

**CALISTOGA JOINT UNIFIED SCHOOL DISTRICT
AGREEMENT WITH INDEPENDENT CONTRACTOR**

**Contractor Name and Address
("Contractor"):**

Brookwood Equities LLC
dba "Brookwood Partners"
200 Lakeside Dr #605
Oakland, CA 94612
PH: 510.499.5674

Contractor: Upon completion of work or agreed-upon work periods, mail invoice with above Agreement Number to:

Calistoga Joint Unified School District
1520 Lake St
Calistoga, CA 94515
PH:707.942.4703

It is agreed between Calistoga Joint Unified School District ("District"), and Brookwood Partners ("Contractor") as follows:

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for the District in accordance with the terms, conditions, and specifications set forth herein, in Exhibit A (the "Services"), with respect to the "Gallis" Property, a 16.44-acre parcel of undeveloped land located within city limits off of Highway 29, Calistoga, CA 94515, APN 011-510-050-000 (the "Site").
2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor's employees, agents, partners, joint venturers, or volunteers, including but not limited to Jeffrey Feeney and/or Coldwell Banker Commercial, Brokers of the Valley (the "Contractor Parties"), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing Services shall be competent to perform those Services.
3. **Contract Term.** The term of the Services shall commence May 13, 2024, and is anticipated to continue through the end of October 2024 or as reasonably necessary to complete the initial Services, or the date the District terminates this Agreement ("Term").
4. **Payments.** In consideration of the Services rendered in accordance with all terms, conditions, and specifications set forth herein and Exhibit A attached hereto, District shall make payment to Contractor in the manner specified herein and in Exhibit B. In the event that the District makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the District at the time of contract termination. The District reserves the right to withhold payment if the District determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for professional Services under this Agreement exceed ninety-five thousand dollars (\$95,000) except by a written amendment signed by the Parties. In addition to professional Services, additional normal, typical, and reasonable reimbursable expenses ("Reimbursable Expenses") shall be charged in accordance with Exhibit B. In no event shall total payment for reimbursable expenses exceed \$2,000, except by written amendment signed by the Parties.
5. **Relationship of the Parties.** Contractor agrees and understands that the Services performed under this Agreement are performed as an Independent Contractor and not as an employee of the District and that neither Contractor nor its employees/agents acquire any of the rights, privileges, powers, or advantages of District employees.
6. **Workers' Compensation Insurance.** If applicable to Contractor, or required, Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer liability insurance providing full statutory coverage.

7. **Other Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Further, Contractor agrees to maintain comprehensive general liability insurance, as indicated below and throughout the course of this Agreement. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount(s) specified below:

- Comprehensive General Liability. \$1,000,000
- Motor Vehicle Liability Insurance \$1,000,000 (to be checked if motor vehicle used in performing services)
- Professional Liability..... \$1,000,000 (to be checked if Contractor is a licensed professional)

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of District before the District's own insurance or self-insurance shall be called upon to protect it as a named insured.

Contractor shall not commence performance of Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is required but is not given, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties.

8. **Hold Harmless.** Contractor agrees to indemnify and defend the District and its employees and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the negligence of Contractor and/or its employees/officers/agents in the performance of this Agreement, including any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement, except for claims of negligence or willful misconduct committed by District.

9. **Confidentiality.** Confidentiality of Contractor Information. All data and information produced or compiled by Contractor in relation to the Services shall be kept confidential by each Party except as otherwise provided by law, including but not limited to the California Public Records Act, and except as otherwise set forth in this Agreement. Each Party shall not be required to keep confidential any data or information which is or becomes publicly available, is already rightfully in that Party's possession, is independently developed by that Party outside the scope of this Agreement, or is rightfully obtained from third parties. The requirements of this Section shall survive termination of this Agreement.

10. **Non-Assignability/Successors and Assigns.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the District, and any attempted assignment without such prior written consent in violation of this Section shall automatically give the District the option to terminate this Agreement without notice. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective Parties.

