

**DEVELOPER FEE REVENUE ALLOCATION AGREEMENT
BETWEEN
TAMALPAIS UNION HIGH SCHOOL DISTRICT
AND
SAUSALITO MARIN CITY SCHOOL DISTRICT**

This Developer Fee Revenue Allocation Agreement (“Agreement”) is dated _____, 2021 for reference purposes only, and is by and between Tamalpais Union High School District (“TUHSD”) and Sausalito Marin City School District (“SMCSD”), collectively referred to as the “Districts.”

Recitals

1. Education Code Section 17620, *et seq.*, and Government Code Section 65995, *et seq.*, (collectively, “School Fee Legislation”) authorize school districts to impose fees on residential, commercial, and industrial developments to mitigate the impact of the development on a school district’s facilities; and
2. The School Fee Legislation authorizes school districts to collect fees pursuant to Government Code Section 65995 (“Level I Fees”) and pursuant to Government Code Sections 65995.5 and 65995.6 (“Level II and Level III Fees”); and
3. Education Code Section 17623 provides that if a school impact fee is levied by two non-unified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum amount permitted by law, the fee revenue for the area of common jurisdiction shall be distributed by the districts entering into an agreement specifying the allocation of fee revenue and the duration of the agreement; and
4. Each school district that is a party to this Agreement has adopted or will adopt a resolution imposing a fee pursuant to Government Code Section 65995 with respect to Level I Fees; and
5. Education Code Section 17623 authorizes school districts having common territorial jurisdictions to enter into an agreement specifying the allocation of fee revenue between the school districts; and
6. The Parties wish to enter into this agreement specifying the manner in which developer fees will be shared.

Covenants

1) Allocation

In consideration of the reciprocal covenants of each school district to the other, the allocation of Level I School Impact Fees for residential and commercial/industrial development shall be as follows:

SMCSD	70%
TUHSD	30%

2) Collection and Distribution of Fees – Administrative Charges

- a) Both districts shall be responsible for collecting their own portion of the fees collected pursuant to the School Fee Legislation in accordance with this Agreement. As a result, there should not be a need for transmittal of fees between districts.

3) Exemptions and Fee Determinations

- a) Both districts shall have the right to determine whether a project is exempt from their own respective portion of the fees.
- b) Both districts shall have the exclusive right to determine the appropriate square footage upon which fees are to be charged. Both districts waive any rights it may have to bring an action against the other district based upon allegations that it improperly determined a project was exempt from fees, or based on allegations that either district did not charge enough fees on a project given both districts are independent calculating the appropriate amount of fees and only collecting their district's respective portion of the fees.

4) Refunds

- a) If any fee refund is due pursuant to Education Code section 17624 due to the expiration of a building permit without commencement of construction, then each Party shall be responsible for refunding its proportionate share (based on the percentages above) of the total refund due.
- b) If a court of competent jurisdiction finds that a fee refund is required because one Party either did not have the legal ability to levy a fee, or did not have the legal ability to retain a fee due to failure to properly make findings required by Gov't Code section 66006, then such Party shall be required to refund 100% of the required amount.
- c) If a court of competent jurisdiction finds that a refund is required because both Parties did not have the legal ability to levy a fee, or both did not have the legal ability to retain a fee due to failure to properly make findings required by Gov't Code section 66006, then each Party shall be responsible for refunding its proportionate share (based on the percentages above) of the total refund due.

5) Term of Agreement

- a) This Agreement shall become effective on the date it has been ratified by the governing boards of each party and signed by their Superintendent or her designee (the "Effective Date").

- b) This Agreement, upon ratification by both districts' governing boards shall be effective after its Effective Date until being superseded by a successor agreement mutually agreed upon by the Parties or amended or cancelled as provided in Article 6 below.

6) Amendment or Cancellation

This Agreement may be cancelled by the governing boards of either District after a period of three (3) years from the Effective Date.

7) General Terms.

- a) Unless otherwise specified herein, each party shall indemnify, defend and hold harmless the other party, its officers, agents, and employees from any and all liability, damage, cost or expense which any party shall become obligated to pay by reason of the indemnifying party's acts or omissions.
- b) If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then such provision shall be deemed invalid to the extent required by such court decision, but all other provisions shall continue in full force and effect.
- c) The titles of the parts and paragraphs of this Agreement are for the convenience of the reader only and no presumption or implication as to the intent of the parties hereto should be made.
- d) In the event it shall become necessary for either party to institute legal proceedings to enforce this Agreement, or any term or provision thereof, then and in such proceedings the prevailing party shall be entitled to reasonable attorney's fees and costs.
- e) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- f) Each of the Districts agree to execute and deliver such documents and take such further action as may be necessary or proper to carry out the terms and intent of this Agreement, including but not limited to, submission of a copy of this Agreement to the State Allocation Board as required by Education Code §17623(a).
- g) This Agreement contains the entire agreement of the Districts hereto and supersedes any prior written or oral agreement between them concerning the subject matter contained herein. There are no representations, agreements, or understandings – oral or written – between the parties hereto relating to the subject matter contained in this Agreement, which are not fully expressed herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Tamalpais Union High School District

By: _____

Name: _____

Title: _____

Date: _____

Sausalito Marin City School District

By: _____

Name: Itoco Garcia

Title: Superintendent

Date: _____