

File No. 031885

Committee Item No. 5

Board Item No. 36

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee Rules

Date 12/3/03

Board of Supervisors Meeting

Date 12/9/03

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

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|--------------------------|-------------------------------------|-----------------------------|
| <input type="checkbox"/> | <input type="checkbox"/>            |                             |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Settlement agreement</u> |
| <input type="checkbox"/> | <input type="checkbox"/>            |                             |
| <input type="checkbox"/> | <input type="checkbox"/>            |                             |
| <input type="checkbox"/> | <input type="checkbox"/>            |                             |

Completed by: Monica Fish

Date November 26, 2003

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.



FILE NO.

RESOLUTION NO.

1 [Settlement Of Claim]  
2

3 **Resolution approving the settlement of the unlitigated claim of Louise Renne, Patrick**  
4 **Devlin, June Lilienthal, Virginia Leishman, Charles Meyers, Alene Meyers, Charles**  
5 **Levinson, and Robert Neal against San Francisco, relating to the use of tobacco**  
6 **settlement revenues by the Department of Public Health; material terms of said**  
7 **settlement are contained in the amended Settlement Agreement on file with the Clerk of**  
8 **the Board of Supervisors.**  
9

10 WHEREAS, In November 1999, the City's voters approved a bond measure known as  
11 Proposition A; and

12 WHEREAS, Proposition A, *inter alia*, authorized the City to incur specified bonded debt  
13 and/or other evidences of indebtedness and/or undertake lease financing by or for the City for  
14 the acquisition, improvement, construction and/or reconstruction of a health care, assisted  
15 living and/or other type of continuing care facility or facilities to replace Laguna Honda  
16 Hospital (the "Laguna Honda Project"); and

17 WHEREAS, The City, to date, has received over \$82 million in revenues under the  
18 1998 Master Settlement Agreement ("Tobacco Settlement Revenues"), of which the City has  
19 expended over \$41 million on the Laguna Honda Project; and

20 WHEREAS, In July 2003 the City adopted Ordinance No. 191-03, which, *inter alia*,  
21 amended Administrative Code Section 10.100-218 to authorize the transfer, in fiscal year  
22 2003-2004, of up to \$25,005,644.60 of specified monies from the Tobacco Settlement  
23 Revenue Sub-account to the City's General Fund for payment of certain costs of the  
24 Department of Public Health (the "Transfer"), such transfer to consist of Tobacco Settlement  
25

SUPERVISOR HALL  
BOARD OF SUPERVISORS

1 Revenues received prior to the City's issuance of any bonds for the Laguna Honda Project  
2 under Proposition A; and

3 WHEREAS, Louise Renne, Patrick Devlin, June Lilienthal, Virginia Leishman, Charles  
4 Meyers, Alene Meyers, Charles Levinson, and Robert Neal ("Claimants") claim that the  
5 Transfer authorized by Ordinance No. 191-03 violates the requirements of Proposition A  
6 and/or is otherwise illegal or invalid; and

7 WHEREAS, The City disputes such claim and maintains the Transfer is consistent with  
8 the provisions of Proposition A; and

9 WHEREAS, Claimants and the City now desire to fully and finally resolve all of  
10 Claimants' claims with regard to Ordinance No. 191-03 and the Transfer therein authorized,  
11 according to the terms of a settlement agreement in form substantially similar to that amended  
12 settlement agreement on file with the Clerk of the Board of Supervisors in File No. 031885,  
13 which is hereby declared to be a part of this Resolution as if set forth fully herein; now,  
14 therefore, be it

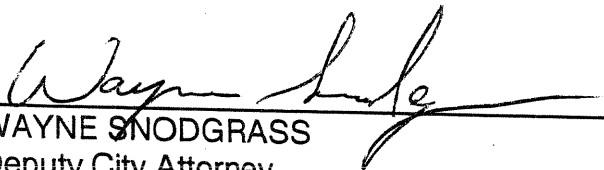
15 RESOLVED, That pursuant to Section 10.22 of the San Francisco Administrative Code,  
16 the agreement between the City and Claimants set forth herein is hereby approved; and be it  
17 further  
18  
19  
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24  
25

SUPERVISOR HALL  
BOARD OF SUPERVISORS

1       RESOLVED, That the Mayor is hereby authorized to execute the agreement between  
2 the City and Claimants set forth herein on behalf of the City.

