

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASES

This Settlement Agreement and Mutual General Releases (“Settlement Agreement”) is made and entered into by and between (i) the City of Alameda, the Alameda Reuse and Redevelopment Authority, and the Community Improvement Commission of the City of Alameda (collectively, “the City”); (ii) SCC Alameda Point LLC (“SCC”); and (iii) Ann Marie Gallant (Gallant). The City, SCC and Gallant are referred to collectively as the “Parties” and individually as a “Party.”

WHEREAS, on or about July 20, 2007 the City and SCC entered into an Exclusive Negotiation Agreement (“ENA”) concerning negotiations over the redevelopment of the former U.S. Naval Air Station at Alameda Point (“Alameda Point”); and

WHEREAS, a dispute arose as to the Parties’ respective obligations and performance under the ENA; and

WHEREAS, on or about August 4, 2010, SCC filed a federal lawsuit against the City and later amended its complaint to include claims against Gallant, and that lawsuit is pending in the U.S. District Court for the Northern District of California and is known as *SCC Alameda Point LLC v. City of Alameda, et al.*, Case No. CV 10-5178 CRB (“the Federal Action”); and

WHEREAS, on or about February 23, 2012, the City filed a counter-claim in the Federal Action against SCC (“the Federal Counter-Claim”); and

WHEREAS, on or about September 23, 2010, SCC filed a petition for writ of mandate and complaint for declaratory relief against the City, and that action is pending in the Alameda County Superior Court and is known as *SCC Alameda Point LLC v. City of Alameda, et al.*, Case

No. RG10537988 (“the State Action”); and

WHEREAS, the Parties desire to finally compromise, settle, and discharge all claims controversies, demands, actions, causes of action, disputes, and disagreements that have existed, now exist, and/or may exist in the future, between and amongst them that relate to and/or arise out of the ENA, the City Council Action, the Federal Action, the Federal Counter-Claim, and/or the State Action;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

(1) **Payment by the City.** the City will make three payments to SCC in the following amounts and on the following schedule:

(a) \$3.25 million (three million two hundred and fifty thousand dollars) by December 31, 2012;

(b) \$500,000.00 (five hundred thousand dollars) by July 1, 2013;

(c) \$500,000 (five hundred thousand dollars) by July 1, 2014.

If payments are made according to this schedule the City will not owe any interest on the payments.

(2) **Dismissal of the Federal Action, Federal Counter-Claim and State Action.** Within seven days after receipt by SCC of the first payment described above, the Parties through their respective counsel, shall execute and cause to be filed a Stipulation of Dismissal of the Federal Action and Federal Counter-Claim; and SCC shall prepare and cause to be filed a Request for Voluntary Dismissal of the State Action. All dismissals shall be with prejudice.

(3) **Provision for Attorneys' Fees and Costs.** The Parties hereto agree to bear their own respective costs and attorneys' fees. No Party shall file a Memorandum of Costs or application for attorney's fees in the Federal Action, Federal Counter-Claim or State Action.

(4) **Release by City.** The City hereby forever generally and completely release and discharge SCC and Gallant, their predecessors and successors in interest, heirs, assigns and their past, present and future principals, agents, officers, directors, shareholders, investors, employees, parent companies, subsidiary companies, employers, partners, assignees, heirs, devisees, indemnitors, insurance companies, affiliates and attorneys from any and all claims and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual, direct, or consequential; and any and all past, present or future claims, demands, obligations or causes of action for compensatory or punitive damages, costs, losses, expenses and compensation, whether based on tort, contract, statute or other legal or equitable theories of recovery which the parties have against each other or which may later accrue to, or be acquired by the parties against each other, arising out of or related to the ENA, the Federal Action, the Federal Counter-Claim, and the State Action.

