



## **AGREEMENT FOR CONSULTING SERVICES**

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 2021 ("Effective Date"), by and between Mount Diablo Unified School District at 1936 Carlotta Drive, Concord, CA 94519, hereinafter called "Client", and Cooperative Strategies, LLC at 2855 Michelle Drive, Suite 230, Irvine, CA 92606, hereinafter called "Consultant". The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows:

### **ARTICLE I.** **SERVICES TO BE PERFORMED BY CONSULTANT**

**Section 1.1** Consulting Services, Statement of Work. Client hereby retains Consultant to perform the services ("Consulting Services") set forth in the statement of work (the "Statement of Work" or "SOW") as attached as Exhibit A to this Agreement. The Consulting Services and the Statement of Work are governed by this Agreement. In the event of any conflict between the terms of this Agreement and the terms of the SOW, the terms of this Agreement shall control. This Agreement along with the SOW shall be referred to hereinafter as the "Agreement".

**Section 1.2** No Agency. The relationship of Client and Consultant hereunder is that of independent contractors. In all matters relating to this Agreement, each of Client and Consultant shall be solely responsible and liable for the acts of its employees and agents, and the employees or agents of either party shall not be considered employees or agents of the other party. Neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other party, nor shall Client or Consultant act or represent or hold itself out as having authority to act as an agent or partner of the other, or in any way to bind or commit the other to any obligations. Nothing in this Agreement is intended to create or constitute, nor does it create or constitute, an employment, joint venture, partnership, agency, trust or other relationship or association of any kind between the parties.

### **ARTICLE II.** **OWNERSHIP; USE**

**Section 2.1** Consultant Materials. As between Client and Consultant, Consultant owns any and all, including all intellectual property rights therein, (collectively, "Consultant Materials") (a) computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, techniques, ideas, concepts, trade secrets and know-how, proprietary models, processes and methods used by Consultant in the performance of the Consulting Services, and (b) reports, drawings, templates, specifications, computer files, field data, notes, other documents and instruments and other works of authorship and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Consulting Services or otherwise under this Agreement.

**Section 2.2** Client's Rights and Obligations. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a right to use the hard copy or electronically transmitted reports portion of the Consultant Materials generated pursuant to the Consulting Services (each a "Report"). Client shall not reuse (for any purpose other than the purpose for which the Report was intended) or make any modification to the Reports without the prior written authorization of the Consultant. As Consultant is performing the Consulting

Services solely for the benefit of Client, Client shall, to the fullest extent permitted by law, indemnify and hold harmless Consultant, its shareholders, officers, directors, and employees against any damages, losses, liabilities and costs and expenses, including reasonable attorneys' fees and costs, arising from or in any way connected with the unauthorized use, reuse or modification of the Reports by Client.

**Section 2.3** Rights. Consultant reserves all rights in the Consultant Materials, including without limitation the Reports, not granted hereunder. Nothing in this Agreement shall prohibit Consultant from using the Consultant Materials for any purpose either during the term of this Agreement or thereafter. Without limiting the generality of the foregoing, 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 Client acknowledges and agrees that Consultant has the right to use the Reports 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 (defined below) provided by Client in such reports and analyses.

**ARTICLE III.  
COMPENSATION**

**Section 3.1** Fees. Client shall pay Consultant a professional fee computed according to the fee schedule attached as Exhibit B hereto (the "Fee Schedule") for the Consulting Services rendered hereunder. Consultant may adjust its rates in the event of a written amendment of the Statement of Work resulting in an agreed-to expansion of the Consulting Services to be rendered hereunder or upon agreement of the parties.

**Section 3.2** Reimbursement. Client agrees that it shall reimburse Consultant for Consultant's out-of-pocket expenses incurred in performance of the Consulting Services plus a 15% administrative charge calculated thereon. Expenses of Consultant in the performance of any Consulting Services that will be reimbursed by Client are the following:

- (a) Cost of clerical assistance @ \$50.00 per hour;
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, travel, lodging and regularly scheduled commercial airline ticket costs;
- (c) Third-party photographic reproduction and data purchases; and
- (d) Cost of photocopies, facsimile, postage, overnight deliveries, conference call hosting, and phone calls at 5% of Consulting Services billed.

