

FUNDING AND JOINT USE AGREEMENT
By and Between
LOS ALTOS SCHOOL DISTRICT
And
CITY OF MOUNTAIN VIEW

THIS FUNDING AND JOINT USE AGREEMENT ("Agreement") is made _____, 2019, by and between the LOS ALTOS SCHOOL DISTRICT, a California public school district ("District"), and the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation ("City"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real; and

WHEREAS, the District is negotiating the acquisition of real property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity; and

WHEREAS, in addition to locating a new school facility in the SAPP, the acquisition of additional park space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents as the area is entirely built-out and the current real estate market has made the creation of new parks and recreational facilities particularly challenging as the cost of the land continues to increase; and

WHEREAS, the Mountain View 2030 General Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development; and

WHEREAS, the City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a school site, while creating new playing fields and recreational facilities that would also be available for neighborhood use; and

WHEREAS, District intends to acquire an approximately 11.65 acre site within the City of Mountain View ("Property") which site will be large enough to provide for: (1) an approximate 2.0-acre open space for a community park and recreational facilities ("Open Space Park"); (2) an area for school facilities, buildings, and other improvements to house and further the educational programs of the students ("School Area"); and (3) an additional approximate 4.0 acres for athletic fields, playground structures and facilities to be used by the School in furtherance of the educational programs and by the City for community recreational purposes ("Joint Use Area"); and

WHEREAS, the City desires to facilitate the development of the Property and create opportunities for newly public accessible open space and recreational facilities and to that end will contribute funds towards acquisition and development of the Property ("City's Financial Contribution"), plans to use the Joint Use Area when not in use by the District for its educational program, and intends to develop and operate the Open Space Park for the community; and

WHEREAS, collectively, the School Area and Joint Use Area are referenced as the "School Site." The approximate location of the Property, including general concepts and layout for the School Site are provided on the attached **Exhibit A**. The Open Space Park will not be part of the School Site and will be acquired by the City from the District for operation as a community park as further detailed in a separate more definitive Transfer Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the funding and joint use provisions for City's use of portions of the School Site for public recreation purposes and to allocate maintenance responsibilities, and to agree to any other terms; and

WHEREAS, under Section 35160 of the Education Code, the governing board of a school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law and which is not in conflict with the purposes for which school districts are established; and

WHEREAS, Chapter 10 of Division 1 of the Education Code, commencing with Section 10900 (Community Recreation Programs), authorizes cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation which will contribute to the attainment of general recreational and educational objectives for children and adults of this State and accordingly enter into an agreement to carry out those purposes.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and City agree as follows:

AGREEMENT

Section 1. Approval of Agreement. This Agreement shall be approved or ratified by the City Council of the City and the District's Board of Trustees ("Board"), and fully executed by both Parties. Notwithstanding the same, this Agreement is subject to District's acquisition of the Property and shall be terminated as set forth in Section 15 below in the event the District is unable to acquire the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below).

Section 2. Title to the Property. The Parties acknowledge that title to the School Site, which includes the School Area and Joint Use Area, is or will be held by District during the entire "Term" of this Agreement, as that term is defined below in Section 6. All improvements to the realty installed by either Party on the School Area or Joint Use Area shall be and remain the property of the District.

Section 3. Property, School Site and Open Space Park.

(a) **Property.** The Property consists of an approximate 11.65 acre portion of the San Antonio Center, and is more particularly described and depicted on **Exhibit A**.

(b) **School Site.** The School Site, comprised of the School Area and Joint Use Area, consists of approximately 9.65 acres of the Property.

(i) The School Area of the School Site is generally depicted on **Exhibit A**, and the facilities shall include all classrooms, buildings, gymnasium(s), improvements, and facilities the District determines, in its sole discretion, is necessary to

provide educational instruction in accordance with its approved educational program for its students, which will include a parking lot and gymnasium.

(ii) The Joint Use Area consists of an approximate 4-acre portion of the School Site and is generally depicted on **Exhibit A**. Any improvements and facilities located on the Joint Use Area shall be at the District's sole, reasonable discretion, with reasonable review by the City. Facilities located on the Joint Use Area will include Athletic fields, including a track, soccer and baseball field and may also include:

- (1) Playground facilities, appropriate for middle school-age students.
- (2) Tot lot, appropriate for toddler-age children.
- (3) Outdoor classroom areas.
- (4) Outdoor basketball courts.

Any specific upgrades to the facilities on the Joint Use Area desired by the City shall be solely funded by the City, outside of City's Financial Contribution, based on the Parties' mutual agreement of plans and cost parameters.

(c) Open Space Park. The Open Space Park consists of an approximate 2.0-acre portion of the Property, and will be more particularly defined as part of the District and City's master planning process set forth in Section 8(a) below. Once the Open Space Park property is transferred to the City pursuant to a separate more definitive Transfer Agreement, it will be designed, developed and operated exclusively by the City, at its sole cost and expense.

Section 4. City Financial Contribution. In consideration for the Parties mutual planning, use and operation of the Property, City agrees to make a financial contribution to the acquisition of the Property as follows:

(a) Contribution Amount. *The City will contribute approximately Six Million Dollars (\$6,000,000) per acre toward the purchase of the Joint Use Area of the Property, which amount shall not exceed Twenty-Three Million Dollars (\$23,000,000). This contribution shall be referred to herein as the City's "Financial Contribution."*

(b) Deposit of Contribution. The City shall deposit its Financial Contribution into an escrow established by the District a minimum of five (5) days before the close of escrow on the District's acquisition of the Property. In order to facilitate timely transfer of the City's Financial Contribution, the District shall provide the City with twenty-one (21) days' notice of the anticipated date for close of escrow on the Property.

(c) Return of Contribution. If District is unable to complete the close of escrow on the Property within two (2) years of the Effective Date of this Agreement (as defined in Section 6 below), any portion of the City's Financial Contribution held by the District or in escrow for the benefit of the District shall be immediately returned to the City along with any interest that has accrued.

Section 5. Term.

(a) Agreement Term. The term of the Agreement shall commence as of the date this Agreement is fully executed by the Parties ("Effective Date"). The term of this Agreement shall expire in (99) years, or for as long as the District is the owner of the School Site, subject to the City's right of first refusal as set forth in Section 5(c) below ("Term").

(b) Term Binding on Subsequent Lessees. The Parties understand that this Agreement may not be terminated for any reason during the Term, except as set forth in the termination provisions contained herein at Section 15, and that the Parties shall have use of the School Site in accordance with the terms of this Agreement throughout the Term. It is also expressly understood that the City's right to use the Joint Use Recreational Facilities will remain in full force and effect in the event of a lease of the School Site to a third party, which lease shall be subordinate to City's use rights.

Section 6. Disposition of School Site

(a) City's Right of First Refusal Prior to Term Expiration

(i) Credit. Should the District elect to sell the School Site during the term of this Agreement, the District shall notify the City of its intent to dispose of the School Site at least ninety (90) days in advance of the anticipated public offering. The City shall have the right of first refusal to purchase the School Site to the extent permitted by law. If the City elects to purchase the School Site, it shall receive a credit towards the fair market value of the Property for the value of the City's Financial Contribution on an amortized basis, as set forth in the Amortization Schedule contained in **Exhibit B** attached hereto.

(ii) Purchase Price. If the City exercises its right of first refusal, the purchase price for the School Site shall take into consideration the then existing development rights of the School Site, as well as the impact of any transfer of development rights encumbering the School Site pursuant to that certain Memorandum of Understanding Between the City of Mountain View and Los Altos School District (Transfer of Development Rights Program), effective on January 29, 2019, attached hereto as **Exhibit C**.

(iii) Appraisal Process. The fair market value of the School Site shall be determined by agreement between City and District. The fair market value shall be based on the highest and best use of the property, giving no recognition to any school use, but shall consider the remaining development rights on the property at the time of value. Within sixty (60) days after District provides written notice to City of its intent to offer the property to the City under City's right of first refusal, City and District each, at its cost and by giving notice to the other party, shall appoint a competent M.A.I. real estate appraiser, unlikely to be unduly influenced by either party, with at least ten (10) years' commercial appraisal experience in Santa Clara County and set the fair market value for the School Site.

If either City or District does not appoint an appraiser within then (10) days after the other party has given written notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the fair market value. If two (2) appraisers are appointed by City and District, they shall meet promptly following completion of their respective appraisal reports and attempt to set the Fair Market Value. If the two (2) appraisers are unable to agree within thirty (30) days after the second appraiser has been

appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two (2) appraisers are given to set fair market value. City and District each shall bear one-half (1/2) of the cost of appointing the third appraisers' fee. The third appraiser, however selected, shall be a person who is unlikely to be unduly influenced by either party. Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set the fair market value.

The appraisal process set forth in this Section shall be conducted by the Parties whether or not the City exercises its right of first refusal to purchase the School Site.

(b) City's Right to Proceeds of Disposition of the School Site. In the event the District disposes of the School Site during the term of this Agreement, and the City does not exercise its first right of refusal to acquire the School Site, then the City shall receive a portion of the proceeds from such disposition in recognition of the City's proportional contribution to the acquisition of the School Site as follows:

(i) If the highest and best use of the School Site is continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the gross proceeds from the sale attributable to the value of the land only; provided, however, that to the extent the City contributes toward the cost of construction, replacement and/or Major Maintenance (as defined in Section 11 below) of any improvements located on the School Site, then the City shall receive a pro-rata share of the value of such improvements based on the amount of the City's contribution.

(ii) If the highest and best use of the School Site is something other than continued use of the then existing facilities, as determined during the appraisal process set forth in Section 6(a)(iii) above, then the City will receive 21% of the value of all gross proceeds from the sale.

Section 7. Development of the School Site. The School Site will be used to serve the Mountain View community surrounding the School Site in order to accommodate the increased enrollment from development in the area north of El Camino. To that end, District agrees the school will serve one or a combination of:

- (a) An elementary school open to neighborhood students;
- (b) A junior high school open to neighborhood students; and/or
- (c) A choice or charter school if it has a preference for neighborhood students.

The school should be substantially similar in size/student enrollment to that of other District schools serving the same population in other areas of the District and based on the District's school targets as set forth in its policies. The school developed on the School Site shall be referred to herein as the "School."

The Parties understand and agree that the District shall retain the right to deem the School Site surplus, in the event the School is no longer needed for educational purposes. In the event the District deems the School as surplus or no longer needed for educational purposes, the District shall have the right to lease or sell the School Site pursuant to the applicable surplus property disposition laws and regulations.

Should the District use the School Site for a school use other than described above, the City, in its sole discretion, may elect to terminate the Agreement in accordance with the Termination provision set forth in Section 15 below and be entitled to reimbursement from the District of the applicable pro-rata share of the City's Financial Contribution as specified in Amortization Schedule contained in **Exhibit B**.

Section 8. Development of the Joint Use Area.

(a) Joint Use Area Master Planning. The District will invite the City of Mountain View to partner with it to master plan the Joint Use Area, including cooperating on preparation of the Environmental Impact Report in compliance with the California Environmental Quality Act. The Parties expressly recognize and agree that any and all improvements constructed on the School Site must be approved by all applicable state agencies, including the California Department of Education, Division of State Architect, Division of Toxic Substance Controls, State Allocation Board and/or Office of Public School Construction.

(b) Early Development of Joint Use Area. In the event the School is not constructed and open by September 30, 2024, the District agrees to develop and permit City use of the Joint Use Area by that time. The improvements to be developed in the Joint Use Area and for this specific purpose do not include the gymnasium ("Gym"). The Gym will be constructed as part of the construction of the School.

Section 9. Use of School Site.

(a) School Area. With the exception of the Gym, the District shall have exclusive use of the School Area of the School Site at any and all times. City may request use of the School Area in accordance with Section 10(b) below.

(b) Joint Use Area and Gym. Use of the Joint Use Area and Gym shall be designated as follows:

(i) District Use. The District shall have exclusive use of: (1) the Gym and (2) all facilities and improvements located on the Joint Use Area of the School Site, collectively referred to as the "Joint Use Recreational Facilities" on all days that school is in session ("School Days"), between the hours of 6:00 a.m. until all school-sponsored activities are concluded. ("School Hours"). During School Hours, District will be solely responsible for scheduling the use of, and for the security of and any liability within the Joint Use Area.

(ii) City Use. The City shall have use of the Joint Use Recreational Facilities during all non-School Days and during all non-School Hours including the summer for operation of recreational programs serving the community. City's right to use and operate the Joint Use Recreational Facilities shall remain in full force and effect throughout the Term of this Agreement.

Section 10. Master Schedule for Use of Facilities.

(a) Scheduling Joint Use Recreational Facilities.

(i) Annual Meetings. District and City shall establish a master schedule of facilities, dates, and times ("Master Schedule") for the use of the Joint Use Recreational Facilities at semi-annual scheduling meetings. The first meeting shall occur on

or before August 1 of each year. The purpose of the first scheduling meeting shall be to coordinate the schedule for each Party's uses of the Joint Use Recreational Facilities in the upcoming academic year for the School Site and to avoid conflict between District, City, and third-party users, to resolve any issues concerning maintenance or renovation of the Joint Use Recreational Facilities, and to address any of the Parties' concerns or issues arising under this Agreement. On or before June 1st of each year, the District shall provide City with the calendar for the school year beginning that fall. On or before January 1 of each year, the District shall notify City of any changes to the calendar for the School Site for the period of January to June. The Parties will also meet as needed to discuss any necessary repairs or maintenance issues, ongoing scheduling and/or use issues associated with the Joint Use Recreational Facilities.

(ii) Scheduling of Public Use of Facilities. City shall have exclusive authority to program and schedule use of the Joint Use Recreational Facilities by members of the public or other third parties during all times that City is permitted to use said Joint Use Recreational Facilities.

(b) Scheduling Use of District's School Area Facilities. The City, when desiring to use a facility on the School Area of the School Site, other than the Gymnasium (i.e., classrooms, multi-purpose rooms, etc.), shall comply with the requirements of the Civic Center Act, or the then existing laws governing use of District facilities.

