

GRANT AGREEMENT

This Grant Agreement (the "Agreement") is entered into by and between the Town of Los Gatos "Town"), and Los Gatos-Saratoga Union High School District ("District").

RECITALS

- A. Town owns real property and improvements located at 4 New York Avenue (APN 529-27-024) in the Town of Los Gatos California and described more particularly in Exhibit "A" attached hereto and incorporated herein by reference. The real property, including improvements thereon, is referred to herein as the "Property."
- B. Town desires to donate and District desires to accept the Property.
- C. Town is willing to grant the Property to District in exchange for significant traffic management policy improvements and other public benefits.
- D. District represents that it is willing and able to carry out the commitments set forth in its proposal dated January 22, 2022 and described in Exhibit "B" attached hereto and incorporated herein by reference, and that this Agreement will materially contribute to the quality of life in Town by enhancing traffic management and contributing toward community benefit and collaboration now and into the future.
- E. In the event that District does not carry out the commitments described in Exhibit "B" and Section 7 of this Agreement, District will pay Town the appraised value of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- 1. **Recitals.** The Recitals are an integral part of this Agreement and are incorporated herein.
- 2. **Effective Date.** This Agreement shall be effective on the date it is fully executed by the District and Town ("Effective Date").
- 3. **Grant and Acceptance of Property.** In accordance with and subject to the terms and provisions of this Agreement, Town agrees to grant the Property to District in a form approved by the Town Manager ("Grant Deed"). Upon the condition that the Title Policy is issued to District, District agrees to accept the Property in AS-IS condition except that Town represents to District that Town owns the Property and there are no leases or third party claims against the Property. Neither Town nor its elected and appointed officials, employees, or agents, have made any representations or warranties to the District with respect to the condition, fitness, use or zoning of the Property upon which the District has relied directly or indirectly for any purpose. The District acknowledges that it has been afforded the opportunity to make such inspections (or have such inspections made by consultants) as it desires of the Property. The District acknowledges that its staff includes experienced property professionals with experience and knowledge in the areas of property acquisition, property zoning and development, and environmental and land use laws and

regulations. The District is relying solely on its own investigation as to the Property and is assuming the risk that adverse physical, economic or other conditions may not have been revealed by such investigation.

4. **No Escrow; Closing; Title Policy.**

4.1 **No escrow.** No escrow will be required under this Agreement.

4.2 **Closing.** Within 10 days from the Effective Date, the parties shall consummate this transaction through the Title Company.

A. **Delivery of Deed.** Within three days of the Effective Date, Town shall execute, acknowledge, and deliver the Grant Deed to the District.

B. **Preliminary Change of Ownership Statement.** Prior to the Closing, District shall complete a Preliminary Change of Ownership Statement and deliver same to the Title Company to be delivered to the County concurrently with the recordation of the Grant Deed.

C. **Recordation.** Promptly upon District's receipt of the originally executed Grant Deed, District shall execute a Certificate of Acceptance and attach it to the Deed with the Executed Agreement and promptly deliver it to the Title Company for recordation in the official records of Santa Clara County.

D. **Closing Defined.** This transaction shall be deemed closed upon confirmation from the Title Company that the Grant Deed has been recorded and the Title Company has issued the Title Policy ("Closing").

E. **Cooperation.** Town agrees to cooperate with District in the event any additional documents are required to cause the Title Company to issue the Title Policy.

4.3 **Costs.** District shall pay all fees with respect to this transaction, including, but not limited to, the premium for the Title Policy, documentary transfer taxes (if applicable), etc.

5. **Title Policy.** District shall promptly obtain and review a preliminary title report ("Title Report") from First American Title Insurance Company ("Title Company") with respect to the Property. At Closing, District shall require that the Title Company issue to District an ALTA non-extended coverage owner's title policy insuring the Property vested in District for the fair value of the Property and subject to such exceptions as acceptable to the District ("Title Policy").

