

MEMORANDUM OF AGREEMENT

CITY ~~RESPONSE TO~~ REVISED SETTLEMENT PROPOSAL 10/413/17 ~~MT SAC DRAFT~~
40/5/17

I. Parking Structure:

1. Remove multi-level Parking Structure location at Lot A by eliminating it from Master Plan, no later than the next Master Plan Update. Surface parking allowed.
2. Mt SAC agrees that any new parking garage shall:
 - a) require Mt. SAC to seek approval from the City of Walnut for required permits before the project is approved.
 - b) comply with CEQA, including preparation of a project level traffic study if required.
 - c) any parking structure shall maintain a setback of no less than 400 feet from the nearest single family residentially zoned property line.
 - d) require Mt. SAC and the City to “meet and confer” to evaluate the potential negative impacts of the actual design, mass, size, capacity of the proposed parking structure on nearby residents to determine whether a larger buffer and other mitigation measures may be appropriate.
3. Mt. SAC agrees it shall:
 - a) install and maintain landscaping along Edinger with 15-gallon like-kind and like-sized trees and shrubs (trees similar to those recently placed on Mountaineer; shrubs continuing as they are from where they were removed) within 180 days of a signed settlement agreement.
 - b) remove the currently stored concrete pipes and vaults within 90 days of a signed settlement agreement approved by the governing bodies of the parties as required by law and made enforceable under CCP 664.6 per Section VI below (with area no longer to be used as a storage area).
4. Mt. SAC agrees it will consider the location of a parking project near the Mt. SAC Transit project. The Mt. SAC agrees to evaluate the benefits of prioritizing the siting of future parking structures in proximity to the Transit Center and along Temple Avenue.

II. West Parcel/Solar Farm Project:

1. Mt. SAC agrees it shall:
 - a) permanently abandon the Solar Generating Farm at West Parcel site and shall eliminate it from the Master Plan no later than the next Master Plan Update. Mt. SAC agrees no future energy project shall be approved at the West Parcel site under any land use or zoning exemption.

MEMORANDUM OF AGREEMENT

- b) “meet and confer” with the City prior to adoption of resolutions under Government Code section 53094 exempting “school classroom facilities” from local building and zoning controls with respect to future development on the West Parcel. If the “meet and confer” is not successful, the City and Mt. SAC will engage good faith mediation prior to the adoption by Mt. SAC of any exemption or commencement of legal action by either side. Unless an exemption is adopted following the meet and confer and, if applicable) the mediation process, Mt. SAC agrees to submit any future development proposal for the West Parcel to the City for review and approval in accordance with the City’s land use entitlement process.
- c) record restrictive covenants against the West Parcel consistent with a) and b) above, in form acceptable to the City and UWT that shall “run with the land” including the entirety and any portion of the West Parcel.

- 2. The City will process future land use and development applications for the West Parcel consistent with Section 1 above and in accordance with applicable federal, state and local laws, including the City of Walnut General Plan, Zoning Ordinance and Municipal Code. UWT agrees to not oppose any reasonable land use of the West Parcel site that does not violate Section 1 above and meets applicable law, including applicable provisions of the City of Walnut Municipal Code, California Division of State Architect and California Geological Society.
- 3. Any future proposed project or plan for development for the West Parcel Site shall be reviewed and processed by Mt. SAC as a new project under its Master Plan and CEQA and shall be submitted to the City for review and approval consistent with II.1, above. UWT reserves its rights to participate and object regarding any new and future plan of development for the West Parcel site.

~~4. Mt. SAC shall be allowed to deposit approximately 139,000 cubic yards of dirt on the West Parcel Site in connection with the construction of the Stadium PEP project described in Section III below (“Earthwork”). The Earthwork shall not include a buildable pad and shall result in a contoured slope. A “contoured slope” is one that undulates and is not a uniform 2:1 grade and results in a visually appealing and environmentally friendly site. Mt SAC shall prepare a conceptual plan that depicts the finished slope upon completion of its proposed Earthwork for review by the City and UWT prior to certifying the West Parcel Solar Project SEIR and Addendum.~~

~~4~~

- ~~a) The City Engineer and professional staff will meet and confer with Mt. SAC’s project manager and professional staff to determine the grading plan requirements necessary to achieve the requisite contoured slope and~~

MEMORANDUM OF AGREEMENT

~~whether and to what extent the current grading plans can be modified to meet these requirements. Grading plans must comply with applicable geotechnical, geological, soils, hydrological and other technical requirements.~~

~~b) The City agrees to expedite processing of the grading plans for the West Parcel Site and Stadium PEP projects in accordance with the City's grading ordinance. The City Engineer will exercise best efforts to respond within one week of submittals and shall prepare an agenda report to the Planning Commission promptly following complete review of a final and complete grading application. The City will exercise best efforts to schedule a Planning Commission meeting within two weeks of the City's Engineer's report which may include calling a special meeting of the Planning Commission. No precedence shall be established.~~

~~c) Mt. SAC may build a temporary access road for the West Parcel Site as reasonably necessary for the Earthwork. Access roads will be eliminated at the conclusion of the grading operation. No permanent access road shall be built on the West Parcel Site except as part of an approved project under Section II. 3, above.~~

~~5. Mt. SAC, the City and UWT agree Mt. SAC will adopt an addendum to the SEIR for the grading and landscaping operations prior to commencement of any Earthwork on the West Parcel site. Consequently, the Mt. SAC Board will take no action at its 10/11 Board meeting and will continue consideration of the Solar Project and SEIR until an appropriate Addendum describing the modified Earthwork and contouring is prepared for concurrent approval. It is the intent that the grading plan preparation and review can be completed concurrently with the preparation of the Addendum in order to avoid any delay.~~

6. The City is granted a "right of first refusal" should Mt. SAC decide to sell the West Parcel site; provided, however, such right of first refusal shall be subject to the provisions in the Education Code and any other applicable law regulating the disposition of California community college district property.

5. Mt. SAC shall not deposit any export dirt from the PEP grading operation to the West Parcel and shall not commence any grading activity or other earthwork on the West Parcel unless and until a future project and corresponding grading plans are approved by the City.

6. Mt. SAC shall rescind its Resolution certifying the Tiered FEIR for the West Parcel Solar Project adopted October 11, 2017.

MEMORANDUM OF AGREEMENT

III. Stadium (PEP) Project:

1. The City and UWT agree not to oppose the construction of the Athletic Complex as shown in the CEQA documents ~~and modified per Section II. 4, above.~~ The City's dismissal of its claim that the Athletic Complex is a non-classroom facility will not constitute a waiver of any similar claim with respect to a future proposed use and shall not establish any precedence.
- 4.2. The use of the Athletic Complex shall be subject to reasonable use restrictions as determined by Mt. SAC in its discretion, but shall include the following use restrictions:
 - a) No alcohol except as allowed by law
 - b) Mt. SAC will bear all security costs incurred for events, or pass them on to third party users, including costs arising from City police and fire services.
3. Mt. SAC shall dispose of all export dirt from the Athletic Complex/PEP on campus and/or outside of the City of Walnut. Haul routes for disposal outside of the City shall be via Temple Avenue in accordance with "Option 3" of Bid #3168 (PEP- Soil Removal – attached).
- ~~The City 2. The City will process the grading plans for the PEP as described above in Section II. 4 above.~~
4. ~~3.~~ will expedite processing of the grading plans for the PEP by submitting directly to the City Council upon final review and recommendation by the City Engineer as part of the global settlement. This procedure shall not constitute a waiver of the City's grading ordinance procedures for future projects (ie submittal to the planning commission) and no precedence shall be established.
- 2.5. Mt. SAC will indemnify the City for damage to City road arising from earthmoving truck hauling through identified and adopted mitigation measures supporting the SEIR, including posting adequate security in accordance with City requirements. City does not waive any claims for additional damages.
4. ~~3-6.~~ Mt. SAC will agree to formation of a Stadium task force to include City and Mt. SAC representatives to discuss partnering opportunities.
5. Mt. SAC will agree that it will expedite processing requests by the City to use the Stadium during times that do not conflict with College use and schedules, which may at City's request include good faith consideration of restoring the annual Fourth of July fireworks at the Stadium. City's use of the Stadium shall be revenue neutral to Mt. SAC and City shall be responsible only for actual costs

Comment [SA1]: Direct City Council review and approval would occur at the same time as approval of the settlement agreement. This achieves timing goals, albeit under City Council discretionary review standard. Settlement Agreement would need to be conditioned of approval and expiration of any citizen appeal right. I believe this is 10 to 15 days.

Comment [SA2]: In the past, Gary Nellesen has indicated \$100,000 is reasonable.

MEMORANDUM OF AGREEMENT

such as security, set-up/clean-up and maintenance and shall not be charged a user fee.

MEMORANDUM OF AGREEMENT

IV. Future Projects:

1. Prior to commencement and/or implementation of either Master Plan projects or Master Plan Updates (MPU), written notice to ~~United Walnut~~UWT and City shall be given at the earliest time that Mt. SAC issues either its Request for Qualifications (RFQ) or Request for Proposals (RFP) for any architect or design or other consultant or contractor, and hold one or more community workshops about the intended project and/or MPU within a 90-day timeframe of said notice and prior to the award of any contract.
2. The City and Mt. SAC will “meet and confer” on the projects proposed under the 2018 Facilities Master Plan Update. The purpose is for Mt. SAC and the City to work together to review projects and discuss project implementation. This will include identifying projects that are definitively “school classroom facilities” and subject to the exemption under 53094 upon Board adoption of a resolution.
3. Mt. SAC and the City will re-establish the quarterly committee (staff and elected representatives) meetings between Mt. SAC and the City to consult, meet and confer on current events, projects, etc. Additional informal consultations/notifications between the City and Mt. SAC staff will be made prior to formal notice and publicity of new projects, events, etc. to allow for improved coordination.
4. Mt. SAC will consult with the City during the next FMP update. FMP will be prepared and approved as required by law ~~and submitted to the City for a consistency finding with the City General Plan.~~
5. Mt SAC will ~~include in its FMP~~meet and confer with the City to consider a Pedestrian Bridge over Temple Avenue at Temple and Bonita to connect the Transit Center to the Campus and a Pedestrian Bridge over Grand Avenue between Temple and San or Jose Hills connecting the commercial center to campus and will meet and confer with the City regarding ultimate design.
6. Mt. SAC will include in its FMP the construction/repair of the missing sidewalk on Grand Avenue between Mountaineer and San Jose Hills and will coordinate with City staff on the ultimate design.
7. ~~Mt. SAC will fund the resurfacing (2.5 inch grind and overlay) of Grand Avenue from the southern City limit to the northern City limit and Temple Avenue from Grand to the easterly City boundary. Mt. SAC will deposit \$1.9 million with~~

Comment [SA3]: I have deleted this language regarding consistency as it does not reflect accurately how FMP are updated. Needs to be left to “as required by law.”

MEMORANDUM OF AGREEMENT

~~the City to be held in a special account to be used exclusively for the resurfacing project at such time as resurfacing is merited. The City would be responsible for any additional costs necessary to fund the resurfacing project at the time it is undertaken.~~

MEMORANDUM OF AGREEMENT

V. Community Representation:

1. Mt SAC shall increase the number of representatives on its statutorily required Bond Oversight Committee (for both its current Measure RR and intended new Measure intended to go before the voters in 2018) such that there shall be at least three (3) Walnut residents and one (1) United Walnut Taxpayer representative.

VI. Accountability:

1. This Memorandum of Agreement shall be memorialized in a full settlement and mutual release agreement that shall include a stipulated judgment to be filed in pending litigation. The written settlement agreement shall contain a provision for judicial enforcement pursuant to CCP 664.6 along with a clause for prevailing party attorneys' fees.

VII. Fees and Costs:

1. UWT current attorneys' fees and costs awards paid within 30 days of signed agreement.
2. Mt. SAC's obligation to pay attorneys' fees to the City arising out of the consolidated Solar Project lawsuit shall be determined by the City's pending motion. The parties reserve all rights with respect to such motion.

Comment [SA4]: If the City is going to require Mt. SAC to spend additional funds of over \$1 million to haul dirt off-site, I believe they should waive their attorneys' fees. The motion is a money grab as the City is out of pocket \$200,000 yet seeking \$550,000.

MEMORANDUM OF AGREEMENT

The above terms are agreed to in principal by the below undersigned parties, and subject to approval of each entity's board of director/trustees.

The above terms shall also be set forth in a more formal form of a settlement agreement.

AGREED:

Date: _____

Sean Absher, Esq.
Counsel for Mt. Sac and President Scroggins

Date: _____

Craig Sherman, Esq.
Counsel for United Walnut Taxpayers

Date: _____

Barbara Leibold, Esq.
Counsel for City of Walnut