
**AGREEMENT FOR EXCHANGE OF REAL PROPERTY
BETWEEN
SOQUEL UNION ELEMENTARY SCHOOL DISTRICT
AND
THE CITY OF CAPITOLA**

PREAMBLE

This Agreement for Exchange of Real Property (“Agreement”) is entered into as of _____, 2024 (“Effective Date”), between the Soquel Union Elementary School District, a California public school district (“District”), and the City of Capitola, a California municipal corporation (“City”). The District and City may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the District is the owner in fee simple of 4.9 acres of real property located at 700 Monterey Avenue, in the City of Capitola, in the County of Santa Cruz, California, with Assessor’s Parcel Number (“APN”) 036-151-01, as more particularly depicted and identified by the circled number “1” in the Santa Cruz County Assessor’s Map attached hereto as Exhibit A, which real property includes a portion of New Brighton Middle School and related playing fields (“District Parcel”); and

WHEREAS, the City is the owner in fee simple of 3.9 acres of real property located on Monterey Avenue, in the City of Capitola, in the County of Santa Cruz, California, with APN 036-151-02, as more particularly depicted and identified by the circled number “2” in Exhibit A, which real property is known as Monterey Avenue Park (“City Parcel”); and

WHEREAS, the District Parcel and City Parcel are adjacently located and are currently used for educational, recreational, playing field, and park purposes; and

WHEREAS, the District Governing Board is empowered by California Education Code section 35160 and former section 39500 to exchange real property with the City upon such terms as the Parties may agree; and

WHEREAS, the City Council is empowered by California Government Code section 37351 to exchange real property with the District as is necessary or proper for municipal purposes and upon such terms as the Parties may agree; and

WHEREAS, the Parties desire that the District transfer ownership to the City of approximately 3,886 square feet of the District Parcel consisting of vacant land that is not in use by the District and that is not currently needed by the District, as more particularly depicted and identified in orange in the Aerial Map of the Property Exchange attached hereto as Exhibit B and made a part hereof (“District Exchange Property”), in exchange for the City transferring ownership to the District of approximately 3,736 square feet of the City Parcel, as more particularly depicted and identified in blue in Exhibit B (“City Exchange Property”) (hereinafter the “Property Exchange”); and

WHEREAS, the City Exchange Property to be acquired by the District is to be used and developed by the District to enhance the recreational facilities at New Brighton Middle School as part of a larger redevelopment of the District Parcel; and

WHEREAS, the District Exchange Property to be acquired by the City is to be used and developed by the City to enhance the recreational facilities at Monterey Avenue Park and to maintain and enhance pedestrian access to Monterey Avenue Park within the Cliffwood Heights neighborhood; and

WHEREAS, legal descriptions describing the District Exchange Property and the City Exchange Property, resulting from the Property Exchange have been prepared by Vernon Little at GV Land Surveying and are attached hereto as Exhibit C and Exhibit D, respectively; and

WHEREAS, the requirements of the Subdivision Map Act are not applicable to the Property Exchange being effectuated by this Agreement pursuant to California Government Code Section 66426.5 because the Property Exchange involves a conveyance of land by and between governmental agencies and/or public entities and thus does not constitute a division of land that would otherwise be subject to the Subdivision Map Act; and

WHEREAS, on February 7, 2024, the District Board adopted Resolution No. 6-2023-24, determining the District Exchange Property to be “exempt surplus land” pursuant to California Government Code Section 54221(f)(1)(C);

WHEREAS, on April 4, 2024, in accordance with Government Code section 65402 (a), the City of Capitola Planning Commission considered the proposed disposition of the City Exchange Property from the City to the District, and the proposed acquisition of the District Exchange Property by the City from the District, and determined that said transactions were consistent with and conform to the Capitola General Plan; and

WHEREAS, on April 25, 2024, the City Council adopted **Resolution No. _____**, determining the City Exchange Property to be “exempt surplus land” pursuant to California Government Code Section 54221(f)(1)(C) and (D); and

WHEREAS, at its Board meeting on **_____**, 2024, the District’s Board adopted a resolution authorizing the Property Exchange in accordance with Education Code section 35160 and former section 39500; and

WHEREAS, on **_____**, 2024, the Capitola City Council adopted _____, authorizing the Property Exchange in accordance with Government Code section 37351; and

WHEREAS, the Parties believe that the Property Exchange as described herein and in the attached Exhibits, is in the best interest of both Parties and in the public’s best interest.

