

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (this "Settlement Agreement") is dated for reference purposes only as of January 1, 2019 (the "Reference Date"), and is entered into by and between Mt. San Antonio Community College District, a community college district duly organized and existing under the Constitution and laws of the State of California ("Mt. SAC") and United Walnut Taxpayers, a California non-profit public benefit corporation ("UWT"), each of which may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. On October 12, 2016, the Mt. SAC Board of Trustees (the "Board") took the following official actions: (1) adopted Resolution No. 16-02 Certifying the Mt. San Antonio College 2015 Facilities Master Plan Update and Physical Education Projects (the "PEP") and the Program Final Environmental Impact Report, Adopting a Statement of Overriding Considerations, and Adopting a Mitigation Monitoring Program (the "Resolution No. 16-02 Actions") and (2) adopted Resolution No. 16-03 Authorizing Exemption from Local Zoning Ordinances for the Physical Education Projects, and Authorization of Measure RR Bond Funds for the Ordering of Improvements to the Physical Education Projects (the "Resolution No. 16-03 Actions").

B. On November 7, 2016, UWT filed a Verified Complaint for Declaratory and Injunctive Relief; Petition for Writ of Mandate ("Complaint" or "UWT Legal Action") alleging eight causes of action based on Mt. SAC's alleged failure to comply with the California Environmental Quality Act ("CEQA") prior to adopting Resolution No. 16-02 and Mt. SAC's improper expenditure of Measure RR Bond Funds for the PEP, including the Athletic Complex East Phase 1 ("ACE"), under Resolution No. 16-03.

C. On July 12, 2017, the Mt. SAC Board authorized the conditional and non-binding approval of the awards of the Athletics Complex East Project – Phase 2, Bid Packages 3103 – 3126 (the "July 12, 2017 Actions").

D. On August 9, 2017, the Mt. SAC Board adopted Resolution No. 17-01 Certifying the Mt. San Antonio College 2015 Physical Education Projects Draft Subsequent Project Environmental Impact Report, Adopting a Statement of Overriding Considerations, and Adopting a Mitigation Monitoring Program (the "Resolution No. 17-01 Actions").

E. On October 11, 2017, the Mt. SAC Board adopted Resolution No. 17-03 Certifying the Mt. San Antonio College West Parcel Solar Project (the "Approved Solar Project") Tiered Draft Environmental Impact Report, Adopting a Statement of Facts and Findings, and Adopting a Mitigation Monitoring Program; and Authorizing Commencement of Phase 1 Grading Operations on the West Parcel (the "Resolution No. 17-03 Actions").

F. On April 12, 2018, Mt. SAC and the City of Walnut, through their respective governing bodies, reached a conditional settlement agreement (the "Memorandum of Agreement") of the following Los Angeles County Superior Court actions filed by the City of Walnut against Mt. SAC: Case No. BS166152, Case No. BS170683 and Case No. BS171818 (collectively the "City Legal Actions"), wherein the City of Walnut challenged the: (i) Resolution No. 16-02 Actions, (ii)

Resolution No. 16-03 Actions, (iii) July 12, 2017 Actions, (iv) Resolution No. 17-01 Actions, and (v) Resolution No. 17-03 Actions. A true and correct copy of the Memorandum of Agreement is attached hereto as Exhibit A. Final settlement and dismissal of the City Legal Actions are subject to the governing bodies of Mt. SAC and the City of Walnut entering into a formal settlement agreement, the City Council of the City of Walnut approving the Earthwork and grading plans, and Mt. SAC recording a restrictive covenant, which have not occurred as of the Reference Date.

G. On July 24, 2018, the Mt. SAC Board adopted Resolution No. 18-01 Ordering an Election and Establishing Specifications of the Election Order for the November 6, 2018 General Election of the Mt. SAC bond measure in the aggregate principal amount of \$750,000,000, which the Los Angeles County Registrar of Voters had designated Measure GO (the "Measure GO Bond Election"). On November 6, 2018, Measure GO Bond Election passed by the affirmative vote of 60.82%.

H. UWT has dismissed all causes of action in the UWT Legal Action, other than the Third and Fourth causes of action, which allege that Mt. SAC is improperly using Measure RR Bond funds for the PEP and ACE under Education Code Section 15284 and Code of Civil Procedure Section 526a and seeks restitution of prior expenditures of Measure RR Bond Funds on the PEP and ACE and injunctive relief prohibiting future expenditures of Measure RR Bond Funds on the PEP and ACE; Mt. SAC denies these allegations.

I. Mt. SAC and UWT now desire to settle the UWT Legal Action in accordance with the terms and provisions set forth herein below.

