

MINUTE ITEM

This Calendar Item No. 1
was approved as Minute Item
No. 1 by the State Lands
Commission by a vote of 2
to 0 at its 2-1-88
meeting.

CALENDAR ITEM

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Townsend

FIRST AMENDMENT TO SETTLEMENT AGREEMENT NO. 1106
BETWEEN THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION
AND ITS BOARD OF HARBOR COMMISSIONERS

TRUSTEE: City of Los Angeles
ATTN: Keith Comrie
Chief Administrative Officer
City Hall East, Room 300
200 North Main Street
Los Angeles, California 90012

Port of Los Angeles
ATTN: Ezunial Burts
Executive Director
425 S. Palos Verdes Street
San Pedro, California 97033-0151

BACKGROUND:

In 1977, the City of Los Angeles and the Board of Harbor Commissioners entered into Settlement Agreement No. 1106 to provide for the settlement of all monetary claims involving the Harbor Revenue Fund and the City General Fund. In addition, the Agreement settled the status of certain City proprietary land under the administration of the Harbor Department, and provided for the segregation of non-trust income and the payment of rental to the City for the land.

Concurrent with the Settlement Agreement, the City and the Board entered into Rental Agreement No. 1107 which set out a method of determining the rental agreed upon in the Settlement Agreement. The Harbor Department was to pay a percentage of the agreed-on fair market value of the land as rent. Payment of the rent was to be made from "actual gross revenues attributable to the City land and the improvements," less a

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management fee and capital costs amortized at an agreed-on rate of return. A rental income standard was established which provided that the City was entitled to actual payments, or a credit equal to a specified rate of return applied to current fair market value of the land. If the product of this rental standard formula exceeded the revenue generated, the excess was to be deemed a credit and accrued to be paid at a later date when actual revenues generated by the land exceeded its agreed fair rental value.

A controversy between the City and the Harbor Department regarding the formula for determining the rental payment has existed for several years. It has been the Harbor Department's position that only building rental, demurrage and storage revenues generated on City land should be used in the rental calculation. They maintain that dockage and wharfage revenues, which are not generated on City land, should be excluded from the rental calculation if the Harbor Department is to fulfill its legal obligation not to commingle State tideland trust assets with its non-trust assets. The City believes wharfage and dockage should be included in the calculation because the wharf would not be as productive without backland to store cargo. Historically, without wharfage and dockage revenues included in the rental calculation, income from the land has not been sufficient for the Harbor Department to make full rental payment to the City.

CURRENT SITUATION:

As a resolution to this controversy, and in conformance with the Board's plan to avoid similar future disputes of this nature by acquiring the properties within the Harbor District, it has proposed to acquire the subject lands from the City at a negotiated price of \$27,400,000. The City has agreed to the conveyance and to the First amendment of Settlement Agreement No. 1106 which provides for the following:

1. The Board agrees to pay \$27,400,000 from its Harbor Revenue Fund to the City in its proprietary capacity. The payment shall be made in one installment within ten (10) days from the effective date of the Agreement.

(CALENDAR ITEM NO. 01 CONT'D)

2. Declares that, from and after the \$27,400,000 payment, Parcels 1 and 2 of the subject lands, as described in the Agreement, shall become trust assets. Parcel 3, as described in the Agreement, shall be conveyed in the same manner, and shall become a trust asset, at a future date when it is no longer used as a public street or highway.
3. In full satisfaction, the City and the Board agree that all claims involving past, present or future rental payments, including all accruals for the use of the subject lands, are waived and eliminated, and further agree to the termination of Rental Agreement No. 1107 between the City and the Board.

It is the opinion of staff of the State Lands Commission and the Office of the Attorney General, that the proposed action provides for a final settlement of a long standing rental dispute concerning the Harbor Revenue Fund and the lands under the jurisdiction of the Board of Harbor Commissioners. Staff has reviewed the independent appraisal report and concurs that the negotiated price of \$27,400,000 is a fair price for the lands, which will be placed under the umbrella of the legislative trust grant. Staff of the Commission and the Office of the Attorney General recommend the State Lands Commission's concurrence with and approval of the First Amendment to Settlement Agreement No. 1106, attached hereto as Exhibit "B".

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Adm. Code 15378.

EXHIBITS:

- A. Site Map.
- B. First Amendment to Settlement Agreement No. 1106.

(CALENDAR ITEM NO. 01 CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE CEQA LEAD AGENCY FOR THIS PROJECT, THE CITY OF LOS ANGELES, HAS DETERMINED THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378, AND STATE THAT IT CONCURS WITH SAID DETERMINATION.
2. APPROVE THE FIRST AMENDMENT TO SETTLEMENT AGREEMENT NO. 1106, CONDITIONAL ON:
 - A. THE ACCEPTANCE OF THE SUBJECT LANDS AS TRUST ASSETS, SUBJECT TO THE TERMS AND CONDITIONS OF CHAPTER 651, STATUTES OF 1929, AS SUBSEQUENTLY AMENDED; AND
 - B. STATE OF CALIFORNIA HOLDING ALL RIGHTS AND INTEREST IN SAID LANDS RETAINED AND RESERVED TO IT IN ACCORDANCE WITH CHAPTER 651, STATUTES OF 1929, AS SUBSEQUENTLY AMENDED.
3. DIRECT THE STAFF OF THE STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, OR RECORDATION OF THE AMENDED AGREEMENT AS MAY BE NECESSARY TO INSURE THE PROVISIONS OF THE AGREEMENT ARE CARRIED OUT.



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EXHIBIT "A"



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EXHIBIT B

HARBOR DEPARTMENT
AGREEMENT 1116A
CITY OF LOS ANGELES

FIRST AMENDMENT TO
SETTLEMENT AGREEMENT NO. 1106

This First Amendment to Settlement Agreement No. 1106 is between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "City"), its BOARD OF HARBOR COMMISSIONERS (hereinafter referred to as "Board"), and the STATE OF CALIFORNIA by and through the STATE LANDS COMMISSION (hereinafter "State Lands"):

WHEREAS, the City of Los Angeles, a municipal corporation, is the grantee in trust of certain tidelands and submerged lands pursuant to Chapter 651, California Statutes of 1929, as subsequently amended; and

WHEREAS, by reason of Section 132 of the Charter of the City of Los Angeles, Board has the management, supervision and control of all navigable waters and all tidelands and submerged lands, whether filled or unfilled, situated below the line of mean high tide northerly and easterly of the United States Government breakwater at Los Angeles Harbor and within the limits of the City of Los Angeles together with all lands purchased by it and all other lands placed under its management, supervision and control by ordinance of City; and

WHEREAS, City owns, in its proprietary capacity, fee title to the three parcels of real property situated in the City of Los Angeles, County of Los Angeles, State of California described in Exhibit 1, attached hereto (hereinafter referred to as "Parcels 1, 2 and 3", respectively); and

WHEREAS, City in its proprietary capacity has leased to Board certain portions of Parcels 1, 2 and 3 for trust purposes in accordance with Settlement Agreement No. 1106 between the parties hereto and Rental Agreement No. 1107 between City and Board; and

WHEREAS, certain disputes have arisen regarding rental payments by Board to City for use of Parcels 1, 2 and 3, which disputes the parties wish to settle; and

WHEREAS, it is in the best interest of the parties and the public to resolve the current disputes and avoid future disputes regarding Parcels 1, 2 and 3 by having said lands become a trust asset and a part of the Harbor District

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by reason of its purchase by the harbor revenue fund pursuant to Section 145 of the Charter of City;

NOW THEREFORE, Settlement Agreement No. 1106 is amended as follows:

1. Board agrees to pay to City the sum of \$27.4 million dollars and shall be consistent with the requirements of Charter Section 138(2), 145(1), 145(2) and 146(d)(3).

2. From and after the payment provided in paragraph 1, Parcels No. 1 and 2 shall be trust assets acquired by expenditure from the harbor revenue fund.

3. Parcel 3 as described in Exhibit 1 is transferred in the same manner as described in paragraph 2 of this amendment at such future date as it is no longer used as a public street or highway. In such event, jurisdiction and control of Parcel 3 held by the Department of Public Works and Department of Water and Power pursuant to City of Los Angeles Ordinance No. 152,076 shall automatically be transferred to the Board. The fair market value of Parcel 3 is included in the consideration paid herein.

