

## **AGREEMENT FOR CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the Mountain View Whisman School District at 750 A San Pierre Way, Mountain View, CA 94043, herein called "Client," and David Taussig & Associates, Inc. at 100 West San Fernando Street, Suite 430, San Jose, CA 95113, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

### **ARTICLE I** **TERM OF CONTRACT**

**Section 1.1** This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) \_\_\_\_\_, 2019 or (ii) until terminated as provided in Article 6 below.

### **ARTICLE II** **SERVICES TO BE PERFORMED BY CONSULTANT**

**Section 2.1** Consultant agrees to perform the professional services for the Client in accordance with the applicable professional standard of care and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

**Section 2.2** Instruments of Service. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models"), reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. The reports and models used to generate such reports are for use on this Project only. The Client shall not reuse or make any modification to the hard copy or electronically transmitted reports generated pursuant to the Consulting Services without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its shareholders, officers, directors, employees and subconsultants (collectively, Consultants) against any damages, liabilities or costs, including reasonable attorneys' par fees and defense costs, arising from or allegedly arising from or in any way connected with the

unauthorized use, reuse or modification of the hard copy or electronically transmitted reports generated pursuant to the Consulting Services or any of Consultant's Instruments of Service, including models, by the Client or any person or entity that acquires or obtains the reports from or through the Client without the written authorization of the Consultant. Client acknowledges that Consultant may have used reports and analyses that Consultant authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that Consultant has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that Consultant authors for Consultant's other clients, provided, however, that Consultant shall not use any confidential information provided by Client in such future reports and analyses. Client further acknowledges and agrees that Consultant has spent substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by Consultant for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Consultant will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

**Section 2.3** Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

**Section 2.4** Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

### **ARTICLE III** **COMPENSATION**

**Section 3.1** Client agrees to pay Consultant for its Consulting Services in accordance with this Agreement, a professional fee computed according to the Professional Fee Schedule attached as Exhibit "B" hereto and incorporated herein by reference (the "**Fee Schedule**"). Client acknowledges and agrees that portions of Consultant's professional fees and expenses may have been incurred by Consultant prior to the execution of this Agreement (the "**Pre-Agreement Fees**") and Client agrees to pay such Pre-Agreement Fees in accordance with this Agreement.

**Section 3.2** The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance at a rate of \$75 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.

(c) Courier services, facsimile, and telephone expenses.

**Section 3.3** On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge may be imposed against accounts which are not paid within thirty (30) days of the date of each invoice.

**Section 3.4** The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

**Section 3.5** Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

#### **ARTICLE IV**

#### **OTHER OBLIGATIONS OF CONSULTANT**

**Section 4.1** Consultant agrees to perform the Consulting Services in accordance with Exhibit "A" and the applicable standard of care. Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

**Section 4.2** Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

**Section 4.3** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

**Section 4.4** In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

**Section 4.5** Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the

Consultant to be a “public official” or “participating in a governmental decision” as those terms are used in Section 87100.

## **ARTICLE V**

### **OTHER OBLIGATIONS OF CLIENT**

**Section 5.1** The Client shall provide full information in a timely manner regarding requirements for and limitations on the Project. Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant’s duties under this Agreement with the exception of those documents which Exhibit “A” calls upon the Consultant to prepare.

**Section 5.2** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

**Section 5.3** Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a contract basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a “significant substantive review” or a “significant intervening substantive review” of Consultant’s activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain an independent expert consultant to review Consultant’s work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit “A”. The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a “public official,” “participating in a governmental decision,” or has a “financial interest” in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

**Section 5.4** The Client shall provide prompt written notice to the Consultant if the Client becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant’s Instruments of Service.

**Section 5.5** Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit “A” will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit “A.” Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant’s work products.

**Section 5.6** Indemnity by Client. Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims,

attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.6 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

**Section 5.7** In the event that court appearances, testimony, or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$400 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

## **ARTICLE VI**

### **TERMINATION OF AGREEMENT**

**Section 6.1** Either party may terminate or suspend this Agreement upon thirty (30) days' written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

**Section 6.2** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

**Section 6.3** In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant.

**Section 6.4** Suspension and Termination for Non-Payment. (i) In addition to any other provisions in this Agreement regarding breach of the Agreement, if the Client fails to make payments when due, the Consultant may suspend performance of services upon ten (10) calendar days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, the Consultant shall resume services under this

Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance. (ii) If the Client fails to make payment to the Consultant in accordance with the payment terms herein, and/or Client has failed to cure its breach or default following a suspension of services as set forth above, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the Consultant upon seven (7) days' written notice to the Client. (iii) Payment of invoices shall not be subject to any discounts or set-offs by the Client, unless agreed to in writing by the Consultant. Payment to the Consultant for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

**Section 6.5** The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

**Section 7.1** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

**Section 7.2** This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

**Section 7.3** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**Section 7.4** Disputes. The parties agree to first try in good faith to settle the dispute by mediation pursuant to the Mediation Rules of the American Arbitration Association. If the claim or controversy is not settled by mediation, the claim or controversy may be resolved by final and binding arbitration. On the written request of one party served on the other, the dispute shall be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event

Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

No arbitration shall include by way of consolidation or joinder any parties or entities nor a party to this Agreement without the express written consent of the Client, the Consultant and any party or entity sought to be joined with an express reference to this provision. Any party or entity joined in the arbitration, after mutual consent, shall be bound by this provision.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Section 7.5** The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

**Section 7.6** This Agreement will be governed by and construed in accordance with the laws of the State of California.

**Section 7.7** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

**Section 7.8** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Consultant nor the Client, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

**Section 7.9** It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that as Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Client and not against any of the individual shareholders, officers, directors, members, managers or employees.

