

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is dated March 1, 2020 for reference purposes only, and is by and between Marin Community College District (“College”) and Kentfield School District (“District”), (together the “Parties”).

### RECITALS

A. At the June 7, 2016 Presidential Primary Election, the voters in the geographical boundary of the College approved local bond Measure B, which authorized the issuance by the College of \$265,000,000 in bonds to finance school facilities projects specifically set forth in Measure B.

B. On October 18, 2016, the College Board of Trustees (Board) at a duly noticed regular meeting approved the Kentfield campus and Indian Valley campus Facilities Master Plan 2016-2021 (2016 FMP), which identifies several Measure B construction projects, including a “new maintenance complex” at the Kentfield campus that includes the maintenance and operations building next to the Sports Field.

C. On April 16, 2019, the Board at a duly noticed regular meeting awarded the construction contract for the new Maintenance and Operations project (Project), which will cost approximately \$15,400,000 and will include two buildings totaling 19,904 square feet of offices, shops, storage, equipment, supplies to support maintenance and operations of all buildings and grounds for the Kentfield and Indian Valley Campuses, and house a refuse compactor. During the study session portion of the April 16<sup>th</sup> meeting, the Board reviewed a categorical exemption report (CE Report) for the Project under CEQA Guidelines Section 15061(b)(3). Rincon’s CE Report concluded that the Project met all criteria for a categorical exemption.

D. On May 14, 2019, the College filed a Notice of Exemption for the Project based on the CE Report. The Project commenced in May, 2019 and substantial completion is scheduled for April 2020, at which time the College will occupy and use the Project.

E. District is a public school district located adjacent to the Project and operates the Kent Middle School.

F. On October 30, 2019, the District filed a Verified Petition for Writ of Mandate; Complaint for Nuisance and Injunctive Relief (Petition), captioned *Kentfield School District v. Marin Community College* District, Marin County Superior Court, Case No. CIV 1904635 (Legal Action) alleging, among other things, the College failed to comply with the California Environmental Quality Act (CEQA) in approving the Project and failed to address the following alleged significant environmental impacts not evaluated in the CE Report: (i) hazardous air emissions within one-quarter mile of Kent Middle School, (ii) construction dust and debris, (iii) noise, and (iv) cumulative program-level impacts from other projects identified in the 2016 FMP. The District requests that the court set aside the CE Report, restrain further Project implementation until preparation of a CEQA compliance document (mitigated negative declaration or environmental impact report) and award District reasonable attorneys’ fees and costs. The College denies these allegations.

G. Authorized representatives of the Parties have engaged in extensive settlement discussions over the past several weeks and the Parties now desire to settle the Legal Action in accordance with the terms and provisions set forth in this Agreement.

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

2. Project Traffic and Safety Obligations.

a. During construction of the Project, the College shall maintain a crossing guard at the Project crosswalk during construction of the Project, at the College's sole cost and expense.

b. After Project completion, the College shall install flashing crossing lights at the Project crosswalk, or other similarly effective safety barrier, at the College's sole cost and expense.

c. During construction of the Project, and Monday through Friday (excluding holidays), the College shall route all construction-related traffic through PE Parking Lot 10 and Lot 12.

d. After construction of the Project and during the hours of 7:00 a.m. to 9:00 a.m. on all weekdays, 2:00 p.m. to 4:00 p.m. on Mondays, Tuesdays, Thursdays, and Fridays, and 1:00 p.m. to 3:00 p.m. on Wednesdays, the College shall route all vehicles through PE Parking Lot 10 and Lot 12. During other hours of the days, the College shall route all delivery vehicles through Parking Lot 10 and Lot 12 and exit out the Access Road, with the proviso that the College shall be permitted to route any vehicles through the Access Road (as such Access Road is shown on Exhibit A attached hereto and incorporated herein by this reference) when reasonably necessary to accommodate vehicles due to their size or configuration. The College shall notify the District whenever it is expected that vehicles will require use of the Access Road. Notice shall be in the form of an email sent by the College's Director of Facilities to the District's Superintendent or their designee.

3. Noise Abatement; Barrier Fencing and Safety Improvement Obligations.

a. The construction of the Project shall be subject to the noise regulations contained in Chapter 6.70 of the Marin County Code titled “Loud and Unnecessary Noise” (the “Noise Regulations”). The College shall enforce the Noise Regulations with regard to the activities of its contractors, vendors, suppliers and any other persons involved in the construction of the Project. During the time period that Kentfield Middle School is in session, the College shall also enforce a “no loud music” policy at the Project construction site.

b. Prior to completion of the Project construction, the College at its sole cost and expense shall install a new 12 inch high curb (the “Curb”) as shown in Exhibit A. Within ninety (90) days of completion of the Project (and subject to all public bidding requirements), the College at its sole cost and expense shall install a new 8-foot high gapless Terx® fence (the “Terx® Fence”), both as shown in Exhibit A. For clarity, the Curb and Terx® Fence shall be located outside the area designated “Walking Track” in Exhibit A. Prior to approval and construction of the Curb and Terx® Fence, the College shall share with the District the design drawings so the District may confirm the design and location of the Curb and Terx® Fence.

c. Commencing on the date of Project operations (the “Date of Project Operations”), and for a period of one year from the Date of Project Operations, the College at its sole cost and expense shall undertake quarterly noise sampling to determine the effectiveness of the Terx® Fence in maintaining ambient noise level in the vicinity of the North Property Line (as shown in Exhibit A) within the existing 46 to 62 dBA ambient noise level as described in the Environmental Noise Study dated February 6, 2020 prepared by CSDA Design Group at the request of the College (the “Existing Ambient Noise Level”). After the one-year period, if the quarterly noise sampling establishes the Existing Ambient Noise Level has been maintained, the College shall have no further obligation to conduct noise sampling. If the quarterly noise sampling establishes the Existing Ambient Noise Level has not been maintained, the College and the District agree to “meet and confer” and discuss resolution as provided in Section 6 below.

4. Diesel Truck Emission Abatement. The College shall enforce the regulations related to the Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling (ATCM), codified in Title 13 CCR Section 2485. The College shall inform diesel-fueled commercial vehicle operators of the ATCM idling restriction and the College’s policy of strictly enforcing the ATCM.

5. Refuse Compactor Odor and Noise Abatement. The College shall maintain, repair and replace the refuse compactor in accordance with the manufacturer’s specifications and recommendations. Further, the College shall install, maintain, repair and replace an ozone generator to abate refuse compactor odor.

6. Communication Process. For any issues or obligations that arise under this Agreement, communications shall be between the Superintendent and the College’s Director of Facilities or their designees. For issues related to traffic/safety conflicts, violations of the noise policy and standards (including the effectiveness of the Terx® Fence in maintaining the Existing Ambient Noise Level), and idling vehicles, the District shall notify the College via

telephone and email (the “Original District Notification”) and College shall make its best efforts to promptly resolve any such issues. In all instances, within 48-hours of the Original District Notification, the College agrees to provide a written response describing the process toward resolution of the issue, including the anticipated date of resolution if such date is known. Resolution of any issue shall be in the discretion of the College and subject to approval by the governing body of the College if such approval is required under law.

7. Description of Claims. The Parties to this Agreement desire to forever resolve, settle and release any and all claims, demands, liabilities, losses, damages, arising out of, or in any way related to: (i) the Project, (ii) the CE Report, and (iii) the Petition (collectively the “Claims”). Expressly excluded from the definition of Claims are claims between the Parties, if any, related to the District’s use of College property shown on Exhibit A as the “Walking Track”.

8. Mutual Release of Claims. Where this release is of a Party, it is intended to extend to that Party, to those persons or entities for whom that Party may be vicariously liable, and that Party’s trustees, officers, employees, predecessors, successors, and attorneys.

a) Each Party releases the other Parties as to any and all Claims.

b) The Parties intend this release to be full and final and shall extend to all claims and damages, past, present or future arising out of, or in any way related to the Claims. The Parties further intend this release to extend to all claims that each Party may have against the other in any way related to the Claims, regardless of whether they are known, suspected to exist, or unknown, and in this regard waive such protection as is afforded by California Civil Code section 1542 providing:

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.

9. Non-disparagement; Joint Release. The Parties, including their trustees, officers, employees, predecessors, successors, and attorneys, agree not to make any comment intended to disparage one another. Within five (5) days of the Effective Date, the Parties agree to issue a joint statement to the effect that the Parties have reached a mutually satisfactory settlement of the Legal Action.

10. Bar Against Other Actions. The Parties agree and warrant that they shall not bring, commence, institute, maintain, prosecute or allow any person, entity or organization to bring, commence, institute, maintain or prosecute in their name, any other action at law or in equity, or any legal proceeding whatsoever, against each other which is released herein, other than an action to enforce this Agreement or based on an alleged breach thereof. This Agreement may be plead as a full and

complete defense to, and may be used as a basis for injunctive relief against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

11. Dismissal of the Legal Action. Within three (3) court days of the Effective Date, the District shall execute and file in the Legal Action a Request for Dismissal, with Prejudice.

12. No Admission of Liability. This Agreement is made by way of compromise of disputed claims and is not to be deemed an admission of fault or liability by any of the Parties hereto or by the trustees, officers, or employees of the Parties, or of the existence or non-existence of any fact.

13. Attorneys Fees and Costs. The Parties will each bear its own costs and attorneys fees incurred in the prosecution or defense of the Legal Action.

14. Governing Law. This Agreement is made pursuant to and shall be construed in accordance with the laws of the State of California.

15. Acknowledgement of Understanding. The Parties each acknowledge that it/he/she has read and fully understands all the provisions of this Agreement and has conferred with its legal counsel prior to execution of this Agreement.

16. Continuing Jurisdiction to Enforce Agreement. The court in the Legal Action shall have continuing jurisdiction to enforce the terms of this Agreement pursuant to Section 664.6 of the Code of Civil Procedure. In any dispute or controversy arising out of this Agreement, the prevailing party shall be entitled to reimbursement of its costs, including cost of the proceeding and attorneys' fees and costs.

17. Warranty of Authority. Each of the signatories to this Agreement warrants and represents that it/he/she is competent and authorized to enter into this Agreement.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, assigns, partners, officers, agents, employees and all affiliated or related entities.

19. No Assignment of Claims. The Parties 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.

20. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, and signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

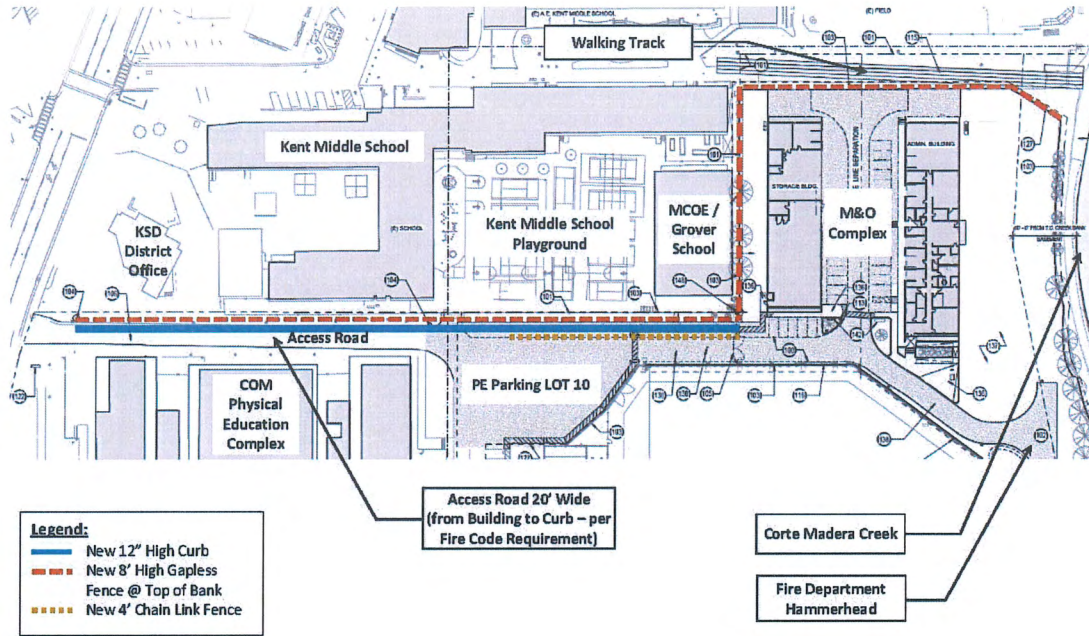
*[SIGNATURES NEXT PAGE]*

IN WITNESS WHEREOF, the Parties agree to the terms of this Agreement.

<p><b>MARIN COMMUNITY COLLEGE DISTRICT</b></p> <p>By: <u>David Wain Coon</u> Name: <u>David Wain Coon</u> Title: <u>Super./ President</u> Dated: March <u>10</u>, 2020</p>	<p><b>Approved as to form:</b></p> <p>Stradling Yocca Carlson &amp; Rauth, a professional corporation</p> <p>By: <u>Sean B. Absher</u> Name: <u>Sean B. Absher</u> Dated: March <u>12</u>, 2020</p>
<p><b>KENTFIELD SCHOOL DISTRICT</b></p> <p>By: <u>Elizabeth Schott</u> Name: <u>Elizabeth Schott</u> Title: <u>Superintendent</u> Dated: March <u>10</u>, 2020</p>	<p><b>Approved as to form:</b></p> <p>Ragghianti Freitas LLP</p> <p>By: <u>James W. Smith</u> Name: <u>James W. Smith</u> Dated: March <u>10</u>, 2020</p>

EXHIBIT A

Depiction of Maintenance & Operations – Terx® Fence & Curb Improvements



**Maintenance & Operations – Fence & Curb Improvements**

Updated: 2/6/2020