

MANAGEMENT CONSULTING AGREEMENT

THIS MANAGEMENT CONSULTING AGREEMENT ("Agreement") is made effective as of August 1, 2017 (the "Effective Date") by and between MILPITAS UNIFIED DISTRICT ("Client") and PUBLIC FINANCE STRATEGIES LLC, DBA TBWB STRATEGIES, a California Limited Liability Company ("TBWB").

RECITALS

- A. Client needs assistance evaluating the electoral feasibility of a bond measure, developing a measure for the ballot and implementing a public outreach and communications program to raise awareness of the Client's funding needs.
- B. TBWB is a professional consulting firm that provides ballot measure electoral feasibility, public outreach and communication consulting services.
- C. Client desires that TBWB provide certain consulting services to Client with respect to a Bond Measure related to upgrading local school facilities and technology ("Bond Measure") pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

- 1. Engagement of TBWB. Client hereby engages TBWB to perform the following services (collectively, "Services"):
 - a. Feasibility Assessment. TBWB shall perform any of the following services as needed to assess the electoral feasibility of the Bond Measure for Client:
 - 1) Develop potential Bond Measure scenarios to meet the District's facility funding needs to be tested in polling;
 - 2) Collaborate with a pollster to design, conduct and analyze an opinion survey of voters in the District to assess the electoral feasibility of the Bond Measure;
 - 3) Conduct a demographic analysis of voters in the District and how they break into key sub-groups by age, ethnicity, political party, length of residency, parents and other key criteria;
 - 4) Analyze past election results in the District and region to understand voter turnout trends and other relevant voting patterns;
 - 5) Research other local tax proposals that may be heading to an upcoming ballot that could compete with Client's Bond Measure; and
 - 6) Make specific recommendations regarding an optimal election date, bond amount, tax rate and other important ballot measure features.

- b. Ballot Measure Development. TBWB shall perform any of the following services as needed to assist Client in preparing the Bond Measure for the ballot:
- 1) Recommend the list of projects to be funded by the measure and prepare messaging that clearly articulates how these projects will benefit from the Bond Measure;
 - 2) Develop procedures for the taxpayer accountability protections, including a process for an independent citizens' oversight committee;
 - 3) Work with legal counsel to develop a resolution calling for the election;
 - 4) Work with legal counsel to develop the 75-word ballot question;
 - 5) Work with legal counsel to develop and refine the full text of the measure, project list, tax rate statement and other materials that will appear in the ballot pamphlet mailed to all voters;
 - 6) Present recommendations, documents and resolutions to the Governing Board for approval; and
 - 7) Work with the County Registrar of Voters Office to assist Client in completing the process of qualifying for the ballot.
- c. Public Information. TBWB shall perform any of the following services as needed to raise awareness of Client's funding needs and the Bond Measure proposal:
- 1) Develop informational fact sheets to be distributed at school sites and school functions;
 - 2) Provide content related to the Bond Measure to be added to Client's website, included in email updates and added to newsletters;
 - 3) Prepare PowerPoint presentations for school and community meetings;
 - 4) Write, design, and produce mailings to educate, inform and engage voters;
 - 5) Develop strategies and plans to inform and engage key internal stakeholder groups, including teachers, principals, parent leaders, bargaining units, Governing Board and others; and
 - 6) Develop strategies and plans to inform and engage influential external groups including elected leaders, business leaders, city leaders, ethnic community leaders, faith community leaders, taxpayer groups and others.
- d. Employment of Additional Personnel. In connection with the consulting services to be provided under this Agreement, TBWB shall utilize its own employees and retain third party vendors pursuant to Section 3.b. TBWB shall not be required to employ any additional

personnel to assist TBWB in the performance of TBWB's duties. TBWB may recommend that Client hire additional personnel to assist TBWB. Any such personnel shall be hired and paid by Client, under the direction and control of Client, and may be discharged by Client. In every instance, such additional personnel shall be considered an employee of Client, not TBWB. The foregoing shall not limit TBWB's right to hire, pay, and/or discharge its own employees.

2. Term of Agreement. The term of this Agreement ("**Term**") shall commence on the Effective Date and shall continue until the earliest of:
 - a. March 15, 2018
 - b. Either party may terminate this Agreement at any time without cause by giving thirty calendar (30) days' advance written notice to the other party.
 - c. Termination of this Agreement by TBWB at any time for non-payment of any amount owed to TBWB under Section 3.
3. Compensation. In consideration for the Services to be rendered by TBWB pursuant to this Agreement, Client shall pay the following fees to TBWB:
 - a. Base Consulting Fee. TBWB shall be paid a Base Consulting Fee of \$6,500 per month, payable within 30 days of receipt of invoice. The Base Consulting Fee shall be calculated on a pro-rata basis for the initial and/or final month of service if less than a full calendar month.
 - b. Payments on Certain Purchases and Rentals. All media and advertising goods and services shall be purchased or rented from TBWB by Client according to the agreed upon schedule of prices, which is attached hereto as Exhibit 1 and incorporated herein by reference. The schedule of prices lists the entire cost of purchasing or renting media goods and services from TBWB. TBWB shall in turn subcontract the work to third party vendors, giving preference to third party vendors who donate or discount their services. Payment for such items shall be made in advance by Client to TBWB, or to the third party vendor at the discretion of TBWB.
 - c. Reimbursement of Expenses. Client shall reimburse TBWB for expenses incurred by TBWB from time to time in connection with the performance of the Services described herein, which includes, but is not limited to, automobile mileage at the established IRS reimbursement rate at the time at the time of travel, parking fees, copying fees, telephone charges, postage and other out-of-pocket expenses. TBWB shall submit a report of actual expenses, and within thirty (30) days thereafter, Client shall reimburse TBWB in full. Expenses billed to Client shall not exceed

\$1,000 in the aggregate, per calendar month without the verbal or written approval of Client. Any verbal approval shall be confirmed in writing by either party. Client may designate in writing an individual(s) with authority to approve expenses on Client's behalf.

4. Indemnification and Limitation of Liability.

- a. Each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party (the "Indemnified Party") from all losses, liabilities, damages, claims, costs or expenses (including reasonable attorney fees or court costs) resulting solely and directly from the Indemnifying Party's material breach of any provision in this Agreement, willful misconduct, gross negligence, or infringement of any patent, copyright, trade secret, or other proprietary right related to any material the Indemnifying Party furnished to the Indemnified Party pursuant to this Agreement; provided, however, this Section does not cover any acts or omissions by any third party pollsters. The Indemnified Party agrees to give the Indemnifying Party prompt written notice of any claim or other matter as to which it believes this indemnification provision applies, and to co-operate with the Indemnifying Party in the defense of any such claim or other matter.
- b. TBWB's sole and maximum liability arising out of, or related to, this Agreement or the Services shall not exceed the fees paid by Client to TBWB pursuant to Sections 3.a and 3.b (excluding any fees paid for public opinion surveys or polls conducted by third parties), and any attorneys' fees and costs owed under Section 12. In no event shall TBWB be liable for indirect, incidental, special, consequential, punitive, exemplary or any other type of damages arising out of or related to this Agreement or the Services.

5. Interest Clause. In the event that any amount owed to TBWB is not paid when due, such amount will bear interest from the due date until paid at the rate of 1.5% per month, calculated on the basis of a 30 day month, or the maximum amount permitted by applicable law, whichever is lower.

6. Expenditure Authority. Only Client, or a person designated by Client, shall have the authority to approve any single expenditure in excess of \$500. TBWB shall not commit Client to any expenditure, nor incur any obligation on behalf of Client, in excess of \$500 without verbal or written approval from Client. TBWB shall not spend more than the amount so approved plus 5% without securing additional approval from Client. Any verbal approval shall be confirmed in writing by either party. Client may designate in writing an individual(s) with authority to approve expenditures on Client's behalf.

7. Approval of Materials. Client is responsible for giving final approval of materials developed by TBWB for distribution to the public, including, without limitation, informational fact sheets to be distributed at school sites and school functions, Client's website content related to the Bond Measure, PowerPoint presentations for school and community meetings, and mailers. Approval of mailers must be given in writing by the Superintendent or his or her designee. Approval of all other materials besides mailers may be given verbally or in writing by any authorized agent of Client.
8. Termination Payments. Upon termination of this Agreement, Client shall pay TBWB the following.
 - a. Base Consulting Fee. Client shall pay TBWB on the termination date any Base Consulting Fee that is owed under Section 3.a for Services performed up to and including the date of termination.
 - b. Reimbursement for Payments to Vendors. Upon termination of this Agreement, Client shall pay TBWB on the termination date all amounts advanced by TBWB pursuant to Section 3.b that have not been paid by Client, including, but not limited to, any amounts owed to third party vendors retained by TBWB and any cancellation fees charged by such third party vendors.
 - c. Reimbursement of Expenses. Within thirty (30) days after termination of this Agreement, TBWB shall submit a final accounting of TBWB's expenses pursuant to Section 3.c, and within ten (10) days thereafter, Client shall pay TBWB for all expenses incurred on behalf of Client.
9. Proprietary Rights and Licenses.
 - a. Any idea, improvement, invention, discovery, process, development, design, know-how, data, logo, trademark, service mark, or work of authorship (collectively referred to as "Developments" and which shall include all intellectual property rights related thereto) conceived of, developed, or first reduced to practice in the performance of Services hereunder for Client shall be and remain the exclusive property of TBWB and may be treated and dealt with by TBWB as such without payment of any consideration to Client. The Development intellectual property rights shall include any patents, copyrights, moral rights, trademarks, trade secrets, industrial design, maskworks, and all other similar rights and protections, including without limitation all applications for registration of any of the foregoing, anywhere in the world (in each case, whether or not patentable or registrable under patent, copyright, trademark, or similar statutes). Client shall make reasonable efforts to preserve such Developments as confidential during the Term of this Agreement and thereafter and, upon TBWB's request, shall execute such documents and instruments as TBWB shall

reasonably request as necessary to confirm and vest title to such Developments in TBWB under any applicable law.

- b. TBWB hereby grants Client a perpetual, royalty-free, non-exclusive right and license (but without the right to sublicense) to use, modify, reproduce, perform, release, display, create derivative works from, and disclose Developments within the School District for any legitimate School District purpose, which shall not include any commercial purpose or impermissible advocacy activities prohibited by applicable law.
10. Compliance with Relevant Laws. Client agrees to comply, during the course of this Agreement, with all applicable Federal, State and Municipal laws, including any applicable public disclosure laws and any applicable laws governing the expenditure of public funds, and obtain the necessary legal, accounting, and other Services necessary to comply with all such laws. Client is solely responsible for determining whether the Services performed by TBWB under this Agreement constitute permissible informational activities or impermissible advocacy activities pursuant to applicable law. Client acknowledges that TBWB does not provide any guidance or advice in this regard and Client's legal counsel has final review and responsibility for compliance with all legal requirements.
11. Relationship Between the Parties. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any relationship other than an independent consulting relationship between Client and TBWB, or cause TBWB to be responsible in any manner for the debts and obligations of Client.
12. Attorneys' Fees. If either party retains counsel to represent that party in any controversy, dispute or claim arising out of or relating to this Agreement, including any claim for the purpose of enforcing, or preventing the breach of, any provision of this Agreement, obtaining damages by reason of any alleged breach of any provision of this Agreement, obtaining a declaration of such party's rights or obligations under this Agreement, or obtaining any other legal remedy (a "Dispute"), before an arbitrator or a court of competent jurisdiction, the prevailing party shall be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which the prevailing party may be entitled.
13. Limited Warranty. TBWB warrants that it shall perform the Services in a professional manner in accordance with commercially reasonable industry standards for similar services. TBWB makes no warranty, express or implied, concerning the results of the Services, including, without limitation, the success of the Bond Measure. TBWB makes no warranty concerning, and is not responsible for, any services performed by third party pollsters. To the full extent permitted by law, all implied warranties are hereby excluded.

