

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (“Agreement”) is made as of June 5, 2014 by and between FRIENDS OF APPLETON-WOLFARD LIBRARIES and COALITION FOR A BETTER NORTH BEACH LIBRARY AND PLAYGROUND (“Petitioners”), as Petitioners and Appellants in *Friends of Appleton-Wolfard Libraries et al. v. City and County of San Francisco*, California Court of Appeal, Case No. A136409 and San Francisco Superior Court, Case No. CPC-11-511469 (“Writ Petition”), and the CITY AND COUNTY OF SAN FRANCISCO (“City”). Together, the parties to this Agreement may be referred to as “Parties,” or in the singular a “Party.”

RECITALS

A. In 1959, the San Francisco Public Library (“SFPL”) opened the North Beach Branch Library (“old Library”) designed by the architectural firm Appleton & Wolfard in the western section of the Joe DiMaggio Playground bounded by Mason Street and Columbus Avenue. In response to the need to improve the Library, in 2008 the SFPL and Recreation and Park Department (“RPD”) began a public planning process to both the need to improve safety, capacity and services of the branch library, to expand and improve open space uses and upgrade the recreational facilities at the Park. The expanded park property includes the property formerly known as 701 Lombard and a vacated portion of Mason Street that could potentially be transformed to park use.

B. The planning process concluded in 2011 with approval of the project at issue in this case, which includes two phases of work (collectively, the “Project.”) Phase I primarily includes the relocation and construction of the new Library to the former 701 Lombard Street parcel and the vacation of a portion of Mason Street. Phase II primarily includes demolition of the old Library and improvements to the Park and the Mason Street right of way.

C. In June, 2011, the Board of Supervisors approved the Project including: upholding the certification of an Environmental Impact Report for the Project on appeal; adopting findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program all under the California Environmental Quality Act (“CEQA”); rezoning and authorization of the use of the 701 Lombard Property for construction of the Library; vacation of a portion of Mason Street; demolition of the existing library; transfer of a portion of Mason Street from DPW to RPD; and incorporation of the Property and the Mason Street property into the Park, among other actions. On July 1, 2011, the County Clerk issued a Notice of Determination for the Project under CEQA.

D. On July 27, 2011, Petitioners filed a Petition for Writ of Mandate in San Francisco Superior Court, alleging that the City’s approval of the Project violated the City’s Charter, violated certain requirements of CEQA, and was inconsistent with the City’s General Plan. On July 26, 2012, the trial court issued its Order Denying the Petition for Writ of Mandate. On August 21, 2012, the trial court issued an order clarifying that the court had denied the Writ on all grounds. On September 5, 2012, Petitioners filed a Notice of Appeal. On May 13, 2014, the Court of Appeal issued an opinion affirming the judgment of the trial court in full.

E. On October 4, 2012, the City filed a Memorandum of Costs in the amount of \$37,497.35. On October 22, 2013, Petitioners filed a Motion to Tax Costs. The parties have entered into several stipulations to continue the City's opposition brief, Petitioners' reply brief and the hearing on the Motion to Tax Costs until the Court of Appeal had ruled on the merits.

F. The parties now deem it to be in their respective best interests and to their mutual advantage to settle any further action on the Petition and to resolve the Motion to Tax Costs without any admission of liability or wrongdoing on the part of any Party.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, of the promises, covenants, agreements, representations and warranties set forth below, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. OBLIGATIONS OF THE CITY

A. **Withdrawal of Memorandum of Costs.**

Within twenty days of the Effective Date of this Agreement, the City shall notify the Superior Court of San Francisco of its withdrawal of the October 4, 2012 Memorandum of Costs. In addition, the City agrees not to seek any other costs relating to Petitioners' actions in the Superior Court and/or the Court of Appeal in connection with the Writ Petition.

2. OBLIGATIONS OF PETITIONERS

A. **Waiver and Release.**

Except for the obligations created by or arising from this Agreement, the Petitioners, on behalf of themselves and each of their successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, trustees, beneficiaries, and persons and entities holding beneficial interests, do hereby release and absolutely and forever discharge the Respondents and their respective successors, heirs, assigns, agents, employees, appointed and elected officials, representatives, partners, officers, directors, commissioners, members, managers, trustees, beneficiaries, and persons and entities holding beneficial interests, from any and all claims, demands, causes of action, whether or not now known, suspected or claimed, which they ever had, now have, claim to have had, or may have had against each other as of the Effective Date of this Agreement arising out of, relating to and/or in connection with the Project that is the subject of the Petition.

Accordingly, the Petitioners hereby waive the provisions of California Civil Code section 1542, which provides 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.

B. No Further Actions.

Petitioners agree that they shall take no further actions to pursue the claims asserted in the Writ Petition, and specifically waive their rights to file a Petition for Rehearing to the Court of Appeal, a Petition for Review to the California Supreme Court, or any further legal action that would seek to change, reverse or amend the Court of Appeal's opinion issued May 13, 2014.

