

MEMORANDUM OF UNDERSTANDING AMONG
BAYSHORE ELEMENTARY SCHOOL DISTRICT, THE COUNTY OF SAN MATEO,
THE HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO AND
THE CITY OF DALY CITY

This Memorandum of Understanding ("MOU"), dated March 31, 2016 (the "Effective Date"), among the Bayshore Elementary School District (the "**District**"), the Housing Authority of the County of San Mateo (the "**Housing Authority**"), the County of San Mateo (the "**County**"), and the City of Daly City (the "**City**") (collectively, the "**Parties**") sets forth the respective responsibilities of each Party related to the construction of eighteen (18) additional affordable housing units as part of the planned redevelopment of the Midway Village apartment complex in Daly City, California.

RECITALS

- A. WHEREAS, the District intends to sell its 6.97-acre surplus property located at 1 Martin Street, Daly City, California (the "**Robertson Property**") in order to finance the construction of a new TK-8 school on its property located at 155 Oriente Street, Daly City, California (the "**Bayshore Property**"); and
- B. WHEREAS, on or about January 14, 2015, the District submitted an application for residential subdivision to the City for a 71 unit development on the Robertson Property in order to maximize the value achieved from the sale (the "**Application**"); and
- C. WHEREAS, the City's approval of the Application is contingent upon the City's approval of the affordable housing component of the Application pursuant to Chapter 17.47 of the City's Ordinance Code ("**City Affordable Housing Requirements**"); and
- D. WHEREAS, the Housing Authority, through its wholly-owned subsidiary, San Mateo County Housing Authority Inc., owns and manages Midway Village, a 150-unit apartment complex for low-income residents in Daly City, located across the street from the Robertson Property ("**Midway Village**"); and
- E. WHEREAS, the Housing Authority has begun investigating options for the redevelopment of Midway Village, is in the process of master-planning and seeks property for the construction of additional affordable housing units; and
- F. WHEREAS, the District owns additional surplus property, approximately one-half (1/2) acre, located on Midway Drive in Daly City, California, APN 005-330-320 (the "**Midway Property**"), valued at \$1.1 million in an appraisal dated July 8, 2015; and
- G. WHEREAS, Peninsula Family Services ("**PFS**") operates a child care facility on the Midway Property at 45 Midway Drive, Daly City, CA 94014 and leases the space for the child care facility from the District; and

H. WHEREAS, in order to satisfy the City Affordable Housing Requirements and the affordable housing requirements contained in the Surplus Lands Act, California Government Code section 654000, et seq. ("**State Affordable Housing Requirements**"), the District is willing to convey fee title of the Midway Property to the Housing Authority so that the Midway Property can be incorporated into the Housing Authority's redevelopment of Midway Village; and

I. WHEREAS, upon the District's sale of the Robertson Property, the Housing Authority is willing to accept fee title of the Midway Property, incorporate the Midway Property into its master plan for the redevelopment of Midway Village, and finance and oversee the construction of eighteen (18) net additional units of affordable rental housing; and

J. WHEREAS, development of the eighteen (18) units of affordable housing will be part of the Midway Village complex, will result in an 18-unit increase in the number of units in the Midway Village complex, but will not necessarily be located on the Midway Property itself; and

K. WHEREAS, the Housing Authority acknowledges that the Midway Property is subject to the Department of Toxic Substances Control Brownfield and Environmental Restoration Program list; and

L. WHEREAS, the City is willing to approve the District's Application based on the District's and the Housing Authority's agreement regarding the arrangement set forth in Recitals H, I and J above subject to the terms and conditions set forth in this MOU, and upon execution of this MOU by all of the Parties; and

M. WHEREAS, the Parties acknowledge the truth of the Recitals set forth above which are hereby incorporated into this MOU.

NOW THEREFORE, the Parties agree to be bound by the following terms in this MOU:

1. Obligations of the Parties.

1.1 Acceptance of District's Application. City staff will deem the District's Application complete upon full execution of this MOU. City staff will recommend approval of the Application to Planning Commission and City Council.

