

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT  
PROFESSIONAL SERVICES AGREEMENT  
FOR SPECIAL TAX CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Mountain View Whisman School District (“School District”) and Koppel & Gruber Public Finance, a California Corporation (“Consultant”).

WHEREAS, the School District desires to engage Consultant to furnish Special Tax Consulting Services (“Project”) as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the parties agree as follows:

**1. SERVICES**

The Consultant shall perform Special Tax Consulting services. The scopes of services (“Services”) is attached as Exhibit “A” and incorporated herein by this reference.

**2. COMPENSATION**

Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “B” attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

**2.1 Payment of Compensation.** Consultant shall submit to the School District a monthly itemized statement which indicates work completed and Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. The School District shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

**2.2 Reimbursement for Expenses.** Consultant shall be reimbursed for any expenses as authorized in Exhibit “B”.

**2.3 Extra Work.** At any time during the term of this Agreement, the School District may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by the School District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the School District's Representative.

**3. SUSPENSION OR TERMINATION**

**3.1 Term.** The term shall be one year from the date the Agreement was entered into.

**3.2 Suspension.** The School District may, at any time, by thirty (30) days written notice, suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and the Consultant shall be paid for all services performed and reimbursable expenses incurred prior to the suspension date.

**3.3 Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days' written notice to the other party of such termination. If this Agreement is terminated as provided herein, Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of Consultant covered by this Agreement, less payments of compensation previously made.

**4. RESPONSIBILITIES OF CONSULTANT**

The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. The School District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the School District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

**5. INSURANCE**

As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

<b>Coverage</b>	<b>Minimum Limits</b>
<b>(a) General Liability</b> <b>1) Products and completed operations</b> <b>2) Contractual liability</b> <b>3) Personal liability</b>	<b>\$1,000,000 Combined Single Limit, per occurrence and general aggregate</b>
<b>(b) Automobile Liability</b> <b>1) Comprehensive automobile liability including owned, non-owned and hired autos</b>	<b>\$1,000,000 Combined Single Limit, each accident</b>

Coverage	Minimum Limits
<p>(c) <b>Workers' Compensation</b>  1) <b>Workers' Compensation Insurance</b>  2) <b>Employer's Liability</b></p>	<p><b>\$1,000,000 (Statutory)</b></p>
<p>(d) <b>Professional Liability Insurance</b>  1) <b>Providing coverage on claims made basis for errors and omissions</b></p>	<p><b>\$1,000,000 per claim and annual aggregate</b></p>

**6. DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY**

The Consultant may rely upon the accuracy of any documents provided to Consultant by the School District. The School District may copy, use, modify, or reuse any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on a computer data storage devices, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the School District. The School District shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at the School District's sole risk.

**7. GENERAL PROVISIONS**

**7.1 Accounting Records.** Records of the Consultant’s direct labor costs, payroll costs and reimbursable expenses pertaining to the Services covered by this agreement shall be maintained on a generally recognized accounting basis and made available during normal business hours upon reasonable notice. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

**7.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the School District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the School District's name or insignia, photographs of the Project, or any publicity pertaining to the

Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the School District.

**7.3 Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

**7.4 Attorney's Fees.** If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

**7.5 Indemnification.** Consultant shall defend, indemnify and hold the School District, its officials, officers, employees, volunteers, and agents free and harmless from all claims, damages, losses, and expenses arising out of the performance of the services described herein caused solely by the negligent acts, errors, or omission of the Consultant, its officials, officers, employees, agents, subcontractors, and subconsultants, except where caused in whole or in part by the active negligence or willful misconduct of the School District or its officials, officers, employees, agents, or volunteers.

**7.6 Entire Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**7.7 Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

**7.8 Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the parties.

**7.9 Assignment or Transfer.** Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the School District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**7.10 Construction; References; Captions.** Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to School District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

7.11 **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

7.12 **Ratification.** In accordance with California Education Code Section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the Governing Board duly passed and adopted.


7.13 **Waiver.** Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any subsequent breach of any other term, condition, or covenant.

7.14 **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

7.15 **Authority to Enter Agreement.** Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

7.16 **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions, and provisions above stated, the day and the year first above written.

<b>Mountain View Whisman School District</b>	<b>Koppel &amp; Gruber Public Finance</b>
By: Ayindé Rudolph Ed.D	By: Lyn Gruber
	
Title: Superintendent	Title: Principal
Address: 1400 Montecito Ave. Mountain View, CA 94043	Address: 334 Via Vera Cruz, Suite 256 San Marcos, CA 92078

**EXHIBIT "A"**  
**SCOPES OF SERVICES**

As the School District's Special Tax Consultant, K&G Public Finance will perform the following scopes of work in relation to the feasibility analysis and possible formation of a CFD within the North Bayshore Project. Note that the CFD Formation scope is a limited scope and reduced fee as the feasibility analysis will provide much of the detail that is necessary to complete the CFD Formation.