**Section 3.3** Invoices. On or about the fifteenth (15) day following each month during which Consulting Services are rendered hereunder, or as soon as is reasonably practicable thereafter, Consultant shall deliver to Client an invoice covering the Consulting Services performed and the reimbursable expenses incurred in the prior month. Client shall pay all invoices within fifteen (15) days of the payment of Client's invoices submitted to the School District upon which Consultant's invoices appear.

**Section 3.4** Records. Consultant shall maintain records of its fees relating to the Consulting Services performed and any reimbursable expenses incurred under this Agreement for review by an authorized representative of Client for a period of three (3) years from the date of each invoice delivered by Consultant in relation thereto, provided, however, that any such reviews shall take place during normal business hours.

**ARTICLE IV.**  
**OTHER AGREEMENTS OF CONSULTANT**

**Section 4.1** Performance. Consultant shall perform the Consulting Services in accordance with the Statement of Work and the applicable generally accepted industry standards and practices for such services and shall comply with all applicable laws and regulation in performing hereunder. Client shall provide written notice to Consultant if Client becomes aware of any fault or defect in the Consulting Services, including any errors, omissions or inconsistencies in the Reports. Subject to Section 5.2, should any errors in the Reports caused by Consultant's negligence be detected Consultant shall correct the error at no additional charge to Client by revising the Reports to eliminate the errors and refund to Client the amount paid by Client for the deficient portion of the Consulting Service(s) that resulted in the error.

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

**Section 4.3** Workers' Compensation. Consultant shall maintain workers' compensation insurance for Consultant's employees performing Consulting Services as required by law. Consultant agrees that it shall comply with all federal, state, and local laws and ordinances as it relates to the work to be performed under this Agreement.

**Section 4.4** Liability Insurance. Consultant shall, at its sole cost and expense, carry and maintain throughout the term of this Agreement professional liability insurance covering errors and omissions, with limits of not less than \$1,000,000 per occurrence or \$2,000,000 aggregate. Evidence of such insurance shall be provided to Client upon request.

**ARTICLE V.**  
**OTHER AGREEMENTS OF CLIENT**

**Section 5.1** Client's Assistance. Client shall provide all information, data and documents as specified in the SOW, or reasonably requested by Consultant and which is reasonably necessary to the performance of the Consulting Services. Client shall also satisfy any assumptions and perform any Client obligations identified in the Statement of Work, and shall comply with all applicable laws and regulations in performing hereunder.

**Section 5.2** Client Responsibility.

(a) Client acknowledges that, in performing the Consulting Services and preparing the Reports, Consultant will be using and relying upon various data, reports, studies, computer printouts and other information, documents and representations as to facts, the source of which may be Client, public agencies or other third-parties, (all of which shall be referred to herein as the "Client Data"). Client agrees that Consultant is entitled to use and rely upon such Client Data in preparing the Reports and performing the other Consulting Services hereunder, and that Consultant shall not be obligated to establish or verify the accuracy of the Client Data, nor shall Consultant be responsible for the impact or effect of Client Data on its work products (including without limitation the Reports) in the event that such Client Data is in error and therefore introduces error into the work products (including without limitation the Reports).

(b) Client represents and warrants to Consultant that Client has the right to deliver to Consultant the Client Data delivered to Consultant hereunder and to the best of Client's knowledge neither the Client Data, nor its use as contemplated hereunder, shall (i) infringe any intellectual property rights of any third party, (ii) violate

any laws or privacy rights of any third party, or (iii) violate any third parties' privacy policies, and Client shall use commercially reasonable efforts to ensure that the Client Data does not contain any viruses or other damaging or disabling code.

