

**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 _____, 2017 (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 1250 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 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 and recreational facilities particularly challenging and the cost of the land continues to increase.

C. 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.

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 neighborhood 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 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 zones and/or with designated receiving sites to develop additional floor area in exchange for a financial contribution 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 and/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 to be constructed on the School Site. To incentivize the purchase of TDRs, the program would also allow potential buyers (evidenced by a signed letter of intent between the buyer and the District) to immediately file Gatekeeper requests for receiving sites. City Council authorization of the Gatekeeper requests allows the

buyers' development applications to be filed and reviewed, enabling the District to acquire and pursue necessary entitlements for a new school to proceed concurrently with the entitlement process for receiving site projects.

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 parks 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 parties desire to enter into this Memorandum of Understanding in order to establish the roles and responsibilities of the parties concerning the development of a TDR program crafted to meet the District's and the City's objectives, including but not limited to providing a measure of predictability and certainty for the District before it commits to the selection and acquisition of a particular School Site, as well as allow potential third-party TDR buyers to obtain City Council approval to process development applications on receiving sites that would exceed the FAR limits under the City's current zoning and General Plan standards.

AGREEMENT

1. Purpose of this MOU: This MOU is intended to provide a programmatic framework and set parameters for the TDR program to be developed by the City in collaboration with the District in order to achieve the following objectives: (i) secure a site for a new District school facility within the City; (ii) add public accessible play fields and open space to the City's inventory of parks and recreational facilities; (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 use of TDRs as part of the development application process, including any requirements for secondary marketing of TDRs.

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. Upon taking title to a School Site and pursuant to any requirements imposed by the City as part of the development of a TDR program, the District shall record a restrictive covenant against the School Site restricting allowable development rights on-site sufficient to accommodate the proposed program for the new school facility. 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 in a form that is acceptable to the City.

2.3. 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 approval of a development application, Receiving Sites shall be designated development sites within the corporate boundaries of the City and designated as a “TDR Receiving Site” by resolution of the City Council.

- 2.4. The District shall enter into a Joint Use Agreement with the City in a form 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. The Joint Use Agreement shall require the District to allow public use of the open space and recreational facilities during times when such facilities are not needed for school purposes.
- 2.5. 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.
- 2.6. The District shall work in good faith with the City to develop the particular terms and parameters of a TDR program, consistent with the objectives set forth in Section 1 of this MOU.

3. Obligations of the City.

- 3.1. The City shall consider granting third-party project applicants, 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, the right to proceed through the City’s Gatekeeper process and assign staff and other resources in order to process applications for such third-party projects, including any General Plan amendments and rezoning requests 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.
- 3.2. Approval of a Gatekeeper application of an eligible TDR Receiving Site project allows the project to proceed through the development review process. Neither the approval 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 collaborate with the District to establish a formal TDR program consistent with the parties’ objectives as set forth in Section 1 of this MOU, including procedures 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. For purposes of this MOU, a TDR program permits the transfer of development rights and includes documentation of any such transfers. The City further agrees to coordinate with the District on the details of such a program in order to facilitate a secondary market for TDRs in accordance with the procedure set forth in Section 3.1.
- 3.4. The City will consider the purchase of TDRs a community benefit because it provides necessary capital for the purchase and development of a public school and park 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 or impose any other exactions on a particular project, provided that such exactions do not expressly 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 construction of new open space and recreational facilities as part of the new school that would be available to the public during all 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 the Joint Use 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 by February 13, 2018, and to commence the environmental review and entitlement process in early 2018 with the target of securing any necessary approvals by early 2019. 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 District has already undertaken extensive negotiations with potential TDR purchasers and shall make good faith efforts to enter into letters of intent with prospective purchasers and use commercially reasonable efforts to encourage purchasers to submit Gatekeeper requests prior to December 31, 2018.
 - 4.3. 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.
 - 4.4. The City shall also work in good faith on the development of a TDR program under Section 3.3 of this MOU such that a program is in place prior to January 1, 2019, in order to ensure the TDR program is in place before the District takes title to the new School site.
 - 4.5. The parties shall further work in good faith to finalize an agreement 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 modified or terminated by any one of the partners by mutual consent.
8. **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:

Partner name
Partner representative
Position
Address
Telephone
Fax
E-mail

District:

Jeffrey Baier, Superintendent

201 Covington Road
Los Altos, CA 94024
Ph: 650-947-1150
Fax: 650-947-0118Address
E-mail: jbaier@lasdschools.org

9. Miscellaneous Provisions.

- 9.1. Amendment.** This MOU may be amended only by a subsequent writing signed by the Parties.
- 9.2. 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.
- 9.3. Assignment.** This MOU is personal to the District and shall not be assigned by the District at any time without the express written consent of the City. The City reserves the right to approve or deny such an assignment in its sole and absolute discretion.
- 9.4. Authorized Signatures.** Unless otherwise specified in this MOU, the City's 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 _____ or his/her written designee shall be the sole party authorized to act on behalf of the District with regard to this MOU.
- 9.5. 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