

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is made by and between Santa Clara Unified School District, a California public school district (hereafter “DISTRICT”), and the City of San José, a California charter city (hereafter “CITY”). “Parties,” when referenced herein, includes DISTRICT and CITY collectively.

WHEREAS, DISTRICT filed a lawsuit on December 17, 2020 entitled *Santa Clara Unified School District v. City of San José* in Santa Clara County Superior Court, Case Number 20CV374923 (hereafter the “Action”).

WHEREAS, the Action seeks the return of Four Million Eight Hundred Sixty-Six Thousand Four Hundred Thirty-Two Dollars (\$4,866,432.00) plus interest paid by the DISTRICT to the CITY pursuant to the California Mitigation Fee Act for the Agnews K-12 school campus project (“PROJECT”).

WHEREAS, the DISTRICT alleged in the Action that (i) the North San José Area Development Policy does not support a requirement that the DISTRICT pay traffic impact mitigation fees; (ii) the applicable fee schedule does not support imposition of traffic impact mitigation fees against the DISTRICT; (iii) the environmental documents for the PROJECT do not support the imposition of traffic impact mitigation fees against the DISTRICT; and (iv) the CITY failed to show a reasonable relationship between the traffic impact mitigation fees and the PROJECT impact.

WHEREAS, the CITY timely filed an answer to the Action on March 9, 2021 and has alleged (i) the traffic impact mitigation fees apply to the DISTRICT through San José Municipal Code Title 20; (ii) the North San José Area Development Policy includes school uses, “industrial use” encompasses school uses, and the PROJECT will generate trips into the policy area from outside the area, justifying imposition of the traffic impact mitigation fees; (iii) the traffic impact mitigation fees are authorized by the California Mitigation Fee Act and there is a reasonable relationship between the fee and the impact of the PROJECT; (iv) the traffic impact mitigation fees do not depend on a PROJECT’s environmental documents; and (v) the DISTRICT is not entitled to a writ since it has an adequate legal remedy in an action for a refund under California Government Code section 66020(a).

WHEREAS, the matter has been fully briefed and a trial court hearing was scheduled for March 7, 2022, but has been continued based upon the Parties' settlement discussions.

WHEREAS, the Parties now undertake to settle the Action in its entirety by entering into this Agreement, pursuant to which DISTRICT releases and extinguishes on a final basis all claims and potential claims against CITY alleged, or could have alleged,

in the Action related to the CITY's imposition of traffic impact mitigation fees for the PROJECT.

WHEREAS, DISTRICT desires to dismiss the Action with prejudice based upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which DISTRICT alleged, or could have alleged, in the Action against the City of San José, CITY Departments, CITY elected officials, and all CITY employees, named or who could have been named in the Action and arising from the CITY's imposition of traffic impact mitigation fees on the PROJECT.

2. Consideration. In consideration for DISTRICT's agreements, promises, covenants, releases, waivers, and dismissal of the Action stated herein, the Parties agree as follows:

- a. The CITY shall repurpose One Million Five Hundred Thousand Dollars (\$1,500,000) of the Four Million Eight Hundred Sixty-Six Thousand Four Hundred Thirty-Two Dollars (\$4,866,432.00) in traffic impact mitigation funds paid by the DISTRICT to the CITY to be used for projects jointly related to the Agnews School campus and the adjacent proposed CITY park ("CITY PARK"). The CITY shall retain the repurposed funds in an account where it can readily determine deposits, withdrawals and the remaining balance of the repurposed funds. Upon thirty (30) days written request by DISTRICT, the CITY shall provide the DISTRICT with statements showing the account balance including deposits thereto and withdrawals therefrom.
- b. The CITY shall use One Million (\$1,000,000) of the repurposed One Million Five Hundred Thousand (\$1,500,000) for (i) site demolition costs for buildings located adjacent to the Agnews School campus on the CITY PARK, or (ii) to pay for the CITY's share of the roadway costs as agreed to in the original purchase and sale agreement. The CITY shall decide, at the CITY's sole discretion, which combination of these two items on which to spend the funding. The Parties shall meet and confer in good faith at least on an annual basis to discuss the tasks and timing of such tasks to be performed under this subsection.
- c. The CITY shall use the remaining Five Hundred Thousand Dollars (\$500,000) of the repurposed One Million Five Hundred Thousand Dollars (\$1,500,000) to assist with master planning of the CITY PARK (including studies, approvals and supporting documents) for

the CITY PARK pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 and/or the National Environmental Policy Act ("NEPA") 42 U.S.C. section 4321, et seq.

- d. The DISTRICT may participate in the master planning of the CITY PARK and provide input on proposed amenities and improvements for the CITY PARK as part of the CITY master planning process. If requested in writing, the CITY shall provide the DISTRICT with annual updates at the start of each fiscal year as to the status of funding for the CITY PARK and once funding becomes available for CITY PARK master planning, the CITY and DISTRICT shall have a joint meeting to confer regarding items to include in the master planning process and proposed timelines. To the extent any committee or commission is established by the CITY to undertake or advise on the master planning process for the CITY PARK, the DISTRICT shall have the option of naming a representative to sit as a regular member of such committee or commission.
- e. Excepting the One Million Five Hundred Thousand Dollars (\$1,500,000) of the repurposed funds, the CITY shall promptly return Three Million Three Hundred Sixty-Six Thousand Four Hundred Thirty-Two Dollars (\$3,366,432) plus interest amount of Fifty Thousand Nine Hundred Fifty-Seven Dollars (\$50,957).
- f. The CITY shall not condition issuance of an encroachment permit for DISTRICT school facilities within the North San José Area Development Policy on payment of the North San José Area Development Policy traffic impact mitigation fees, but nothing shall preclude the CITY or DISTRICT from exercising any right or remedies available to it under any applicable laws including environmental laws such as CEQA or NEPA. To the extent the parties dispute the amount of fees payable to the CITY under any permit, the parties will attempt to resolve such dispute in good faith, but issuance of such permit shall not be withheld while the parties seek to resolve their dispute with each party reserving all rights and defenses as to any fees payable. City shall provide reasonable advance notice to the District, through the District's Chief Business Official, if it intends to adopt a new traffic impact fee program for the North San Jose Policy area within the next five (5) years from the date of full execution of this Agreement.