1.2 Conveyance of Title to Midway Property. The District will convey fee title to the Midway Property to the Housing Authority within five (5) days of the close of escrow on the sale of the Robertson Property.

1.3 Alternate Site for Child Care Center. The District and the Housing Authority will cooperate in seeking alternate facilities in the immediate vicinity for the current Child Care Center operated by PFS on the Midway Property, without interrupting existing child

care services, if possible. Neither the Housing Authority nor the District will finance any aspect of such relocation.

1.4 Transfer of Child Care Center Lease. Concurrently with the transfer of the Midway Property from the District to the Housing Authority, the District shall also transfer to the Housing Authority, and the Housing Authority will assume, the District's interest as landlord under the current lease between the District and PFS (the "**Lease**") pursuant to a separate written assignment and assumption agreement between the District and the Housing Authority. Under Section 3.3.2 of the Lease, the Housing Authority will exercise its assumed right as the landlord to terminate the Lease for any reason upon six months' written notice.

1.5 Withdrawal of Proposal. This MOU supersedes any Affordable Housing Proposal submitted to the City for the Robertson Property.

1.6 Commitment to Facilitate Timely Commencement and Completion of Construction of Midway Village Phase 1. The District shall cooperate with the Housing Authority and the City and undertake good faith, reasonable efforts to facilitate the commencement and completion of construction of the first eighteen affordable housing units of the Midway Village redevelopment project ("**Midway Village Phase 1**") within the time frames set forth in Section 1.10 of this MOU. The Housing Authority commits to facilitate commencement and completion of construction of Midway Village Phase 1 within the time frames set forth in Section 1.10, and shall undertake best efforts to do so, subject to Force Majeure as set forth in Section 1.14.

1.7 Indemnification. To the fullest extent permitted by law, the District shall defend (with counsel reasonably approved by the City), indemnify and hold the City, the County and the Housing Authority, and their respective elected and appointed officers, officials, trustees, directors, commissioners, members, employees, agents and servants (all of the foregoing, collectively, the "**Indemnitees**") harmless from and against any and all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing, collectively "**Claims**") that are caused by, arise in connection with, or result from, third-party allegations that the affordable housing plan referenced in Recitals H, I and J above does not satisfy the State Affordable Housing Requirements. The provisions of this Section shall survive the expiration or termination of this Agreement.

1.8 Incorporation of the Midway Property into Midway Village. Upon conveyance of the Midway Property by the District, the Housing Authority will own and incorporate the Midway Property into the master planning of Midway Village.

1.9 Construction of Affordable Housing. The Housing Authority will issue one or more Requests for Proposals for the redevelopment of Midway Village ("**RFP**"). The RFP will require that any redevelopment proposals include at least eighteen (18) additional rental units above the one hundred fifty (150) existing Midway Village units that will comply with the City Affordable Housing Requirements. Thirteen (13) of the additional units must be set aside

for occupancy at affordable rents by low income households with incomes at or below 80% of Area Median Income, and five (5) of the additional units must be set aside for occupancy at affordable rents by moderate income households with incomes at or below 120% of Area Median Income; provided however, any of the eighteen (18) units described herein may be rent-restricted for households at even lower income levels, but in no event higher than the limits specified in this Section 1.9. The Housing Authority's obligations pursuant to this Section 1.9 shall not be triggered unless and until the District closes escrow on the Robertson Property and conveys Midway Property to the Housing Authority within the time set forth in Section 1.2.

1.10 Anticipated Time Frames, Benchmarks and Deadlines.

June 2017	Developer of the Robertson Property begins construction of phased 71 unit market-rate residential development.
May 2019	Final phase of the 71 unit residential subdivision on the Robertson Property is completed.
2018-2020	Construction of Midway Village Phase 1 commences, as evidenced by the issuance of a notice to proceed by the Housing Authority or the Developer.
The later of 12/31/22 or 24 months following completion of the market-rate project, but in no event later than 12/31/25 ("Construction Completion Deadline")	Completion of construction of Midway Village Phase 1, as evidenced by the City's issuance of a final certificate of occupancy or equivalent.