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Effective Date**. This Settlement Agreement shall become effective and binding upon the Parties upon the date each of the following conditions are satisfied: 1) this Settlement Agreement has been approved by the governing bodies of Mt. SAC and UWT at a duly noticed meeting held in compliance with all applicable laws and 2) this Settlement Agreement has been duly executed by the authorized representative of Mt. SAC and UWT. Upon satisfaction of each condition above, this Settlement Agreement shall thereupon become effective and binding upon the Parties, the date of which shall be known as the "Effective Date". This Settlement Agreement shall thereafter continue in full force and effect and be enforceable, according to its terms and conditions, as provided herein.

2. **Mt. SAC Modifications of Earthwork and Grading Operations on the West Parcel**.

a. **Mt. SAC Obligations**.

i. Mt. SAC agrees it will not deposit approximately 140,000 cubic yards of earth on the "West Parcel" (as defined below) in connection with construction of the PEP. For purposes of this Section 2, the "West Parcel" means an approximately 27.65 acre area of the Mt. SAC campus located west of Grand Avenue and south of Amar Road and Temple Avenue.

ii. Within three (3) days of the Effective Date, Mt. SAC further agrees it will transmit a fully executed copy of this Settlement Agreement to the City of Walnut and will give notice to the City of Walnut that Mt. SAC has formally abandoned the Earthwork and withdraws the grading plans and application to the extent such plans and application relate to the Earthwork.

iii. Mt. SAC further agrees it will not deposit earth from the PEP and/or ACE projects to the West Parcel.

iv. Mt. SAC further agrees that any future earthwork or grading operations at the West Parcel shall require official action of the Board taken at a duly noticed meeting in compliance with all laws; including, but not limited to, CEQA and City of Walnut grading and truck hauling ordinances to the extent applicable.

b. Earthwork and Grading Operations Exclusions. Notwithstanding anything to the contrary above in Section 2.a, Mt. SAC shall be permitted to undertake and complete the following earthwork and grading operations at the West Parcel (collectively the “Excluded Earthwork”):

i. Earthwork and grading operations required under the Declaration of Restrictive Covenants recorded by Mt. SAC, as Declarant, in favor of the State of California, acting by and through the California Department of Fish and Wildlife, a subdivision of the California Natural Resources Agency (“CDFW”), and the United States of America acting by and through the U.S. Army Corps of Engineers (“ACOE”), and the United States Fish and Wildlife Service, an agency within the United States Department of the Interior, (“USFWS”)

ii. Earthwork and grading operations required pursuant to the (1) Agreement Regarding Proposed Stream or Lake Alteration (Notification No. 1600-2015-0022-R5) issued to Mt. SAC and the Final Mitigation Plan created thereunder; (2) the ACOE CWA Section 404 Permit No. SPL-2015-00113-PKK and any amendments thereto; (3) the Los Angeles Regional Water Quality Board CWA Section 401 Certification No. 15-021; and (4) USFWS biological opinion No. FWS-LA-14B0243 -15F0556 and any amendments thereto.

iii. Earthwork and grading operations to perform landslide remediation, subject to compliance with all applicable laws.

3. **PEP and ACE Projects.** UWT agrees Mt. SAC shall have the right to use Measure RR Bond Funds for the PEP, ACE and any future modifications to the PEP and/or ACE. UWT further agrees Mt. SAC shall have the right to use Measure GO Bond Funds for the PEP, ACE and any future modifications to the PEP and/or ACE. UWT further agrees it will not oppose the construction of the PEP, the ACE and any future modifications to the PEP and/or ACE.

4. **Mutual General Releases.**

a. Except as set forth in this Settlement Agreement, UWT releases Mt. SAC and its Board, trustees, officers, employees, agents and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that UWT has or may have arising out of, or connected to, the following matters: (i) the Mt. SAC Board Actions, (ii) the UWT Legal Action, (iii) the PEP, (iv) the ACE, (v) the use of Measure RR Bond Funds to construct

the PEP, the ACE and any modifications thereto, (vi) the use of Measure GO Bond Funds to construct the PEP, the ACE and any modifications thereto, (vi) the Excluded Earthwork.

b. Except as set forth in this Settlement Agreement, Mt. SAC releases UWT and its directors, officers, agents and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that Mt. SAC has or may have arising out of, or connected to, the UWT Legal Action.

c. Upon the Effective Date, each of the Parties has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. Each of the Parties hereby expressly waives the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

“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 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”



Mt. SAC's Initials

LA/MC

UWT's Initials

5. **Court to Retain Jurisdiction; Attorneys' Fees and Costs.** The court in the UWT Legal Action shall have continuing jurisdiction to enforce the terms of this Settlement Agreement pursuant to Section 664.6 of the Code of Civil Procedure. In any dispute or controversy arising out of this Settlement Agreement, the prevailing party shall be entitled to reimbursement of its costs, including cost of the proceeding and attorneys' fees and costs. No action to enforce this Settlement Agreement for breach shall be brought or maintained until: (1) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (2) within thirty (30) days after mailing of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

6. **Waiver of Attorneys' Fees and Costs in UWT Legal Action.** The Parties will each bear its own costs and attorneys' fees incurred in the prosecution and defense of the UWT Legal Action, including costs and attorneys' fees incurred in all proceedings related to the appeal of the order denying UWT's motion for preliminary injunction.