The payment of Three Million Three Hundred Sixty-Six Thousand Four Hundred Thirty-Two Dollars (\$3,366,432) plus interest amount of Fifty Thousand Nine Hundred Fifty-Seven Dollars (\$50,957) shall fully compensate DISTRICT for any

and all damages claimed, or which DISTRICT could have claimed, arising from or related in any way to the subject matters in the Action. In consideration of said payment, DISTRICT shall dismiss the Action with prejudice and withdraw, waive, and release any and all claims for damages, including any and all claims and/or rights to recover costs and attorney's fees.

3. Dismissal of Claims. DISTRICT and DISTRICT's attorneys shall dismiss the Action with prejudice upon full execution of this Agreement and within five (5) business days after receiving payment of both the settlement amount of Three Million Three Hundred Sixty-Six Thousand Four Hundred Thirty-Two Dollars (\$3,366,432) plus interest amount of Fifty Thousand Nine Hundred Fifty-Seven Dollars (\$50,957). In seeking dismissal, the Parties shall enter into a proposed stipulation and order providing that the Court shall retain jurisdiction for purposes of enforcement pursuant to Code of Civil Procedure section 664.6.

4. Release.

a. DISTRICT and DISTRICT's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge, as set forth in this paragraph, the CITY and all past and present CITY employees, whether or not the employee was named individually in the Action. For purposes of this Agreement, the City of San José includes, without limitation, all CITY Departments and Agencies, the CITY Council, all past and present elected and appointed CITY officials, CITY employees, and any person or entity to which the CITY may owe an obligation of contractual or implied indemnity relating to a released claim as set forth herein. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action, arising from the CITY's imposition of traffic impact mitigation fees for the PROJECT.

b. CITY and CITY's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge, as set forth in this paragraph, the DISTRICT and all past and present DISTRICT employees, whether or not the employee was named individually in the Action. For purposes of this Agreement, the Santa Clara Unified School District includes, without limitation, all DISTRICT Departments and Agencies, the DISTRICT Board of Trustees, all past and present elected and appointed DISTRICT officials, DISTRICT employees, and any person or entity to which the DISTRICT may owe an obligation of contractual or implied indemnity relating to a released claim as set forth herein. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the

Action, whether or not such claims were actually asserted in the Action, arising from the CITY's imposition of traffic impact mitigation fees for the PROJECT.

5. Release of Unknown Claims. The Parties understand this Agreement is a full and final settlement of all disputes as set forth in this Agreement, including but not limited to all claims and causes of action asserted, or which could have been asserted in the Action, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Action and arising from the CITY's imposition of traffic impact mitigation fees for the PROJECT (the "Released Matters"). The Parties acknowledge and understand Section 1542 of the Civil Code of the State of California 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.**

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Initials

The Parties represent that he/she/it has read, reviewed with counsel, and understood Civil Code Section 1542, and that he/she/it hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Action based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

6. Liability Not Admitted. The Parties acknowledge and agree that CITY's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission by the CITY, or any other Party, of liability or responsibility of any kind, or a concession by any Party that assertions or allegations regarding the claims or defenses alleged in the Action are valid. Each Party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that Party believes them to be.

7. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

8. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this

Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Action.

9. Representations. Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. DISTRICT further represents and warrants that it is the sole and rightful owner of the claims asserted in the Action; that it has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no liens on the settlement proceeds have been asserted or exist.

10. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

12. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives. This Agreement shall become binding and effective upon ratification of the governing boards of the CITY and the DISTRICT, and upon full execution by the CITY's and the DISTRICT's duly authorized representatives.

13. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations, or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants, and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties. All Parties acknowledge that they equally participated in the drafting of this Agreement.

14. Timely Performance. The Parties, and each of them, shall act promptly and in good faith to do all such acts, including, but not limited to, execution of any necessary documents, required to effectuate the terms of this Agreement. Time is of the essence as to each and every provision herein.

15. Execution. This Agreement, and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all

of which together shall constitute a single instrument. This Agreement may be executed by electronic signature in lieu of an original signature, but the Parties shall provide an original signature upon request.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[NAME]  
SANTA CLARA UNIFIED  
SCHOOL DISTRICT

Dated: \_\_\_\_\_

CITY OF SAN JOSE

By: \_\_\_\_\_  
NORA FRIMANN  
City Attorney as Authorized Agent  
for the CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

KRONICK, MOSKOVITZ, TIEDEMANN  
& GIRARD

By: \_\_\_\_\_  
William T. Chisum, Attorneys for Santa  
Clara Unified School District

Dated: \_\_\_\_\_

NORA FRIMANN, City Attorney

By: \_\_\_\_\_  
Johnny V. Phan  
Chief Deputy City Attorney