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Consulting Agreement

This CONSULTING AGREEMENT ("Agreement") is made and entered into as of **August 24th, 2018 (the "Effective Date")**, by and between Mountain View Whisman School District ("Owner"), and DCG Strategies, INC., a California corporation ("Consultant").

1. BASIC AGREEMENTS

1.1 Basic Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A", which services are referred to herein as the "Basic Services".

1.2 Additional Services. Owner shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work ("Additional Services"), by written request to Consultant, subject to the written acceptance of Consultant. The written request and acceptance of Additional Work shall be written amendments to the Scope of Services. No Additional Services may be undertaken unless authorized by Owner in advance and in writing, including email. Additional Services shall be paid for by Owner as provided in Section 2.2. All services performed in connection with this Agreement may be referred to herein as the "Services." All terms and conditions under this Agreement applicable to Basic Services shall be applicable to all Services except as otherwise agreed to in writing by Owner and Consultant.

1.3 Standard of Performance. As a material inducement to Owner to enter into this Agreement, Consultant hereby represents that Consultant has all applicable licenses to perform the Basic Services and is experienced in performing work or services similar to the Basic Services and, in light of such experience, Consultant hereby covenants that it shall follow applicable industry standards in performing all services required hereunder and using only qualified personnel. Owner and Consultant agree that Consultant shall comply with all applicable federal, state and local laws, ordinances, regulations and orders in performing the services hereunder.

2. COMPENSATION. The Owner shall compensate the Consultant for the services to be performed in accordance with the terms and conditions of this Agreement as follows:

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2.1 Basic Services. For the Basic Services, as described in the Scope of Services, Consultant shall be paid in accordance with the "Schedule of Compensation" attached hereto as Exhibit "B" (Schedule and Compensation). Said compensation shall be inclusive of all benefits, compensation costs and expenses unless specifically set forth to the contrary in this Section 2 or in Exhibit "B". Consultant shall pay its own income taxes, federal, state or city, and self-employment taxes.

2.2 Additional Services. For Additional Services, as described in Section 1.2 hereof, compensation shall be paid as set forth in the Schedule of Compensation attached hereto as Exhibit "B" or pursuant to a separate written agreement between Owner and Consultant specifying the Additional Services to be performed (the "Additional Services Fee" and, together with the Basic Services Fee and any other amounts owed by Owner pursuant to this Agreement, the "Fees").

2.3 Payment. Payment of the compensation set forth herein shall be made as set forth in Exhibit B. In addition, Consultant shall be entitled to receive reimbursement for expenses approved in writing in advance by Owner. Consultant shall render an invoice (together with all applicable lien releases and other supporting documentation reasonably requested by Owner) to Owner for all Services and approved reimbursable expenses for which Consultant seeks payment. Upon timely submission by Consultant, Owner shall pay Consultant for all payments due and payable within thirty (30) days thereafter. All past due and unpaid amounts shall bear interest of 0.8% per month assessed from the due date until payment is received. Consultant will continue to perform its obligations hereunder and pursue prosecution of the Services during any claim, dispute, or proceeding between the parties hereto as if such claim, dispute, or proceeding had not been instituted, provided that Owner continues to make payments to Consultant as required under this Agreement for Services that are not the subject of any dispute.

3. INSURANCE AND INDEMNIFICATION.

3.1 Insurance. Consultant shall provide Owner with certification of insurance evidencing Consultant's current policies of Workers' Compensation Insurance, Employer's Liability Insurance, Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Professional Errors and Omissions Insurance, and any deductibles or self-insured retention applicable to such policies.

3.2 Indemnification.

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(a) Consultant Indemnity. Consultant, on behalf of itself and its officers, employees, invitees, licensees, independent contractors and agents (all of said parties are herein collectively referred to as the "Consultant Indemnitor"), shall indemnify, protect, defend (with counsel reasonably acceptable to Owner and to Consultant Indemnitor's insurance company), save and hold Owner and its parent, affiliated and subsidiary entities and their respective principals, agents, employees, partners, directors, officers (all of said parties are herein collectively referred to as the "Owner Indemnitee") harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever, including, but not limited to, attorneys' fees (collectively, "Claims"), to the extent such Claims arise out of or are connected with, or are claimed to arise out of or be connected with: (i) the negligent act, error or omission of a Consultant Indemnitor; or (ii) the willful misconduct of a Consultant Indemnitor; and excluding any such claim or liability to the extent arising from the negligence or willful misconduct of an Indemnitee.