NOW, THEREFORE the Parties agree as follows:

TERMS, CONDITIONS, AND COVENANTS

ARTICLE I EXCHANGE AGREEMENT

- 1.01 Recitals. The above Recitals are incorporated herein and made a part of the Agreement as if set forth in full.
- 1.02 Property Exchange. Subject to the terms and provisions of this Agreement, the City agrees to convey the City Exchange Property to the District in exchange for the District Exchange Property and the District agrees to convey the District Exchange Property to the City in exchange for the City Exchange Property. The conveyances agreed to herein include all right, title and interest in and to the City Exchange Property and the District Exchange Property, respectively (collectively, the “Exchanged Properties”).
- 1.03 Total Consideration. The total consideration for the conveyance of the City Exchange Property consists of the District Exchange Property and the performance of the terms and conditions of this Agreement. The total consideration for the conveyance of the District Exchange Property consists of the City Exchange Property and the performance of the terms and conditions of this Agreement. Except as to any costs contemplated by this Agreement, there will be no cost to either the City or the District in connection with the conveyance of the respective properties hereunder.
- 1.04 Investigations; Exchanged Properties Conveyed in “As Is” Condition.
- (a) City hereby acknowledges that they have been given a full opportunity to inspect and investigate each and every aspect of the District Exchange Property, either independently or through agents of City’s choosing, including, without limitation:
 - (i) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.
 - (ii) The physical condition of the District Exchange Property, including, without limitation, the presence or absence of Hazardous Substances (as defined below), and all other physical and functional aspects of the District Exchange Property.
 - (iii) Any easements and/or access rights affecting the District Exchange Property; and
 - (iv) All other matters of material significance affecting the District Exchange Property.
 - (b) District hereby acknowledges that they have been given a full opportunity to inspect and investigate each and every aspect of the City Exchange Property, either independently or through agents of District’s choosing, including, without limitation:

- (i) All matters relating to title, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.
 - (ii) The physical condition of the City Exchange Property, including, without limitation, the presence or absence of Hazardous Substances (as defined below), and all other physical and functional aspects of the City Exchange Property.
 - (iii) Any easements and/or access rights affecting the City Exchange Property; and
 - (iv) All other matters of material significance affecting the City Exchange Property.
- (c) The Parties understand and agree that the Exchanged Properties are being conveyed in “as is” condition and that neither Party nor any agent of either Party has made any representations, warranties or agreements to the other Party other than as contained herein, as to any matters concerning either of the Exchanged Properties including, but not limited to, the land, topography, utilities, future zoning, soil, subsoil, the purposes for which either of the Exchanged Properties may be used for development, drainage, access to roads, proposed routes or extensions thereof, environmental laws, rules or regulations, or any other representation or warranty. Any statement not expressly contained in this Agreement shall not bind either Party, and both Parties expressly waive any right of rescission or claim for damages against the other Party or its agents by reason of any statement, representation, warranty or promise except as contained in this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.01 City’s Representations and Warranties. The City covenants, represents and warrants the following:

- (a) Full Authority to Convey All Interest in the City Exchange Property. The City has the full right, power, and authority to execute this Agreement, and any related title documents, has the full right, power, and authority to perform all of the obligations hereunder, and has the full right, power and authority to dispose of or otherwise convey the City Exchange Property as described herein. City represents that it has secured, or will secure before the Closing, as set forth in Section 5.01, hereunder, all appropriate consents that are necessary to consummate the Agreement, if any.
- (b) Compliance with Applicable Law and No Pending Litigation Against the City Exchange Property. To the best of the City’s actual knowledge, there is no violation of federal, state, or local law, code, ordinance, rule, regulation or requirement, nor is there any pending or threatened litigation in connection with the City Exchange

Property which would prohibit the conveyance of the City Exchange Property.

- (c) No Liens Securing Payment or Other Obligations on City Exchange Property. The City warrants that the City Exchange Property is not encumbered, or will not be encumbered by the Closing, by liens securing payment, or other encumbrances, encroachments, easements, or conditions which would adversely affect the District's use and enjoyment of the City Exchange Property. Except as specifically disclosed to District in writing, City has not, and shall not without the prior written consent of District prior to the Closing, made any written commitments or agreements materially and adversely affecting the City Exchange Property, or any part thereof, or any interest therein, which will survive the Closing, including agreements regarding the sale, rental, management, repair, or other matters affecting the City Exchange Property.

- (d) No Hazardous Waste on City Exchange Property. To the best of City's knowledge, (1) the City Exchange Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the City Exchange Property, including but not limited to soil and groundwater conditions, and (2) neither City nor any other persons have used, generated, manufactured, stored or disposed of on, under or about the City Exchange Property or transported to or from the City Exchange Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials ("Hazardous Substances"). For the purpose of this Agreement, Hazardous Substances include, without limitation, oil, natural gas or other petroleum or hydrocarbon substances; substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes" or stated to be known to cause cancer or reproductive toxicity under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317, *et seq.*; the California Hazardous Substance Act, Health & Safety Code Sections 28740, *et seq.*; the California Hazardous Waste Control Act, Health & Safety Code Sections 25100, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, Health & Safety Code sections 24249.5, *et seq.*; the Porter-Cologne Water Quality Act, Water Code Sections 1300, *et seq.*; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws.

- (e) Survival. The City's representations, warranties, and obligations under this Section 2.01 shall survive the recordation and delivery of the Grant Deed(s).

2.02 The District's Representations and Warranties. The District covenants, represents and warrants the following:

- (a) Full Authority to Convey All Interest in the District Exchange Property. The District has the full right, power, and authority to execute this Agreement, and any related title documents, has the full right, power, and authority to perform all of the

obligations hereunder, and has the full right, power and authority to dispose of or otherwise convey the District Exchange Property as described herein. The District represents that it has secured, or will secure before the Closing, as set forth in section 5.01 of this Agreement, all appropriate consents that are necessary to consummate the Agreement, if any. Furthermore, the District represents that the fence to be installed by the District as part of its site redevelopment along the extended pathway between Orchid Avenue and Monterey Park will be composed of chain link or other see-through material to enhance visibility.

- (b) Compliance with Applicable Law and No Pending Litigation Against the District Exchange Property. To the best of the District's actual knowledge, there is no violation of federal, state, or local law, code, ordinance, rule, regulation or requirement, nor is there any pending or threatened litigation in connection with the District Exchange Property which would prohibit the conveyance of the District Exchange Property.
- (c) No Liens Securing Payment or Other Obligations on District Exchange Property. The District warrants that the District Exchange Property is not encumbered, or will not be encumbered by the Closing, by liens securing payment or other encumbrances, encroachments, easements, or conditions which would adversely affect the City's use and enjoyment of the District Exchange Property. Except as specifically disclosed to City in writing, District has not, and shall not without the prior written consent of City prior to the Closing, made any written commitments or agreements materially and adversely affecting the District Exchange Property, or any part thereof, or any interest therein, which will survive the Closing, including agreements regarding the sale, rental, management, repair, or other matters affecting the District Exchange Property.
- (d) No Hazardous Waste on District Exchange Property. To the best of District's knowledge, (1) the District Exchange Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the District Exchange Property, including but not limited to soil and groundwater conditions, and (2) neither the District nor any other person has used, generated, manufactured, stored or disposed of on, under or about the District Exchange Property or transported to or from the District Exchange Property any Hazardous Substances as defined in Section 2.01(d) above.
- (e) Survival. The District's representations, warranties, and obligations under this Section 2.02 shall survive the recordation and delivery of the Grant Deed(s).

ARTICLE III CONDITIONS PRECEDENT

The obligations of the District and the City to complete this transaction pursuant to this Agreement are subject to the satisfaction, at or before the Closing, of the conditions contained herein. The District and City agree that each Party will, in good faith, endeavor to remove all said contingencies

and conditions which are within the control of the respective Party. The following are conditions precedent to the performance of the Agreement:

- 3.01 Each Party Shall Bear its Own Costs. Except as set forth hereunder, each Party is responsible for its own costs, fees, and charges necessary to complete the Property Exchange contemplated under this Agreement. The Parties agree that costs incurred by District in obtaining surveys and legal descriptions for each of the Exchanged Properties as required for completion of the Property Exchange (“Survey Costs”) shall be paid by the District.
- 3.02 Conveyance of Good Title. Except as otherwise provided, each Party will convey good and marketable title to its property by Grant Deed free and clear of all debts, liens, assessments and encumbrances, unless specifically allowed or permitted pursuant to this Agreement.
- 3.03 Miscellaneous Conditions. The following are also conditions which must be satisfied before the Property Exchange can occur:
 - (a) The District’s Governing Board will have accepted and ratified this Agreement.
 - (b) The District Board has adopted a resolution by unanimous vote authorizing the Property Exchange and prescribing its terms, and such resolution has been published in a newspaper of general circulation within the District for not less than once a week for three weeks.
 - (c) The City Council will have accepted and ratified this Agreement.

