



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 12.1h

Meeting Date: December 14, 2023

Subject: **Approve Resolution No. 3368: Agreement for Termination of Leases and Quit Claim Deed for the Luther Burbank High School Pool Replacement and Locker Room Improvement Project**

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Business Services

Recommendation: Approve Resolution No. 3368: Agreement for Termination of Leases and Quit Claim Deed for the Luther Burbank High School Pool Replacement and Locker Room Improvement Project

Background/Rationale: On May 19, 2022, the Sacramento City Unified School District (“District”) and John F. Otto, Inc. dba Otto Construction (“Developer”) executed the Site Lease and Facilities Lease for the Luther Burbank Pool Replacement and Locker Room Improvement (“Project”).

On or about September 11, 2023, the District and Developer executed the Memorandum of Commencement Date under the Facilities Lease, acknowledging that (i) Developer had completed the construction of the Project, (ii) the District had accepted and entered into possession of the Project, (iii) the term for lease payments under the Facilities Lease would now commence.

The District has paid its obligations under the Facilities Lease in full, including paying the balance of the lease payments to Developer. Upon District’s payment in full, Developer has executed a Termination Agreement and Quitclaim Deed, which will terminate the Facilities Lease and Site Lease and releases Developer’s interests in the Project and site.

District staff ask that the Board approve, and authorize the Superintendent to execute, the Termination Agreement and Quitclaim Deed and the corresponding Certificate of Acceptance.

Financial Considerations: \$338,059 paid for the balance of the lease payments

Documents Attached:

1. Termination Agreement and Quit Claim Deed
2. Resolution Agreement for Termination of Leases and Quit Claim Deed
3. Agenda Item Resolution

Estimated Time of Presentation: N/A

Submitted by: Janea Marking, Chief Business & Operations Officer

Tina Alvarez Bevens, Contract Analyst

Approved by: Lisa Allen, Interim Superintendent

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Attention: Tina Alvarez-Bevens

(Recording Fee: Exempt
under Section 27383 of
the Government Code)

TERMINATION AGREEMENT AND QUIT CLAIM DEED

THIS TERMINATION AGREEMENT AND QUIT CLAIM DEED (this "Agreement") dated as of December 10, 2023, is entered by and between the SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, a political subdivision duly organized and existing under and by virtue of the laws of the State of California (the "District"), and John F. Otto, Inc. dba Otto Construction (the "Developer").

WITNESSETH

WHEREAS, District and Developer entered into a Facilities Lease, dated May 19, 2022, as amended ("Facilities Lease") and a Site Lease, dated May 19, 2022 ("Site Lease") for the construction of certain improvements by the Developer at the District's Luther Burbank Pool Replacement and Locker Room Improvement project ("Project"), located at 3500 Florin Road Sacramento, California 95823, as described in Exhibit A hereto and incorporated herein ("Project Site");

WHEREAS, under the terms of the Site Lease the District leased the Project Site to the Developer for the construction of the Project;

WHEREAS, under the terms of the Facilities Lease the District leased back the Project from the Developer and was obligated to make lease payments to the Developer for the lease of the Project;

WHEREAS, the District has paid its Project obligations in full which were secured by the lease payments payable under the Facilities Lease by making its final lease payment to the Developer and the District has paid all other amounts due or to become due with respect to the Facilities Lease;

WHEREAS, upon such payment in full, title to the Project leased under the Facilities Lease is to vest in the District and the Facilities Lease and the Site Lease are to terminate immediately upon such payment; and

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Developer do hereby agree as follows:

1. Termination of Leases. The District and the Developer do hereby unconditionally terminate the Facilities Lease, which pertains to that certain real property defined above as the Project Site, as more particularly described in the Facilities Lease and incorporated herein by reference. The District and Developer concurrently unconditionally terminate the related Site Lease, which pertains to that certain real property defined above as the Project Site, as more particularly described in the Site Lease and incorporated herein by reference. The District and the Developer agree that the District has fulfilled its obligations under the Facilities Lease and fee title to the Project and the Project Site leased thereunder is to vest in the District. The Developer and its successors and assigns shall be released from all obligations and liabilities as to the Project Site, the Facilities Lease and the Site Lease, whether arising or accruing prior to or following the date hereof, except for warranty, guarantee and latent defect obligations to the District. The Facilities Lease and the Site Lease shall no longer have any force or effect.

2. Quitclaim. The Developer does hereby remise, release and forever quitclaim the Project Site and the Project to the District.

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

4. Counterparts. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto and may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

ACCEPTED AND AGREED on the first date indicated above.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

John F. Otto, Inc. dba Otto Construction

By: _____
Name: Janea Marking
Title: Chief Business & Operations Officer

By: _____
Name: Allison Otto
Title: President & CEO

EXHIBIT "A"
PROPERTY DESCRIPTION

Attached is the Legal Description for:

Luther Burbank Pool Replacement and Locker Room Improvement Project
Recorded Address: 7256 Luther Drive, Sacramento, CA 95823
Physical Address: 3500 Florin Road Sacramento, CA 95823

All that portion of that certain 48.506 acre tract of land designated "48.506 Acres" on the Record of Survey entitled "Portion of Northeast One-quarter of Section 6, T. 7 N., R. 5 E., M. D. B. & M.", recorded in the office of the Recorder of Sacramento County in Book 16 of Surveys, Map No. 29, described as follows:

Beginning at a point on the east line of said 48.506 acre tract of land from which the southeast corner thereof bears South 03° 27' 10" East 289.44 feet, said point of beginning is further described as being the southwest corner of that certain 8.000 acre tract of land designated "Parcel A" on the Record of Survey entitled "Portion of Northwest One-quarter of Section 5, T. 7 N., R. 5 E., M. D. M.", recorded in the office of the Recorder of Sacramento County in Book 24 of Surveys at Page 21; thence from said point of beginning along the east line of said 48.506 acre tract of land South 03° 27' 10" East 10.13 feet; thence North 89° 17' 56" West 5.01 feet; thence parallel to and distant five feet westerly, measured at right angles, from the east line of said 48.506 acre tract of land North 03° 27' 10" West 10.03 feet; thence South 89° 17' 56" East 5.01 feet to the point of beginning.

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 202_, before me, _____,
Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary Public

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 202_, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature of Notary Public

CERTIFICATE OF ACCEPTANCE

This Acceptance dated as of December 14, 2023, is executed by the SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, a public school district duly organized and existing under and by virtue of the laws of the State of California (the "District").

In consideration of the covenants contained in the Termination Agreement and Quit Claim Deed and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District hereby accepts that certain real property and facilities located in the County of Sacramento, California, as more particularly described in that certain Termination Agreement and Quit Claim Deed dated as of the date hereof, by and between the District and John F. Otto, Inc. dba Otto Construction.

IN WITNESS WHEREOF, the District has executed this Acceptance as of the date first written above.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

By: _____

Name: Janea Marking

Title: Chief Business & Operations Officer

RESOLUTION NO. 3368

**RESOLUTION OF THE GOVERNING BOARD
OF THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
TO ACCEPT AGREEMENT FOR TERMINATION OF LEASES
AND QUIT CLAIM DEED**

WHEREAS, Sacramento City Unified School District ("District") and John F. Otto, Inc. dba Otto Construction ("Developer") entered into a Facilities Lease, dated May 19, 2022, as amended ("Facilities Lease") and a Site Lease, dated May 19, 2022 ("Site Lease") for the construction of certain improvements by the Developer, known as Luther Burbank Pool Replacement and Locker Room Improvement ("Project"), located at 3500 Florin Road Sacramento, CA 95823 as described in Exhibit A to the Facilities Lease ("Project Site");

WHEREAS, under the terms of the Site Lease the District leased a portion of the Project Site to the Developer for the construction of the Project;

WHEREAS, under the terms of the Facilities Lease the District leased back the Project from the Developer and is obligated to make lease payments to the Developer for the lease of the Project;

WHEREAS, the District has paid its Project obligations in full which were secured by the lease payments payable under the Facilities Lease by making its final lease payment to the Developer, and the District has paid all other amounts due or to become due with respect to the Facilities Lease;

WHEREAS, upon such payment in full, title to the Project leased under the Facilities Lease is to vest in the District, and the Facilities Lease and the Site Lease are to terminate immediately upon such payment;

WHEREAS, the District and the Developer desire to unconditionally terminate the Facilities Lease, which pertains to the Project Site and to concurrently unconditionally terminate the related Site Lease, which also pertains to the Project Site; and

WHEREAS, the District and the Developer agree that the District has fulfilled its obligations under the Facilities Lease and that fee title to the Project and the Project Site leased thereby is to vest in the District.

NOW, THEREFORE, the Governing Board of the Sacramento City Unified School District hereby finds, determines, declares, orders, and resolves as follows:

Section 1. The above recitals are true and correct.

Section 2. The District hereby accepts and approves the Termination Agreement and Quit Claim Deed terminating the Facilities Lease and the Site Lease and conveying all of Developer's right, title and interest in the Project Site and the Project to the District.

Section 3. The District does hereby accept all of Developer's right, title and interest in the Project Site and the Project remised, released, quitclaimed and conveyed to the District by the Termination Agreement and Quit Claim Deed.