1.11 Petition for Board Resolution; Additional Board Support. The Housing Authority, its staff and County staff will present for approval to the Board of Supervisors (sitting as the Board of Commissioners of the Housing Authority) (the "Board"), by the end of March 2016, a resolution affirming the Board's commitment to the redevelopment of Midway Village and specifically affirming its intent to facilitate both commencement of, and completion of, construction of Midway Village Phase 1 within the time frames set forth in Section 1.10. Said resolution shall include approval for incorporating the eighteen (18) additional affordable housing units referenced in Section 1.9 into the construction of Midway Village Phase 1. The Housing Authority staff will recommend that the Board support all necessary and reasonable efforts to facilitate commencement and completion of construction of Midway Village Phase 1 within the time frames set forth in Section 1.10.

1.12 Progress Reports. Within six (6) months following the Effective Date of this MOU, and every six months thereafter until the completion of construction of Midway Village Phase 1, the Housing Authority will submit to the City written reports detailing the progress achieved in reaching the milestones outlined in the document entitled "**Estimated**

Midway Village Redevelopment Timeline" attached hereto as Exhibit A. Said reports will also indicate whether any particular milestone may be delayed, the reason for such anticipated delay, and whether the cause of delay is beyond the control of the Housing Authority and/or the developer selected to construct Midway Village Phase 1 ("**Developer**").

1.13 In-Lieu Fee; Restrictions on Use. If completion of construction of Midway Village Phase 1 has not occurred by the Construction Completion Deadline set forth in Section 1.10, the Housing Authority will pay to the City an in-lieu fee of \$1,743,490.00 (the "**In-Lieu Fee**") on the Construction Completion Deadline date, provided that such date has not been extended due to Force Majeure as defined in Section 1.14. In the event that the Housing Authority is unable to make such payment for any reason, including without limitation, the lack of availability of funds that can be used for such purpose, the County will pay the In-Lieu Fee to the City. If payment of the In-Lieu Fee is ultimately made to the City, then for a period of up to twenty four (24) months, the City shall reserve such funds for use solely to help close any demonstrated financing gaps for the Midway Village redevelopment project. Such funds shall first be allocated to close any financing gaps preventing the commencement or completion of construction of Midway Village Phase 1. Any remaining funds shall be allocated to the subsequent phases of the Midway Village redevelopment project.

1.14 Extensions of Time. If despite its reasonable efforts, the Housing Authority is unable to satisfy the deadlines for completion of construction for Midway Village Phase 1 set forth in Section 1.10, due to Force Majeure (as defined below), the City and the Housing Authority shall cooperate in good faith and negotiate a reasonable extension of time (but in no event later than December 31, 2030), within which either the completion of construction of Midway Village Phase 1 shall occur or the In-Lieu Fee must be paid.

The Construction Completion Deadline shall be extended for a period equal to the period of any delay adversely affecting commencement or completion of construction of Midway Village Phase 1 including ("**Force Majeure**"):

- The identification of previously unrecognized environmental contamination on the Midway Village Phase 1 Site, or the imposition of an unanticipated remediation requirement thereon;
- Failure to secure the capital, rental assistance or service subsidy commitments necessary to close and begin construction, through no fault or negligence on the part of the Developer;
- The failure of, or delay by, any regulatory or governing body to provide any approvals required for development of the Midway Village Phase 1, including but not limited to planning entitlements or other authorizations, necessary to begin construction when associated applications and information provided by the Developer and/or the Housing Authority are reasonably accurate, complete and submitted in good faith;

- Natural disasters, fires, floods, acts of war, acts of terrorism, strikes, lockouts, riots, or freight embargoes;
- The filing of any litigation, arbitration or other legal claim or complaint related to or arising from the redevelopment of Midway Village that delays the commencement and/or completion of construction of Midway Village Phase 1;
- The issuance of any court decision, or the enactment of any statute or ordinance or the promulgation of any regulation or other legal requirement, that delays the commencement and/or completion of construction of Midway Village Phase 1; or
- Any other unforeseeable circumstance or set of circumstances beyond the control of the Housing Authority or the Developer against which it would have been unreasonable for the Housing Authority or the Developer to take precautions and which the Housing Authority or the Developer could not have avoided even by using their best efforts.