3  
4 APPROVED AS TO FORM AND  
5 RECOMMENDED:

6 DENNIS J. HERRERA  
7 City Attorney

8   
9 WAYNE SNODGRASS  
10 Deputy City Attorney

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SUPERVISOR HALL  
BOARD OF SUPERVISORS

## SETTLEMENT AGREEMENT, GENERAL RELEASE, AND COVENANT NOT TO SUE

This Settlement Agreement, General Release, and Covenant Not To Sue (this "Agreement") is entered into by and between Louise H. Renne, Patrick Devlin, June Lilienthal, Virginia Leishman, Charles Meyers, Alene Meyers, Charles Levinson, and Robert Neal (individually and collectively "Claimants"), on the one hand, and the City and County of San Francisco, including its departments, commissions, agencies, boards, predecessors, successors, subsidiaries, and its current and former officials, officers, employees, trustees, representatives, and agents (collectively "the City"), on the other hand.

This Agreement is made with reference to the following facts and circumstances:

A. In November 1999, the City's voters approved a bond measure known as Proposition A (hereinafter "Proposition A").

B. Proposition A, *inter alia*, authorized the City to incur specified bonded debt and/or other evidences of indebtedness and/or undertake lease financing by or for the City for the acquisition, improvement, construction and/or reconstruction of a health care, assisted living and/or other type of continuing care facility or facilities to replace Laguna Honda Hospital (the "Laguna Honda Project").

C. The City, to date, has received over \$82 million in Tobacco Settlement Revenues, of which the City has expended over \$41 million on the Laguna Honda Project.

D. In July 2003 the City adopted Ordinance No. 191-03, which, *inter alia*, amended the City's Administrative Code to authorize the transfer, in fiscal year 2003-2004, of up to \$25,005,644.60 of specified monies from the Tobacco Settlement Revenue Sub-account to the City's General Fund for payment of certain costs of the Department of Public Health (the "Transfer"), before the City issued any bonds for the Laguna Honda Project.

E. Ordinance No. 191-03, *inter alia*, amended Administrative Code Section 10.100-218 by adding subsection (c) thereof, which states that "[i]f and when the Director of Public Finance certifies that (i) the City has not received Tobacco Settlement Revenues in amounts sufficient to contribute \$100,000,000 to finance the [Laguna Honda] Project and (ii) the Project requires a payment equal to the difference between \$100,000,000 and the amount of Tobacco Settlement Revenues actually expended to finance the Project (the 'Shortfall') to achieve completion, then the City shall transfer from the General Fund an amount equal to the lesser of the Shortfall or \$25,005,644.60."

F. Claimants claim that the Transfer authorized by Ordinance No. 191-03 violates the requirements of Proposition A and/or is otherwise illegal or invalid.

G. City disputes such claim and maintains the Transfer is consistent with the provisions of Proposition A.

H. As set forth in this Agreement, Claimants and the City now desire to fully and finally resolve all of Claimants' claims with regard to Ordinance No. 191-03 and the Transfer therein authorized, in consideration of the promises contained herein.

I. In addition to the cost of completing the Laguna Honda Project, there shall be a need to acquire furniture, fixtures and equipment for use within or at that facility (as defined more particularly in Section 1 below, the "FF&E"). To ensure the timely completion of the Laguna Honda Project, under this Agreement the Claimants shall forego and release any and all claims relating to Ordinance No. 191-03, and in consideration the City shall take such actions, including by appropriating sufficient funds, as are necessary to cause FFE having a cumulative cost of up to a maximum of twenty-five million dollars (\$25,000,000), to be provided to the Laguna Honda Hospital on a schedule compatible with the opening of the Laguna Honda Project, all as more particularly set forth below.

J. On \_\_\_\_\_, 2003, the City's Board of Supervisors approved this Agreement by Resolution No. \_\_\_\_\_, and the Mayor signed such Resolution on \_\_\_\_\_.

NOW THEREFORE, in consideration of the following, the sufficiency of which is hereby acknowledged, the parties do freely and voluntarily agree as follows:

#### **Terms of Settlement**

1. Furnishings, Fixtures, and Equipment for Laguna Honda Hospital. In a manner consistent with the funding plan set forth in Section 2 hereof, the City will cause the furnishings, fixtures and equipment for the convalescent hospital portion of the Laguna Honda Project described in Exhibit A hereto (hereinafter the "FF&E") to be provided to Laguna Honda Hospital for use within or at that facility; provided, however, in no event shall this Agreement require the City to cause FF&E having a cumulative cost in excess of twenty-five million dollars (\$25,000,000) to be provided to Laguna Honda Hospital. The City may satisfy such obligation through any source of funding, including, but not limited to, financings, gifts or grants.
2. Funding Plan for FF&E. The City shall appropriate sufficient funds (including without limitation, state or federal grants, the proceeds of equipment lease financings, gifts other than gifts provided by or through the Claimants or the Laguna Honda Hospital Volunteers, and any other legally available source) up to the \$25,000,000 cap set forth above to install the FF&E on a schedule compatible with the opening of the Laguna Honda Project (the "FF&E Schedule"). The expenditure of funds under this Agreement shall be made in accordance with the City's Charter. Accordingly, and to ensure compliance with the FF&E Schedule, on or before February 15<sup>th</sup> of fiscal years 2004-2005, 2005-2006 and 2006-2007, the project manager of the Laguna Honda Project shall submit to the Director of Public Health (with copies to the Controller, the Director of Public Finance, and the Mayor's Budget Director) an estimate of the portion of the total cost of the FF&E that should be appropriated in the following fiscal year to meet the FF&E Schedule, and the Director of Public Health shall include in the Public Health Department's budget such funds.
3. Additional FF&E. Nothing in this Agreement shall be construed to obligate the City to provide or cause the provision of any furnishings, fixtures, or equipment to the Laguna Honda Hospital except to the extent required by paragraph 1, above.

4. General Fund Guarantee. The City will comply with Administrative Code Section 10.100-218(c) as in effect as of the date this Agreement is executed, provided that City may satisfy such payment obligation from any legally available source.
5. FF&E in Addition to Project. No obligation imposed upon the City by this Agreement with respect to the provision of the FF&E shall reduce the funding available under Proposition A to construct the Laguna Honda Project.
6. Obligations Contingent upon Lack of Successful Future Challenges. Claimants and the City agree that all obligations on the part of Claimants and/or the City that arise under this Agreement are entirely contingent upon the absence of any successful legal challenge to Ordinance No. 191-03, including to the Transfer therein authorized. The City shall promptly notify Claimants of any legal challenge to Ordinance No. 191-03 by mailing copies of any such challenge to the Claimants' undersigned counsel of record, Matthew D. Davis, c/o Walkup, Melodia, Kelly, Wecht & Schoenberger, 650 California Street, 26th Floor, San Francisco, CA 94108. In the event of notice of such challenge given to Claimants and a final court order or ruling that Ordinance No. 191-03 and/or the Transfer therein authorized are not legally permissible, valid, and/or enforceable, in whole or in part, neither Claimants nor the City shall have any obligations under this Agreement. In the event of the issuance of a preliminary injunction or other preliminary order or ruling that Ordinance No. 191-03 and/or the Transfer therein authorized are not legally permissible, valid, and/or enforceable, in whole or in part, and/or are enjoined in whole or in part, the parties' obligations under this Agreement shall be suspended pending the final resolution of such action.
7. Release of Claims by Claimants and Covenant Not to Sue. In consideration of the foregoing, and for other good and sufficient consideration, Claimants for themselves, their successors, assigns, officers, employees, agents, and consultants, fully and forever release, discharge, and covenant not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings against the City, its predecessors, successors, assigns, officers, employees, Commissioners, agents, consultants, and attorneys, and each of them, that arises out of, is connected with, or relates in any way to the legality, validity, and/or enforceability of Ordinance No. 191-03 and/or the Transfer therein authorized, including any and all claims, obligations, demands, actions, causes of action, damages, and any other liabilities of any nature whatsoever, state or federal, in law or in equity, whether known or unknown, that concern Ordinance No. 191-03 and/or the Transfer therein authorized.
8. Complete and General Release. Except to the extent this Agreement expressly states otherwise, this Agreement is a complete and general release that will forever bar Claimants from pursuing any claim (or assisting in any claim) against the City, its successors, assigns, officers, employees, Commissioners, agents, consultants, and attorneys, and each of them, with respect to any matter arising out of, connected with, or related in any way to the legality, validity, and/or enforceability of Ordinance No. 191-03 and/or the Transfer therein authorized. Claimants understand and agree that they are waiving any rights they may have had, now have, or in the future may have to pursue any and all remedies available under any cause of action related in any way to the legality, validity, and/or enforceability of Ordinance No. 191-03 and/or the Transfer therein authorized.



9. Waiver of Rights under Civil Code Section 1542. Claimants understand and expressly agree that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or related in any way to the legality, validity, and/or enforceability of Ordinance No. 191-03 and/or the Transfer therein authorized, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section 1542 of the Civil Code of the State of California reads as follows:

**A general release does not extend to claims which the creditor does now know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

10. No Admission of Liability. Neither this Agreement nor any other document referred to herein nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission by or against the City of any fault, wrongdoing, or liability of any kind whatsoever. Entering into and carrying out this Agreement and any negotiations, statements, writings, actions, or proceedings related thereto shall not in any event be construed as, or deemed to be evidence of, an admission or concession by the City, and shall not be offered or received in evidence of, an admission or concession by the City, and shall not be offered or received in evidence in any action or proceeding by or against any party to this Agreement in any court, administrative agency, or other tribunal, except as necessary to prove a term, provision, or condition of this Agreement or to enforce same. Claimants and the City hereby affirm that California Evidence Code Section 1152 applies to all of the negotiations, statements, writings and actions that led up to and resulted in this Agreement.

11. Authority to Enter into Agreement; Indemnification. Claimants represent and warrant that they have full power to make the releases and agreements contained herein. Claimants expressly represent and warrant that they have not assigned, encumbered, or in any manner transferred all of any portion of the claims covered by the releases and agreements contained herein. Claimants acknowledge and agree that this warranty and representation is an essential and material term of this Agreement. Claimants agree to indemnify the City and County of San Francisco for any claims brought by purported assignees of Claimants, including costs of judgment and reasonable attorney's fees.

12. Entire Agreement. The parties agree that this Agreement constitutes the entire agreement among the parties, and supersedes all previous negotiations, statements, writings, and agreements among the parties. The parties agree that this Agreement shall not be subject to any mistake of fact and that there is absolutely no agreement, release, or reservation which is not clearly expressed herein. The terms of this Agreement are contractual and are not mere recitals. This Agreement may be amended, modified, or otherwise changed only in a writing signed by all parties hereto. The parties to this Agreement represent and warrant that, except as set forth in this Agreement, they have not relied upon or been induced by any representation, statement, or disclosure of any other party, but have relied upon their own knowledge and judgment and upon the advice and representation of counsel of their own selection in entering into this Agreement. The

parties to this Agreement further represent and warrant that they have read and fully understand the terms of this Agreement and are fully advised of the legal effect thereof.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Enforcement. The parties agree that the San Francisco Superior Court will have jurisdiction to enforce this Agreement and to resolve all disputes arising out of this Agreement.

15. Headings and Captions. Any and all headings and captions used in this Agreement are for no other purpose than the convenient indication of the general subject matter of the term(s), provision(s), and condition(s) which follow, and shall not be considered or construed in any way so as to alter or modify the meaning and intent of any such term, provision, or condition.

16. Attorneys' Fees and Costs. Except as may be specifically provided in this Agreement, all parties to this Agreement shall bear their own attorneys' fees, legal expenses, and costs.

17. Interpretation. This Agreement and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

18. Counterparts. This Agreement may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

19. Severability. If any term, provision, or condition contained in the Agreement – or the application of such term, provision, or condition – shall, to any extent, be held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect.

20. Notice. All written communications sent by the parties to this Agreement may be by U.S. mail or by fax, and shall be addressed as follows:

To City: City Attorney's Office, Room 234, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4682, fax (415) 554-4715

To Claimants: Matthew Davis, Esq., Law Offices of Walkup, Melodia, Kelly, Wecht & Schoenberger, 650 California Street, 26<sup>th</sup> Floor, San Francisco, CA 94108-2615, fax (415) 391-6965

//

IN WITNESS WHEREOF, the parties and their counsel have executed this Agreement as of the dates set forth below:

DATED: \_\_\_\_\_

\_\_\_\_\_  
LOUISE H. RENNE

DATED: \_\_\_\_\_

\_\_\_\_\_  
PATRICK DEVLIN

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUNE LILIENTHAL

DATED: \_\_\_\_\_

\_\_\_\_\_  
VIRGINIA LEISHMAN

DATED: \_\_\_\_\_

\_\_\_\_\_  
CHARLES MEYERS

DATED: \_\_\_\_\_

\_\_\_\_\_  
ALENE MEYERS

DATED: \_\_\_\_\_

\_\_\_\_\_  
CHARLES LEVINSON

DATED: \_\_\_\_\_

\_\_\_\_\_  
ROBERT NEAL

DATED: \_\_\_\_\_

CITY AND COUNTY OF SAN  
FRANCISCO

By: \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO FORM AND SUBSTANCE:

DATED: \_\_\_\_\_

WALKUP, MELODIA, KELLY, WECHT  
& SCHOENBERGER

By: \_\_\_\_\_  
MATTHEW D. DAVIS  
Attorneys for Claimants

DATED: \_\_\_\_\_

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
WAYNE K. SNODGRASS  
Deputy City Attorney  
Attorneys for City and County of  
San Francisco

EXHIBIT A: The following is a general list of equipment, furniture, fixtures and equipment that will exist in the Laguna Honda replacement facility upon opening:

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**CATEGORY/DESCRIPTION**

**KITCHEN EQUIPMENT**

Includes necessary machines, pans, utensils, carts, satellite serveries and drink dispensers.

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**INFORMATION TECHNOLOGY**

Includes PC's and related equipment, IT server, network equipment, PBX equipment, security equipment and miscellaneous handsets and pagers.

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**MEDICAL EQUIPMENT**

Includes beds, dental equipment, pharmacy equipment, rehabilitation equipment, diagnostic equipment and related furnishings.

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**FURNITURE**

Includes furnishings for living rooms, dining rooms and resident rooms; cafeteria; staff areas and offices; and outpatient programs.

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The parties currently estimate that the cost of the FF&E will exceed \$20 million, and may be significantly higher.