(b) Owner Release. Owner hereby acknowledges and agrees that it shall not hold Consultant liable or responsible for any inaccuracies or incomplete information contained in any site plans, maps, drawings, materials, reports, studies, investigations, or documents provided by Owner or to Owner by any appraisers, lenders, investors, architects, engineers, brokers or real estate salespersons and/or any other consultants (collectively, "Third Parties"). In addition, Consultant shall have no liability to Owner for its recommendations of any Third Parties. In connection with the foregoing, Owner hereby releases and agrees to hold Consultant harmless from any liability, expense, fee or damage arising from: (a) the negligence or willful misconduct of Owner or any Third Parties; and (b) any inaccuracies or incomplete information contained in any site plans, maps, drawings, materials, reports, studies, investigations, or documents provided by any Third Party. Nothing in this Section shall release Consultant from fraud, gross negligence, willful misconduct, any indemnity obligation set forth in this Agreement and/or any breach of this Agreement by Consultant.

4. TERMINATION. Owner shall have the right to terminate this Agreement, upon written thirty (30) business days' notice to Consultant, in the event of any breach of the terms of this Agreement and Consultant's failure to cure the same within thirty (30) business days of written notice of the breach. Upon such termination, this Agreement shall be void and of no further force or effect and Owner shall have no liability to Consultant for any fees arising or incurred from and after the date of termination, provided, however, that Consultant shall be entitled to the amount of all Fees, if any, due and payable through the

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termination date. Consultant shall have the right to terminate this Agreement immediately upon written notice to Owner, in the event of any breach of the terms of this Agreement and Owner's failure to cure the same within ten (10) business days of written notice of the breach. The obligation to pay fees to Consultant in accordance with the terms set in Exhibit B shall survive the expiration or termination of this Agreement.

5. WORK PRODUCT. All data, survey results, models, reports, plans and specifications obtained or prepared by the Consultant in connection with the performance of services under this Agreement (collectively, "Work Product") shall be the property of Owner, including all copyrights, rights of reproduction and other interests relating thereto, except as provided herein. The release of the "product" is subject to the various consultant agreements, all of which should be signed by the Owner. Consultant may retain a copy of project Work Product for its records.

6. MISCELLANEOUS.

6.1 [Intentionally omitted.]

6.2 Party Representatives. Owner's designated representative is Ayindé Rudolph. Consultant's designated representative and project principal is Landis Graden. The parties each specifically acknowledge that no other officer, employee or agent except the designated representatives shall have authority to modify this Agreement, give any consent or approval on behalf of their represented party, order or approve Additional Services, or waive any rights hereunder this Agreement. As the Consultant's designated representative and project principal, Landis Graden shall have primary authority and oversight of the performance of all Consultant services under this Agreement. Consultant shall not replace Landis Graden as the Consultant's designated representative and project principal without the prior written consent of Owner.

6.3 Limitation of Liability. No direct or indirect constituent partner or member of Consultant or Owner, or any affiliate, nor any trustee, beneficiary, shareholder, partner, member, manager, officer, director, employee or other agent of any of the foregoing, shall have any personal liability in connection with this Agreement. IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS, OR FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES FOR ANY

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CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

6.4 Disclaimer and Release. Owner represents and warrants that Consultant has made no promise, guarantee, or assurance of any particular outcome, approval, or success of the Project, and Consultant disclaims any representations or statements made by any of its employees, agents, contractors, members, managers, officers, or directors, or any other agent of any of the foregoing promising, guaranteeing, or assuring any particular outcome, Approval, or success of the Project. Owner is not relying on any prior representations or statements regarding the Approval or success of the Project by Consultant, and acknowledges that the nature of the Project renders the outcome uncertain at the outset. Owner releases Consultant from any and all liability for the final Project outcome and any failure to achieve Approval of the Project on terms satisfactory to Owner.

