

Agreement No. _____

Board Resolution No. _____

**MEASURE K GRANT AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT**

This Agreement is entered into this 4th day of October, 2022 by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Midpeninsula Regional Open Space District, hereinafter called "District."

* * *

WHEREAS, the District has applied to the County seeking a grant for the purpose of funding the matters set forth in its Project described in Exhibit A (the "Grant");

WHEREAS, the County has approved the grant of certain funds to District pursuant the terms set forth in this Agreement;

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Project Description
- Exhibit B—Reporting
- Exhibit C—Map
- Exhibit D—Open Space Easement

2. Grant

County hereby grants to District a sum not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) in consideration of and on the condition that the sum be expended for the sole purpose of carrying out the objectives of District's Project as identified in Exhibit A, and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. District agrees to assume any obligation to secure and furnish any additional funds that may be necessary to carry out its Project.

Funds granted under this Agreement shall not be disbursed until execution of this Agreement by County and District.

County shall disburse grant funds to District 30 calendar days after receipt of a satisfactory invoice. Invoices should be accompanied by back up documentation (e.g., receipts for professional services rendered, salary and benefits back up, etc.) and submittal of any required summary reports outlined in Exhibits A or B. The County reserves the right to change the disbursement method during the term of this Agreement.

The disbursement schedule is as follows:

- **Payment into escrow account-** Invoice for up to 100% of the grant amount (i.e., \$500,000), upon submission of invoice for the grant amount showing escrow instruction for the Cloverdale Ranch Land Conservation project funded by the grant.

INVOICES: The invoice/requests for grant disbursement shall be (1) on the organization's official letterhead, (2) include date of invoice, amount requested, and Agreement number, and (3) submitted to the attention of:

Heather Ledesma, Principal Management Analyst
400 County Center, 1st Floor

Agreement No. _____

Board Resolution No. _____

Redwood City, CA 94063
 (650) 363-4174 Email: hledesma@smcgov.org

3. Term & Termination

Subject to compliance with all of its terms and conditions, the term of this Agreement shall begin October 4, 2022, and continue until 60 calendar days after the close of escrow. District will provide County written notice of close of escrow. At the close of escrow, District will deliver to the County an open space easement for a ten-year term from the escrow closing date covering the 822-acre Butano Farm portion of the 6,300-acre Cloverdale Ranch Property, which easement shall be recorded at the close of escrow. The 822-acre Butano Farm is generally depicted in a map attached hereto as Exhibit C. The open space easement shall be in substantially the same form as Exhibit D, attached hereto. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future grants.

County may terminate this Agreement based upon the unavailability of Federal, State, or County funds by providing written notice to District within a reasonable time after County learns of said unavailability of funding. District acknowledges that this Agreement may be subject to approval of the Board of Supervisors, and assumes all risk of possible non-appropriation and non-approval of funds.

County may suspend and/or terminate this Agreement if District fails to comply with the terms of this Agreement and may, in its sole discretion, withhold or cancel pending and future disbursements of grant funds and/or require District to return some or all funds disbursed under this Agreement.

4. Relationship of Parties

Notwithstanding any publicity or other references to the County required to be made in connection with the Project as set forth in Exhibit A, District understands and agrees that the Project performed under this Agreement is not performed by District as an independent contractor of the County or as an employee of County and that neither District nor its employees acquire any of the rights, privileges, powers, or advantages of County contractors or County employees. District acknowledges and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of the County, and that this Agreement is not intended to and does not create an agency, partnership, or joint venture between the Parties.

5. Project Administration

The Parties agree that the Project as described in Exhibit A shall not be altered without a written amendment to this Agreement, signed by both the County and the District. District shall provide written reports to the County's authorized representative in accordance with Exhibit B.

6. Hold Harmless

District shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services performed of District in furtherance of the Project under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including District or its employees/officers/agents/volunteers;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from District's failure to comply with any applicable federal, state, or local laws or regulations; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, District's duty to indemnify and save harmless under this Section shall not apply to injuries or

Agreement No. _____

Board Resolution No. _____

damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of District to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7. Insurance

a. General Requirements

District shall, upon County's request, provide evidence of insurance coverages specified in this Section. Such insurance shall be subject to the approval by County's Risk Management. District represents that it maintains coverage through a public agency pooled risk Joint Powers Insurance Authority. Upon County's request, District shall furnish County with certificates of insurance evidencing the required coverage, including any applicable endorsements extending District's coverage to County. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

District represents that it currently has in effect, and District shall maintain in effect during the entire term of this Agreement, workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, District certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing or continuing the performance of Project work for which it would receive grant funds.

c. Liability Insurance

District represents that it currently has in effect, and District shall maintain in effect, bodily injury liability and property damage liability insurance as shall protect District 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 District's operations under this Agreement, whether such operations be by District, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be in the amounts specified below:

- Comprehensive General Liability... \$1,000,000
(Applies to all agreements)
- 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 Grantee is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may,

Agreement No. _____

Board Resolution No. _____

notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any further payment pursuant to this Agreement.

8. Assignability and Subcontracting

District shall not assign this Agreement or any portion of it to a third party. Except as set forth in Exhibit A, District shall not subcontract with a third party to perform the Project. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice and the County shall have the right to a refund of all funds disbursed under this Agreement.

9. Compliance With Laws

All services to be performed by District in connection with the Project shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code. In connection with the Project, District bears responsibility to obtain, at District's expense, any license, permit, or approval required from any agency.

10. Merger Clause; Amendments

This Agreement, including Exhibits, constitutes the sole Agreement of the parties regarding the Grant, and correctly states the rights, duties, and obligations of each party as of this document's date. 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 the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties concerning the Grant that are not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

11. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

12. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:	In the case of District, to:
Heather Ledesma, Principal Management Analyst County Manager's Office 400 County Center, 1st Floor Redwood City, CA 94063 (650) 363-4174 hledesma@smcgov.org	Midpeninsula Regional Open Space District Ana Ruiz, General Manager Midpeninsula Regional Open Space District 330 Distel Circle, Los Altos, CA 94022 (650) 691-1200 aruiz@openspace.org

Agreement No. _____

Board Resolution No. _____

13. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

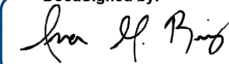
Agreement No. _____

Board Resolution No. _____

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: **Midpeninsula Regional Open Space District**

<p>DocuSigned by:  <small>B0890649F640410...</small></p>	<p>9/28/2022</p>	<p>Ana Ruiz</p>
<p>Contractor Signature</p>	<p>Date Contractor</p>	<p>Name (please print)</p>

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Agreement No. _____

Board Resolution No. _____

Exhibit A

The County and District agree that the grant funds shall only be used to further the goals of the following Project, described below and in the October 4, 2022 Board transmittal and resolution, attached hereto as Attachment A-1:

- Midpeninsula Regional Open Space District will complete the component of the Cloverdale Ranch Land Conservation project consisting of acquisition of the 822-acre Butano Farm portion of coastal property from Peninsula Open Space Trust for permanent protection as open space, with the anticipated close of escrow in spring 2023. San Mateo County's \$500,000 in Measure K grant funding will contribute to the \$16,000,000 acquisition cost for the larger 6,300-acre Cloverdale Ranch property, leveraging \$9,428,282 in funding from the State of California provided by the California Department of Parks and Recreation and approximately \$6,071,718 in Measure AA local general obligation bond funding from Midpeninsula Regional Open Space District.

In no event shall the County's fiscal obligation under this Agreement exceed \$500,000.

Agreement No. _____

Board Resolution No. _____

Exhibit B

In accordance with the terms of this Grant Agreement, District will provide, or cause to be provided the services for the Project detailed in Exhibit A and will report back to the County regarding various performance measures including, but not limited to, those noted below. Such reporting data shall be delivered to the County no later than June 30, 2026. In addition, District agrees to provide descriptive information about the Project funded by the Measure K grant upon reasonable request of the County, including, but not limited to, the County Manager's Office, the County Communications Officer, or the Supervisorial District Office.

<u>Performance Measure</u>	<u>Target</u>
Cloverdale Ranch Land Conservation Project is completed upon delivery of: 1) documentation of District ownership provided to County upon close of escrow, and 2) delivery of a recorded open space easement conveyed by Midpeninsula Regional Open Space District and held by the County for a term of 10 years over the approximately 822-acre Butano Farm property as part of the Cloverdale Land Conservation Project.	June 30, 2026

Agreement No. _____

Board Resolution No. _____

Exhibit A

The County and District agree that the grant funds shall only be used to further the goals of the following Project, described below and in the September 13, 2022 Board transmittal and resolution, attached hereto as Attachment A-1:

- Midpeninsula Regional Open Space District will complete the component of the Cloverdale Ranch Land Conservation project consisting of acquisition of the 822-acre Butano Farm portion of coastal property from Peninsula Open Space Trust for permanent protection as open space, with the anticipated close of escrow in spring 2023. San Mateo County's \$500,000 in Measure K grant funding will contribute to the \$16,000,000 acquisition cost for the larger 6,300-acre Cloverdale Ranch property, leveraging \$9,428,282 in funding from the State of California provided by the California Department of Parks and Recreation and approximately \$6,071,718 in Measure AA local general obligation bond funding from Midpeninsula Regional Open Space District.

In no event shall the County's fiscal obligation under this Agreement exceed \$500,000.

Agreement No. _____

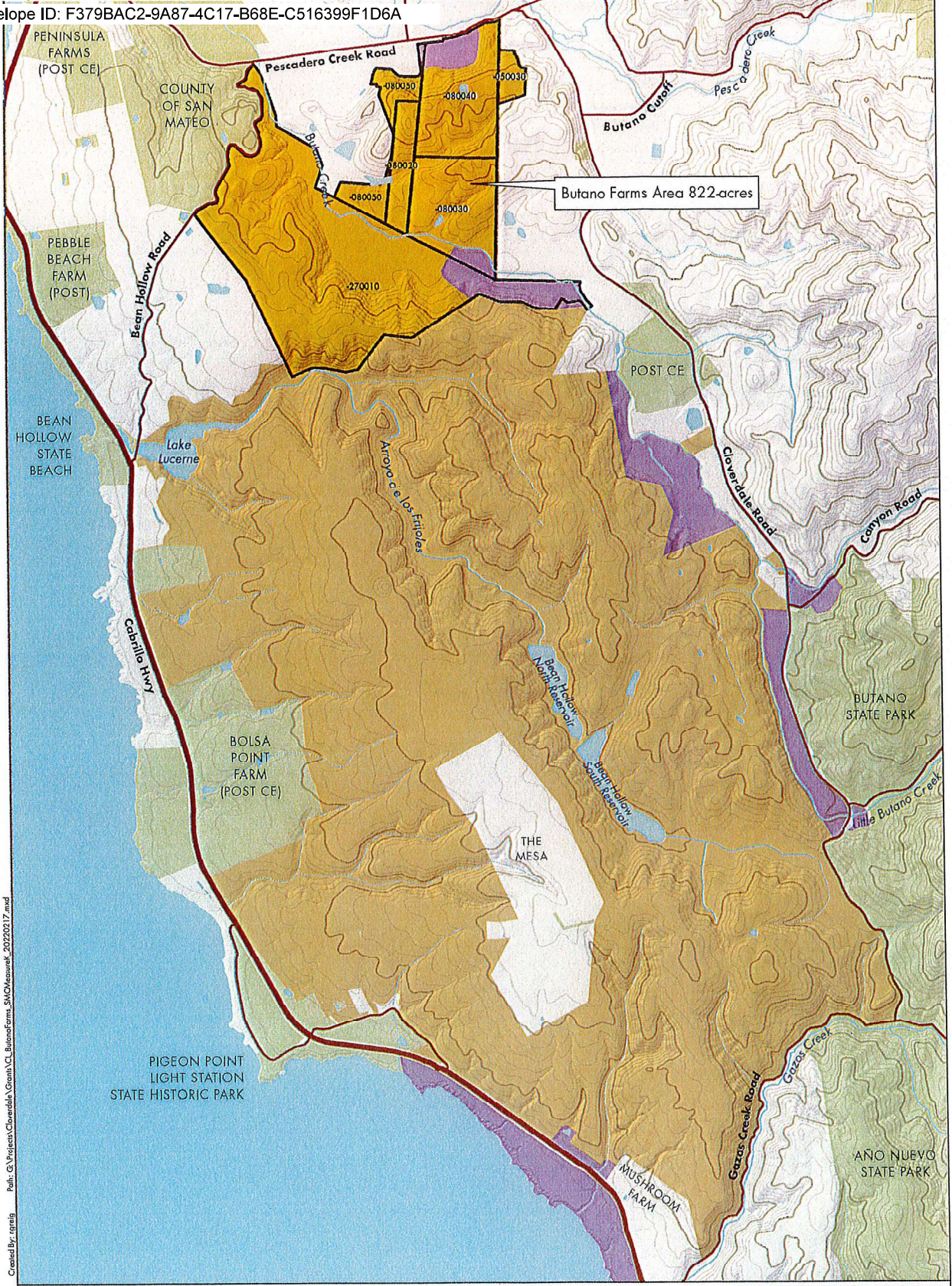
Board Resolution No. _____

Exhibit B

In accordance with the terms of this Grant Agreement, District will provide, or cause to be provided the services for the Project detailed in Exhibit A and will report back to the County regarding various performance measures including, but not limited to, those noted below. Such reporting data shall be delivered to the County no later than June 30, 2026. In addition, District agrees to provide descriptive information about the Project funded by the Measure K grant upon reasonable request of the County, including, but not limited to, the County Manager's Office, the County Communications Officer, or the Supervisorial District Office.

<u>Performance Measure</u>	<u>Target</u>
Cloverdale Ranch Land Conservation Project is completed upon delivery of: 1) documentation of District ownership provided to County upon close of escrow, and 2) delivery of a recorded open space easement conveyed by Midpeninsula Regional Open Space District and held by the County for a term of 10 years over the approximately 822-acre Butano Farm property as part of the Cloverdale Land Conservation Project.	June 30, 2026

Exhibit C
Map



Path: G:\Projects\Cloverdale\Grant\CL\ButanoFarms_SMO\Measure\20220217.mxd
 Created By: rgrnig

Butano Farms

- Proposed Butano Farms Area of Cloverdale Ranch to be transferred to Midpen
- Butano Farms parcel (APN 086-)
- Proposed Cloverdale Coastal Ranch to be transferred to Midpen
- Proposed agricultural lands to be retained by POST
- Other protected land
- Private property

Midpeninsula Regional
 Open Space District
 (Midpen)
 2/17/2022

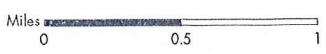


Exhibit D
Open Space Easement Agreement

WHEN RECORDED MAIL TO:

[County]
Attn:

**OPEN SPACE EASEMENT AGREEMENT
BUTANO FARMS PORTION OF CLOVERDALE RANCH PROPERTY**

This "Agreement", dated for reference purposes only, this ___ day of _____, 2022, is made by and between the COUNTY OF SAN MATEO ("County") and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT ("District").

RECITALS

- A. The District acquired certain real property located within the unincorporated area of the County of San Mateo, State of California consisting of 822 acres and commonly known as "Butano Farms" as a portion of the 6,300-acre Cloverdale Ranch Property. The Butano Farms property encompasses Lower Butano Creek in the Pescadero Creek watershed. The District acquired Cloverdale Ranch for public park, low-intensity recreation, scenic and agricultural preservation, and open space purposes including public trail opportunities. Cloverdale Ranch is valued at over \$32 million, and the District purchased the property at a bargain sale purchase price of approximately \$16 million. The State of California and California's Department of Parks and Recreation contributed a combined total of \$9,428,282 towards the purchase, and the District used \$6,071,718 of its Measure AA local general obligation bond funds for the remainder of the purchase.
- B. The County wishes to enhance the park, open space, and regional trail opportunities within the San Mateo County coastside area by contributing funding to the District's purchase of Cloverdale Ranch. The County contributed \$500,000 in Measure K grant funds ("County Grant") towards the District's purchase of Cloverdale Ranch.
- C. The County's desire to contribute funding toward the District's purchase of Cloverdale Ranch is conditioned upon the District meeting certain terms contained in the Measure K Grant Agreement between the County and the District ("Grant Agreement") incorporated herein by this reference. The County Board of Supervisors has approved the County's use of Measure K funds as a contribution toward the District's purchase of Cloverdale Ranch, subject to the County acquiring from the District an open space easement over the 822-acre Butano Farm portion of Cloverdale Ranch, as more particularly described in "Exhibit A" attached hereto.
- D. The County's contribution of Measure K grant funding to the District is expressly

conditioned upon the availability of County funds.

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and in particular, inter alia, Sections 815 through 816 of the California Civil Code, District hereby grants to County an Open Space Easement ("Easement") over the 822-acre Butano Farms portion of Cloverdale Ranch more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference ("Easement Property"), subject to the following terms and conditions.

1. Purpose. The purpose of the Easement is to assure that the Easement Property will be retained in its natural, scenic, agricultural and open space condition, to promote compatible low-intensity recreational use (including public trails), and to prevent any use of the Easement Property that will significantly impair or interfere with these conservation values. Accordingly, this Easement restricts the use of the Easement Property to allow only activities involving conservation grazing, low-intensity public recreational use, open space, resource management, natural habitat and environmental protection, and related uses that are consistent with the Easement and all grant limitations and requirements as contained in the Grant Agreement.
2. Term. This Easement shall run for a period of ten (10) years and shall expire on the tenth anniversary of the date this Easement is accepted by County. Upon the expiration of this Easement, and upon receipt of District's written notice and request, County agrees to prepare and record a quitclaim of this Easement as more particularly set forth in Section 11 hereunder.
3. Rights of County. To accomplish the purposes of the Easement, District conveys to County the right:
 - (a) To preserve and protect the open space values of the Easement Property consistent with this Easement and the Grant Agreement.
 - (b) To enter upon the Easement Property in order to monitor District's compliance with the terms of the Easement and to enforce such terms, provided that such entry shall be upon reasonable prior notice to District.
 - (c) Pursuant to Section 7 hereof ("Disputes and Remedies"), to prevent any activity on or use of the Easement Property which is inconsistent with the terms of the Easement or the Grant Agreement and to require the restoration of such areas or features of the Easement Property that may be damaged by any inconsistent activity or use.
4. Prohibited Uses. Any activity on or use of the Easement Property that is inconsistent with the terms of the Easement or Grant Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Commercial or Industrial Use. Any commercial or industrial development, use of, or activity on the Easement Property is prohibited. This provision excludes agricultural use and the use of the Easement Property by District for conservation grazing as referenced in Section 5(g) hereunder.
- (b) Building. The placement or construction of any new buildings, structures or other improvements on the Easement Property is prohibited other than the public open space and recreational improvements permitted in Section 5 hereunder. This provision also excludes any improvements authorized by any grazing Lease Agreement as referenced in Section 5(g) hereunder.
- (c) Soil Erosion or Degradation. Any use or activity that causes, or is likely to cause, significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited. This prohibition shall not apply to the use of agrochemicals such as fertilizers, pesticides, herbicides, and fungicides, which are used in accordance with law and USDA, manufacturer's, and the County Agricultural Commissioner's regulations, directions, and policies, or those of their successors.
- (d) Tree Cutting. The cutting down, or other removal of live trees, except when required for safety or fire protection and subject to the prior written approval of the County, which approval shall not be unreasonably withheld, is prohibited.
- (e) Dumping. The dumping or disposal of any and all waste, refuse, or debris on the Easement Property is prohibited.
- (f) New Utilities. The installation of new above-ground utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities is prohibited. This provision excludes the installation of underground utilities serving existing agricultural improvements and facilities located on Butano Farm, or that may be necessary to serve future public recreation or access, and excludes any utilities authorized by any grazing Lease Agreement as referenced in Section 5(g) hereunder.
- (g) Mineral Rights. The exploration for, or development and extraction of, minerals and hydrocarbons by any mining method is prohibited.
- (h) Off Road Vehicles. Use of off-road or all-terrain vehicles or motorcycles is prohibited except by District's personnel and contractors for resource management, patrol, maintenance or construction purposes permitted under the terms of this Easement, or by District's agricultural tenant under the terms of any grazing Lease Agreement as referenced in Section 5(g) hereunder.
- (i) Hunting or Shooting. Hunting or trapping of wildlife and the shooting of guns is prohibited, except by District's personnel or contractors for pest species.

- (j) Noise Limits. No activities such as concerts shall be permitted on the Easement Property that produce noise levels in excess of 65 decibels as measured on trails surrounding the Easement Property. Agricultural, construction, maintenance and landscaping equipment such as tractors, chainsaws, and leaf blowers are specifically excluded from this provision.
 - (k) Junk Yards. Storage or disassembly of inoperable automobiles and trucks for purposes of sale or rental of space for that purpose is expressly prohibited.
 - (l) Excavation. Alteration of land forms by grading or excavation of topsoil, earth, or rock is prohibited except for the construction, installation, repair, and maintenance of public trails or patrol roads, staging areas, or associated accessory facilities such as signs, gates, and fencing, or for erosion control purposes or other resource management purposes.
 - (m) Scenic and Natural Character. Activities such as clearing, stripping of native vegetation, grading, or storage of materials that would clearly degrade the scenic and natural character of the Easement Property is prohibited.
 - (n) Archeological and Cultural Resources. The excavation, removal, destruction, or sale of any archeological or cultural artifacts or remains found on the Easement Property, except as part of an archeological investigation approved by District, is prohibited.
5. Permitted Uses. District may use the Easement Property for any purpose not prohibited by Section 4 herein, and which is consistent with the terms of the Easement and the Grant Agreement. The following uses and practices, though not an exhaustive recital of consistent uses, are consistent with the terms and purpose of the Easement and are not precluded by it, to the extent consistent with the Grant Agreement:
- (a) To use and operate the Easement Property for public open space, agricultural, and recreational purposes including, but not limited to, natural resource management activities, environmental education, occasional special events, and low-intensity public recreation and trail uses. All uses and improvements shall be constructed and operated in accordance with all applicable laws, including but not limited to the Americans with Disabilities Act ("ADA"). Compliance with the ADA shall be the sole responsibility of District.
 - (b) To plan, design and construct recreational trails, trail staging areas, parking areas, restrooms and related improvements to create opportunities for low-intensity public use of the Easement Property.
 - (c) To install gates and appropriate signage and fencing.
 - (d) To implement standard fuel management and defensible space practices consistent with the District's Wildland Fire Resiliency Program.

- (e) To remove exotic non-native invasive vegetation and restore the area with native vegetation.
 - (f) To maintain existing roads to a year-round unsurfaced standard for vehicle access.
 - (g) To permit conservation grazing through a Lease Agreement with an agricultural tenant, and all other permitted activities by District's current or future grazing tenant on the Easement Property.
 - (h) To maintain the natural reservoirs on the Easement Property, to maintain underground water lines, and remove water from the Easement Property, and to perform such maintenance and repair as is necessary for the reservoirs.
6. Cooperation Between County and District. County and District acknowledge that the primary purpose and intended use of the County Grant is to assist with the acquisition of the 822-acre Butano Farm portion of Cloverdale Ranch for permanent protection as open space. The Property is within the San Mateo County Coastal Zone. Accordingly, the District will consult with the County's Planning Department on all subsequent actions to ensure compliance with the Local Coastal Plan (LCP) and Coastal Development (CD) permitting requirements. District will work cooperatively with County to facilitate the fulfillment of any conditions of the County Grant applicable to the Easement.
7. Disputes and Remedies. If County determines that District or any occupant of the Easement Property is conducting or allowing a use, activity, or condition on the Easement Property which is prohibited by the terms of the Easement or Grant Agreement, or that a violation is threatened, County shall give written notice to District of such violation and request corrective action sufficient to cure the violation, and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purposes of the Easement or Grant Agreement, to restore the portion of the Easement Property so injured, promptly and at District's sole cost and expense.
- (a) Consultations Regarding Interpretation and Enforcement of Easement. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to the Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to legal action.
 - (b) Notice of Violation; Corrective Action. If County determines that a violation of the terms of the Easement has occurred or is threatened, County shall give written notice to District of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the terms of the Easement, to request restoration of the portion of the Easement Property so injured to its prior condition. Such written notice is not required in the event of any actual or imminent physical harm to the Easement Property.

- (c) Injunctive Relief. If District fails to cure the violation within ninety (90) days after receipt of notice thereof from County, or under circumstances where the violation cannot reasonably be cured within a ninety (90) day period, fails to begin curing such violation within the ninety (90) day period, or fails to continue diligently to cure such violation until finally cured, County may bring an action at law or in equity in a court of competent jurisdiction which seeks to enforce the terms of the Easement, to enjoin the violation, by temporary or permanent injunction, and seeks to require the restoration of the Easement Property to the condition that existed prior to any such injury.
 - (d) Damages. County shall be entitled to recover damages for violation of the terms of this Easement or injury to this Easement or the interests protected by this Easement, as provided by Government Code Section 815.7.
 - (e) Forbearance. Enforcement of the terms of the Easement shall be at the discretion of the County, and any forbearance by County to exercise its rights under the Easement in the event of any breach of any term of the Easement by District shall not be deemed or construed to be a waiver by County of such term or of any subsequent breach of the same or any other term of the Easement or of any of County's rights under the Easement. No delay or omission by County in the exercise of any right or remedy upon any breach by District shall impair such right or remedy or be construed as a waiver.
 - (f) Acts Beyond the District's Control. Nothing contained in the Easement shall be construed to entitle County to bring any action against District for any injury to or change in the Easement Property resulting from causes not involving any affirmative acts by District or its tenants, or causes beyond District's or its tenants' control, including without limitation, trespassers, fire, flood, storm, and earth movement or other Acts of God, or from any prudent action taken by District under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes.
8. Indemnity, Costs and Responsibilities. District or its designees or authorized lessees shall have the sole responsibility for the ownership, liability, operation, upkeep, and maintenance of the Easement Property. District shall be responsible for compliance with any Grant Agreement conditions or requirements applicable to the grant funds used to acquire the Property covered by the Easement, including but not limited to limitations and requirements regarding the use or condition of the Easement Property. District shall be responsible for, indemnify, defend, and save harmless County, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs whatsoever, including but not limited to claims for personal injury or death of any person, whether public or private resulting from, growing out of, or in any way connected with or incident to the Easement or the condition, use, installation, construction, operation, maintenance, or lack of maintenance of the Easement Property, except for the sole or active negligence

or willful misconduct of County, its officers, agents, or employees. This indemnity shall extend to any claims against County due to the release or existence of any hazardous materials (as defined by any applicable local, state or federal law) on, under or in the Easement property. This indemnity shall also extend to any claims against County concerning any failure by County to comply with the Americans with Disabilities Act in any way connected with the Easement property. The duty of District to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.

9. Insurance. Throughout the term of this Easement, the District shall at its sole cost maintain in full force and effect either self-insurance through a government risk pool or a policy of general commercial liability insurance with a company licensed to do business in the State of California insuring the District against claims for personal injury, death, or property damage occurring in, on or about the Easement Property with a coverage limit of not less than Two Million Dollars (\$2,000,000) aggregate limit for bodily injury or death or property damage.
10. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To District: Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
Attn: Real Property Manager
(650) 691-1200 (Telephone)
(650) 691-0485 (Fax)

To County: County of San Mateo
County Executive's Office
400 County Center, 1st Floor
Redwood City, CA 94063
Attn: County Executive
(650) 363-4129 (Telephone)

or to such other address as either party from time to time shall designate by written notice to the other.

11. Recordation. This instrument shall be recorded by County in the Official Records of the County of San Mateo, California. County may re-record this Agreement whenever re-recording is required to preserve County's rights under the Easement. Upon receipt of District's written notice and request, County agrees to prepare a quitclaim of the Easement in substantially the same form set out in "Exhibit B", attached hereto and incorporated herein by reference, or such other form as is acceptable to District, quitclaiming all of County's rights and interests in the Easement, and to cause the quitclaim to record within 30 days of the ten (10) year anniversary of the execution of

this Agreement by both parties.

12. General Provisions.

- (a) Controlling Law. The interpretation and performance of the Easement shall be governed by the laws of the State of California. Venue shall be the Superior Courts of San Mateo County.
- (b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the Easement to effectuate the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This instrument shall be construed in accordance with its fair meaning, and it shall not be construed against either party on the basis that such party prepared this instrument.
- (c) Severability. If any provision of the Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of the Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby, so long as the purposes of the Easement can still be carried out.
- (d) No Third-Party Rights. This instrument is made and entered into for the sole benefit and protection of District and County and their respective heirs, grantees, successors, and assigns. No person or entity other than the parties hereto and their respective heirs, grantees, successors, and assigns shall have any right of action under the Easement or any right to enforce the terms and provisions hereof.
- (e) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of District's fee title in any respect. District specifically reserves the right to convey fee title, or to lease, or to grant easements pertaining to the Easement Property, subject to the terms of this Easement and Grant Agreement.
- (f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (g) Counterparts. The parties may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- (h) Consent not to be Unreasonably Withheld. In the event District, as required by the terms hereof, seeks consent of County, County agrees in all such

circumstances not to unreasonably withhold its consent, regardless whether the paragraph hereunder requiring County's consent so provides.

- (i) Authority to Sign. The parties executing this Agreement represent that they have authority and power to sign this Agreement on behalf of the Midpeninsula Regional Open Space District and the County of San Mateo, respectively.

IN WITNESS WHEREOF, District and County have executed this Open Space Easement Agreement on the day and year shown with their signature hereon.

**MIDPENINSULA REGIONAL
OPEN SPACE DISTRICT**

COUNTY OF SAN MATEO

By: _____
Zoe Kersteen-Tucker, President
Board of Directors

By: _____
_____, President
Board of Supervisors

Date: _____

Date: _____

Attest:

Attest:

By: _____
Jennifer Woodworth,
District Clerk

By: _____
_____,
Clerk of the Board of Supervisors

Approved as to form and legality:

Approved as to form and legality:

By: _____
Hilary Stevenson,
General Counsel

EXHIBIT B

WHEN RECORDED MAIL TO:

County of San Mateo
Attention: _____

NO TRANSFER TAX DUE
PUBLIC AGENCY ACQUIRING TITLE,
CALIFORNIA REVENUE AND TAXATION
CODE SECTION 11922

QUITCLAIM DEED

DULY RECORDED WITHOUT FEE
Pursuant to Government Code
Sections 6103, 27383.

BY: _____

For a Valuable Consideration, the **COUNTY OF SAN MATEO** does hereby REMISE, RELEASE AND QUITCLAIM to the **MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

that certain OPEN SPACE EASEMENT filed in the office of the County Recorder of San Mateo County, State of California, on _____, 20__ as Document No. _____.

APN _____

State of California
County of San Mateo

On this ____ day of _____, before me,
_____, the undersigned notary public
personally appeared _____ known to
me or proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity (ies), and that by his/her/their signature(s) on the
instrument the person(s), or entity upon behalf of which the person(s)]
acted, executed the instrument.

WITNESS my official seal.

Signature

Name (typed or printed)

[SIGNATURE Insert Name of Person Signing
and his/her title if applicable]

[2nd signature, if applicable]