(c) Further Amendment to Agreement. The Parties recognize and acknowledge that planning and development of the School are in the preliminary stages. As the District has not made a final determination as to the type of School that will be constructed on the School Site, the use provisions contained in the Agreement, including Sections 9 and 10, are likewise preliminary and intended to establish baseline parameters of use. Once the specific type of School that will operate on the School Site is defined and constructed, this Agreement shall be amended to modify the use provisions consistent with applicable school type and projected use.

Section 11. Custodial Services, Maintenance, and Repairs. Each Party agrees to exercise care in the use of and to repair any damage to the School Site, except for damage arising from ordinary wear and tear. The general terms for maintenance, repair, and upkeep are set forth below.

(a) Routine Maintenance and Repairs. Routine maintenance and repairs, as used in this Agreement, includes all routine maintenance and custodial services required to keep and maintain the School Area, Gym and Joint Use Area in good, clean, orderly condition, and shall be allocated between the Parties as follows:

(i) School Area. District shall be solely responsible for custodial services, routine maintenance, operations, and upkeep of the School Area, except the Gym, at its own cost and expense. District's obligations and responsibilities under this Section shall be to District-wide standards and policies and in accordance with applicable laws and regulations.

(ii) Gym. It is the intent of the Parties to share equally in the costs of custodial services, routine maintenance and repairs of the Gymnasium. The parties shall meet annually on or about February 1st to establish and agree to a maintenance plan for the gym. The maintenance plan shall identify the annual routine maintenance obligations of the parties.

(iii) Joint Use Area. The City shall provide for the upkeep of the Joint Use Area, including custodial services and routine maintenance, at its sole cost and expense.

(b) Vandalism.

(i) School Area. District shall be responsible for repairing any damage to the School Area, with the exception of the Gym, caused by vandalism.

(ii) Joint Use Area. Each Party shall be responsible for repairing any damage to the Joint Use Recreational Facilities by vandalism that occurs during that Parties' use of the Joint Use Recreational Facilities. If the Parties cannot determine when such vandalism occurred, the Parties will share equally the cost of repairing the damage.

(c) Major Repairs and Deferred Maintenance. Major repairs and deferred maintenance, as used in this Agreement, includes major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, and flooring systems, the exterior and interior painting of buildings, drainage systems and/or structural elements of permanent improvements ("Major Maintenance"), and shall be allocated between the Parties as follows:

(i) Joint Use Recreational Facilities. During the Annual Meetings described in Section 10(a)(1) above, the District and City shall discuss repair and maintenance needs for the Joint Use Recreational Facilities. If the Parties determine that Major Maintenance is required for any of the Joint Use Recreational Facilities, the Parties shall use good faith efforts to plan, schedule and fund such expenses to the extent financially feasible for each Party and subject to the approval and appropriation by each Party's respective governing body.

(ii) School Area. The District shall be responsible, at its sole cost and expense, for all Major Maintenance of the School Area; provided, however, that the Gym shall be included in the planning for Major Maintenance for the Joint Use Recreational Facilities as set forth in Section 11(c)(1) above.

(d) Other Terms.

(i) Each Party shall keep the property in the Joint Use Area and the Joint Use Facilities under its control in neat order, shall promptly remove all trash, refuse, garbage, and debris of any kind from the property and, as needed, shall provide a sufficient number of receptacles in the area for trash disposal.

(ii) Each Party shall make available to the other Party any information and/or documents related to accidents, injuries, damage to property, or other incidents occurring on the Property of which it receives notice or becomes aware.

(iii) Either Party may, at the expense of the responsible Party, correct or repair any hazardous or dangerous condition of real property in the Joint Use Area after reasonable written notice to the Party responsible for correction of the hazardous or dangerous condition and that the responsible Party's failure to take reasonable measures to correct or repair the condition or to commence the process of correcting or repairing the hazardous or dangerous condition and opportunity to take corrective measures.

(iv) The Parties shall address any concerns or issues regarding maintenance or upkeep during the scheduling meetings referenced at Section 10(a)(1), including discussion about supplementing or replacing equipment located within the Joint Use Area.

Section 12. Utilities. Payment for utility costs to the School Site shall be allocated as follows:

(a) School Area. The District shall pay all utility costs, including irrigation, attributable to the School Area, except the Gym.

(b) Gym.

(i) During the academic year, the Parties shall share equally in the costs of all utilities serving the Gym. The Gym utility costs shall be calculated based on the pro-rata share of the costs of utilities for the entire School Area. Alternatively, the Gym may be separately metered and the costs split equally between the City and District.

(ii) During the non-school days during the summer and holiday periods of one (1) week or more, the City shall be solely responsible for the costs of utilities attributable to the Gym.

(c) Joint Use Area. The City shall be solely responsible for the costs of utilities serving the Joint Use Area. All utilities for the Joint Use Area will be separately metered.

Section 13. Improvements or Alterations. City shall not construct or cause to be constructed on the School Site any improvements or alterations of any kind without the prior written approval of District's Board.

Section 14. Alternative Dispute Resolution.

(a) Designation of Liaisons. Within ninety (90) days of the Effective Date of this Agreement, each Party shall designate a liaison ("Liaison") to act as a representative in resolving any issues or disputes arising out of this Agreement, including, but not limited to, the use, maintenance, repair or other issues related to the Joint Use Recreational Facilities.

(b) Alternative Dispute Resolution Process. Prior to either Party exercising its right to terminate this Agreement pursuant to Section 15 below, the Parties must exhaust all of the steps in this Alternative Dispute Resolution Process.

(c) Informal Meet and Confer. The Liaison for the complaining Party must first initiate an informal meet and confer with the Liaison for the other Party within thirty (30) days of receiving notice from the other party of a material breach of this Agreement.

(d) Formal Meet and Confer. If the Liaisons are unable to resolve a dispute through the informal meet and confer process, then the City Manager or his or her designee shall meet with the District Superintendent to make a good faith effort to resolve the dispute. This meeting shall take place within five (5) business days of the Liaison's' meeting.

(e) Formal Dispute Resolution. If the City Manager and the District Superintendent are unable to resolve a dispute through the formal meet and confer process

set forth above, the dispute shall be subject to a dispute resolution process agreed to by the both Parties (i.e., mediation) before either party may initiate any litigation to resolve the dispute. The Parties shall agree upon a dispute resolution process no later than ten (10) business days following the conclusion of an unsuccessful formal meet and confer process.

Section 15. Termination.

(a) Notice and Opportunity to Cure. A party may only terminate this Agreement based on a failure to cure a Material Breach, provide it has provided notice of the material breach to the other party and an opportunity to cure for ninety (90) days following notice of the material breach. In addition the terminating party must participate in all of the steps in the Alternative Dispute Resolution Process.

(b) Termination for Cause. Either Party may terminate this Agreement based on the material violation of this Agreement by the other Party if such violation shall continue for ninety (90) days after written notice is given by either Party to the other Party of such violation. Material violations of this Agreement expressly and solely include violations of Section 5 (City Financial Contribution), Section 6 (Term), Section 7 (Development of School Site), Section 8 (Development of Joint Use Area), Section 9 (Use of School Site), Section 11 (Repair and Maintenance), Section 13 (Improvements and Modifications) and Section 16 (Compliance with Laws) [individually or collectively referred to herein as "Material Violation(s)"].

(c) In the Event of Material Violation and/or Termination:

(i) Available Remedies. In the event of a Material Violation, the aggrieved Party may exercise its right to terminate the Agreement pursuant to Section 15(a) above, or may seek any and all remedies available to it under the law, including, but not limited to, filing an action for specific performance, injunctive or declaratory relief.

(ii) Surrender of Joint Use Area. Upon expiration or earlier termination of this Agreement, City shall be responsible for restoring the Joint Use Area, and other portions of the School Site that were affected by City's occupancy during the Term, to a neat and clean condition with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on District's title.

(iii) District Reimbursement to City. In the event of termination, due to a Material Violation by District, District shall make reimbursement payments to the City, based on the City's Financial Contribution on an amortized basis in accordance with the Amortization Schedule attached hereto as **Exhibit B**.

Section 16. Compliance With Laws.

(a) Applicable Laws. In using the Joint Use Recreational Facilities under this Agreement, each Party agrees to comply with all applicable laws, rules, regulations, and ordinances. The Parties acknowledge and agree that use of School Site Area, excluding the Gymnasium, shall be in accordance with the procedures and policies established by the District for use of District facilities, including the Civic Center Act (Education Code section 38130 et seq.) and the fingerprinting and criminal background investigation requirements of Education Code section 10911.5, as applicable. Use of the Joint Use Facilities shall be in accordance with Education Code section 10900 et seq. (Community Recreation Programs) and the policies, rules, and ordinances of the City. Neither the Master Schedule, as

amended from time to time, nor any portion of the Agreement shall require or allow use of any of the School Site contrary to the laws governing school property and facilities.

(b) Fingerprinting and Criminal Background Investigations. Prior to each individual's commencement of assignment to or involvement in programs on the School Site whether City programs, City-sponsored activities or events, or activities or events sponsored by a City-affiliated or City-authorized organization, City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements under state law. Verification of compliance with this section shall be provided in writing to the District upon request.

(c) Alcoholic Beverages/ Illegal Drugs/ Noise/ Animals/ Harmful Substances. Any uses which involve the serving and/or sale of alcoholic beverages or illegal drugs and/or the conducting of games of chance are prohibited on the Property, unless such use has received prior written approval in accordance with the provisions of Section 25608 of the Business and Professions Code. City shall comply with the District-wide policy prohibiting the use of tobacco products on the School Site at all times. Parties shall not use or permit the use of the Property or any part thereof for any purpose which is inimical or contrary to public morals and/or welfare or morally objectionable as unsuitable for a public educational facility. City agrees to respond immediately to concerns expressed by neighbors or District relating to the operation of the City's programs, Open Space Park or use of the School Site for City purposes. Parties agree to not commit or suffer to be committed, any waste upon the Property, or allow any sale by auction upon the Property, or allow the Property to be used for any unlawful purpose, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property except in trash containers designated for that purpose.

Section 17. Mutual Hold Harmless/Indemnification.

To the fullest extent permitted by California law, each Party shall defend, indemnify, and hold harmless the other Party, its governing body and members thereof, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the other Party, its agents, contractors, employees, representatives, officers, servants, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against said Party, the other Party, upon written notice from the other, shall defend the same at its expense by counsel approved in writing by the Indemnified Party.

Section 18. Insurance.

(a) Commercial General Liability Insurance. The Parties shall maintain commercial general liability insurance, covering all of the Parties' operations regarding this Agreement, with a combined single limit of not less than Two Million Dollars (\$2,000,000).

(b) Motor Vehicle Liability Insurance. The Parties shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-

owned, and hired) used pursuant to this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Workers' Compensation Insurance. Each Party shall maintain a workers' compensation plan covering all of its employees as required by Section 3700 of the Labor Code, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations.

(d) Employer's Liability Coverage. Each Party shall maintain employer's liability coverage for each employee who is subject to this Agreement. That policy shall provide employer's liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per occurrence.City's Equipment Insurance. City acknowledges that the insurance to be maintained by District on the School Site will not insure any City-owned equipment, property or any improvements made by City on the Joint Use Area or located within the Gym. Accordingly, City shall, at its own expense, maintain in full force and effect an insurance policy on all of its fixtures, equipment, improvements made by City and personal property in, about, or on the Joint Use Area or Gym. Said policy is to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of City's property.

(f) Self-Insurance. If either Party elects to be self-insured, in lieu of providing proof of insurance, that Party shall provide proof of self-insurance satisfactory to the other Party and meeting the requirements imposed herein, which can include a consent to self-insure issued by the State Director of Industrial Relations. Either Party providing proof of self-insurance warrants that the self-insurance provides substantially the same protection as the insurance required herein. Each Party further agrees to notify the other Party in the event any change in self-insurance occurs that would alter the obligations undertaken in this Agreement within thirty (30) days of the change.

(g) Other Requirements. Without limiting the Parties' duties of indemnification, the Parties each shall comply with the following insurance coverage requirements:

(i) Each policy shall be issued by a company authorized by law to transact business in the State of California.

(ii) Each policy shall provide that the Parties shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.

(iii) Comprehensive motor vehicle and commercial general liability policies shall each provide an endorsement naming the other Party, and its officers, agents, representatives and employees as additional insured.

(iv) Each Party shall provide an endorsement that the insurer waives the right of subrogation against the other Party, and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

(v) The required coverage and policy limits shall be maintained in effect throughout the Term and may be adjusted by each Party pursuant to legally required or commercially reasonable practice for property with the same or similar uses.

(vi) Certificates of Insurance. Upon execution of this Agreement, the Parties shall file certificates of insurance or consents to self-insure with each other, showing that they have in effect the insurance required by this Agreement. The Parties shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

Section 19. Cooperation with Other Occupants of the School Site. It is understood and recognized by City that the School Area may be used by other parties, including District, and City shall cooperate with the other parties in reaching amicable arrangements concerning such matters as use of the parking areas, playgrounds, and security measures, etc.

Section 20. Hazardous Materials. City and District agree as follows with respect to the existence or use of Hazardous Materials on or within the Joint Use Recreational Facilities:

(a) **Definition.** As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Sections 66261.30 et seq.; (ii) defined as a "hazardous waste" pursuant to Section 6903 of the Federal Resource Conservation and Recovery Act (42 U.S.C., § 6901 et seq.), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C., § 9601 et seq.). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Health Services, and the California Department of Toxic Substances Control), which regulates the use, storage, release, or disposal of any Hazardous Material.

(b) **Storage of Hazardous Materials.** Neither District nor City shall cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Property by District or City, or their agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom, gardening, and janitorial supplies (which shall be used and stored in strict compliance with the applicable Hazardous Materials Laws) utilized on the respective properties. Both Parties shall comply with all Hazardous Materials Laws.

(c) **District Action.** If the presence of Hazardous Materials on the School Site (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the District is responsible for that contamination under applicable law, then District shall, at its sole cost and expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the School Site or any part thereof.

(d) **City Action.** If the presence of Hazardous Materials on the Open Space Park (from any source whatsoever) results in contamination or deterioration of water or soil resulting in a level of contamination greater than the levels established as acceptable by any governmental agency having jurisdiction over such contamination, and if the City is responsible for that contamination under applicable law, then City shall, at its sole cost and

expense, promptly take any and all action necessary to investigate and remediate the contamination if required by law or as a condition to the issuance or continuing effectiveness of any governmental approval which relates to the use of the Open Space Park or any part thereof.

(e) Notice of Hazardous Materials. District and City shall each give written notice to the other as soon as reasonably practicable of (i) any communication received from any governmental authority concerning Hazardous Materials which relates to the Property, and (ii) any contamination of the Property by Hazardous Materials which constitutes a violation of any Hazardous Materials Law.

Section 21. Authorized Representative. Whenever any action, consent, approval, or agreement is required of either City or District within the terms of this Agreement, the City Manager of the City, or his or her designee, may act on behalf of the City and the Superintendent of the District, or his or her designee, may act on behalf of the District.

Section 22. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

LOS ALTOS SCHOOL DISTRICT
Attn: Superintendent
201 Covington Road
Los Altos, CA 94024
Facsimile: (650) 947-0118

CITY OF MOUNTAIN VIEW
Attn: City Manager
500 Castro Street
Mountain View, CA 94041
Facsimile: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective five (5) days after deposit in the United States mail.

Section 23. Sublease and Assignment. City shall not assign its rights, duties or privileges under this Agreement, nor shall City sublease or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of District. Any such attempt without District written consent shall be void.

Section 24. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 25. Entire Agreement of Parties. This Agreement, together with the Memorandum of Understanding attached as **Exhibit C** and the Transfer Agreement contemplated in Section 3(c) above, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 26. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the County where the Property is located.

Section 27. Attorneys' Fees. The Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with or as a result of this Agreement.

Section 28. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 29. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

Section 30. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts and transmitted by facsimile, and all counterparts together, whether original or facsimile, shall be construed as one document.

Section 31. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 32. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

Section 33. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

Section 34. Non-Discrimination. Each Party and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, sexual orientation, national origin or physical handicap. The Parties shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, sexual orientation, age, national origin or physical handicap. Each Party covenants to meet all requirements of pertaining to non-discrimination in employment. If either Party is found in violation of the non-discrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Agreement by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

ACCEPTED AND AGREED BY:

LOS ALTOS SCHOOL DISTRICT

CITY OF MOUNTAIN VIEW

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____

EXHIBIT A
School Site

[PLACE HOLDER – UPDATE MAP BEFORE FINALIZING]

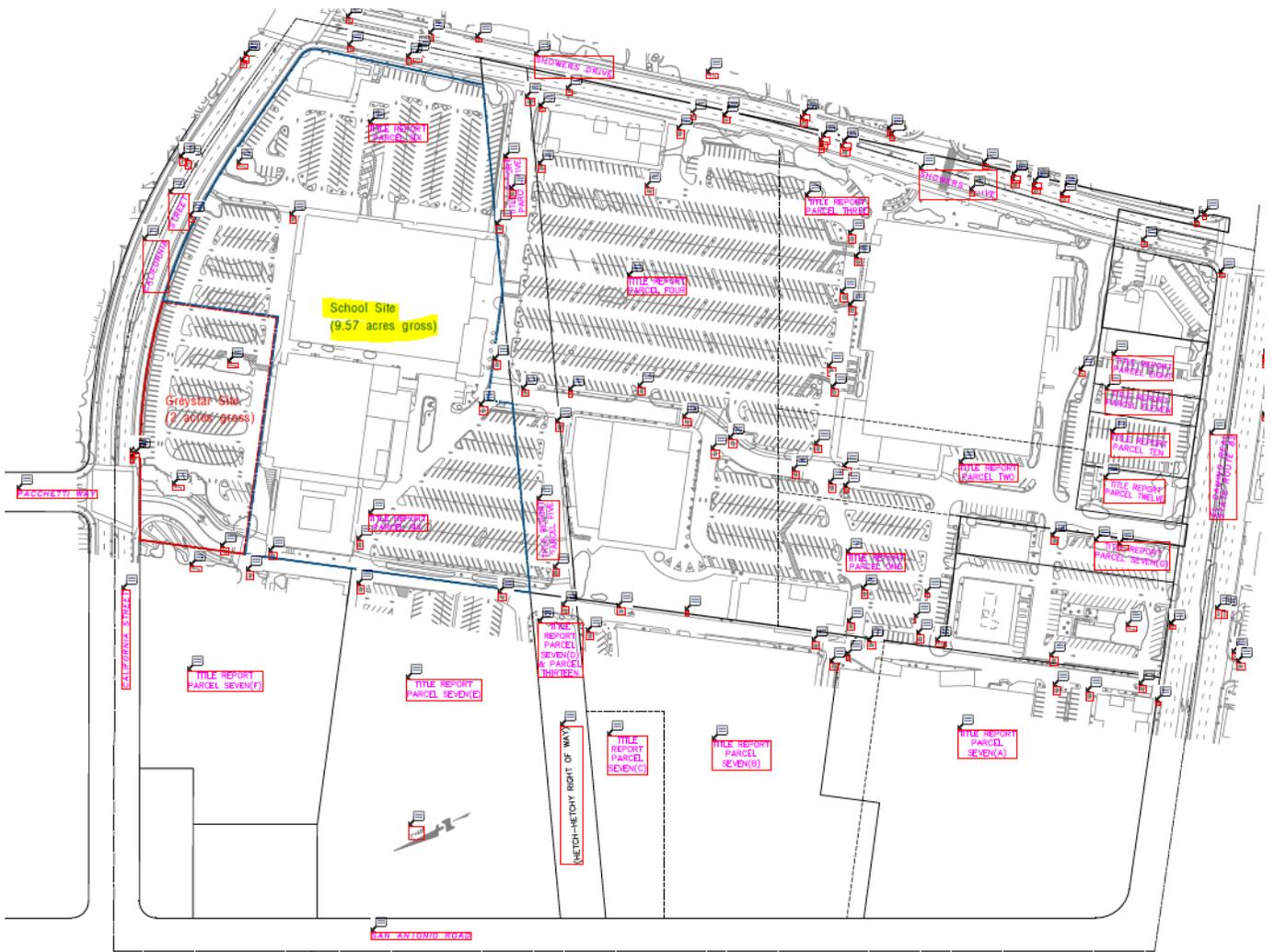


EXHIBIT B
Amortization Schedule

The Parties recognize the City contributed \$23 million to assist the District in acquiring four acres of open space for the School Site to create joint use recreational facilities for a period of 99 years. In the event the City is not able to utilize the Joint Use Area and Joint Use Recreational Facilities for the entire term of the agreement due to a breach of a material term by the District, then the City would be entitled to reimbursement of its contribution in proportion to the number of years it is not able to use the Joint Use Area and Joint Use Recreational Facilities. In addition, if the Agreement is terminated at any time after the City provides funding to the District to acquire the School Site but prior to the City's use of the Joint Use Area and Joint Use Recreational Facilities, then the District would reimburse the City for its entire Funding Contribution. The amortization of the City's contribution will commence once the City begins to use the Joint Use Area and Joint Use Recreational Facilities.

In the event the District disposes of the school site during the term of this agreement and the City exercises its first right of refusal, this amortization schedule will also be used to determine the credit to be applied towards the City's purchase of the school site.

The Parties have agreed to value this contribution by dividing the City's contribution of \$23,000,000 by 75 years for an annual amount of \$306,666.72, in addition to maintenance responsibilities and obligations set forth in the agreement. The table below sets forth the amortization schedule.

Year of Use	Beginning Balance	Amortization	Reimbursement/Credit
1	\$23,000,000.00	\$306,666.72	\$22,693,333.33
2	\$22,693,333.33	\$306,666.72	\$22,386,666.67
3	\$22,386,666.67	\$306,666.72	\$22,080,000.00
4	\$22,080,000.00	\$306,666.72	\$21,773,333.33
5	\$21,773,333.33	\$306,666.72	\$21,466,666.67
6	\$21,466,666.67	\$306,666.72	\$21,160,000.00
7	\$21,160,000.00	\$306,666.72	\$20,853,333.33
8	\$20,853,333.33	\$306,666.72	\$20,546,666.67
9	\$20,546,666.67	\$306,666.72	\$20,240,000.00
10	\$20,240,000.00	\$306,666.72	\$19,933,333.33
11	\$19,933,333.33	\$306,666.72	\$19,626,666.67
12	\$19,626,666.67	\$306,666.72	\$19,320,000.00
13	\$19,320,000.00	\$306,666.72	\$19,013,333.33
14	\$19,013,333.33	\$306,666.72	\$18,706,666.67
15	\$18,706,666.67	\$306,666.72	\$18,400,000.00
16	\$18,400,000.00	\$306,666.72	\$18,093,333.33

17	\$18,093,333.33	\$306,666.72	\$17,786,666.67
18	\$17,786,666.67	\$306,666.72	\$17,480,000.00
19	\$17,480,000.00	\$306,666.72	\$17,173,333.33
20	\$17,173,333.33	\$306,666.72	\$16,866,666.67
21	\$16,866,666.67	\$306,666.72	\$16,560,000.00
22	\$16,560,000.00	\$306,666.72	\$16,253,333.33
23	\$16,253,333.33	\$306,666.72	\$15,946,666.67
24	\$15,946,666.67	\$306,666.72	\$15,640,000.00
25	\$15,640,000.00	\$306,666.72	\$15,333,333.33
26	\$15,333,333.33	\$306,666.72	\$15,026,666.67
27	\$15,026,666.67	\$306,666.72	\$14,720,000.00
28	\$14,720,000.00	\$306,666.72	\$14,413,333.33
29	\$14,413,333.33	\$306,666.72	\$14,106,666.67
30	\$14,106,666.67	\$306,666.72	\$13,800,000.00
31	\$13,800,000.00	\$306,666.72	\$13,493,333.33
32	\$13,493,333.33	\$306,666.72	\$13,186,666.67
33	\$13,186,666.67	\$306,666.72	\$12,880,000.00
34	\$12,880,000.00	\$306,666.72	\$12,573,333.33
35	\$12,573,333.33	\$306,666.72	\$12,266,666.67
36	\$12,266,666.67	\$306,666.72	\$11,960,000.00
37	\$11,960,000.00	\$306,666.72	\$11,653,333.33
38	\$11,653,333.33	\$306,666.72	\$11,346,666.67
39	\$11,346,666.67	\$306,666.72	\$11,040,000.00
40	\$11,040,000.00	\$306,666.72	\$10,733,333.33
41	\$10,733,333.33	\$306,666.72	\$10,426,666.67
42	\$10,426,666.67	\$306,666.72	\$10,120,000.00
43	\$10,120,000.00	\$306,666.72	\$9,813,333.33
44	\$9,813,333.33	\$306,666.72	\$9,506,666.67
45	\$9,506,666.67	\$306,666.72	\$9,200,000.00
46	\$9,200,000.00	\$306,666.72	\$8,893,333.33
47	\$8,893,333.33	\$306,666.72	\$8,586,666.67
48	\$8,586,666.67	\$306,666.72	\$8,280,000.00
49	\$8,280,000.00	\$306,666.72	\$7,973,333.33
50	\$7,973,333.33	\$306,666.72	\$7,666,666.67

51	\$7,666,666.67	\$306,666.72	\$7,360,000.00
52	\$7,360,000.00	\$306,666.72	\$7,053,333.33
53	\$7,053,333.33	\$306,666.72	\$6,746,666.67
54	\$6,746,666.67	\$306,666.72	\$6,440,000.00
55	\$6,440,000.00	\$306,666.72	\$6,133,333.33
56	\$6,133,333.33	\$306,666.72	\$5,826,666.67
57	\$5,826,666.67	\$306,666.72	\$5,520,000.00
58	\$5,520,000.00	\$306,666.72	\$5,213,333.33
59	\$5,213,333.33	\$306,666.72	\$4,906,666.67
60	\$4,906,666.67	\$306,666.72	\$4,600,000.00
61	\$4,600,000.00	\$306,666.72	\$4,293,333.33
62	\$4,293,333.33	\$306,666.72	\$3,986,666.67
63	\$3,986,666.67	\$306,666.72	\$3,680,000.00
64	\$3,680,000.00	\$306,666.72	\$3,373,333.33
65	\$3,373,333.33	\$306,666.72	\$3,066,666.67
66	\$3,066,666.67	\$306,666.72	\$2,760,000.00
67	\$2,760,000.00	\$306,666.72	\$2,453,333.33
68	\$2,453,333.33	\$306,666.72	\$2,146,666.67
69	\$2,146,666.67	\$306,666.72	\$1,840,000.00
70	\$1,840,000.00	\$306,666.72	\$1,533,333.33
71	\$1,533,333.33	\$306,666.72	\$1,226,666.67
72	\$1,226,666.67	\$306,666.72	\$920,000.00
73	\$920,000.00	\$306,666.72	\$613,333.33
74	\$613,333.33	\$306,666.72	\$306,666.67
75	\$306,666.67	\$306,666.72	\$0.00

EXHIBIT C

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MOUNTAIN VIEW & THE LOS ALTOS SCHOOL DISTRICT (TRANSFER OF DEVELOPMENT RIGHTS PROGRAM)

This Memorandum of Understanding is entered into as of January 29, 2019 (the "Effective Date"), by and between the City of Mountain View ("City") and the Los Altos School District ("District") to establish a framework for the development of a transferrable development rights ("TDR") program for the mutual benefit of the City and the District.

RECITALS

A. The District currently serves roughly 1,250 students who reside in the City, with approximately 650 living in the area north of El Camino Real. The District seeks to acquire property located within the San Antonio Precise Plan ("SAPP") area of the City for the construction of a new school facility (the "School Site") to provide needed additional school capacity. The District anticipates that the new school facility will not utilize the majority of the building area allowed by the SAPP. If the District proceeds to acquire a site, it will pay a real estate market premium for potential building area that it cannot use.

B. Acquisition of additional park and open space in the SAPP area is a high priority for the City in order to meet the needs of current and future residents. The area is entirely built-out and the current real estate market has made the creation of new parks, open space and recreational facilities particularly challenging as the cost of the land continues to increase.

C. The Mountain View 2030 General Plan and San Antonio Precise Plan encourages cooperation between the City and local school districts to meet community educational and open space needs and contains policies to foster collaboration on new school development.

D. The City and the District recognize an opportunity for a mutually beneficial partnership that could support the District's acquisition of a School Site, while creating new playing fields and recreational facilities that would also be available for public use.

E. In order to facilitate the District's acquisition of a School Site and create opportunities for new publicly accessible open space and recreational facilities, the District and the City desire to create and implement an innovative program that would allow the District to transfer the School Sites' unutilized FAR to third-party buyers pursuant to a TDR program. The TDR program would allow third-parties within designated TDR receiving sites or with designated "Receiving Sites" to propose development projects for City review and approval to utilize additional floor area in excess of applicable zoning regulations in exchange for a financial contribution by prospective developers to the District. The District will apply the proceeds from the TDR purchases toward the costs of acquiring the new school and open space site, or construction of the new school and associated recreational facilities. The District will also execute an agreement with the City allowing public access to new recreational facilities that would be constructed on the School Site. To incentivize the purchase of TDRs, the program would allow potential buyers (evidenced by a signed letter of intent between the buyer and the District) to file Gatekeeper requests for receiving sites. City Council authorization of the

Gatekeeper requests allows the buyers' development applications to be filed and reviewed by the City, while also enabling the District to acquire a school site and pursue necessary approvals and permits for a new school to proceed concurrently with the City's development application process for receiving site projects with authorized Gatekeeper requests.

F. The City also desires to contribute funding to the District from the City's Park Land Dedication In-Lieu Fee program in an amount to be determined to create new joint use open space, including playing fields and recreational facilities and help offset the cost of the District's construction of the new park and recreational facilities on the School Site. The specific terms and conditions of the City's funding contribution will be set forth in a more definitive agreement between the District and the City.

G. The District has already undertaken extensive negotiations with potential TDR purchasers and entered into letters of intent with eight prospective purchasers, five of whom have submitted informal Gatekeeper development applications with the City.

H. On January 16, 2018, the City Council authorized the City Manager to execute this MOU based on an identified preferred School Site and directed staff to develop a master joint use agreement and funding agreement in furtherance of the objectives set forth above. At the same meeting, the City Council also authorized seven gatekeeper requests from prospective purchasers of TDRs for projects that are, as of the effective date of this MOU, developers with authorized Gatekeeper requests have either submitted applications and are undergoing review as part of the City's entitlement process or are expected to submit applications in the near future.

I. On May 22, 2018, the City Council authorized one additional gatekeeper request from a prospective purchasers of TDRs for a project that is, as of the effective date of this MOU, undergoing review as part of the City's development application process.

J. On June 26, 2018, the City Council authorized a change in the preferred School Site identified by the District to another location in the SAPP Area and directed staff to continue pursuing all remaining actions authorized on January 16, 2018, in connection with the proposed TDR program.

K. The parties desire to enter into this Memorandum of Understanding in order to establish the roles and responsibilities of the parties concerning the development and implementation of a TDR program to meet the objectives of both the District and the City, including but not limited to providing a measure of predictability and certainty for the District before it commits to the acquisition of a particular School Site.

AGREEMENT

- 1. Purpose of this MOU:** This MOU is intended to provide a programmatic framework and set parameters for the TDR program in order to try to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) add publicly accessible open space, including playing fields and recreational facilities to the City's park inventory; (iii) create a program that allows the District to monetize unused development rights associated with a new School Site; and (iv) outline the procedure for the distribution and requests to use TDRs as part of the City's development application process.

2. Obligations of the District.

- 2.1.** The District shall endeavor in good faith to select and acquire a School Site within the City sufficient to (i) accommodate its mandate to develop a new tenth school within the District's attendance boundaries, and (ii) accommodate the City's desire for significant new open space and recreational facilities for the public as part of the new school facilities.
- 2.2.** The District shall enter into one or more agreements with the City in a form or forms to be agreed upon by the parties for the funding, development and use of the open space and recreational facilities to be developed on the School Site. These agreements shall require the District to allow public use of the open space and recreational facilities on such terms and during such times as mutually agreed upon by the Parties. The District shall insure that an executed letter of intent is available for any third party's submittal to City of a Gatekeeper application request to utilize TDRs.
- 2.3.** The District shall be responsible for identifying prospective buyers of TDRs and negotiating a purchase price. The District has further developed a form "letter of intent" which the City has reviewed for prospective purchasers of TDRs.
- 2.4.** The District shall comply with any requirements imposed by the City in order to document the creation of TDRs originating from the School Site, as well as to document the transfer of TDRs to eligible "Receiving Sites." Upon taking title to a School Site, and in connection with the purchase and sale of any TDRs to prospective purchasers with LOIs, the District shall record a restrictive covenant against the School Site, in a form acceptable to the City, restricting allowable development rights on the School Site, and consistent with applicable provisions of any conditions of approval (including but not limited to conditions in any development agreement) for a TDR Purchaser's project on the Receiving Site. The District also reserves the right to sell TDRs to prospective third-party purchasers with LOIs prior to the approval of a specific project using the same City approved form of restrictive covenant. No TDRs may be sold until the District has taken title to a particular School Site and recorded a restrictive covenant restricting allowable development rights on the School Site in a form that is acceptable to the City.
- 2.5.** The District shall work in good faith with the City to implement the TDR program and address any issues arising out of the TDR program or this MOU, consistent with the objectives set forth in Section 1, including but not limited to developing documentation associated with the creation and redemption of TDRs arising from the School Site (e.g., a form of restrictive covenant and a certificate of transfer).

3. Obligations of the City.

- 3.1.** During the term of this MOU, the City shall consider granting third-party development project applicants the right to enter into the City's Gatekeeper process subject to providing evidence of a signed letter of intent with the District to purchase future TDRs and the submittal of the required materials for a Gatekeeper request consistent with the City's Zoning Ordinance, and consider assigning staff and other resources in order to process applications for such third-party projects, including any General Plan

amendments, rezoning requests or other necessary approvals or permits brought forward as part of an application that would be required in order to permit additional density associated with the application of TDRs purchased from the District. During the term of this MOU (and unless such term is extended by resolution or other action of the City Council), the City further agrees to facilitate a secondary market for TDRs by allowing prospective purchasers of unredeemed TDRs (e.g., in the event that a TDR purchaser is unable to apply the full amount of any purchased TDRs to an approved project) to submit a Gatekeeper application, subject to providing evidence of a signed letter of intent with the original TDR buyer to purchase future TDRs and the submittal of the required materials for a Gatekeeper request, consistent with the provisions set forth in Section 3.1 of this MOU.

- 3.2. Authorization of a Gatekeeper application for an eligible TDR Receiving Site project allows the project to proceed through the development review process. Neither the authorization of the Gatekeeper application nor any subsequent City actions related to the development and implementation of a TDR program pursuant to this MOU provide any assurance or implied "pre-commitment" to a particular project approval.
- 3.3. The City shall establish an internal procedure that would allow the auditing of TDRs purchased from the District and redeemed by prospective third-party buyers as part of a project located on a Receiving Site, which may include using the annual review process associated with any development agreements approved for specific projects utilizing TDRs.
- 3.4. The City will consider the purchase of TDRs a community benefit because it provides necessary capital for the purchase of a School Site and development of a public school with publically accessible open space and recreational facilities within the City of Mountain View. As such, the City will not impose any additional public benefit requirement on any floor area granted by virtue of the purchase of TDRs. However, nothing in this Section shall abrogate the City's rights to negotiate the terms of a Development Agreement for a particular project if a Development Agreement is sought by an applicant or impose any other exactions on a particular project, provided that such exactions do not relate to the granting of additional floor area through the redemption of TDRs on a TDR Receiving Site.
- 3.5. If the District acquires title to a School Site, then the City shall provide a funding contribution in an amount to be determined by the City to the District from the City's Park Land Dedication In-Lieu Fee reserve to facilitate the acquisition and construction of new open space and recreational facilities as part of the new school that would be available to the public during times when such facilities are not needed for school purposes. The terms and conditions of the City's funding contribution shall be set forth in a separate agreement between the City and the District.

4. Schedule and Milestones.

- 4.1. The District shall make good faith efforts to select a preferred School Site for a new school and commence the process of acquiring the School Site, targeting acquisition of the School Site in early 2019 and commencing the environmental review and entitlement

- process shortly thereafter. Prior to commencement of the entitlement process for the new school, the District shall coordinate with the City regarding the design of playing fields and recreational facilities.
- 4.2. The City shall make good faith efforts to commence processing any applications for projects within designated TDR Receiving Sites or zones that are granted Gatekeeper status pursuant to Section 3.1 of this MOU in a timely manner after submittal of the application in accordance with the City's Zoning Ordinance.
 - 4.3. The City shall also work in good faith on the development of any documentation required to implement the TDR program.
 - 4.4. The parties shall work in good faith to finalize separate agreements addressing the City's contribution of funds for new playing fields and recreational facilities in exchange for the joint use of those facilities prior to the District taking title to the new School Site.
5. **Funding.** This MOU is being entered into for the mutual benefit of the parties and each party intends to pursue the objectives set out in this MOU. While the parties intend to pursue the objectives defined in this MOU, this MOU does not constitute a commitment of funding or other resources by either party, and does not create any legally binding obligations. Any commitment of funds or other resources shall be made under a separate agreement or by resolution of the City Council or District Board of Trustees.
 6. **Compliance with the California Environmental Quality Act:** The parties acknowledge that the endorsement of this MOU does not commit the District to select or acquire any particular School Site, nor commit the City to approving any particular project which may be eligible for receiving TDRs. The parties further acknowledge that this MOU does not foreclose the possibility of the City or the District considering alternatives to any specific proposal, potential mitigation measures, or future decisions to disapprove any particular project proposal until after conducting and completing appropriate environmental review under the California Environmental Quality Act ("CEQA"). While this MOU identifies certain essential terms of the proposed TDR program, it does not bind the City or the District to any specific terms or set forth all of the material terms and conditions that the parties anticipate will be developed over time. All future projects, including any Gatekeeper requests granted by the City for projects that have signed letters of intent with the District, would be subject to future environmental review as required by CEQA, as would any proposal advanced by the District once a School Site has been selected and a specific school proposal designated. The parties will not take any discretionary actions committing either the City or the District to a particular course of action with respect to any proposed project until the City and/or the District, in its capacity as a lead or responsible agency, has considered environmental documentation required by CEQA and adopted appropriate CEQA findings.
 7. **Term and Effectiveness.** This MOU is at-will and may be modified by mutual consent of the City Council and the District Board of Trustees. This MOU shall become effective upon signature by the City Manager and District Superintendent and will remain in effect for a period of ten years from the Effective Date unless (i) modified or terminated by any one of the partners by mutual consent or (ii) the District does not acquire a School Site within eighteen months after the Effective Date, in which case this MOU shall terminate

automatically. In the event that any litigation is filed that delays District's ability to acquire title to a School Site beyond three years from the Effective Date, including but not limited to any eminent domain action filed by the District, then District shall be entitled to an automatic day-for-day extension (until final resolution of the litigation, including any appeals) for each day that District's acquisition of a School Site is delayed due to litigation.

8. **Indemnification.** District shall indemnify, defend and hold City and its elected and appointed officers, officials, employees, agents, and consultants (collectively, "Indemnitees"), harmless from and against any and all claims arising out of or in connection with the implementation of a TDR program pursuant to this MOU, with the exception of any claims that arise out of the approval of specific projects proposed by third-party TDR purchasers provided such purchasers provide appropriate indemnifications for any claims arising out of such approvals.
9. **Notices and Points of Contact.** The parties hereby designate the following points of contact for implementation of this MOU. Any notice required to be given under this MOU shall be sufficient if hand-delivered, mailed or sent prepaid by commercial overnight delivery services as follows, or to such other addresses as the affected parties shall specify in writing:

City:

City of Mountain View
Attention: City Manager
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

With a copy to:

City of Mountain View
Attention: City Attorney
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

District:

Los Altos School District
Attention: Jeffrey Baier, Superintendent
201 Covington Road
Los Altos, CA 94024
E-mail: jbaier@lasdschools.org

With a copy to:

Arent Fox LLP
Attn: Timothy A. Tosta
55 2nd Street, 21st Floor

San Francisco, CA 94105
E-Mail: tim.tosta@arentfox.com

10. Miscellaneous Provisions.

- 10.1. Amendment.** This MOU may be amended only by a subsequent writing signed by the Parties.
- 10.2. Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be deemed an original; however all such counterparts shall constitute but one and the same instrument with the Effective Date hereof being the date set forth above.
- 10.3. Assignment.** This MOU is personal to the District and shall not be assigned by the District at any time without the written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 10.4. Authorized Signatures.** Unless otherwise specified in this MOU, the City Manager or his/her written designee shall be the sole party authorized to act on behalf of the City with regard to this MOU. The District's Superintendent or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 10.5. Entire Agreement.** This MOU contains the entire understanding between the parties with respect to the subject matter of this MOU. There are no representations, agreements or other understandings between or among the parties relating to the subject matter of this MOU which are not fully expressed above.

(Signatures on Following Page)

IN WITNESS WHEREOF, this MOU is executed by the City of Mountain View and the Los Altos School District.

"District"

LOS ALTOS SCHOOL DISTRICT

By: 
Jeffrey Baier, Superintendent

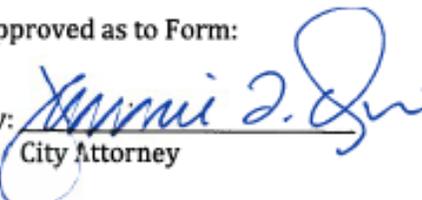
"City"

CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:
By: 
City Attorney