**A. Feasibility Analysis**

1. Participate in meetings and conference calls as necessary throughout the process. Develop effective channels of communication to facilitate the project moving forward in a successful and timely manner and to provide that the School District's stated goals and policy objectives are being met.
2. Develop a parcel database that will include information such as current and proposed land use, zoning, acreage, estimated number of proposed units, and other pertinent information necessary to determine rates and the boundaries of the CFD.
3. Determine the number of registered voters within the proposed boundaries of the CFD. This Task will help determine if a landowner Community Facilities District may be an option or if a registered voter election will be necessary.
4. Based on the database created in Task 2 and discussion with School District staff, develop the proposed boundaries of the CFD.
5. Prepare an estimated budget of the proposed facilities necessary to serve the students anticipated to be generated from the North Bayshore Project, including formation costs and bond issuance costs related to the CFD, if bonds are to be sold. Costs typically come from the architects or School District staff, however estimates from nearby districts may be utilized if School District specific costs are not available. Bond issuance costs are estimated and discussed with the financing team for completeness.
6. Create a special tax rate structure based on the budget, proposed boundaries and development expected to occur in the North Bayshore Project area. This may include Improvement Areas or zones.
7. Present special tax rate structures to School District staff and financing team. This analysis is reviewed and based on comments, modified if necessary and finalized prior to moving forward.
8. Prepare and present the recommended special tax rate structures to School Board or a School Board Subcommittee (as directed by School District staff) to assist in the decision making process. This presentation will include the various rate structures and formation requirements and process.
9. Take feedback and revise special tax rate structure if necessary. We will create up to four special tax rate structures.

**B. CFD Formation (Optional and assumes Feasibility Analysis is completed)**

1. Finalize the special tax rate structure based on the final budget completed in the Feasibility Analysis.

The special tax rate structure is reviewed with the financing team, modified if necessary, and finalized prior to moving forward with the formation.

2. Develop the Rate and Method of Apportionment of Special Tax based on the special tax rate structure described above. The Rate and Method of Apportionment will be crafted to include a rational basis for spreading the special tax. Our methodologies provide an equitable allocation of special tax burden among future property owners. Additional items considered in the Rate and Method of Apportionment include a practical “trigger” method for classification of parcels into categories and a prepayment methodology.
3. Based on the boundaries determined in the Feasibility Analysis, prepare a boundary map in accordance with the Streets and Highways Code, 18-inch by 26-inch format suitable for recording as well as 8-inch by 11-inch format including the following items.
  - a. CFD boundary.
  - b. Identification of Improvement Areas and/or Zones if applicable.
  - c. Configuration of Parcels at the time of district formation. This may include either assessor parcel numbers or recorded tract information.
4. Attend School Board meetings where the consideration of the Resolution of Intention, Resolution of Formation, and bond issuance are on the agenda for consideration.
5. Coordinate the appropriate signatures for the map and record the boundary map after approval by the School District Board.
6. Prepare the Community Facilities District Report in accordance with Government Code Section 53321.5. At a minimum the Community Facilities District Report will include the following components:
  - a) A brief explanation of the annual special tax rates by special tax classification and the Rate and Method of Apportionment.
  - b) A description of the proposed public facilities to be funded.
  - c) Cost estimates of the proposed facilities.  
Typically included, although not required are the following components:
    - d) Estimates of bond issuance and other incidentals costs.
    - e) Description of the CFD and a copy of the boundary map.
7. Coordinate the appropriate signatures and record the Notice of Special Tax Lien upon formation of the CFD.

**EXHIBIT "B"**  
**COMPENSATION**

K&G Public Finance will provide the above listed Scope of Services for the fees outlined below.

TASK	PROPOSED FEE
Feasibility Analysis Services	Hourly (at rates set forth below) not to exceed \$19,800
CFD Formation (assumes Feasibility Analysis is completed within a year of the commencement of the CFD Formation)	\$9,500

**Expenses**

In addition to fees for services, K&G Public Finance shall be reimbursed for direct expenses, including travel, mileage, photocopying, data sources, courier services, overnight delivery, and long-distance telephone expenses. These expenses are billed at our cost; we *do not* charge an administrative fee or additional expense mark up.

**Billing Structure**

K&G Public Finance will invoice on a monthly basis for each of the services included above. The quoted rates and fees will be subject to an annual Consumer Price Index increase for the San Francisco-Oakland-Hayward Metropolitan Area All Urban Consumer Price Index (All Items) beginning January, 2021.

**Hourly Rate Schedule**

The following hourly rates will be applied for the services described in the Scope of Services and will not exceed the total fee range as listed above.

TITLE	RATE
Principal	\$240
Senior Associate	185
Associate	135
Production/Administration	85