6.5 General.

(a) Consultant shall perform all services required herein as an independent contractor of Owner and shall remain at all times as to Owner a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are employees of Owner.

(b) Consultant may not assign this Agreement without the prior written approval of Owner. Owner, in its sole and absolute discretion, may assign this Agreement at any time provided that Owner's assignee executes an undertaking to Consultant to be bound by the terms and conditions of this Agreement. Upon any such assignment by Owner, and upon the written assumption of liability and execution of a written undertaking of this Agreement by an assignee subject to Consultant's written acceptance, Owner shall be released from all obligations and liability under this Agreement that accrue after the effective date of such assignment.

(c) Any notice which either party may desire to give to the other party must be in writing and shall be effective upon confirmed receipt or refusal thereof, addressed to the respective parties at the addresses designated by such parties.

(d) Consultant, for itself and its employees and personnel, acknowledges, confirms and agrees that all information learned in the course of their employment and all data furnished by Owner, all plans, drawings, computer programs, specifications, and other documents relating to the

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Project, Owner's business and the terms of this Agreement are and shall remain of a confidential nature, unless and until such matter is publicly known, or becomes publicly known, without fault of Consultant.

(e) No waiver of any default hereunder shall be construed as a waiver of any subsequent breach.

(f) This Agreement shall be construed in accordance with the laws of the state in which the Project is located. This Agreement is made and shall be performed in Mountain View, California, and any dispute arising from or in connection with this Agreement shall be adjudicated in the state or federal courts having jurisdiction of such subject matter situated in Santa Clara County, California. The parties accordingly submit to the personal jurisdiction of such courts and waive any objection to said venue.

(g) All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument, which fully and completely express the parties' rights and obligations.

(h) The terms, provisions, representations and certification contained in this Agreement, or inferable therefrom, shall survive the termination of this Agreement and the payment of the remuneration hereinabove provided.

(i) The prevailing party in any action against the other related to this Agreement shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses in connection with such action.

(j) If any term or provision of this Agreement shall be found to be unenforceable, then, notwithstanding such term or provision, this Agreement shall be and remain in full force and effect and such term shall be deemed stricken to the least extent necessary to avoid such unenforceability, and the Agreement shall be construed to give fullest effect possible to the original intent of the parties.

(k) All exhibits attached hereto are incorporated herein by this reference for the sole purposes of setting forth the scope of the Basic Services, the terms of payment, and any schedule of performance.

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(l) Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party to this Agreement.

(m) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which when taken together shall be deemed an original and shall constitute one and the same instrument. In order to facilitate the transaction contemplated herein, electronically mailed or facsimile signatures may be used in place of original signatures on this Agreement. Each party intends to be bound by the signatures on the electronically mailed or facsimiled document, is aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

(n) Marketing: Consultant retains the right to include all aspects of this project in future marketing materials unless this is prohibited, in which such prohibition must be in writing by the Owner.

[Signatures on following page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER

Mountain View Whisman School District

By: 

Ayindé Rudolph, its Designated Representative

CONSULTANT

DCG Strategies Inc., a California corporation

By: _____

Landis Graden, its Designated Representative

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EXHIBIT "A"

SCOPE OF SERVICES

See Attached Proposal.

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EXHIBIT "B"

SCHEDULE AND COMPENSATION

DCG proposes a flat fee of Ten Thousand Dollars (\$10,000.00) to provide real consulting services to the District from the date of execution of this agreement through October 5, 2018. This fee includes DCG's time for on-call real estate services and travel expenses. The District will be responsible for all third-party consultant fees (subject to prior District authorization) including but not limited to appraisal, market valuation, rent comparability studies, and teacher workforce housing experts, should they decide to hire the consultants. The District will be responsible for all other consultant expenses including printing of materials and meeting supplies should they be required, prior to District pre-authorization.

