

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Protecting the Children of Orchard School (“Petitioner”), a 501(c)(3) non-profit association, and the City of San José (“City” or “Respondent”), collectively referred to as the “Parties.”

WHEREAS, on June 9, 2020, the City passed Resolution No. 79559 certifying the Environmental Impact Report (“EIR”) for its Charcot Avenue Extension Project, making certain findings regarding significant impacts, adopting a statement of overriding considerations, adopting a mitigation monitoring and reporting program, and approving the Project (collectively, the “Project”).

AND WHEREAS, Petitioner filed an action against Respondent on or about September 1, 2020 in the Superior Court of California, County of Santa Clara, case number 20CV370153, entitled *Protecting the Children of Orchard School v. City of San Jose* (“Action”);

AND WHEREAS, the Parties now undertake to settle this Action in its entirety, and Petitioner and Respondent now undertake to release and extinguish on a final basis any and all claims against Respondent, arising out of, or in any way connected with, the Project, which is the subject of the Action, as more fully described in the Complaint filed in this Action;

AND WHEREAS Petitioner desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of rescission of Resolution No. 79559 and approval of the Project, decertification the EIR, and payment of one hundred fifteen thousand dollars (\$115,000.00) for attorneys’ fees and costs, Petitioner and Respondent, on

behalf of themselves, their past and present assigns, heirs, executors, and administrators under their control, hereby release and forever discharge each other, their past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns under their control, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, or arising out of the Project. A draft in the amount of one hundred fifteen dollars (\$115,000.00) shall be made payable to: "Aqua Terra Aeris Law Group LLP" addressed to: Aqua Terra Aeris Law Group LLP, Attn: Jason Flanders and delivered by overnight carrier to Aqua Terra Aeris Law Group, 4030 Martin Luther King Jr. Way, Oakland, CA 94609" within 35 days of receipt of the Settlement Agreement and Release. In consideration for the above-referenced actions, Petitioner shall dismiss the Action with prejudice within ten days after receipt of the drafts.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Petitioner represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that it hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating

to, arising out of, or any way connected to the Project based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to or arising out of the Project. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party. Nothing herein shall be construed to waive or otherwise limit Petitioner's rights to participate in and/or challenge any future City proceeding considering or approving any new version, iteration, or component thereof, of a Charcot Avenue Extension.

5. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

6. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

7. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so. The undersigned, individually and on behalf of Petitioner, represents that he/she is expressly authorized to execute this Agreement on Petitioner's behalf and that no person or entity other than Petitioner has any claim, lien, or interest in the settlement proceeds, and that Petitioner and the undersigned, jointly and severally, shall be solely responsible to resolve any such claim, lien or interest that later arises.

8. This Settlement Agreement shall become effective upon approval by the San Jose City Council in open session.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: _____

Robin Roemer, for
PROTECTING CHILDREN OF
ORCHARD SCHOOL
Petitioner

AQUA TERRA AERIS LAW GROUP

Dated: _____

By: _____
Jason R. Flanders

Attorney for Petitioner PROTECTING THE
CHILDREN OF ORCHARD SCHOOL

CITY OF SAN JOSE

Dated: _____

By: _____
NORA FRIMANN
City Attorney as Authorized Agent
for the
CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____

By: _____
ELISA TOLENTINO
Sr. Deputy City Attorney

Attorney for Respondent CITY OF SAN
JOSE