**Section 5.3** Testimony. In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the Consulting Services rendered hereunder, and the parties do not separately contract for such additional services, Client shall compensate Consultant for such appearances at a rate of \$200 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis. In the event Consultant is subpoenaed by a third-party in relation to services provided under this Agreement, fulfilling such obligations will be considered out of scope services and be billed based on time and materials expended.

**Section 5.4** Non-Solicitation. Client shall not solicit the employment of or hire any of Consultant's employees during the term, and for one year following the termination of, this Agreement; provided, however, that the foregoing restrictions shall not prohibit Client from generalized solicitation or advertising, including the use of an independent employment agency or search firm whose efforts are not specifically directed at such employees. Notwithstanding the foregoing, such employees shall not include any individual (a) whose employment with Consultant has terminated for any reason (other than through breach of this Section 5.4), or (b) whose employment or solicitation thereof has been agreed upon in writing by Consultant.

## **ARTICLE VI.** **TERM; TERMINATION**

**Section 6.1** Term. This Agreement shall become effective on the Effective Date and will continue in effect until the earlier of (a) completion of performance under the SOW, or (b) termination as provided herein.

**Section 6.2** Convenience. Either party may terminate this Agreement (and the Statement of Work) for convenience upon thirty (30) prior written days' notice to the other party.

**Section 6.3** Breach. Either party may terminate this Agreement (and the Statement of Work) with written notice to the other party if the other party is in material breach of any of its obligations under this Agreement, which breach is not cured within three (3) days' written notice from the other party. Without limiting the generality of the foregoing, if Client fails to make payments when due hereunder, Consultant may suspend performance of the Consulting Services upon written notice to Client. Consultant shall have no liability to Client for any costs or damages arising as a result of such suspension. Upon payment in full by Client (provided that Consultant has not terminated the Agreement in the interim), Consultant shall resume Consulting Services under this Agreement, and the Statement of Work 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.

**Section 6.4** Fees. Upon expiration or termination of this Agreement, Client shall pay all of Consultant's fees, expenses and other costs payable by Client pursuant to Article III, which have accrued through the date of expiration or termination unless such termination is due to Consultant's breach of this Agreement.

**Section 6.5** Survival. Sections 1,2, 3.1, 3.2, 3.3, 5.2, 5.4, 6.4, 6.5 and Articles II, VII and VIII shall survive the expiration or termination of this Agreement.

**ARTICLE VII.**  
**CONFIDENTIALITY**

**Section 7.1** Definition. "Confidential Information" means all information that is disclosed by a party to the other party and that: (a) is designated as confidential, regardless of the form in which it is disclosed; or (b) relates to a party's markets, customers, patents, trade secrets, inventions, procedures, methods, designs, strategies, distributors or business in general. The term Confidential Information shall not include any item of information which: (i) the receiving party can prove was in its possession without a duty of confidentiality prior to disclosure thereof by the disclosing party whether prior to or during the term of this Agreement; (ii) is or becomes generally available to the public other than as a result of any action or omission by the receiving party; (iii) is rightfully disclosed to the receiving party by a third party without the imposition on the third party of any confidentiality obligation or restrictions on use; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, as evidenced by the receiving party's written records.

**Section 7.2** Obligation. Each party, as a receiving party, shall (a) hold all Confidential Information of the disclosing party in confidence and not disclose the other party's Confidential Information to anyone except its employees who have a need to know and who are at all times informed of, and understand that they are bound to observe, the same confidentiality and nondisclosure restrictions and obligations as are set forth in this Agreement; (b) use the other party's Confidential Information only as necessary for its performance hereunder; and (c) hold and protect the other party's Confidential Information with the same degree of care that it uses with its own information of like importance, but in no event less than a reasonable standard of care.

**Section 7.3** Compelled Disclosure. If either receiving party is requested or required by law or legal process to disclose any of the disclosing party's Confidential Information, the person required to disclose such Confidential Information shall provide the disclosing party with prompt oral and written notice, so that the disclosing party may seek a protective order or other appropriate remedy. In the event that such a protective order or other remedy is not promptly obtained, the receiving party shall furnish only that portion of the disclosing party's Confidential Information which is legally required.