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Real Estate Consultant Services



**Mountain View
Whisman
School District**

PRESENTED TO MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

DCG Strategies

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August 14, 2018

Mountain View Whisman School District
ATTN: Dr. Ayindé Rudolph
Superintendent
750 A San Pierre Way
Mountain View, CA 94043

RE: Real Estate Consulting Services

Dear Ayinde,

It has been a pleasure meeting and chatting with you and I am excited to continue DCG's relationship with Mountain View Whisman School District. DCG Strategies, Inc. ("DCG") is pleased to provide this proposal for real estate consulting services related to the construction of teacher housing on a site owned by Fortbay LLC in Mountain View, California. The objective of our work with the District is to identify, through a series of conversations with Fortbay and the City of Mountain View and our own affordable housing research and analysis, an affordable housing development plan that maximizes teacher housing for the District while also satisfying the needs of Fortbay and the City of Mountain View. We see our role as integral to the success of the District and will serve as an advocate for the District in researching and negotiating a sustainable project that provides ample housing for teachers and staff and is also a benefit to the local community.

The following pages present our recommended scope. We aim to remain flexible in our approach as this has the potential to change based upon our findings as we veer deeper into conversations and analysis. We welcome the opportunity to provide additional information that may be helpful and look forward to assisting the District in any of its real estate needs.

Sincerely,

Landis Graden
Chief Executive Officer

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BACKGROUND

In December 2015, Fortbay LLC purchased 9.78 acres located at 777 W. Middlefield Road in Mountain View, California for a reported \$145,000,000.00. On October 5, 2016, Fortbay team members presented a development plan for the site to Mountain View planning commission that included a total number 711 apartments, including 144 affordable units.

Upon discussions with the City of Mountain View, Fortbay and Mountain View Whisman School District, the District is currently in negotiations with Fortbay to restrict occupancy of the 144 affordable housing units to teachers and District employees.

Based on the unique characteristics of the development, the specific negotiations and the potential complexities, DCG will assemble a team of experienced and qualified consultants to develop an affordable housing plan that the District can rely on and use in it's negotiations. DCG will serve as a Real Estate Consultant for the District and also a temporary lead developer, until such time we can put a team in place to take this project from concept to completion.

DCG will present the findings of our analysis and recommendations to District staff in preparation for the City of Mountain View's study session on October 2, 2018. Following the study session, the District shall then make a determination to either proceed with the negotiations or to discontinue the effort altogether.

REAL ESTATE CONSULTANT SERVICES

Property owners, property buyers and stakeholders are often uncertain about what they want to do with their real estate assets and often are not aware of their options. DCG provides Real Estate Consultant Services to alleviate the stress associated with making the right decisions surrounding real estate. As your trusted consultant, we will serve as an extension of your District staff. We walk alongside you through the entire process and are committed to understanding your values and protecting your interests at all times.

Our Real Estate Consultant services save our clients money, time and energy. We do this by ensuring outside vendors are honest and fair. We work with them to make sure your project is completed on time and on budget. Our experience and technical knowledge allow our clients to focus on their priorities without distractions.

Key Questions we ask as your Real Estate Consultant:

1. What are our client's goals? Ideal scenario? Preferred alternatives?
2. What is the likelihood of getting the project approved, and what are the potential issues the project faces?
3. What steps are needed to accomplish our client's goals?
4. What is the best solution to achieve our client's goals?



Our Real Estate Consultant services can include, but will not be limited to:

- Participate in conversations with Fortbay and the City of Mountain View
- Research and develop a viable affordable housing development plan for the site
- Assemble a team of consultants including a managing agent and affordable housing developer, if required by the state of California
- Research SB1413 and it's implications for teacher housing and tax credits
- Attend meetings with and on behalf of the District
- Represent client's best interest and generally provide coordination
- Perform financial feasibility, including debt and equity structuring and low income housing tax credits
- Provide recommendations in structuring of ownership entity

Schedule and Compensation

DCG proposes a flat fee of Ten Thousand Dollars (\$10,000.00) to provide real consulting services to the District from the date of execution of this agreement through October 5, 2018. This fee includes DCG's time for on-call real estate services and travel expenses. The District will be responsible for all third-party consultant fees (subject to prior District authorization) including but not limited to appraisal, market valuation, rent comparability studies, and teacher workforce housing experts, should they decide to hire the consultants.

The District will be responsible for all other consultant expenses including printing of materials and meeting supplies should they be required, prior to District pre-authorization.