

**FIRST AMENDMENT TO FUNDING AND JOINT USE AGREEMENT BETWEEN
THE CITY OF MOUNTAIN VIEW AND LOS ALTOS SCHOOL DISTRICT**

This First Amended Funding and Joint Use Agreement is made and entered into by and between the CITY OF MOUNTAIN VIEW, a municipal corporation located at 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter “City”), and the LOS ALTOS SCHOOL DISTRICT located at 201 Covington Road, Los Altos, California, 94024 (hereinafter “District”), (City and District hereinafter collectively “Parties” or individually “Party”).

RECITALS

- A. Between December 2014 and June 2018, the City of Mountain View City Council and City staff took several actions for the purpose of generating a funding source to support the District’s acquisition and development of property for a new public school within the Los Altos School District.
- B. These actions included discretionary approvals that resulted in the creation of a Transfer of Development Rights Program (“TDR Program”) that allows the District to sell 610,000 sq. ft. of unused development rights with respect to the property to third parties and use the proceeds from those sales to, among other things, offset the cost of acquiring the property and construct a new school and related recreational facilities (“10th School Site”) within the City’s San Antonio Precise Plan (“SAPP”) area.
- C. The potential maximum proceeds that can be generated under the TDR Program is \$79.3 million, reflecting a rate of \$130 per square foot of TDR x 610,000 available square feet of TDR.
- D. In 2019, the Parties executed the following agreements to facilitate the District’s acquisition of an 11.65-acre parcel within the SAPP area to be used for the development of the 10th School Site and a publicly accessible open space park:
 - 1. Memorandum of Understanding dated January 29, 2019, to create and implement the above-mentioned TDR Program.
 - 2. Funding and Joint Use Agreement (“FJUA”) dated April 29, 2019, governing, among other things, the City’s funding and joint use of an approximately 4-acre portion of the 10th School Site that will be improved with new athletic fields and other recreational facilities (“Joint Use Area”).
 - 3. Open Space Park Property Transfer Agreement dated November 19, 2019, governing the transfer of a 2-acre portion of the 10th School Site to the City in exchange for City’s payment of \$20 million to the District.

- E. Pursuant to the April 29, 2019, FJUA, the City agreed to contribute \$23 million towards the District's acquisition of the Joint Use Area.
- F. In consideration of the City's \$23 million contribution, the District agreed, among other things, to construct the Joint Use Area and make it available for City use no later than September 30, 2024.
- G. Due to the onset of the COVID 19 pandemic in March 2020 and the resulting suspension of some routine operations within both the City and the District, master planning and design for the Joint Use Area was significantly delayed.
- H. Consequently, the Joint Use Area has not yet been constructed or made available for City use as originally contemplated in the FJUA.
- I. The Parties have met and conferred and now wish to amend the FJUA to extend the deadline to construct and open the Joint Use Area for City use and to make other elective amendments as set forth herein.

AGREEMENT

NOW, THEREFORE, it is mutually understood and agreed by and between the undersigned Parties that the FJUA is hereby amended as follows:

1. **Amended Section 3, Property, School Site and Open Space Park.** Section 3 of the FJUA is hereby amended to read as follows:

- (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 in **Exhibit A-1**, and the facilities shall include all classrooms, buildings and gymnasium(s), improvements, and facilities the District determines, in its sole discretion, ~~is~~ **are** 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-1**. 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, **subject to the sole discretion of the District:**

- (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.

2. **Addition of New Section 4.1**. The FJUA is hereby amended to include the following new section, which shall be added as **Section 4.1, Transfer of Development Rights Proceeds**:

(a) Allocation. The Parties hereby agree that all revenue, income or monies generated by or arising under the TDR Program and paid to the District on or after October 1, 2024 ("TDR Program Proceeds") shall be split equally between the Parties and each Party shall receive fifty percent (50%) of the total amount of TDR Program Proceeds and any interest earned thereon, less any costs of escrow to hold such funds. For clarity, the cost of establishing and maintaining the escrow account will be deducted first from the total amount of the TDR Program Proceeds (including interest). The remaining balance, after escrow costs are subtracted, will then be divided equally, with each Party receiving fifty percent (50%).

(b) Remittance of TDR Program Proceeds to City. The District shall pay the City its 50% share of the TDR Program Proceeds within thirty (30) days after the District receives any payment, including a partial payment, of TDR Program Proceeds. For the avoidance of doubt, funds placed into escrow shall not be considered "received" by the District until such funds are legally eligible to be disbursed to District.

(c) Supersession and Termination of Escrow Agreement. This Section 4.1 is expressly intended to supersede and replace in its entirety the agreement governing the deposit and disbursement of TDR Program Proceeds executed by the Parties in June 2025 ("Escrow Agreement"). The Parties agree to execute a separate written agreement, within thirty (30) days after the execution of this First Amended Funding and Joint Use Agreement, formally terminating the Escrow Agreement and releasing all Parties from any obligations thereunder.

3. **Amended Section 5, Term**. Section 5 of the FJUA is hereby amended to read as follows:

(a) Effective Date. This Agreement shall become effective on the date it is executed by all Parties, and if the Agreement is not executed by all Parties on the same date, the Agreement shall become effective on the date it is last executed by a Party ("Effective Date").