Section 4. The Superintendent and the Superintendent’s designees are authorized to take all steps and sign all documents necessary to effect the intent of this resolution, including but not limited to the Termination Agreement and Quit Claim Deed and the Certificate of Acceptance of the real property and facilities located in Sacramento County, California, as more particularly described in the Termination Agreement and Quit Claim Deed.

IN WITNESS WHEREOF, this resolution was approved and adopted by the Governing Board of the Sacramento City Unified School District this 14th day of December 2023.

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

President of the Governing Board of the
Sacramento City Unified School District

ATTEST:

Clerk of the Governing Board of the
Sacramento City Unified School District

BOARD AGENDA ITEM

DATE: December 14, 2023

ITEM NO. 12.1h

TOPIC: APPROVAL OF RESOLUTION NO. 3368 TO ACCEPT TERMINATION OF LEASES AND QUIT CLAIM DEED FOR THE LUTHER BURBANK POOL REPLACEMENT AND LOCKER ROOM IMPROVEMENT PROJECT

DESCRIPTION: On May 19, 2022, the Sacramento City Unified School District ("District") and John F. Otto, Inc. dba Otto Construction ("Developer") executed the Site Lease and Facilities Lease for the Luther Burbank Pool Replacement and Locker Room Improvement ("Project").

On or about September 11, 2023, the District and Developer executed the Memorandum of Commencement Date under the Facilities Lease, acknowledging that (i) Developer had completed the construction of the Project, (ii) the District had accepted and entered into possession of the Project, (iii) the term for lease payments under the Facilities Lease would now commence.

The District has paid its obligations under the Facilities Lease in full, including paying the balance of the lease payments to Developer. Upon District's payment in full, Developer has executed a Termination Agreement and Quitclaim Deed, which will terminate the Facilities Lease and Site Lease and releases Developer's interests in the Project and site.

District staff ask that the Board approve, and authorize the Superintendent to execute, the Termination Agreement and Quitclaim Deed and the corresponding Certificate of Acceptance.

FISCAL IMPACT: \$338,059.00 paid for the balance of the lease payments.

RECOMMENDATION: It is recommended that the Board approve and adopt Resolution No. 3368 to Accept Termination of Leases and Quit Claim Deed for the Luther Burbank Pool Replacement and Locker Room Improvement Project.

Janea Marking
Chief Business and Operations Officer

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS 14th DAY OF September, 2023 by and between the Sacramento City Unified School District ("District") and John F. Otto, Inc. dba Otto Construction ("Developer"), whose place of business is 1717 2ND Street Sacramento, CA 95811.

RECITALS

WHEREAS, District and Developer entered into a Facilities Lease and Site Lease for the following project: Luther Burbank Pool Replacement and Locker Room Improvement Project ("Contract" or "Project") in the County of Sacramento, California.

WHEREAS, The Work under the Contract was completed on August 22, 2023 and a Notice of Completion was recorded with the County Recorder on September 14, 2023.

NOW, THEREFORE, it is mutually agreed between District and Developer as follows:

AGREEMENT

1. Developer will only be assessed liquidated damages as detailed below:

Original Guaranteed Maximum Price	\$ <u>6,761,177.00</u>
Modified Guaranteed Maximum Price	\$ <u>6,388,618.56</u>
Payment to Date	\$ <u>6,050,559.56</u>
Liquidated Damages	\$ <u>0.00</u>
Payment Due Developer	\$ <u>338,059.00</u>

2. Subject to the provisions hereof, District shall forthwith pay to Developer the undisputed sum of Three Hundred Thirty-Eight Thousand Fifty-Nine and no/100 Dollars (\$338,059.00) under the Contract for Tenant Improvement Payments, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.

3. Developer acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 4 and continuing obligations described in Paragraph 6. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Developer against District and all of its respective agents, employees, trustees, inspectors, assignees, consultants and transferees, except for the Lease Payments under the Contract, any Disputed Claim that may be set forth in Paragraph 4 and the continuing obligations described in Paragraph 6 hereof.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____

5. Consistent with California Public Contract Code section 7100, Developer hereby agrees that, in consideration of the payment set forth in Paragraph 2 hereof, Developer hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract, except for the Lease Payments.
6. Guarantees and warranties for the Work, duty to defend, indemnify and hold harmless the District, and any other continuing obligation of Developer, shall remain in full force and effect as specified in the Contract Documents.
7. Except as provided for specifically herein, Developer hereby waives the provisions of California Civil Code section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
9. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

* * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * *

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Signature: Janea Marking 11/13/2023
D2972921888C416...

Print Name: Janea Marking

Title: Chief Business & Operations Officer

DEVELOPER: John F. Otto, Inc. dba Otto Construction

Signature: Allison Otto Digitally signed by Allison Otto
Date: 2023.11.13 09:43:52
08'00'

Print Name: Allison Otto

Title: President & CEO

END OF DOCUMENT