIC shall have no obligation to make any payments to the District until a judgment becomes final upholding the validity of the Plan, the Final EIR on the Plan, the Project and the Ordinance. If a judgment becomes final which declares the Plan, the Project or the Ordinance invalid, this Agreement shall become null and void.

Section 13. This Agreement shall terminate upon the earlier of the expiration or termination of the Plan or of the provisions of the Plan authorizing the allocation to the CIC of Tax Increments for the Project. Upon termination of this Agreement, all obligations of the CIC to make payments to the District shall cease.

IN WITNESS WHEREOF, the CIC and the District have executed this Agreement as of the date first above written.

ALAMEDA UNIFIED SCHOOL DISTRICT

By: William C. Barvine

Title: President, Board of Trustees

APPROVED AS TO FORM:

By: _____

COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA

By: William C. Norton

Title: Executive Director

APPROVED AS TO FORM:

By: Carl A. Korade