~~(a)~~ (b) Agreement Term. The term of ~~the this~~ Agreement shall commence on the Effective Date ~~as of the date this Agreement is fully executed by the Parties ("Effective Date")~~ and shall continue ~~for. The term of this Agreement shall expire in ninety-nine (99) years, or for as long as the District is the owner of~~ owns the School Site, subject to the City's right of first refusal as set forth in Section ~~5e~~ 6 below ("Term").

~~(b)~~ (c) 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.

4. Amended Section 7, Development of the School Site. Section 7 of the FJUA is hereby amended to read as follows:

~~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 Parties hereby agree that the School Site will be used for the construction and development of a "public school" as that term is defined by the California Department of Education or any successor agency (hereinafter the "School").

The School shall be built consistent with District policies and procedures and in compliance with all applicable laws governing the size, capacity, and construction of California public schools, including, but not limited to, the guidelines established by the California Department of Education, the Division of State Architect, and the Department of Toxic Substances Control. ~~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, **subject to the City's right of first refusal in Section 6 to the extent permitted by law.**

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.**

5. Amended Section 8, Development of the Joint Use Area. Section 8 of the FJUA is hereby amended to read as follows:

(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 Parties agree that the Joint Use Area will be designed and constructed concurrently with the design and construction of the School, but the Joint Use Area shall be complete and available for use by the City no later than September 30, 2030. 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.~~

~~The September 30, 2030, deadline for constructing the Joint Use Area may be extended by the City Manager or their designee, upon the District's request and a showing of good cause. Good cause may include, but is not limited to, evidence that the District has made progress toward completion during the Term of this Agreement and that unforeseen circumstances beyond the District's control have caused delays. The City agrees that any request demonstrating good cause shall not be unreasonably or arbitrarily denied by the City Manager or their designee.~~

6. Amended Section 10, Master Schedule for Use of Facilities. Section 10 of the FJUA is hereby amended to read as follows:

(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 and ~~agree that this Agreement may be amended, as necessary to modify the use provisions, by written instrument signed by both Parties. 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.~~

7. Amended Subsection 15(b), Termination for Cause. Subsection 15(b) of the FJUA is hereby amended to read as follows:

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 ~~4 5~~ (City Financial Contribution), ~~Section 4.1~~ (Transfer of Development Rights Proceeds), ~~Section 5~~ (Term), Section 6 (~~Term~~ Disposition of School Site), Section 7 Development of School Site), Section 8 (Development of Joint Use Area), Section 9 (Use of School Site), Section 11 (~~Custodial Services, Maintenance, and Repairs~~ ~~Repair~~

~~and Maintenance~~), Section 13 (Improvements and ~~Alterations~~ ~~Modifications~~) and Section 16 (Compliance with Laws), ~~f~~individually or collectively referred to herein as "Material Violation(s)".

8. **Amended Section 25, Entire Agreement of Parties.** Section 25 of the FJUA is hereby amended to read as follows:

This Agreement, together with the Memorandum of Understanding dated January 29, 2019, attached as **Exhibit C**, and the ~~Transfer Agreement contemplated in Section 3(e)~~ Open Space Park Property Transfer Agreement dated November 19, 2019, attached as **Exhibit D**, shall constitute the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written.

9. **Addition of New Section 35.** The FJUA is hereby amended to include the following new section, which shall be added as **Section 35, Amendment:**

This Agreement may be amended, modified, or supplemented only by a written instrument executed by a duly authorized representative of each Party. No oral modification or waiver shall be effective unless memorialized in writing and signed by all Parties.

10. **Replacement of Exhibit C.** The FJUA is hereby amended to replace **Exhibit C** with **Exhibit C-1** attached to this First Amended Funding and Joint Use Agreement. All references to **Exhibit C** in the FJUA shall be replaced by reference to **Exhibit C-1**.

11. **Addition of Exhibits.** The FJUA is hereby amended to include the following exhibits, which shall be attached to and incorporated as part of the FJUA as if fully set forth therein:

- **Exhibit A-1:** Maps of School Area, Joint Use Area and Open Space Park Area
- **Exhibit D:** Open Space Park Property Transfer Agreement

12. **Ratification of Agreement.** The FJUA, except as modified by this First Amendment, remains in full force and effect, and the Parties hereby ratify the same.

13. **Effective Date.** This First Amended Funding and Joint Use Agreement shall become effective on the date it is executed by all Parties. If this First Amended Funding and Joint Use Agreement is not executed by all Parties on the same date, it shall become effective on the date it is last executed by a Party.

14. **Counterparts.** This First Amended Funding and Joint Use Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same agreement. The Parties shall be entitled to electronically sign and transmit this agreement (whether by facsimile, PDF or other electronic transmission), which signature shall be binding on the signing party or the party on whose behalf the document has been signed. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed agreement upon request.

15. **Authority.** The persons signing below represent and warrant that they have authority to bind their respective Party, and all necessary approvals to sign on behalf of their respective party have been obtained.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this First Amended Funding and Joint Use Agreement is hereby executed by City and District.

“CITY”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“DISTRICT”:
LOS ALTOS SCHOOL DISTRICT

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney