

# CliffordMoss.

October 19, 2023

**Kristi Schwiebert**

Superintendent

Cambrian School District

4115 Jacksol Drive,

San Jose, CA 95124

**Re: Agreement for Professional Services**

Dear Superintendent Schwiebert:

This letter confirms our agreement for professional services (“Agreement”) and takes effect on the Commencement date provided below by and between **CliffordMoss** (“Provider”) and **Cambrian School District** (“Client”).

**1. Scope of Agreement.**

Provider will, with consultation from Client and for the direct benefit of Client, provide strategic assessment, communications, and planning services relating to determining electoral feasibility for and preparing for a November 2024 local school parcel tax measure. Provider’s scope of work in this process will include:

**Early Communications & Strategic Assessment Services**

- Meet with Client and set a realistic project schedule.
- Assess Client’s existing public communications efforts as they relate to its school parcel tax measure goal.
- Review and update relevant background material on Client’s program needs.
- Coordinate with True North, your chosen pollster on opinion research and analysis – via poll of a qualified sample of the Client’s likely voters.
- Recommend a strategy and provide guidance as Client implements its early stakeholder/public engagement program to listen and gather early input from school sites, community stakeholders and local opinion leaders.
- Collaborate with pollster to analyze and interpret results of the research.
- Provide recommendations regarding electoral feasibility of Client’s goal – a local school parcel tax measure on the November 2024 election ballot.
- Assist with project communications to keep the Board and District leaders informed.
- Provide ongoing project-related strategic counsel as needed.

**Final Ballot Measure Preparation & Communications Services**

- Based on early stakeholder feedback and polling research results, provide strategic input into Client’s November 2024 parcel tax plan to ensure community alignment.
- Recommend a strategy, tools, calendar and budget to guide stakeholder and public information/education as Client approaches Board action calling for an election.
- Provide the proper schedule to meet all filing deadline requirements and qualify Client’s measure for the ballot.
- Provide recommendations to package Client’s measure, including overall tax amount, tax rate, exemptions and ballot language.
- Collaborate with Client and other consultants (including legal and finance teams) to finalize Client’s chosen ballot measure.
- Prepare Client for information-only communications environment to be used once Client’s measure is on the ballot (e.g. factual, information-only web content, fact sheets, FAQs, etc.).
- Assist with internal communications to keep the Board and District leaders informed.
- Provide ongoing project-related strategic counsel as needed.

**Provider’s services do not include legal or financial advice of any kind.**

**Commencement Date:** November 1, 2023

**Expiration Date:** August 9, 2024 OR 88 days prior to an alternative qualifying school parcel tax election date

**CliffordMoss Compensation:** \$7,500/month\* – Professional Services Fee plus approved business expenses

\*Program costs are separate.

**True North Research Poll:** \$27,500 – (inclusive of all tasks and deliverables) with remote meetings. If an in-person meeting is required, additional costs will apply for travel time and expenses. This assumes an 16-minute survey conducted among at least 400 voters in English.

**2. Compensation Payment Schedule.**

Provider’s Fee of \$7,500/month (seven thousand & five hundred dollars per month) will be payable monthly, on the first of the month, starting November 1, 2023. Because the final month of service from Provider to Client will likely result in a partial month of service due to legal filing deadlines (e.g. August 9, 2024 if a November 2024 election is selected), Provider’s Fee will be \$3,750 (three thousand, five hundred & fifty dollars) for that final month of service and will be payable on the first of the month.

**3. Provider's Expenses.**

Client shall separately reimburse Provider for Provider's reasonable and necessary expenses (the "Expenses") including, without limitation, travel (airfare, car rental, gas and other related transportation expenses), lodging, meals, teleconferencing, and/or cellular telephone charges; photocopying and faxes; express mail, messenger or delivery service incurred in performing the Services hereunder. Provider shall be reimbursed by Client within thirty (30) days following presentation of Provider's invoice or statement.

**4. Vendor Costs and Payments.**

Subject to prior approval of Client, Provider is authorized to enter into third party contracts on behalf of Client for Client's public information efforts. Payment of vendor for all good, services, and costs shall be Client's sole responsibility, and shall be in addition to the Compensation or any other fees for the Services. Such third party contracts include, without limitation, contracts for printing, paid field and phone calling, graphic artwork, demographic data and voter data, opinion research (polling services), mailing services, and postage.

**5. Client's Obligations.**

At all times while Provider is providing the Services described above or otherwise assisting Client, Client shall promptly provide Provider with access to the facilities, personnel and other resources necessary for Provider to provide the Services.

**6. LIMITED WARRANTY; LIMITATION ON LIABILITY.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S LIABILITY SHALL BE LIMITED TO THE AMOUNT PAYABLE BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT FOR DELIVERABLES PROVIDED PRIOR TO THE CLAIMS.

**7. Indemnification.**

Each party agrees to indemnify, defend and save harmless from all loss, liability, damage, claim, cost or expense (including reasonable attorney fees or court costs) to the extent caused by the actual or alleged infringement of any patent, copyright, trade secret, or other proprietary right arising from or related to any material it furnished to such other party pursuant to this Agreement. Each party agrees to indemnify, defend, and save harmless the other party from all loss, liability, damage, claim, cost or expense (including reasonable attorney fees or court costs) arising from or relating to any personal injury, death, damage to property, or economic loss to the extent caused by the Indemnifying Party's sole negligent act or omission, intentional misconduct, or other breach of duty. In the event both Provider and Client are at fault, indemnification shall be proportionate to their respective shares of fault. In the event neither party is at fault, each party shall bear responsibility for its own losses, expenses and liabilities.

**8. Term; Termination.**

- (a) The term of this Agreement shall commence on the Commencement Date and continue through the Expiration Date as those terms are defined in Section 1 (Scope of Agreement) above.
- (b) Either party may terminate this Agreement with or without cause by sending written notice of termination at least thirty (30) days prior to terminating the Agreement. In the event of termination, Client shall pay the outstanding balance of all fees due to Provider provided by this Agreement within ten (10) days of the termination.
- (c) The parties may agree to extend this Agreement at any time by mutual written consent.

**9. Agreement Is Confidential.**

Client agrees that Client shall not during, or at any time following termination of Agreement with Provider, disclose or divulge to other parties, the specific terms of this Agreement, except as required by law.

**10. Ownership of Work Product.**

All finished documents and other materials prepared by Provider under this contract shall be jointly owned by Client and Provider. Joint ownership means that either Client or Provider can use documents or materials as needed at their discretion. The only exception to this joint ownership agreement is artistic renderings. Joint future use of such artistic renderings by Client shall be subject to negotiation between Client and the appropriate artist/sub-vendor.

**11. Protection of Confidential Information.**

Provider has and will develop, compile, and own certain proprietary techniques and confidential information and data that have great value in its business (such techniques, and information and data are referred to in this Agreement collectively as "Confidential Information"). Confidential Information includes, without limitation, (a) all information that has or could have commercial value or other utility in the business in which Provider is engaged or in which it contemplates engaging and (b) all information of which the unauthorized disclosure could be detrimental to the interests of Provider, whether or not such information is identified as Confidential Information by Provider.

Client shall keep confidential any and all Confidential Information regardless of means of transmission and storage except as required by law. Failure to mark any of the Confidential Information as confidential or proprietary shall not affect its status as Confidential Information under the terms of this Agreement. Client shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Client shall take at least those measures that Client takes to protect its own most highly confidential information. Client acknowledges that it is impossible to measure fully, in money, the injury that will be caused in the event of a breach or threatened breach of this provision and Provider shall be entitled to injunctive relief to enforce the provisions of this Agreement, without prejudice to any other remedy that such party may have at law or in equity.

**12. Late Charges.**

Provider may charge a late fee of 1.5% per month on any payment due under this Agreement and not paid in full on the date due, and on any balance due and unpaid more than thirty (30) days after presentation of any statement or invoice from Provider.

**13. Notice.**

All notices required or permitted under this Agreement must be in writing and will be deemed given (a) when delivered personally, (b) two (2) days after having been sent by commercial express courier with written verification of receipt, (c) on transmission by facsimile, provided that receipt is confirmed by a report generated the facsimile machine transmitting such notice, or (d) on the earlier of receipt or seven (7) business days after having been sent by U.S. first class mail, return receipt requested, postage prepaid.

**The delivery address for any such notice shall be as follows:**

Cambrian School District  
Attention: Kristi Schwiebert  
Superintendent  
4115 Jacksol Drive,  
San Jose, CA 95124

CliffordMoss  
Attention: Ms. Amanda Clifford  
Principal  
5111 Telegraph Avenue, Suite 307  
Oakland, CA 94609

**14. Survival.**

All terms and provisions hereof intended to be observed and performed by the parties after the termination hereof, shall survive such expiration or termination and shall continue thereafter in full force and effect, subject to applicable statutes of limitations.

**15. Severability.**

If a court of competent jurisdiction finds any provision of this Agreement void, illegal, invalid or unenforceable as applied to any person or circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to effect the intent of the parties hereto. The parties further agree to replace any such void, illegal, invalid or unenforceable provision with a valid and enforceable provision that will achieve, to the fullest extent possible, the economic, business, and other purposes of such provision.

**16. Assignment Prohibited; Binding Effect; No Third Party Rights.**

No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt to assign such rights or obligations shall be null and void. Notwithstanding the prior limitation, this Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and assigns. This Agreement shall not create any rights or benefits to parties other than Client and Provider. No third party shall have the right to rely on Provider opinions rendered in connection with the Services without the prior written consent of Provider.

**17. Governing Law; Venue.**

This Agreement shall be governed by the laws of the State of California without regard to any conflicts of law doctrine. In any action or proceeding brought to enforce this Agreement or any other claim arising out of or related to this Agreement, the venue shall be Santa Clara County, California, if the action is brought by Client or Alameda County, California, if the action is brought by Provider. Each party waives, to the maximum extent permitted by law, any and all rights, either substantive or procedural, which in any way limit or prevent enforcement of the terms of this Agreement.

**18. Entire Understanding; Waiver; Modification.**

This Agreement constitutes the complete and exclusive statement of the agreement among the parties about the described subject matter. It supersedes all prior written and oral statements, including any prior representation or statement. No waiver or indulgence of any failure to keep or perform any promise or condition of this Agreement shall be a waiver of any preceding or succeeding breach of the same or any other promise or condition. No waiver of any right shall be construed as a waiver of any other right. Neither party shall be required to give notice to enforce strict adherence to all terms of this Agreement. No waiver or modification of any of the terms of this Agreement shall be valid unless in writing, signed by the party to be bound.

**Provider: CliffordMoss**

Address: 5111 Telegraph Avenue Suite 307, Oakland CA 94609

By: \_\_\_\_\_  
Amanda Clifford, Principal

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

**Client: Cambrian School District**

Address: 4115 Jacksol Drive, San Jose, CA 95124

By: \_\_\_\_\_  
Kristi Schwiebert, Superintendent

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