11. **Termination of Agreement.** The District's Superintendent may, at any time after execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the District by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty (30) days from said notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials prepared by Contractor under this Agreement shall become the property of the District and shall be promptly delivered to the District. In the event of termination, written notice by the District Superintendent shall be sufficient to immediately stop further performance of the Services by the Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for all work satisfactorily performed through the date of termination except where the quality or quantity of the work performed is unacceptable. Upon payment by the District for Services, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper. The District may immediately terminate this Agreement based upon unavailability of Federal, State, or local funds by providing written notice to Contractor as soon as is reasonably possible after District learns of said unavailability of funding.
12. **Payment of Permits/Licenses.** Costs for licenses, permits, or approvals required from any agency for Services under this Agreement shall be considered Reimbursable Expenses. Contractor shall submit a written request should expenses exceed the authorized amount. Failure to do so may, as reasonably and equitably determined by the District, result in forfeit of any right to compensation of Reimbursable Expenses under this Agreement.
13. **Retention of Records.** Contractor shall maintain all records related to this Agreement for no fewer than five years after the District makes final payment or after termination of this Agreement and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the District, the State of California, other regulatory agencies, and/or Federal grantor agencies. Upon request, Contractor shall make such records available to District for the purpose of auditing and copying such records.
14. **Ownership of Documents.** All plans, studies, drawings, calculations, reports, specifications, estimates, and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Contractor under this Agreement ("Documents") shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to the Services but as they relate or may relate to any other project. Contractor will provide the District with a complete set of Documents. Contractor shall promptly make available to District any original documents it has retained under this Agreement upon request by the District. Notwithstanding Section 9 (Confidentiality), a license is granted by the District to Contractor to utilize and replicate final work product resulting from its Services for the District for the purposes of Contractor's marketing.
15. **Licensing of Intellectual Property.** This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, or reuse any and all copyrights, designs and other intellectual property embodied in the Documents ("Intellectual Property"). The Contractor shall request any and all subcontractors and subconsultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the Intellectual Property of such subcontractors or consultants that they provided to Contractor as part of the Services. The intent of such request is that the compensation for the Services includes compensation not only for any such use of the Intellectual Property in connection with the Services, but also for any re-use of the Intellectual Property by the District in relation to other projects. Contractor, not having entered into agreements with its consultants at this time, does not know if it has the legal right to license the Intellectual Property that Contractor, its subcontractors, or its subconsultants prepare or cause to be prepared under this Agreement. District will have the right to review and consent to Contractor's agreements with consultants. A license is granted by the District to Contractor to utilize any intellectual property created by Contractor in the scope of its Services under this Agreement.

16. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.
17. **Compliance with State, Federal, and Local Laws, Regulations, and Ordinances.** Contractor and all subcontractors shall ensure compliance with all state, federal, and local laws, regulations, or rules applicable to performance of the work required under this Agreement and shall execute all necessary certifications of compliance therewith. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.
18. **Conflict of Interest.** Contractor warrants that neither Contractor nor any of its employees, agents, or subcontractors, with the exception of Jeffrey Feeny (who has professional relationships as a real estate broker in and around Calistoga), has an actual or potential conflict of interest with the District in respect to the Services to be performed under this Agreement for the District. None of such individuals shall, during this term of this Agreement, acquire any interest which conflicts, or could potentially conflict, in any manner with the interests of the District.
19. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.
20. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, and such remaining portions shall continue to be in full force and effect. Such invalid or unenforceable portion shall be deemed to be severed from the Agreement. Notwithstanding the foregoing, if the invalidity of any provision of this Agreement results in a material failure of consideration, this Agreement shall terminate.
21. **Merger Clause.** This Agreement, including all exhibits/attachments attached hereto, which are incorporated herein by this reference, constitutes the sole agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the Superintendent. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this Agreement, the provisions of the body of this Agreement shall prevail. This Agreement constitutes the entire Agreement between the District and Contractor. Further, liability referenced in Section 6 is limited to Contractor's negligence during Contractor's performance under this Agreement.
22. **Liability.** Notwithstanding anything stated herein to the contrary, neither District nor Contractor shall be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits in connection with this Agreement.
23. **Time.** Time is of the essence for performance of the Services under this Agreement.
24. **Waiver.** No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude either Party from any or further exercise of any right or remedy.
25. **Ambiguity.** The Parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.
26. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

27. **Governing Law.** This Agreement, including any exhibits, and any disputes arising out of this Agreement shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this Agreement shall be venued in the County of Napa or in the United States District Court for the Northern District of California.

Board Approval Date: May 13, 2024.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES AND APPROVED BY THE DISTRICT'S GOVERNING BOARD.

For Contractor:

Contractor Signature Date Contractor Name (please print)

For the District:

District Signature Date District Name (please print)

Exhibit A
Description of Services to be Performed by Contractor

In consideration of the payments set forth in **Exhibit B, Amount and Method of Payment**, Contractor shall provide the following:

Services

Contractor will provide real estate asset management services related to the evaluation of the Site and the possible sale, lease, exchange, possible use as workforce housing, or other disposition of all or a portion of the Site. The Services will include, but not be limited to, the following:

- Contractor will manage a high-level study to determine both the feasibility of developing employee workforce and middle-income housing and the underlying value of the District's real estate in the marketplace so as to maximize the benefit of the holdings to the District.
- Contractor will meet with key city agencies having jurisdiction over the project approvals on the Site. This includes public works for utilities and requirements for public improvements, planning for zoning and site design restrictions, and the fire marshal for specific project restrictions, if any.
- Contractor will work with District staff and the District's legal team to confirm assumptions and direction during its work (e.g.: property disposition, Affordable Housing restrictions, interpretation of evolving Education Code legislation, alternative construction procurement strategies as appropriate). Contractor will also work with District staff and the District's legal advisors on the review of title reports for the Site.
- Contractor will coordinate with District's financial advisors to inform the financial assumptions for the strategic real estate analysis and recommendations for approaches to structuring capital.
- Contractor will review the potential uses of the site and assess the likelihood of a successful re-entitlement that would affect the site's development timing and a sale or lease price.
- Contractor will work towards establishing a likely minimum and maximum amount a buyer, land lessee, or joint venture partner will value the property if offered in the marketplace.
- For purposes of determining the site's value, Contractor will develop a proforma to establish a residual land value "as is" and the value of the land as potentially re-entitled.

Specifically, Brookwood Partners' analysis will include:

- Determination of F.A.R. (Floor Area Ratio) or residential densities.
- Budgets for the likely housing construction typologies.
- Soft cost budgets including project consultants, development fees to be paid to the City of Calistoga and other public agencies, carry costs, permits, reasonable contingencies, etc.
- Market data for rental or for-sale residential product or other uses as appropriate.
- Project Schedules for alternative approaches.
- Affordable housing requirements and state legislation affecting the number of allowable housing units.
- An opinion of revenues from sale, lease, or other revenue generating mechanisms that will result from the project itself, with capitalization and interest rate assumptions based on market conditions and product type.
- A range for the net operating income from the proposed project(s).
- Analysis of financial returns in terms most useful & appropriate to the District.
- A framework for realistic next steps, including possible lease, sale, or other disposal of the Site.

Contractor will provide a monthly status report to the assigned District staff contact regarding all Services performed under this Agreement. Contractor will provide presentations to the Board of Trustees, as coordinated with District staff.

Project Workflow (to be modified based on CJUSD’s project program and objectives)

	April	May	June	July	August
Kick-off Meeting					
Data Collection Alignment of Project Objectives with CJUSD Review existing Due Diligence and Reports Title Reports / Site Easements and restrictions Project Considerations based upon State Legislative Agenda Review/Update with Leadership/Sub-Committee	■	■ ■ ■ ■			
Initial Discussions with City/Agency Officials Planning: Approvals Process, Zoning and Affordable Housing DPW: Utility Capacity Fire: Emergency Vehicle Access Review/Update with Leadership/Sub-Committee		■ ■ ■ ■			
Strategic Analysis and Options Survey of Faculty and Staff (Demand and Unit Types) Survey of existing market lease rates Site Considerations–pros and cons Traffic and Parking Considerations Project Red Flags (risk analysis) Review/Update with Leadership/Sub-Committee			■ ■ ■ ■ ■ ■ ■ ■		
Fit Plan Conceptual Design Design Confirmation with Agency Staff Project Costs and Budget Residual Land Value Analysis Lease vs. Own Analysis & Recommendations Review/Update with Leadership/Sub-Committee			■ ■ ■ ■ ■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■ ■	
Synthesis of Assumptions and Project Refinement Stakeholder Engagement Project Schedule & Phasing Preliminary Operating Proforma Update with Leadership Proposed Schedule Next Steps for Workforce Housing / Asset Sale or Lease Review/Update with Leadership/Sub-Committee				■ ■ ■ ■ ■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■ ■

Exhibit B

Amount and Method of Payment

In consideration of the Services provided by Contractor pursuant to Exhibit A, **Description of Services to be Performed by Contractor**, and subject to the terms of the Agreement, the District shall pay Contractor based on the following schedule and terms:

Fees

Professional Fees: Not to Exceed (NTE) **\$95,000**.

Professional Fees include both Professional Fees for Contracting Parties and Professional Fees for Consultants to Brookwood Partners. In addition to Professional Fees, Reimbursable Expenses will be submitted to the District for reimbursement and are excluded from the \$95,000 Professional Fee. Reimbursable Expenses shall be normal, typical, and reasonable, and include an administrative mark-up of 5%.

Professional Fees and Reimbursable Expenses shall be invoiced on a monthly basis. Professional Fees for Contracting Parties are fees earned based on the Hourly Rates set forth below. Professional Fees for Consultants to Contractor are fees paid by Contractor for Consultants that have been approved by the District in advance in writing, who will assist Contractor in completing the tasks identified in the Services. Examples include traffic engineers or civil engineers, and environmental or geotechnical consultants, as approved by the District. Such Professional Fees for Consultants shall not exceed a maximum of \$30,000 of the Professional Fees. In the event a Consultant is retained by Contractor without the written approval of the District, the Contractor may, at the District's discretion, be solely responsible for payment by the Consultant.

Contractor shall provide proof of payment for Reimbursable Expenses as a condition of reimbursement. Reimbursable Expense exceeding \$2,000 are to be approved in writing by the District.

Based on the District's available due diligence materials and site conditions, other engineering firms may be recommended for the initial analysis, but this work will not be undertaken without concurrence and authorization by the District.

Hourly Rates

Work will be invoiced on an hourly basis for the team's time based on the hourly rates below:

Jeff Feeney, Coldwell Banker	\$270 per hour
Lev Weisbach, Architecture and Construction Lead	\$270 per hour
Bruce Fukuji, Urban Design, Community Outreach & CEQA Lead	\$285 per hour
Chris White, Co-Principal / Project Director	\$290 per hour
Alan Katz, Co-Principal / Principal-in-Charge	\$310 per hour