**ARTICLE IV
NOTICES**

Any notice, demand, approval, consent, or other communication between the Parties will be mailed to the following addressees:

To City: **City of Capitola**
420 Capitola Avenue
Capitola, California 95010
Telephone: 831-475-7300
Facsimile: 831-479-8879
Attention: City Manager

To District: **Soquel Union Elementary School District**
620 Monterey Avenue
Capitola, California 95010
Telephone: 831-464-5630
Attention: Superintendent

**ARTICLE V
CLOSING**

- 5.01 Closing. The “Closing” or “Closing Date” shall mean the date upon which the grant deeds transferring title to the (i) District Exchange Property from the District to the City, and the

accompanying City Certificate of Acceptance, in the form attached hereto as Exhibit E and Exhibit F, respectively, and (ii) City Exchange Property from the City to the District, and the accompanying District Certificate of Acceptance, in the form attached hereto as Exhibit G and Exhibit H, respectively, are recorded with the Santa Cruz County Recorder. The Parties will cooperate in good faith to ensure that the executed grant deeds are timely recorded, simultaneously, if possible, and that City and District coordinate on the preparation and filing of a Preliminary Change of Ownership Report with the recording of each grant deed, in the form attached hereto as Exhibit I, with the Santa Cruz County Recorder. Closing shall take place within thirty (30) days of the Effective Date of this Agreement, or as may be extended by mutual written agreement of the Parties, provided that if the Closing Date falls on a Saturday, Sunday, or legal holiday, it shall be extended to the next business day that is not a Saturday, Sunday, or legal holiday. In any event, the Closing shall only occur after all conditions set forth in this Agreement have been satisfied or waived.

5.02 Failure to Close. If either Party determines that any or all conditions set forth in this Agreement for the Closing cannot be met, then this Agreement may be terminated, and the Property Exchange cancelled, without penalty, by written notice provided to the other Party. Upon such termination and cancellation, the Parties shall have no further obligations to one another. The Parties hereby waive any and all claims for additional compensation in connection with any termination of this Agreement and cancellation of the Property Exchange pursuant to this Section.

5.03 Conditions of Closing. The following are conditions precedent to Closing which can only be waived by written waiver executed by the City or the District as applicable:

- (a) The City will not be in breach or default of any provisions herein.
- (b) The City's warranties and representations as set forth herein are true as of the Closing.
- (c) The City has received and approved the legal description of the District Exchange Property and the City Exchange Property.
- (d) On or before the Closing, the City will deliver, or cause to be delivered to the District the following:
 - (i) A Grant Deed or Deeds to the City Exchange Property in a form approved by the District; and
 - (ii) Such other documents as in the opinion of the District, are required from the City to carry out the provisions of this Agreement.
- (e) The District will not be in breach or default of any provisions herein.
- (f) The District's warranties and representations as set forth herein are true as of the Closing.

- (h) The District has received and approved the legal description of the District Exchange Property and the City Exchange Property.
- (i) On or before the Closing, the District will deliver, or cause to be delivered to the City the following:
 - (i) A Grant Deed or Deeds to the District Exchange Property in a form approved by the City; and
 - (ii) Such other documents as in the opinion of the City, are required from the District to carry out the provisions of this Agreement.

**ARTICLE VI
MISCELLANEOUS PROVISIONS**

- 6.01 Binding Effect. This Agreement is binding upon the heirs, successors, and assigns of the Parties.
- 6.02 Waiver of Provisions. The waiver by the District or the City, of any breach by the District or City as the case may be, of any term, covenant or condition contained in this Agreement, will not be deemed to be a waiver of any subsequent breach by the District or the City, as the case may be, of the same or of any other term, covenant or condition contained in this Agreement. Waiver of any provision of this Agreement must be in writing.
- 6.03 Commissions. The Parties represent that they have not engaged any agents or brokers in connection with the transaction that is the subject of this Agreement.
- 6.04 Further Documents. The Parties hereto agree to make, execute and deliver such documents and undertake such other and further acts as may be reasonably necessary or convenient to carry out this Agreement and its purpose and intent.
- 6.05 Entire Agreement. This Agreement, plus such ancillary agreements as may be executed by the Parties in connection with this Agreement, sets forth the entire Agreement between City and the District and supersedes any and all prior negotiations and agreements, written or oral, concerning or relating to the conveyance of the City Exchange Property and District Exchange Property.
- 6.06 Invalidity of Any Provision. If any provision of this Agreement as applied to either Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.
- 6.07 Amendments in Writing. No addition to or modification of any provision contained in this Agreement will be effective unless fully set forth in writing and signed by both Parties hereto.