4. The parties hereto agree that all claims known and unknown involving all past, present, or future rental payments, including all accruals for the use of Parcels 1, 2 and 3 as described in Exhibit 1, are hereby waived and eliminated. The parties further agree that subsections A and B of Section 2 of Settlement Agreement No. 1106 are deleted in their entirety and that Rental Agreement No. 1107 regarding rental payments on Parcels 1, 2 and 3 is hereby cancelled. Subsection C of section 2 of Settlement Agreement No. 1106 is amended by deletion of its first six words.

5. This First Amendment to Settlement Agreement No. 1106 shall become effective upon its approval and execution by the City of Los Angeles and the Board of Harbor Commissioners, and upon the approval and execution of the amendment by the State Lands Commission on behalf of the State of California.

Transfer of the amount set forth in paragraph 1 from the City's harbor revenue fund to the City's general fund shall occur within ten (10) days following the effective date.

6. This Agreement is made in compromise and settlement of the matters set forth herein and shall affect only these matters; it shall have no precedential value for any other present or future dispute. In the event this Agreement does not become effective as provided in paragraph 5 above, nothing herein shall be an admission of any party hereto with respect to such matters and shall not be used by any party hereto in any proceedings, whether judicial or otherwise.

7. This Agreement constitutes the entire Agreement between the parties and no party relies upon any warrants or representations not contained herein. The terms and conditions hereof shall not be altered or amended without the concurrence of the parties.

8. Except as amended herein, all remaining terms and conditions of Settlement Agreement No. 1106 shall remain in full force and effect.

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IN WITNESS WHEREOF, each party has caused this First Amendment to Agreement No. 1106 to be executed on the date immediately to the left of their signatures.

CITY OF LOS ANGELES,
a municipal corporation

Dated: JAN 19 1988

By

Tom Bradley

Adopted by the City Council
of the City of Los Angeles
at its meeting held on

January 12, 1988



City Clerk

Wille Taylor

CITY OF LOS ANGELES, a municipal
corporation, acting by and
through its Board of Harbor
Commissioners

Dated:

1/19/88

By

Bill St
Executive Director

Adopted by the Board of
Harbor Commissioners at its
meeting held on Jan 15, 1988

Attest

Audrey H. Yamaki
acting Secretary

APPROVED AS TO FORM:

JAMES K. HAHN, City Attorney

Dated:

Jan 15, 1988

By

Pat Nave
JONATHON P. NAVE, Deputy

The foregoing Amendment was approved by the State Lands
Commission pursuant to resolution adopted at its meeting held
on _____, 1988.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By

Executive Director

The foregoing Amendment is approved as to form:

Dated: _____

JOHN K. VAN de KAMP,
Attorney General

By

Deputy Attorney General

JPN:sjc:au

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LEGAL DESCRIPTION

PARCEL 1

All those portions of Lot 12, Tract No. 3192, as per map recorded in Book 44, pages 91 to 94 inclusive of Maps, in the office of the County Recorder of Los Angeles County, described as follows:

Parcels A, B, C, D and E as described in Ordinance No. 106,107 of the City of Los Angeles, approved by the City Council on August 23, 1955, Council File No. 64756.

EXCEPTING THEREFROM all that parcel of land over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said City and described as John S. Gibson Boulevard and those parcels of land to be used as a bikeway and for the construction and maintenance of powerlines and poles, over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said City and to the Department of Water and Power of said City, as described in Order No. 4752 of the Board of Harbor Commissioners of said City, adopted February 1, 1978 and described in Ordinance No. 152,076 of the City of Los Angeles, approved by the City Council on March 1, 1979; Council File No. 72-3778.

ALSO EXCEPTING THEREFROM all that parcel of land over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Board of Public Works of said City by Ordinance No. 116,221 of the City of Los Angeles, approved by the City Council on May 12, 1960, Council File No. 64756.

ALSO EXCEPTING THEREFROM all that parcel of land over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Board of Public Works of said City by Ordinance No. 132,885 of the City of Los Angeles, approved by the City Council on August 9, 1966, Council File No. 12825C.

EXHIBIT 1

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LEGAL DESCRIPTION

PARCEL 2

That portion of Wilmington and San Pedro Road, vacated by Ordinance No. 152,076 of the City of Los Angeles, approved by the City Council on March 1, 1979, Council File No. 72-3778, as shown and described in Volume 21, page 41, of "Street Vacation Maps" on file in the Office of the City Clerk of the City of Los Angeles, City Hall, Los Angeles, California, described as follows:

COMMENCING at the southeasterly corner of that certain parcel of land conveyed by Burkhard Investment Company to Oil Terminals Inc. by deed recorded in Book 14623, page 39 of Official Records in the office of said County Recorder; thence westerly along the southerly line of said parcel of land so conveyed a distance of 375 feet to a point, said southerly line has a bearing of S 89°47'52" W for purposes of this description; thence S 3°27'08" E, 625 feet; thence S 35°00'57" E, 721.31 feet to a point in the northwesterly line of said Wilmington and San Pedro Road, 100 feet wide, said point being in a curve concave to the northwest having a radius of 1,352.47 feet, a radial line to said curve bears, S 66°59'36" E through said point, said point is the TRUE POINT OF BEGINNING of this description; thence southwesterly along said curved northwesterly line of Wilmington and San Pedro Road, an arc distance of 891.00 feet to the end of said curve and to a point of tangency in the straight northwesterly line of said road shown as having a bearing and length of S 60°45'10" W, 810.90 feet on said Map of Tract No. 3192; thence S 60°45'10" W 810.90 feet to a tangent curve concave northerly shown on map of said tract as having radius of 684.08 feet; thence westerly along said curve an arc distance of 559.03 feet to a point of tangency in a line shown on map of said tract as having a bearing and length of N 72°25'30" W, 134.20 feet; thence N 72°25'30" W, 134.20 feet to a tangent curve concave southerly shown on map of said tract as having a radius of 844.08 feet; thence westerly along said curve an arc distance of 580.62 feet to a point of tangency in a line shown on said map as having a bearing of S 68°09'45" W; thence S 68°09'45" W, 676.60 feet; thence S 21°50'15" E to the centerline of said Wilmington and San Pedro Road a distance of 50 feet; thence N 58°09'45" E, 676.60 feet along said centerline to a tangent curve concave southerly having a radius of 794.08 feet that is concentric with said

curve hereinbefore described as having a radius of 844.08 feet; thence easterly along said curve having a radius of 794.08 feet an arc distance of 546.33 feet to a point of tangency in a line that bears S 72°25'30" E; thence S 72°25'30" E, 134.20 feet to a tangent curve concave northerly having a radius of 734.08 feet that is concentric with said curve hereinbefore described as having a radius of 684.08 feet, thence easterly along said curve having a radius of 734.08 feet an arc distance of 599.89 feet to a point of tangency in a line that bears N 60°45'10" E; thence N 60°45'10" E, 810.90 feet to a tangent curve concave northwesterly having a radius of 1,402.47 feet that is concentric with said curve hereinbefore described as having a radius of 1,352.47 feet; thence northeasterly along said curve having a radius of 1402.47 feet an arc distance of 923.94 feet to the southeasterly extension of that certain radial line hereinbefore described as having a bearing of S 66°59'36" E; thence leaving the centerline of said Wilmington and San Pedro Road N 66°59'36" W, a distance of 50 feet to the True Point of Beginning.

EXCEPTING THEREFROM all that parcel of land over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said City and described as John S. Gibson Boulevard and those parcels of land to be used as a bikeway and for the construction and maintenance of powerlines and poles, over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said City and to the Department of Water and Power of said City, as described in Order No. 4752 of the Board of Harbor Commissioners of said City, adopted February 1, 1978 and described in Ordinance No. 152,076 of the City of Los Angeles, approved by the City Council on March 1, 1979, Council File No. 72-3778.

LEGAL DESCRIPTION

PARCEL 3

All that parcel of land over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said city and described as John S. Gibson Boulevard and those parcels of land to be used as a bikeway and for the construction and maintenance of powerlines and poles, over which jurisdiction was transferred from the Board of Harbor Commissioners of the City of Los Angeles to the Department of Public Works of said city and to the Department of Water and Power of said city, as described in Order No. 4752 of the Board of Harbor Commissioners of said city adopted on February 1, 1978 and described in Ordinance No. 157,076 of the City of Los Angeles, approved by the City Council on March 1, 1979, Council File No. 72-3778.

By _____
City Clerk
and _____
City Clerk

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