2. Governing Board Approvals; Other Terms.

2.1 Board or Governing Body Approval for All Parties. This MOU shall not be binding on any of the Parties unless and until each of the Parties has obtained approval of this MOU from its governing board or body (for the District, its Board of Trustees; for the City, its City Council; for the County, the San Mateo County Board of Supervisors; and for the Housing Authority, the San Mateo County Board of Supervisors sitting as the Board of Commissioners of the Housing Authority of the County of San Mateo).

2.2 Modification of this MOU. This MOU may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by the Parties in the same manner as this MOU.

2.3 Choice of Law; Venue. The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this MOU shall be in San Mateo County Superior Court.

2.4 Construction. All section headings are for reference only and shall not be considered in construing this MOU.

2.5 Entire Agreement. This MOU sets forth the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all other oral or written provisions with respect thereto. This MOU may be modified only as provided in Section 2.2, "Modification of this MOU."

2.6 Cooperative Drafting. This MOU has been drafted through a cooperative effort of all the Parties, and all the Parties have had an opportunity to have this MOU reviewed

and revised by legal counsel. No Party shall be considered the drafter of this MOU, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this MOU.

2.7 Representation re Authority of Parties/Signatories. Each person signing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each Party represents and warrants to the other that the execution and delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized and that this MOU is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

2.8 Severability. If any term, provision, or condition of this MOU is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this MOU shall continue in full force and effect unless an essential purpose of this MOU is defeated by such invalidity or unenforceability.

2.9 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties, any rights or remedies hereunder.

2.10 Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

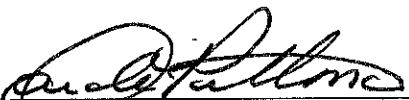
[Signatures on following page]

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective as of the date first written above.

DISTRICT

Bayshore Elementary School District

By: 
Name: Audra Pittman, Ph.D.
Title: Superintendent

Date: 3/15/16

HOUSING AUTHORITY

The Housing Authority of the County of San Mateo

By: _____
Name: Ken Cole
Title: Director

Date: _____

COUNTY

The County of San Mateo

By: _____
Name: John L. Maltbie
Title: County Manager/Clerk of the Board

Date: _____

CITY

The City of Daly City

By: _____
Name: Patricia E. Martel
Title: City Manager

Date: _____

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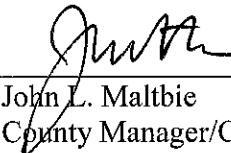
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CITY

The City of Daly City

By: Patricia E. Martel Date: 3/15/2016
Name: Patricia E. Martel
Title: City Manager

EXHIBIT A

Estimated Midway Village Redevelopment Timeline

Midway Village Redevelopment - Estimated Time Line and Milestones
Board of Supervisors (Commissioners) March 29, 2016

Process Steps / Milestones	Estimated Timeline	
Develop Planning process for site redevelopment	May – August 2015	
Identify desired priority uses	May 2015 – June 2016	
RFP process to select Environmental Consultant	October – December 2015	
Work with Environmental Consultant to identify environmental constraints & development options for redevelopment of Midway Village	January – June 2016	
Identify potential development scenarios and criteria to be included in the Developer RFP	January – June 2016	
RFP process to select Developer Team(s) to design and carry out redevelopment phases	July - Sept 2016	
Selection of Developer Team(s)	Fall 2016	
Exclusive Negotiations Agreement (ENA) process and agreed-upon predevelopment milestones	Fall 2016 – early 2017	
	<i>Phase 1</i>	<i>Phase 2</i>
Predevelopment phase (Local financing & Planning entitlements; Architectural Drawings)	2017 – 2020	2018 – 2021
Tax Credit application(s) / Secure Tax Credits	March 2018 – December 2020	March 2019 – December 2021
Start of Construction	December 2018 – December 2020	December 2019 – December 2021
Completion of Construction & Occupancy	December 2020 – December 2022	December 2021 – December 2023