7. **Duty to Dismiss with Prejudice.** UWT shall effectuate dismissal with prejudice of the UWT Legal Action by filing a request for dismissal with prejudice within ten (10) court days of the Effective Date.

8. **Notices.** Any notice or request required to be given to a Party under this Settlement Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

Mt SAC:

Attn: Michael Gregoryk

Vice President, Administrative
Services
Mt. SAC College
1100 North Grand Avenue
Walnut, CA 91789
Tel: (909) 274-5502
Email: mgregoryk@mt.sac.edu

With a copy to:

Attn: Sean B. Absher
Stradling Yocca Carlson & Rauth
Professional Law Corporation
44 Montgomery Street, Suite 4200 |
San Francisco, CA 94104
Tel: (415) 283-2242
Email: sabsher@sycr.com

UWT:

Attn: Layla Abou-Taleb
1608 N. Timber Ridge Lane
Walnut, CA 91789
Email: abousassi@yahoo.com

With a copy to:

Attn: Craig A. Sherman
Craig A. Sherman
Professional Law Corporation
1901 First Avenue, Suite 219
San Diego, CA 92101
Tel: (619) 702-7892
CraigShermanAPC@gmail.com

Any address may be changed by mailing written notice to all Parties.

9. **Miscellaneous.**

a. Parties Bound. This Settlement Agreement shall apply to and be binding upon the Parties and each of them, and their current and future members, officials, officers, directors, agents, trustees, successors, and assigns.

b. No Third Party Beneficiary; Memorandum of Settlement. This Settlement Agreement shall not be construed as creating in favor of UWT the status of a third party beneficiary to the Memorandum of Agreement.

10. Entire Agreement. The Parties acknowledge that this Settlement Agreement is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the Parties, other than

those which are expressly contained within this Settlement Agreement. This Settlement Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Settlement Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.

11. Amendments and Modifications. This Settlement Agreement may only be amended or modified through writing executed by all the Parties.

12. Settlement, No Admissions by Parties. Each of the Parties acknowledges that this Settlement Agreement relates to the avoidance of litigation and the preclusion of actions described above. Therefore, the Parties agree that this Settlement Agreement is not to be treated or construed, at any time or in any manner whatsoever, as an admission by any Party that any of the allegations in the UWT Legal Action has or lacks merit.

13. Choice of Law and Choice of Forum. This Settlement Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Settlement Agreement, its performance, and its interpretation shall be the Superior Court of Los Angeles County.

14. Damages. The Parties agree (i) that the performance of the obligations of this Settlement Agreement are paramount, (ii) that, in the event of a breach, monetary damages will provide inadequate relief, and (iii) that each may seek equitable relief to enforce such obligations.

15. Authorized Signatory; No Assignment of Claims. Each Party represents and warrants to each other that its signature to this Settlement Agreement has the authority to bind the Party, and this Settlement Agreement does in fact bind the Party. The Parties further warrant and represent that they are the sole and lawful owners of all rights, titles and interest in and to all the Claims released herein, and that they have not voluntarily, by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any other person or entity, any Claims, or any part or portion thereof, or any interest therein.


16. Counterparts and Facsimile Signatures. This Settlement Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document, and signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement.

MT. SAN ANTONIO COMMUNITY
COLLEGE DISTRICT

Date

3/4/19

By: 
Name: William T. Scroggins

Title: _____

Approved as to form:

Sean B. Absher
Stradling Yocca Carlson & Rauth
Attorneys for Mt. SAC

*UNITED WALNUT TAXPAYERS,
a California non-profit public benefit corporation

February 1, 2019

Date

By: Layla Abou-Taleb
Name: Layla Abou-Taleb
Title: President, United Walnut Taxpayers

February 1, 2019

Date

By: Mansfield Collins
Name: Mansfield Collins
Title: Board Member, United Walnu Taxpayers

*[*Signatures by two (2) UWT officers are required unless UWT has provided Mt. SAC with a corporate resolution authorizing a single officer to sign.]*

EXHIBIT A
MEMORANDUM OF AGREEMENT

[See Attachment]
