

**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 __, 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"

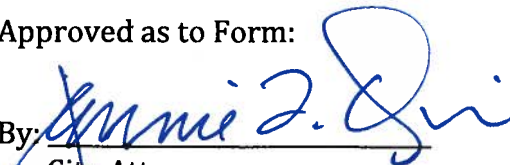
CITY OF MOUNTAIN VIEW, a municipal corporation of the State of California

By: 
Daniel H. Rich, City Manager

Attest:

By: 
City Clerk, City of Mountain View

Approved as to Form:

By: 
City Attorney