6. **Release and Discharge.** Except for those terms and provisions which expressly survive the Close of Escrow, from and after the Closing, the District hereby completely releases and forever discharges Town's elected and appointed officials, employees, and agents from and against all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (collectively, "**Claims**") arising from or in any way growing out of or connected with the physical condition of the Property or any law or regulation applicable thereto (collectively, the "**Released Matters**"). In connection with such waiver and relinquishment, the District acknowledges that it is aware that it hereafter may discover Claims or facts in addition to or different from those which it now knows or believes to exist with respect to the Released Matters, but that it is the District's intention to fully, finally and forever to settle and release all of the Released Matters in accordance with the provisions of this Section, and the release set forth herein shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different Claims or facts. The foregoing release of Claims shall be binding on the District and all subsequent owners, lessees and other transferees of the Property.

In connection with this Section, the District expressly waives the benefits of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.”

District's Initials _____

7. **Conditions to Grant.** Town's grant is conditioned upon District's agreement to undertake the commitments described in Exhibit B to this Agreement.

7.1 **Material Commitments.** The District's material commitments include:

- A. Convening a working group to address parking and traffic issues in the vicinity of the High School;
- B. Expanding existing parking and improve ingress/egress/student drop off at the pinch point of New York Avenue and Pleasant Street to address traffic and parking issues;
- C. Allowing future ingress/egress from the property on which the Los Gatos Lodge is currently located;
- D. Retaining KCAT at the property known as "the Venue" with multi-generational programming for community benefit;
- E. Continuing LGHS as a community resource with the community continuing to have appropriate access to the open spaces on campus;
- F. Working toward amending the District's Master Plan to show access at the property line shared with the property currently occupied by the Los Gatos Lodge;
- G. Developing design for bicycle/pedestrian access at the property line shared with the property currently occupied by the Los Gatos Lodge; and
- H. Cooperating with Town to grant necessary public utility easements and emergency vehicle access easements on portions of streets on the High School campus proposed for vacation by the Town.

7.2 **Breach.** In the event that District fails to undertake any Material Commitment, Town will provide 30 days' written notice of the breach. Remedy. If District does not rectify the breach within 30 days' of receiving written notice from the Town, District will pay the Town the appraised value of the Property, which is \$710,000 within 90 days of Town's original written notice.

8. **Taxes and Assessments.** Non-delinquent real property taxes and assessments and utility and other charges (to the extent such utility or other accounts cannot be transferred in the name of District as of the Effective Date) shall be prorated between Town and District as of the Effective Date. All prorations shall be made on a per-diem basis using a thirty (30) day month and a three hundred sixty-five (365) day year. To the extent any apportionment cannot reasonably be completed by the Effective Date, the parties shall make such necessary proration in a commercially reasonable manner and pay such amounts to the party entitled hereto within a

period of thirty (30) days after the Effective Date. Notwithstanding anything to the contrary herein, Town reserves the right to keep, collect and retain any refunds, rate or price reductions or other sums, including, without limitation, any property tax refund, reductions or rebate, which relate to the periods prior to the Effective Date whether or not such sums are collected after the Effective Date, and District shall promptly return to Town any such sums received by District.

9. **Miscellaneous.**

9.1 **Town Manager Authority.** On behalf of the town, the Town Manager or designee shall have the authority to (i) extend any dates under this Agreement, (ii) execute documents required to effectuate this transaction, and (iii) agree to any non-material modifications of this Agreement.

9.2 **No Conflict of Interest.** No officer or employee of Town shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his or her financial interest or the financial interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. Town and District each warrant that they have not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.3 **Notices.** All notices shall be in writing and delivered personally, by overnight air courier service, by facsimile transmission or email, or by U.S. certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth herein, and the same shall be effective upon receipt if delivered personally, one business day after depositing with an overnight air courier, or two business days after depositing in the mail.

A. City: [insert contact name and address]

B. District: [insert contact name and address]

9.4 **Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of execution of this Agreement.

9.5 **No waiver.** No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions, or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions.

9.6 **Amendment.** This Agreement may only be modified or amended by a written document executed by both parties.

9.7 **Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party of circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to

whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.8 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated by this Agreement and all prior to contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

9.9 Qualifications; Authority. Each individual executing this Agreement on behalf of the party represents, warrants and covenants to the other party that (a) such person is duly authorized to execute and deliver this Agreement on behalf of such party; and (b) such party is bound under the terms of this Agreement.