14. Arbitration. To the fullest extent permitted by law, any Dispute, as defined in Section 12, shall be settled by binding arbitration administered by the American Arbitration Association in San Francisco, California under its Commercial Arbitration Rules that are in effect at that time ("Rules"), which may be obtained from www.adr.org or from any AAA office. In the event of any conflict between the Rules and this Section, this Section shall apply. The parties agree to submit to the jurisdiction of a single neutral arbitrator selected in accordance with the Rules. The arbitration shall be governed by the laws of the State of California, including, but not limited to, the California Arbitration Act (Code of Civil Procedure § 1280 et seq.). The arbitrator shall have discretion to award damages, and to fashion any other remedy or relief otherwise available under applicable law in a court proceeding. The arbitrator shall award the prevailing party reasonable attorneys' fees and costs pursuant to Section 12. The arbitrator shall provide a written award, including findings of fact and the conclusions of law on which the decision is based. The arbitrator shall not have the power or authority to commit errors of law or legal reasoning. The parties each expressly waive the right to a jury trial, and agree that the arbitrator's award shall be final and binding on the parties; provided that any award shall be reviewable for legal error, confirmation, correction or vacatur pursuant to California Code of Civil Procedure §1285 et seq. Any action to review the arbitration award shall be filed and maintained in a California state court of competent jurisdiction.
15. Assignment. Client shall not have the right to assign Client's rights or delegate Client's obligations under this Agreement without the prior written consent of TBWB, which consent may be withheld in TBWB's sole and absolute discretion. Any attempted assignment or delegation in violation of this provision is void and will entitle TBWB to terminate this Agreement.
16. Exclusivity of the Agreement. During the Term of this Agreement, Client shall not engage any other person or entity to perform any acts or services to be performed by TBWB under this Agreement without the prior written approval of TBWB. TBWB's right to perform consulting, media management, or any other services for any other person or party shall not be limited in any way.
17. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be addressed to the other party at the address set forth on the signature page of this Agreement. A notice shall be effective (i) upon personal delivery if given by hand delivery, (ii) the date of the completed transmission if given by facsimile, (iii) one business day after deposit, prepaid, with Federal Express or similar overnight delivery service for next business day delivery, or (iii) two business days after deposit with the United States Post Office, by registered or certified mail, postage prepaid. Each party may, by five days advance written notice to all other parties, specify any other address for the receipt of such notices.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and it supersedes and replaces any prior or contemporaneous understandings or agreements, whether written or oral, between the parties with respect to such subject matter. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.
19. Applicable Law. This Agreement and the rights of the parties shall be governed by and construed and enforced in accordance with the laws of the State of California, except that the Agreement shall be interpreted as though drafted jointly by both parties.
20. Severability. In case one or more of the provisions contained in this Agreement, or any application of the provisions, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement, and any other application thereof, shall not in any way be affected or impaired.
21. Captions for Convenience. The captions and headings in this Agreement are for convenience only and shall not be considered in interpreting any provision of this Agreement or in determining any of the rights or obligations of the parties to this Agreement.
22. Waiver and Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach. This Agreement may be amended only by a written agreement executed by the parties hereto at the time of the modification.
23. Binding Effect. This Agreement shall be binding upon, and inure to the benefits of, the parties and their respective heirs, executors, administrators, successors and permitted assigns.
24. Counterparts; Facsimile Signature. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one Agreement. The parties agree that signatures on this Agreement transmitted via facsimile have the same force and effect, and are considered the same as, originals.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Management Consulting Agreement as of the date first written above.

TBWB STRATEGIES

By: _____

Name: Charles Heath

Title: Partner

Address for Notices:
400 Montgomery Street, 7th Floor
San Francisco, CA 94104

CLIENT

By:_____

Name:_____

Title: _____

Address for Notices:
1331 East Calaveras Boulevard
Milpitas, CA 95035

**Exhibit 1
Schedule of Prices**

To: Milpitas Unified School District
From: TBWB Strategies
Subject: Subvendor/Subcontractor Pricing
Date: May 11, 2016

Informational Direct Mail Pricing:

Estimated quantity of all voter and parent households:	18,000
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Cost for brochures (11x17 or equivalent, 1 or 2-fold, 4-color):	\$15,495

*Price includes design, pre-press, print, labels, labeling, post office check-in, stock photography, shipping, sales tax and non-profit bulk rate postage.
Additional pricing available upon request.*