**Section 7.10** Limitation of Liability – for available insurance: In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been

allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall not exceed the sum of insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, except for Consultant's willful misconduct or unless otherwise prohibited by law.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

**CONSULTANT:**  
**David Taussig & Associates, Inc.**

**CLIENT:**  
**Mountain View Whisman School District**

By: \_\_\_\_\_  
Nathan Perez, Managing Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF WORK**

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**  
**PARCEL TAX ADMINISTRATION**

David Taussig & Associates, Inc. (“Consultant”) shall provide financial consulting services to assist the Mountain View Whisman School District (“Client”) in the administration of Client’s parcel tax, special tax, or special assessment. The focus of these services shall be to determine the parcel tax, special tax, or special assessment charges and to facilitate the collection of the charges for one (1) fiscal year, 2018-2019, by the County of Santa Clara.

The specific activities and tasks to be performed under this Scope of Work include the following:

**Task 1 Parcel Database**

This task involves organizing the land use data required to apportion and collect parcel tax, special tax, or special assessment charges, and includes the following subtasks:

- 1.1 Database Management:** Create automated parcel database to include all parcels. Data items will include Assessor Parcel Number, acreage, and owner of record, as necessary and applicable.
- 1.2 Parcel Research:** Review Assessor Parcel Maps to determine which parcel numbers will be valid for each fiscal year.

**Task 2 Parcel Tax, Special Tax, or Special Assessment Budget**

This task involves working with the Client to determine the parcel tax, special tax, or special assessment budget for each fiscal year and calculating the charge for each parcel in the parcel tax, special tax, or special assessment, and includes the following subtasks:

- 2.1 Determine Parcel Tax, Special Tax, or Special Assessment Charge Requirement:** Determine parcel tax, special tax, or special assessment budget based on information provided by the Client.
- 2.2 Parcel Tax, Special Tax, or Special Assessment Charge:** Based on the parcel tax, special tax, or special assessment budget, compute the parcel tax, special tax, or special assessment charges for all parcels for a given fiscal year.

### **Task 3 Summary Memo**

This task includes the preparation of a summary memo. Included in the memo is a list of parcel tax, special tax, or special assessment charges by Assessor's Parcel.

### **Task 4 Submittal of Parcel Tax, Special Tax, or Special Assessment Charges to County of Santa Clara**

This task involves submitting the parcel tax, special tax, or special assessment charges on or before August 10, of each year, or such other date specified by the County of Santa Clara to the Auditor-Controller for inclusion on each fiscal year's consolidated property tax bills. The parcel tax, special tax, or special assessment levy will be submitted via email or other media as specified by the County.

### **Optional Services**

### **Task 5 Provide Information to Interested Parties**

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax. DTA's "800" phone number will be placed on the property tax bills mailed by the County. This task includes brief written responses to property owners as necessary. Formal meetings with property owners to resolve disputes will be classified as "Additional Work" and billed at the hourly rates listed in Exhibit B.

### **Task 6 Roll Monitoring and Adjusted Property Tax Bills**

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

### **Task 7 Delinquent Property Owner Research**

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 7.1 Static Delinquent Special Tax Report:** Request the First, Second, and Final Installment Paid/Unpaid Status Reports from the Santa Clara County Auditor-Controller to determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 7.2 Dynamic Delinquent Special Tax Report:** As necessary, conduct a review of on-line records to provide an up-to-the-minute status report for any given number of delinquent parcels. Please note that our research for this task is dependent upon the rate at which the County updates their on-line payment records.

## **Task 8 Ownership/Exempt Parcel Research**

This task involves researching and monitoring any changes in ownership and offers of dedication of property to public agencies and other entities exempt from the special tax.

**EXHIBIT B**  
**FEE SCHEDULE**

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT**  
**PARCEL TAX ADMINISTRATION**

Consultant shall charge the following hourly fees for services related to Tasks 1 through 4:

<b>David Taussig &amp; Associates, Inc.</b> <b>2018 Fee Schedule</b>	
President/Managing Director	\$325/Hour
Vice President/Engineer	\$250/Hour
Manager	\$185/Hour
Senior Associate	\$170/Hour
Associate II	\$155/Hour
Associate I	\$140/Hour
Research Associate	\$110/Hour

Subject to the limitations below, fees related to Tasks 1 through 4 shall not exceed **\$1,750** for the upcoming fiscal year. Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details or services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee required to complete Tasks 1 through 4 is less than the amounts shown above. Alternatively, if the Scope of Work can be completed for less than the maximum amount, only the hours actually expended will be billed.

In addition to fees for services, Client shall reimburse Consultant for travel, copying, courier, facsimile, telephone expenses, data services, maps, clerical charges, administrative charges, and other out-of-pocket expenses, in an amount not to exceed **\$250** for each fiscal year. Monthly progress payments shall be made by Client upon presentation of invoices by Consultant providing details of services rendered and expenses incurred.

**Limitations**

The preceding hourly rates apply for a twelve (12) month period from execution of the Agreement and are subject to a cost-of-living and/or other appropriate increase every twelve (12) months thereafter. Consultant generally reviews its hourly rates annually and, if appropriate, adjusts them to reflect increases in seniority, experience, cost-of-living, and other relevant factors. Consultant shall notify Client in advance of any such increase.

Additional services other than those necessary to amend errors on the part of Consultant in Tasks 1 through 4 are not covered by the maximum fee listed above.