- 6.08 Time is of the Essence. Time is of the essence in this Agreement and each and every provision hereof. Although time is of the essence in this Agreement, this provision will not cause an automatic forfeiture and will be construed in accordance with traditional principles of equity.
- 6.09 Governing Law. The laws of the State of California will govern all questions with respect to the construction of this Agreement and the rights and liabilities of the Parties.
- 6.10 Headings. Headings in this Agreement are solely for the convenience of the Parties and are not to be construed as enlarging or limiting the language following said headings.
- 6.11 Construction. Whenever the context of this Agreement requires, the singular will include the plural and the masculine, feminine and neuter will include the others. This Agreement will not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared this Agreement. This Agreement consists of not only this Agreement but also any and all related documents necessary to consummate the Property Exchange.
- 6.12 Survival of Warranties and Covenants. All of the covenants, representations and warranties set forth herein which are intended to bind the Parties after the vesting of title to the Exchanged Properties will survive the recording and delivery of the Grant Deed(s).
- 6.13 Execution in Counterparts; Electronic Signatures. The execution of any document, including this Agreement, may be made in counterparts such that each document, when all signatures are appended together, will constitute a fully executed original or copy thereof. Further, the Parties agree that this Agreement may be executed by electronic signatures and delivered by electronic means and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for purposes of validity, enforceability and admissibility.
- 6.14 Calendar Days. All time limits and related provisions herein will be counted in calendar days unless otherwise specifically provided.
- 6.15 Exhibits Incorporated by Reference. All Exhibits attached to this Agreement are hereby incorporated into the Agreement by this reference as if set forth in full.

WHEREFORE, the District and the City, by their signatures below, enter into this Agreement as of the Effective Date.

THE CITY:

By: _____

THE CITY OF CAPITOLA

Name: _____

Title: _____

THE DISTRICT:

SOQUEL UNION ELEMENTARY
SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS

Exhibit A – Santa Cruz County Assessor’s Map Depicting District Parcel (APN 036-151-01) and City Parcel (APN 036-151-02)

Exhibit B – Aerial Map of City Exchange Property (blue) and District Exchange Property (orange)

Exhibit C – Legal Description of District Exchange Property

Exhibit D – Legal Description of City Exchange Property

Exhibit E – Grant Deed for District Exchange Property

Exhibit F – City Certificate of Acceptance

Exhibit G – Grant Deed for City Exchange Property

Exhibit H – District Certificate of Acceptance

Exhibit I – Form of Preliminary Change of Ownership Report

EXHIBIT A
Santa Cruz County Assessor's Map Depicting District Parcel (APN 036-151-01) and City Parcel (APN 036-151-02)

EXHIBIT B

Aerial Map of City Exchange Property (blue) and District Exchange Property (orange)

EXHIBIT C
Legal Descriptions and Diagrams of District Exchange Property
(Transfer Areas A and C)

EXHIBIT D
Legal Descriptions and Diagrams of City Exchange Property
(Transfer Areas B and D)

EXHIBIT E
Grant Deed for District Exchange Property

EXHIBIT F

CITY CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2024, from the Soquel Union Elementary School District, a public agency duly organized and existing under the laws of the State of California, to the City of Capitola, a California municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of Capitola pursuant to authority conferred by Resolution No. _____, adopted by the City Council of the City of Capitola on _____, 2024, and the City Council of the City of Capitola consents to the recordation thereof by its duly authorized officer.

Dated: _____

CITY OF CAPITOLA,
a California municipal corporation

By: _____
Name: Jamie Goldstein

Its: City Manager

EXHIBIT G
Grant Deed for City Exchange Property

EXHIBIT H

DISTRICT CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2024, from the City of Capitola, a municipal corporation, to the Soquel Union Elementary School District, a public agency duly organized and existing under the laws of the State of California, is hereby accepted by the undersigned officer on behalf of the Soquel Union Elementary School District pursuant to authority conferred by the California Constitution and California Education Code sections 1040, *et seq.*, and the Soquel Union Elementary School District consents to the recordation thereof by its duly authorized officer.

Dated: _____

SOQUEL UNION ELEMENTARY SCHOOL DISTRICT,
a public agency duly organized and existing
under the laws of the State of California

By: _____

Name: Scott Turnbull

Its: Superintendent

EXHIBIT I

FORM OF PRELIMINARY CHANGE OF OWNERSHIP REPORT