

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “**Agreement**”) is entered into as of February 22, 2018 by and between Grossmont Union High School District (“**GUHSD**”) and Ralf Swenson (“**Swenson**”), on the one hand, and Alpine Union School District (“**AUSD**”); Alpine Taxpayers for Bond Accountability (“**ATBA**”); Sal Casamassima (“**Casamassima**”); Bill Weaver (“**Weaver**”); Al Haven (“**Haven**”); George Barnett (“**Barnett**”); and Colin Campbell (“**Campbell**”), on the other hand. Hereinafter, Casamassima, Weaver, Haven, Barnett, and Campbell are referred to as the “**ATBA Members**.”

RECITALS

WHEREAS, Grossmont Union High School District is a public high school district in San Diego County;

WHEREAS, in March 2004, GUHSD voters passed Proposition H, which authorized GUHSD to issue up to \$274 million in general obligation bonds to finance school improvement projects throughout the district;

WHEREAS, Proposition H bond funds were insufficient to complete many of the projects contemplated by Proposition H;

WHEREAS, in November 2008, voters passed Proposition U, which authorized GUHSD to issue an additional \$417 million in general obligation bonds and identified over 100 projects GUHSD was authorized to complete using Proposition U monies;

WHEREAS, Proposition U authorizes GUHSD to build a new high school in Alpine, but only if an enrollment condition (the “**Enrollment Condition**”) is met;

WHEREAS, under the Enrollment Condition, GUHSD is authorized to construct the new school only if district-wide enrollment “at the existing comprehensive school sites, including the two current charter schools” (the “**Relevant Enrollment**”) equals or exceeds 23,245 students (the “**Enrollment Figure**”) at the time GUHSD releases a request for construction bids for construction of the new high school buildings;

WHEREAS, following the passage of Proposition U, GUHSD proceeded promptly and in good faith with the acquisition of the site for the new high school, site preparation work, and preconstruction work, including the removal of homes on the site, removal of contaminated soil in accordance with a Removal Action Workplan, and grading and building design;

WHEREAS, the Relevant Enrollment equaled or exceeded the Enrollment Figure during the school years 2008/2009, 2009/2010, and 2010/2011;

WHEREAS, despite GUHSD’s best efforts, GUHSD was not ready or able to release a request for construction bids for construction of the new high school buildings between 2008 and 2011, when the Relevant Enrollment equaled or exceeded the Enrollment Figure;

WHEREAS, in the school year 2011/2012, the Relevant Enrollment was below the

Enrollment Figure, and it has continued to remain below the Enrollment Figure since then;

WHEREAS, as of today, the Enrollment Condition for construction of a new high school in Alpine under Proposition U has not been met, and GUHSD is therefore not authorized to commence construction of the new high school;

WHEREAS, on or about October 14, 2014, AUSD and ATBA filed suit against GUHSD and Swenson (the "Action"), alleging, *inter alia*, that there was an agreement between GUHSD and AUSD providing for construction of a new high school in exchange for the withdrawal of a pending petition for unification; GUHSD was obligated to spend or set aside available bond dollars for construction of the new high school; and use of Proposition U bond funds for other bond projects constituted waste;

WHEREAS, beginning on April 11, 2016, a trial was held in the Action;

WHEREAS, following the trial, the trial court issued a Statement of Decision, attached hereto as **Exhibit A**, finding in favor of GUHSD and Swenson, and against AUSD and ATBA on all claims;

WHEREAS, the trial court found, *inter alia*, that (1) "there was no agreement between GUHSD and AUSD to build a high school in exchange for the withdrawal of a pending petition for unification"; (2) Proposition H did not unconditionally obligate GUHSD to build a new high school in Alpine; (3) Proposition U's Enrollment Condition has never been met; (4) Proposition U confers discretion on GUHSD with respect to the new high school and other projects, and Grossmont's decision to put the new high school project on hold during a period of declining enrollment and economic challenges was a reasonable exercise of GUHSD's discretion; (5) Proposition U does not entitle AUSD or ATBA to a school of "a particular design or budget" but only a school that will "accommodate up to 800 students"; (6) Grossmont has not committed waste; (7) ATBA's waste claims unrelated to the new high school were barred by the statute of limitations; and (8) ATBA's claims for mandamus and waste were barred by the doctrine of laches;

WHEREAS, on June 16, 2016, the trial court entered a Judgment in favor of GUHSD and Swenson, and against AUSD and ATBA, which included an award of GUHSD's costs;

WHEREAS, on June 24, 2016, AUSD and ATBA appealed (the "Appeal") the Judgment;

WHEREAS, on August 10, 2016, the trial court entered a final Amended Judgment (the "Judgment"), attached hereto as **Exhibit B**, in favor of GUHSD and Swenson, and against AUSD and ATBA, which included an award of GUHSD's costs in the specific amount of \$28,987.85;

WHEREAS, oral argument in the Appeal was held on January 11, 2018;

WHEREAS, on January 18, 2018, the California Court of Appeal issued its unanimous decision (the "Court of Appeal Decision") in the appeal, affirming the Judgment on the grounds stated in the Court of Appeal Decision, attached hereto as **Exhibit C**;

WHEREAS, the Court of Appeal held, *inter alia*, that Proposition U's Enrollment Condition for construction of a new high school in Alpine has not "been satisfied and Defendants [GUHSD and Swenson] therefore are not authorized or obligated to begin and complete construction of the new high school";

WHEREAS, despite its best efforts, at no time has GUHSD been prepared to release a request for construction bids for construction of the new high school buildings;

WHEREAS, in November 2016, voters passed Measure BB, which authorized GUHSD to issue an additional \$128 million in general obligation bonds to finance school improvement projects throughout the district, including projects previously identified in Proposition U; and

WHEREAS, the parties wish to amicably resolve the disputes related to the Action upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Scope of Settlement and Binding Effect

(a) The parties to this Agreement desire to settle all claims and causes of action of any kind whatsoever that the parties have or may have as of the date of this Settlement Agreement, including those arising out of or relating in any way to Proposition H and Proposition U, including specifically the Action.

(b) The parties hereby acknowledge that their execution of this Agreement is binding on themselves, as well as, where applicable, their principals, past or present members or Governing Boards, and successors.

(c) This settlement is intended to end all litigation and public disputes between the parties. The ATBA Members hereby jointly and severally represent that they are all of the members of the ATBA at any time and that the ATBA, its Members, or those that benefit from the release set forth in Section 3(b) will not attempt to circumvent this Agreement by creating other entities or associations or engaging other individuals to accomplish indirectly what the ATBA and ATBA Members are prohibited from doing under this Agreement.

2. Termination of the Action

(a) AUSD and ATBA waive any right to file, and hereby agree not to file, any appeal or challenge to the Court of Appeal Decision, including but not limited to any petition for reconsideration, petition for rehearing, or petition for review by the California Supreme Court.

(b) AUSD shall use its best efforts to obtain unanimous ratification of this Agreement by its Governing Board.

(c) GUHSD and Swenson waive any costs each is entitled to recover from AUSD, ATBA, and the ATBA Members in the Action, including any potential cost recovery in the Appeal and any cost award provided for under the Judgment.

3. Releases

(a) In consideration of this Agreement, AUSD and its officers and Governing Board members hereby release and forever discharge in full GUHSD, Swenson, and each of their respective officers, Governing Board members, heirs, predecessors, successors, assigns, agents, representatives, employees, and attorneys from any and all accounts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, both known and unknown, which they ever had, or now have, based on any events that have occurred prior to the date of this Agreement. This release shall not constitute a release of any undertaking, obligation, representation, warranty, covenant or agreement contained in this Agreement.

(b) In consideration of this Agreement, GUHSD and its officers and Governing Board members hereby release and forever discharge in full AUSD, ATBA, the ATBA Members, and each of their respective officers, Governing Board members, heirs, predecessors, successors, assigns, agents, representatives, employees, and attorneys from any and all accounts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, both known and unknown, which they ever had, or now have, based on any events that have occurred prior to the date of this Agreement. This release shall not constitute a release of any undertaking, obligation, representation, warranty, covenant or agreement contained in this Agreement.

(c) In consideration of this Agreement, Swenson hereby releases and forever discharges in full AUSD, ATBA, the ATBA Members, and each of their respective officers, Governing Board members, heirs, predecessors, successors, assigns, agents, representatives, employees, and attorneys from any and all accounts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, both known and unknown, which they ever had, or now have, based on any events that have occurred prior to the date of this Agreement. This release shall not constitute a release of any undertaking, obligation, representation, warranty, covenant or agreement contained in this Agreement.

(d) In connection with this Agreement, each party acknowledges that it is aware that it may later discover facts in addition to or different from those which it now knows or believes to be true, but that it is the intention of each party to fully, finally and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist or formerly existed between the parties, and that in furtherance of that intention, this Agreement shall be and will remain in effect as a full and complete mutual release, regarding any and all known or unknown disputes and differences between them based on any events that have occurred prior to the date of this Agreement.

(e) THE PARTIES TO THIS AGREEMENT HEREBY RELINQUISH AND WAIVE ALL RIGHTS CONFERRED UPON THEM BY THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA WHICH 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 TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. Prohibition Against Further Litigation

(a) AUSD, ATBA, and the ATBA Members shall not pursue directly or indirectly any future litigation against GUHSD, Swenson, or any other officer of GUHSD arising out of or related in any way to any action or inaction of GUHSD, Swenson, the Governing Board of GUHSD, or any officer of GUHSD relating to Proposition H or Proposition U, including but not limited to any decision regarding whether or when to build a new high school in Alpine; any decision to fund projects under Proposition H, Proposition U, or Measure BB; and the use of bond funds to defend the Action.

(b) AUSD, ATBA, and the ATBA Members shall not fund, solicit, or encourage any litigation against GUHSD, Swenson, the Governing Board of GUHSD, or any officer of GUHSD arising out of or related in any way to any action or inaction of GUHSD, Swenson, the Governing Board of GUHSD, or any officer of GUHSD relating to Proposition H or Proposition U, including but not limited to any decision regarding whether or when to build a new high school in Alpine; any decision to fund projects under Proposition H, Proposition U, or Measure BB; and the use of bond funds to defend the Action.

5. Acknowledgments

(a) AUSD, ATBA, and the ATBA Members jointly and severally acknowledge that the Statement of Decision and the Court of Appeal Decision confirm that the actions and decisions of GUHSD and Swenson have been lawful and have constituted sound and reasonable exercises of their discretion with respect to the new school and that Proposition U's Enrollment Condition for construction of a new high school in Alpine has not been satisfied, and GUHSD therefore is not authorized or obligated to begin and complete construction of the new high school.

(b) AUSD, ATBA, and the ATBA Members jointly and severally agree to abide by the decisions of the trial court and the Court of Appeal, as provided for under the Statement of Decision and Court of Appeal Decision.

(c) GUHSD acknowledges that it remains committed to building a new high school in Alpine when the conditions are appropriate for doing so.

6. Further Statements Regarding the Action

(a) Within five (5) business days of the execution of this Agreement, GUHSD and AUSD shall release to the press a joint statement of all parties to this Agreement in the form attached hereto as **Exhibit D**.

(b) AUSD, ATBA, and the ATBA Members shall not disparage GUHSD, Swenson, or any of GUHSD's current or former Governing Board members or officers for their decisions or actions arising out of or relating in any way to the Action, including but not limited to their decisions regarding whether or when to build a new high school in Alpine and whether to fund other projects under Proposition H and Proposition U. For the sake of clarity, nothing in this provision shall prevent AUSD, ATBA, or the ATBA Members from taking a position on any political issue, including any proposed bond measures or in any elections of officials, or from making truthful statements of fact.

7. Knowing and Voluntary Waiver of Certain Rights

(a) AUSD, ATBA, and the ATBA Members acknowledge that it or he understands that certain provisions of this Agreement may require him or it to act or refrain from acting in a manner that could otherwise give rise to state or federal constitutional challenges and that, by voluntarily consenting to this Agreement, AUSD, ATBA, and each ATBA member waives for purposes of performance of this Agreement any and all claims or contentions that any of the provisions of this Agreement, including but not limited to sections 4 and 6 of this Agreement, violates the state or federal constitutions. This includes not is not limited to, any claims or contentions that any provision of this Agreement constitutes a prior restraint or violates the First Amendment of the United States Constitution.

(b) ATBA and the ATBA Members acknowledge that Fagen, Friedman & Fulfroft LLP ("F3") is counsel for AUSD in connection with the negotiation of this Agreement and that GUHSD and AUSD have signed a waiver of conflict or potential conflict to permit such representation. ATBA and the ATBA Members each consents to AUSD's retention of F3 as counsel for AUSD in connection with this Agreement, and ATBA and each of the ATBA Members waives any right to challenge such representation.

8. Representations and Warranties

(a) Each party represents and warrants that it has the power and authority to enter into this Agreement and all documents executed and delivered pursuant to this Agreement, whether individually or on behalf of any entity executing this Agreement, and that each such document is valid, binding, and enforceable upon it, except as otherwise specifically provided herein. Each party to this Agreement represents and warrants that no consent, approval, authorization or order of, and no notice to, or filing with any court, government authority, person or entity, is required for the execution, delivery or performance by it of this Agreement, except as otherwise specifically provided herein.

(b) The ATBA Members jointly and severally represent and warrant to GUHSD and Swenson that they have full power and authority to enter into this Agreement and to take all of the actions and perform all of the obligations undertaken by ATBA herein, and the consent or joinder of no other individual or entity is required.

9. Miscellaneous

(a) Additional Documents: The parties agree to cooperate fully and execute any and all supplementary and additional documents and take all additional actions that may be necessary

or appropriate to carry out and give full force and effect to the basic terms and intent of this Agreement.

(b) Entire Agreement: Amendment: Except as otherwise specifically set forth in the Agreement, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, agreements and understandings with respect to the subject matter of this Agreement. The terms of this Agreement are contractual, are the consideration for this Agreement, and are not mere recitals. This Agreement may not be amended, altered, modified or changed in any way except in writing signed by all the parties. The parties agree that an email or other electronic transmission shall not be deemed to be a "writing" for purposes of amending this Agreement.