**Section 7.4** Injunctive Relief. Each party, as a receiving party, agrees that remedies at law are inadequate to protect against its breach or threatened breach of this Article VII. Accordingly, each party agrees that the other party may obtain injunctive relief against it in the event of any such breach or threat thereof, in addition to any other legal or equitable remedies that may be available.

**ARTICLE VIII.**  
**GENERAL PROVISIONS**

**Section 8.1** Notice. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing, by mail or by electronic mail (reader receipt requested). Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, or at the following email addresses (Consultant: [info@coopstrategies.com](mailto:info@coopstrategies.com); Client: \_\_\_\_\_), but each party may change the address by written notice in accordance with the first sentence of this Section 8.1. Notices

delivered personally or by electronic mail (reader receipt requested) will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

**Section 8.2** Assignment. Neither party may assign this Agreement, in whole or in part and any such attempted assignment shall be void.

**Section 8.3** Not Public Official. Neither this Agreement, nor any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause 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. Client and Consultant also agree that no actions and opinions necessary for the performance of duties under this Agreement will cause Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

**Section 8.4** Entire Agreement. This Agreement and Exhibits A and B 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 the Consulting 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 reference to any statute herein shall be construed as including all statutory provisions consolidating, amending or replacing such statute.

**Section 8.5** Amendment. This Agreement and any exhibit hereto (including the Statement of Work) may not be amended or modified except as expressly provided herein or in writing by the parties and signed by authorized representatives of both parties.

**Section 8.6** Severability. 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 8.7** Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules.

**Section 8.8** Third Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant. The Consulting Services are being performed solely for Client's benefit, and no other party or entity shall have any claim against Consultant because of this Agreement or the performance or nonperformance of services hereunder.

**Section 8.9** Force Majeure. Neither party will be liable for any failure to perform (except for payment of monies due hereunder) due to unforeseen circumstances or causes beyond its reasonable control, including, but not limited to, acts of God, war, acts of terrorism, embargoes, acts of civil or military authorities, fire, flood, accident, strikes. In the event of force majeure, time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.

**Section 8.10** Indemnification. Consultant shall defend, indemnify, and hold Client 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 and expenses, arising out of or connected with the performance of the Consulting Services under this Agreement when such Claims arise from, relate to, or in any way result from Consultant's negligence or willful misconduct.

**Section 8.11** Limitation. The parties intend that the Consulting Services shall not subject the Consultant's individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with the Consulting Services. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant and not against any of the individual shareholders, officers, directors, members, managers or employees.

**Section 8.12** Limitation of Liability. In recognition of the relative risks and benefits of the Consulting Services to both Client and Consultant, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, that, except for breach of Article VII by Consultant, Consultant's total aggregate liability under or relating to this Agreement for any cause of action, including contract, tort and otherwise, shall not exceed the sum of amounts actually paid to Consultant under this Agreement. The limitations of liability set forth in this Article VIII and exclusion of certain damages shall apply regardless of the success or effectiveness of any of the exclusive remedies provided for under this Agreement. Any action against Consultant must be brought within eighteen (18) months after the cause of action arises.

IN WITNESS WHEREOF, this Agreement has been executed on the Effective Date.

CONSULTANT:

CLIENT:

**Cooperative Strategies, LLC**

**Mount Diablo Unified School District**

By:   
Justin Rich  
Executive Director

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

Date: AUGUST 6, 2021

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

**EXHIBIT A**

**STATEMENT OF WORK  
MOUNT DIABLO UNIFIED SCHOOL DISTRICT  
TRUSTEE AREA REDISTRICTING SERVICES**

Cooperative Strategies, LLC shall provide consulting services to Mount Diablo Unified School District ("School District" or "Client") to assist in the evaluation of existing voting areas with the 2020 Census Data and potential adjustments to such voting areas as result of updated data. The specific tasks include, but are not limited to, the following:

