

**AGREEMENT TO TRANSFER FUNDS
BETWEEN
THE CITY OF RIALTO
AND
THE RIALTO UNIFIED SCHOOL DISTRICT**

This **AGREEMENT TO TRANSFER FUNDS** (herein “Agreement”), is made and entered into this ____ day of ____ 2018, by and between the **CITY OF RIALTO**, a municipal corporation, (herein “City”) and **THE RIALTO UNIFIED SCHOOL DISTRICT**, (herein “School District”). School District and City occasionally herein are each individually referred to herein as a “party” and collectively as the “parties”. The parties hereto agree as follows:

RECITALS

WHEREAS, pursuant to the Redevelopment Dissolution Act, the City is required to obtain compensation approvals from certain taxing entities, including School District, within the City’s jurisdiction to allow the City to acquire certain Rialto Successor Agency parcels, including (i) the proposed Fire Station 205 site, (ii) a park site in the Renaissance Specific Plan area, and (iii) an Area A site; and

WHEREAS, on March 13, 2017, the City transferred a portion of the Area A parcels to LHR pursuant to the Area A Contract of Sale dated January 10, 2017 (“Area A Contract”), and the purchase price for the first transfer to LHR under the Area A Contract was \$1,251,827.56 (“Area A Proceeds”), which the escrow agent held in escrow pending execution of a compensation agreement between the affected taxing entities and the City regarding the Area A Proceeds (“Area A Compensation Agreement”); and

WHEREAS, in early 2017, the City and the School District discussed the Area A Compensation Agreement that included the School District’s property tax portion from the Area A Contract held for School District and City capital projects; and

WHEREAS, on May 17, 2017, the School District Board approved a draft of the Area A Compensation Agreement, believing it to be the final version; and

WHEREAS, in August 2017, staff emailed the final Area A Compensation Agreement (“Final Area A Compensation Agreement”) to each of the taxing entities to execute, which Final Area A Compensation Agreement differed materially from the draft approved by the School District Board; and

WHEREAS, School District signed the Final Area A Compensation Agreement, which includes a provision at Section B therein providing, in relevant part: “Notwithstanding anything to the contrary herein, the City shall be allowed to retain 31.5269244% of the Applicable Net Purchase Price representing the share of Applicable Net Purchase Price proceeds payable to Rialto Unified School District, which funds shall be used by the City for eligible capital improvements within the City”; and

WHEREAS, on August 22, 2017, the City approved the Area A Compensation Agreement; and

WHEREAS, in February 2018, escrow distributed the Area A Proceeds to the taxing entities, and the School District's portion was \$376,000, which represents 31.5269244% of the Area A Proceeds; and

WHEREAS, City contacted School District to deposit the \$376,000 in an escrow account, at which time the School District states it first became aware of the above Section B clause, which it states was not included in the draft Area A Compensation Agreement approved by its Board, and requested eliminating the above Section B clause and that it directly receive the \$376,000 amount and future Area A Contract proceeds; and

WHEREAS, Escrow issued a check for \$376,000 in School District's name that the City currently holds ("Check Funds"); and

WHEREAS, City and School District now desire to enter into an agreement for City to transfer and release to School District the Check Funds held by City.

NOW, THEREFORE, in consideration of the foregoing, the parties agree that:

1.0 TRANSFER OF THE CHECK FUNDS HELD BY ESCROW

Subject to and on the terms and conditions herein set forth, and notwithstanding the final language stated in Section B of the Final Area A Compensation Agreement to allow the City to retain School District's portion of the Area A Proceeds for capital improvement projects, the City agrees to convey and assign to the School District, and the School District hereby agrees to accept from the City, the total amount of the Check Funds, which is Three Hundred Seventy-Six Thousand Dollars (\$376,000). This amount represents School District's 31.5269244% share of the Area A Proceeds, as provided in the Final Area A Compensation Agreement.

Except as stated in this Agreement, all provisions of the Final Area A Compensation Agreement shall remain in full force and effect for all parties thereunder.

2.0 ELIMINATE SECTION B CLAUSE

The following clause in Section B of the Final Area A Compensation Agreement is eliminated and shall have no force or effect as between the parties:

"Notwithstanding anything to the contrary herein, the City shall be allowed to retain 31.5269244% of the Applicable Net Purchase Price representing the share of Applicable Net Purchase Price proceeds payable to Rialto Unified School District, which funds shall be used by the City for eligible capital improvements within the City"

3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

City shall transfer the Check Funds within forty five (45) days after the execution of this Agreement.

3.3 Term.

This Agreement shall continue in full force and effect until all Check Funds have been transferred to School District.

4.0 LEGAL COMPLIANCE & ENFORCEMENT OF AGREEMENT

4.1 Compliance with Law.

All services and fund allocation rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

4.2 California Law.

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and the parties covenant and agree to submit to the personal jurisdiction of such court in the event of such action.

4.3 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

4.4 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

5.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

5.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the School District, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the School District or to its successor, or for breach of any obligation of the terms of this Agreement.

No officer or employee of the School District shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the School District or for any amount which may become due to the City or to its successor, or for breach of any obligation of the terms of this Agreement.

5.2 Conflict of Interest.

No officer or employee of the City or School District shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The School District and City warrant that they have not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

5.3 Covenant Against Discrimination.

School District covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. School District shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

6.0 MISCELLANEOUS PROVISIONS

6.1 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail as follows: in the case of the City, to the Interim City Administrator, and in the case of the School District, to the Superintendent. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

6.2 Recitals.

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement and are hereby incorporated herein.

6.3 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

6.4 Integration; Amendment.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

6.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

CITY:
CITY OF RIALTO, a municipal corporation

Deborah Robertson, Mayor

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Fred Galante, City Attorney

ATTEST:

Barbara A. McGee, City Clerk

SCHOOL DISTRICT:
RIALTO UNIFIED SCHOOL DISTRICT

Cuauhtémoc Avila, Ed. D., Superintendent

[END OF SIGNATURES]

[illegible]

On _____, 2018, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On _____, 2018, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Final Area A Compensation Agreement

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