(c) Costs and Fees: Each of the parties shall pay its own costs and attorneys fees incurred in connection with the Action and the drafting and execution of this Agreement. In the event that any party is compelled to institute litigation to enforce this Agreement or any of its terms, the prevailing party in such litigation shall be entitled to recover the attorneys' fees, costs and expenses it incurred in connection with such litigation in addition to any damages and/or equitable relief awarded by the court.

(d) Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed one instrument.

(e) Drafting: This Agreement has been prepared by the joint efforts of the respective attorneys for each of the parties.

(f) Headings: The section headings contained in each section of this Agreement are intended solely for convenience of reference, and shall not limit or expand the express terms of this Agreement or otherwise be used in its construction.

(g) Reasonable Consideration: For the avoidance of any doubt, the parties expressly agree and stipulate that each has received good and adequate consideration, the receipt and sufficiency of which is hereby acknowledged, in exchange for entering into this Agreement, and for the releases and other terms and conditions contained herein.

(h) California Law: This Agreement and any dispute, claim or controversy, including tort claims, arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles.

(i) Severability: Each of the parties' rights and obligations under this Agreement shall be discrete and severable, and may be enforceable notwithstanding the impossibility of performance, invalidity, illegality, or unenforceability of any one or more other provisions of this Agreement. If one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect such provisions shall be limited or eliminated to the minimum extent necessary, and to the extent such provisions are limited or eliminated the parties shall use their best efforts to reform such provisions, in each case so as to give effect to the intent of the parties hereunder.

(j) Successors and Assigns: This Agreement shall continue perpetually and shall be binding upon the parties and their heirs, successors, and assigns, and shall inure to the benefit of the parties and their officers and Governing Board members.

(k) No Reliance: Each of the parties expressly represents and warrants that it or he was represented by counsel and other advisers of its or his choice, or had a full opportunity to consult its or his own counsel and advisers, in connection with the drafting and execution of this Agreement, and that it or he relied exclusively upon the advice of its or his own attorneys and other advisers concerning the legal, financial, tax and other consequences of entering into this Agreement. Each party expressly disclaims reliance upon any facts or representations made by any other party to this Agreement, or by any other party's attorneys, if not contained in this Agreement.


(l) Waiver. The waiver by any party of any right under this Agreement, or of any failure of any other party to perform its obligations, or of any breach by any other party, shall not be deemed a waiver of any other right under this Agreement, or of any other breach or failure of performance by any other party, whether of a similar nature or otherwise.

(m) Specific Performance and Injunctive Relief. The parties hereto agree that money damages will be an inadequate remedy for certain breaches of this Agreement and that irreparable harm will result therefore. The parties therefore agree that equitable remedies, including, without but not limited to, the remedies of specific performance and injunctive relief, shall be available in addition to any other remedies available at law. The parties further agree that any violation of this Agreement may entitle a party to immediate injunctive relief.

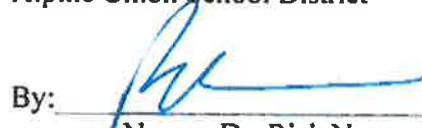
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

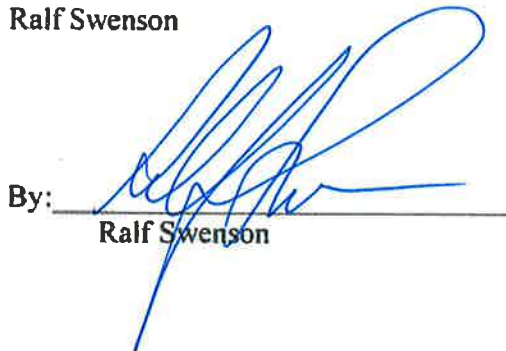
Grossmont Union High School District

By: 
Name: Dr. Tim Glover
Title: Superintendent

Alpine Union School District

By: 
Name: Dr. Rich Newman
Title: Superintendent



Ralf Swenson

By: 
Ralf Swenson

Sal Casamassima
Individually and on behalf of the Alpine
Taxpayers for Bond Accountability

By: 
Sal Casamassima

Bill Weaver
Individually and on behalf of the Alpine
Taxpayers for Bond Accountability


By: 
Bill Weaver

Al Haven
Individually and on behalf of the Alpine
Taxpayers for Bond Accountability

By: 
Al Haven

[Signatures continue on following page.]

George Barnett
Individually and on behalf of the Alpine
Taxpayers for Bond Accountability

By: 
George Barnett

Colin Campbell
Individually and on behalf of the Alpine
Taxpayers for Bond Accountability

By: 
Colin Campbell