<b>ACTIVITY</b>	<b>TASKS</b>
<b>1. Assessment of Voting Areas and 2020 Census</b>	<b>1.A. Identify Goals and Priorities</b> This task involves determining the goals the School District has for the redistricting process. This determination will be based on Education Code and Elections Code, including the California Voting Rights Act and Federal Voting Rights Act.
	<b>1.B. Identify Key Issues and Considerations</b> This task involves identifying the key issues and considerations involved in adjusting voting areas. These may include legal issues, compliance with federal and State regulations, constituent/community concerns, as well as others.
	<b>1.C. Discuss Requirements with Legal Counsel</b> This task involves discussing the list of items identified in Tasks 1.A and 1.B. with staff of the School District and legal counsel to ensure compliance with all applicable legal, statutory, and organizational requirements.
	<b>1.D. Prepare Census Data Analysis for Trustee Areas</b> This task involves analyzing 2020 Census data to obtain information on population within the School District to determine the population within each voting area and for use in any potential adjustments.
	<b>1.E. Evaluate Population Balance of Current Voting Areas</b> This task involves determining whether the current voting areas meet the population balance requirements utilizing the 2020 Census. Cooperative Strategies shall prepare a report outlining the population within each voting area based on the 2020 Census and a determination of the population variance between the largest and smallest areas.



ACTIVITY	TASKS
	<p><b>1.F. Attend and Present at Meeting of Board of Education</b>  This task involves Cooperative Strategies attending and presenting at a meeting of the Board of Education of School District to review the data from the 2020 Census and review criteria for adjustments of voting areas, if required by the Census results or if requested by the Board.</p>
<p><b>2. Adjust Voting Areas Based on 2020 Census</b></p>	<p><b>2.A. Create Conceptual Trustee Areas</b>  This task involves using Census data and GIS data gathered to prepare three (3) conceptual Voting Area scenarios. This task will involve preparing alternative Voting Area boundary proposals for consideration, including maps and demographic data for comparative purposes.</p> <p><b>2.B. Present Recommendations to Staff</b>  This task involves presenting conceptual Trustee Areas to School District staff for their review and consideration. Cooperative Strategies will prepare deliverables and a presentation with the goal of refining the recommendations that will be delivered to the Board.</p> <p><b>2.C. Present to Governing Board</b>  This task involves three (3) meetings to present the scenarios to the Board for comment and review.</p> <p><b>2.D. Assist in Public Outreach</b>  This task involves assisting in a public outreach effort to present conceptual scenarios to the public and solicit feedback from constituents on the scenarios.</p> <p><b>2.E. Revise Scenarios</b>  This task involves revising the conceptual scenarios based on feedback from the public and the Board.</p> <p><b>2.F. Present Revised Scenarios to Governing Board</b>  This task involves presenting the revised scenarios to the Board for consideration and approval of adjusted Voting Areas.</p> <p><b>2.G. Assist in Approval and Implementation Process</b>  This task involves assisting in obtaining approval of Voting Areas and assisting with processing the new Voting Areas with the Registrar of Voters.</p>

**EXHIBIT B**

**FEE SCHEDULE  
MOUNT DIABLO UNIFIED SCHOOL DISTRICT  
TRUSTEE AREA REDISTRICTING SERVICES**

The proposed fees for Cooperative Strategies to perform the services for Mt. Diablo Unified School District ("School District") as described in Exhibit A of this Agreement are outlined below.

<b>SERVICE DESCRIPTION</b>	<b>PROPOSED FEE</b>
Assessment of Voting Areas and 2020 Census	\$4,000 (Plus Expenses Up to \$400)
Adjust Voting Areas Based on 2020 Census	\$10,500 (Plus Expenses Up to \$1,050)

Should the School District require attendance at additional meetings beyond those identified in Exhibit A, the fee shall be \$850 per additional meeting.

Should the School District wish to utilize a web-based tool for members of the community to provide scenarios or revise map options, there shall be an additional fee of \$5,000 for such service.

Additionally, Cooperative Strategies shall be reimbursed for travel, photocopying, courier, facsimile, clerical, telephone expenses, data services, materials, and other out-of-pocket expenses and administrative charges.