(5) **Release by SCC.** SCC hereby forever generally and completely releases and discharges the City and Gallant, their predecessors and successors in interest, heirs, assigns and their past, present and future elected or appointed officials, boards, commissions, principals, agents, officers, directors, shareholders, investors, employees, employers, partners, assignees, heirs,

devises, indemnitors, insurance companies, and attorneys from any and all claims and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual, direct, or consequential; and any and all past, present or future claims, demands, obligations or causes of action for compensatory or punitive damages, costs, losses, expenses and compensation, whether based on tort, contract, statute or other legal or equitable theories of recovery which the parties have against each other or which may later accrue to, or be acquired by the parties against each other, arising out of or related to the ENA, the Federal Action, the Federal Counter-Claim, and the State Action.

(6) **Release by Gallant.** Gallant hereby forever generally and completely releases and discharges the City and SCC, their predecessors and successors in interest, heirs, assigns and their past, present and future elected or appointed officials, boards, commissions, principals, agents, officers, directors, shareholders, investors, employees, parent companies, subsidiary companies, employers, partners, assignees, heirs, devisees, indemnitors, insurance companies, affiliates and attorneys from any and all claims and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual, direct, or consequential; and any and all past, present or future claims, demands, obligations or causes of action for compensatory or punitive damages, costs, losses, expenses and compensation, whether based on tort, contract, statute or other legal or equitable theories of recovery which the parties

have against each other or which may later accrue to, or be acquired by the parties against each other, arising out of or related to the ENA, , the Federal Action, the Federal Counter-Claim, and the State Action.

(7) It is understood and agreed that the releases described in paragraphs 5, 6 and 7 ("Mutual General Releases") are full, complete, and final mutual releases of any and all claims described as aforesaid, and the Parties agree that they shall apply to all unknown, unanticipated, unsuspected, and undisclosed claims, demands, liabilities, actions or causes of actions, in law, equity, or otherwise as well as those which are now known, anticipated, suspected, or disclosed concerning these Parties; provided however that the mutual releases between Gallant and the City and the City and Gallant will have no force or effect as to any claim or defense in the lawsuit pending in Alameda County Superior Court captioned *Gallant v. City of Alameda*, Case No. RG11590505.

(8) **Waiver of California Civil Code Section 1542.** It is the intention of the Parties that the foregoing Mutual General Releases shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever nature, character or kind, known or unknown, suspected or unsuspected. The parties acknowledge that they are familiar with Section 1542 of the California Civil Code and expressly waive the benefits of that section or any similar statute or law. Section 1542 reads as follows:

"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."

The Parties understand and acknowledge that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if one of them should eventually suffer additional damages or losses arising out of or relating to the subject matter of the Mutual General Releases, or should there exist other undisclosed obligations or liabilities existing between them, including their assignees, they will not be able to make any claim for those damages, losses or obligations. Furthermore, the Parties acknowledge that they intend these consequences even as to claims for damages, losses or obligations that may exist as of the date of this release but which they do not know exist, and which, if known, would materially affect their decision, either singularly or collectively, to execute this release, regardless of the cause of their lack of knowledge.

(9) **Retention of Jurisdiction.** The parties request that the court in the Federal Action shall retain jurisdiction to enforce the Settlement Agreement. The scope of the Court's continuing jurisdiction will expire on or before September 1, 2014. The Stipulation of Dismissal filed by the Parties in the Federal Action (pursuant to Paragraph 2 of the Settlement Agreement) shall include the language contained in this provision. The prevailing party in any lawsuit brought to enforce the terms of this Settlement Agreement shall be entitled to recover its attorney's fees and costs.

(10) **No Admission of Wrongdoing.** This Settlement Agreement effects the compromise and settlement of disputed and contested claims and nothing contained herein shall be construed as an admission by any Party hereto of any fault, liability or wrongdoing of any kind. Each Party hereby expressly denies any fault, liability or wrongdoing alleged in the Federal Action, Federal

Counter-Claim, the State Action, other pleadings or otherwise

(11) **Ownership of Released Matters.** The Parties hereto warrant and represent to each other that they are the sole and lawful owners of all rights, title, and interest in and to all released matters and that they have not heretofore assigned or transferred or purported to assign or transfer to any other person any released matter or any part or portion of any released matter. Each Party further warrants and represents that there are no liens or claims of liens of assignments in law or equity or otherwise of or against any of their claims or causes of action released herein and, further, that each party is fully entitled and duly authorized to give this complete and final general release and discharge. Each party further warrants and represents that it has not sold, transferred, conveyed, assigned, hypothecated, or subrogated any of their rights, claims, or causes of action released herein. The City warrants and represents that it has obtained all votes and approvals required in order to execute this Settlement Agreement and that it is authorized to bind itself to the terms contained herein.

(12) **Binding on Successors.** This Settlement Agreement shall bind the heirs, personal representatives, successors, and assigns of the parties, and inure to the benefit of each Party, its agents, directors, managers, brokers, officers, partners, employees, servants, insurers, successors, franchisers and assigns.

(13) **Governing Law.** This Settlement Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California.

(14) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding

upon the Parties at such time as all of the signatories hereto have signed the counterparts of this Settlement Agreement. All counterparts so executed shall constitute an agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

(15) **Construction.** Each party and counsel for each party have reviewed and revised this Settlement Agreement, and the normal rule of construction that any ambiguities in this Settlement Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement.

(16) **Headings.** Title and captions contained in this Settlement Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend, or describe the rights or obligations of the parties or affect the meaning or construction of this Settlement Agreement, or any provision hereof.

(17) **Independent Advice of Counsel.** The Parties represent and declare that in executing this Settlement Agreement they relied solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matter made by any other Party or any person representing any other Party.

(18) **Voluntary Agreement.** The parties further represent and declare that they have carefully read this Settlement Agreement and know the contents thereof and that they signed the same freely and voluntarily.

(19) **No Inducement.** The Parties declare and represent that no promises, inducements or

other agreements not expressly contained herein have been made and that this release contains the entire agreement between the parties and the terms of this Settlement Agreement are contractual and not recitals only.

(20) **Authority of Signatories.** The signatories to this Settlement Agreement represent, warrant and covenant that they possess the necessary capacity and authority to sign and enter into this Settlement Agreement on behalf of their respective principals.

(21) **Entire Agreement.** All agreements, covenants, representations, and warranties express and implied, oral and written, of the Parties concerning the subject matter hereof are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by and between the Parties concerning the subject matter herein. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties between the Parties concerning the subject matter hereof are merged herein. All earlier understandings, oral agreements and writings are expressly superseded hereby and are of no further force or effect. This is an integrated agreement.

(22) **No Modification.** This document may not be altered, amended or modified in any respect except by written instrument, duly executed by the Party to be charged.

(23) **Severability.** If any term, provision, covenant or condition of this Settlement Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Settlement Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(24) **Effective Date Of Agreement.** This Settlement Agreement shall take effect immediately

upon execution by the last signatory.

Dated: 19 Dec. 2012

CITY OF ALAMEDA



By: John Russo
Its: City Manager

Dated: 19 Dec. 2012

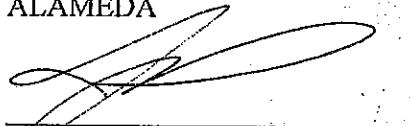
ALAMEDA REUSE AND
REDEVELOPMENT AUTHORITY



By: John Russo
Its: Executive Director

Dated: 19 Dec 2012

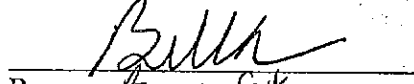
COMMUNITY IMPROVEMENT
COMMISSION OF THE CITY OF
ALAMEDA



By: John Russo
Its: Executive Director

Dated: December 19, 2012

SCC ALAMEDA POINT LLC



By: Bruce Cook
Its: General Counsel