C. Non-Opposition.

Petitioners shall not themselves take, and shall not aid, encourage, assist or collaborate with (monetarily or otherwise) any other party in taking any action to challenge the City's previous approval of the Project, or any further required approvals for the Project, including any that would: (1) delay or prevent the demolition of the old Library; (2) delay, change the process for issuance of, or otherwise interfere with, any Project approvals or amendments to the approvals related to the demolition of the old Library or implementation of Phase II of the Project; or (3) increase the costs of processing, development, construction or operation, or adversely affect the timing of the development and build-out, of Phase II of the Project.

3. GENERAL PROVISIONS

A. Effective Date.

The date, following execution by Petitioners, by which the City has finally approved this Agreement is the "Effective Date."

B. No Admissions of Liability.

This Agreement, including the releases and waivers contained herein, reflects the settlement of denied and contested claims. Nothing contained herein is, or shall be construed to be, an admission by any party of liability, of any kind, to any other party.

C. Waiver.

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to either Party upon any breach of the terms of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

D. Entire Agreement.

This instrument contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

E. Headings.

The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

F. Applicable Law.

This Agreement shall be construed according to the laws of the State of California.

G. Jurisdiction.

The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding or arising under this Agreement. In mutual recognition of the fact that this Agreement is to be performed in the City and County of San Francisco, California, the parties agree that in the event any civil action is commenced regarding this Agreement, San Francisco County, California, is the proper venue for the commencement and trial of such action.

H. Attorneys' Fees.

If any party commences an action against another party or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of the City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience.

I. Binding on Successors.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

J. Joint and Several Obligations.

The obligations of Petitioners shall be joint and several.

K. No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement. There are no intended third party beneficiaries.

L. Informed Decision.

Petitioners represent and warrant to the City that they have had the advice of counsel of their own choosing in the negotiations for, and the preparation of, this Agreement and Petitioners have read and understand the contents of this Agreement and its legal effect. Each Party has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement

M. Agreement as Defense.

In connection with any demand or cause of action related to a matter released herein, this Agreement may be pleaded as a defense by either Party hereto and shall operate to effect a dismissal of such demand or cause of action.

N. Cooperation/Further Assurances.

The Parties shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds and assurances, including the delivery of any documents, as either Party may reasonably require in order to carry out the intent and purpose of this Agreement.

O. Joint Preparation.

This Settlement Agreement shall be deemed to have been jointly prepared by the Parties, and shall not be construed against one Party or the other in the event of any claimed uncertainty or ambiguity.

P. Warranty of Authority.

The Parties, and each of them, represent and warrant to the other Parties hereto that the individual signatories to this Agreement have authority to execute this Agreement and to release claims as outlined by this Agreement, on behalf of themselves and the individuals or entities on whose behalf they purport to act.

Q. No Prior Assignments.

The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, association, corporation, or firm whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

R. Counterparts.

This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

S. Notices.

All notices required under this Agreement must be in writing, and may be given either personally or by overnight delivery, or facsimile. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the Parties at their addresses set forth below:

PETITIONERS:

Paul Carroll, Esq.
1103 17th Avenue
Redwood City, CA 94063

CITY:

San Francisco City Attorney's Office
Attention: Land Use
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102
Telephone No.: 415-554-4700
555 California Street, 10th Floor
San Francisco, CA 94104
Fax (415) 262-5199

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT as of the dates hereafter appearing

PETITIONERS:

Friends of Appelton-Welford Libraries

By: Howard Wong
Howard Wong Principal

Coalition for a Better North Beach Library

By: Howard Wong
Howard Wong Principal

APPROVED AS TO FORM:

By _____
Paul Carroll

CITY and COUNTY OF SAN FRANCISCO:

By _____
Luis Herrera
City Librarian

By _____
Phil Ginsburg
General Manager, Recreation and Park Department

APPROVED AS TO FORM:

Susan Cleveland-Knowles

Deputy City Attorney

PETITIONERS:

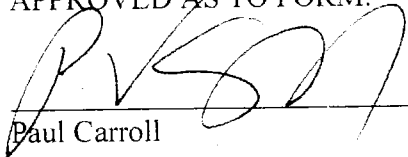
Friends of Appelton-Wolfard Libraries

By: _____
Howard Wong Principal

Coalition for a Better North Beach Library

By: _____
Howard Wong Principal

APPROVED AS TO FORM:

By  _____
Paul Carroll

CITY and COUNTY OF SAN FRANCISCO:

By _____
Luis Herrera
City Librarian

By _____
Phil Ginsburg
General Manager, Recreation and Park Department

APPROVED AS TO FORM:

Susan Cleveland-Knowles

Deputy City Attorney