9.10 Time of Essence. Time is of the essence of this Agreement.

9.11 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the original or the same counterpart.

9.12 Attorney's Fees. In the event any action or suit is brought by a party hereto against another party hereunder by reason of any breach of this Agreement, the prevailing party shall be entitled to have and recover from other party all costs and expenses of the action or suit, including reasonable attorneys' fees and related costs.

10. **Survival.** All of the terms, provisions, representations, warranties and covenants of the parties under this Agreement shall survive the assignment, expiration or termination of this Agreement and shall not merge in the deed or other documents following the delivery and recordation of said deed or other documents.
11. **Possession of the Property.** Possession of the Property shall be delivered to District at the Closing.
12. **Attorneys' Fees.** Should either party institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive all costs and expenses, including reasonable attorneys', consultants and expert witness fees incurred by such prevailing party in connection with such action or proceeding, at trial and on any appeal.
13. **Assignment and Successors.** This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.
14. **Entire Agreement.** The parties have herein set forth the whole of their agreement.
15. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The Recitals are and shall be enforceable as a part of this Agreement.

16. **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.
17. **Property Studies and Records.** Town shall deliver to District, within ten (10) calendar days after execution of this Agreement by all Parties, complete, accurate and legible (hard and electronic) copies of all documents concerning the Property that are in Donors' possession or control or are readily available to Donors, including, but not limited to, title reports, specifications, maps, drawings, surveys, engineering, soils, environmental, and geotechnical studies and reports, leases, estoppels, topographic surveys, grading plans, feasibility, marketing or other studies, investigations or reports, permits, approvals, right of way and easement agreements, zoning and master plans, bonds, specific plans, initial studies, mitigated negative declarations and/or environmental impact reports, Phase I and II environmental assessments, entitlement documents; property tax bills; estoppels from tenants; and notices of any violation of any federal, state or local statutes, ordinances, affordable housing or inclusionary housing agreements, rules or regulations.
18. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.
19. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
20. **Counterparts.** This Agreement and any amendments hereto may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument.
21. **Costs, Expenses and Fees.** District and Town each agree to pay their own costs and expenses, including fees of attorneys, accountants and consultants, incurred in the preparation of and carrying out of this Agreement.
22. **Right To Enter Property.**
 - 22.1 **Access to Property.** Commencing with execution of this Agreement, District or District's representatives, after written request(s) and approval(s), shall be allowed access to the Property prior to Closing at all reasonable times for the purpose of obtaining data and making surveys, tests, inspections and other studies at District's sole expense, necessary

to carry out this Agreement or as required by local and California state regulatory agencies.

- 22.2 If District elects to enter Property,** District shall procure and maintain (and require any of its representatives entering the Property to procure and maintain): (i) workers' compensation insurance required by the laws of the State of California; (ii) commercial general liability insurance in the amount of at least Two Million Dollars (\$2,000,000) combined single limit, naming Town as additional insureds and containing a cross liability endorsement or severability of interests clause; and (iii) with respect to any contractor or consultant conducting environmental, soils or geological tests, commercial general liability insurance, in the amount of at least One Million Dollars (\$1,000,000) combined single limit. District shall, prior to any entry by District and/or its representatives, furnish certificates of such insurance coverage to Town. Such certificates shall contain a clause providing for thirty (30) days' advance notice of cancellation or material change in coverage.
- 22.3 Restoration of Property.** District shall, upon completion of data gathering, and making surveys, tests, inspections and other studies, restore the Property to the extent reasonably possible to its condition prior to such data gathering, surveys, tests, inspections and other studies.
- 22.4 Indemnification Resulting From Access.** District shall indemnify and hold harmless Town of and from any and all mechanic's liens, claims, actions, liabilities, costs, expenses, including attorneys' fees, and damages of any type or nature arising out of or in any way related to any such use of or entry onto the Property by District or by any other person or entity on behalf of, or at the request of, District, excluding any losses or damages, including but not limited to a reduction in the value of the property, resulting from any finding or results of any surveys, tests, inspections or other studies, whether or not negligent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates below written.

DISTRICT

TOWN

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Approved as to form:

Approved as to form:

Attest: