

SUCCESSOR AGREEMENT
BETWEEN

SAN MATEO COUNTY
AND

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
(REGARDING FIRE SERVICES)

RECITALS

WHEREAS, the Midpeninsula Regional Open Space District ("DISTRICT") and San Mateo County ("COUNTY") entered into an Agreement (Regarding Fire Services) effective on March 16, 2004 ("2004 Agreement"), which agreement was for a fifteen year term expiring on March 15, 2019; and

WHEREAS, the 2004 Agreement provides that the DISTRICT and the COUNTY will meet and negotiate in good faith regarding a Successor Agreement; and

WHEREAS, the DISTRICT and COUNTY have conferred and negotiated regarding a Successor Agreement and desire to enter into this Successor Agreement to provide for continued fire-related services to DISTRICT lands in the Coastside Protection Area that are not currently provided within the State Responsibility Area by the California Department of Forestry and Fire Protection (Cal Fire); and

WHEREAS, on September 7, 2004, the San Mateo County Local Agency Formation Commission ("LAFCo") approved the DISTRICT'S Coastside Protection Program which expanded DISTRICT'S boundaries to the Coastside Protection Area; and

WHEREAS, the DISTRICT owns, manages and acquires land in the Coastside Protection Area, and Public Resources Code Section 5561.6 provides that: "For the purposes of the prevention and suppression of fires on such lands, the board [of an open space district] may enter into co-operative mutual aid agreements with the federal government, the State, any municipality, county or district..."; and

WHEREAS, the approved Final Program Environmental Impact Report ("EIR"), adopted in connection with the DISTRICT'S Coastside Protection Program, contains Mitigation Measures which require DISTRICT to undertake specified fire-related joint operations with the COUNTY, including consultation on site-specific fuel modification and management programs for specific lands acquired as part of DISTRICT's Use and Management site planning process; coordination on review of available dry hydrant water resources on specific lands acquired, coordination on use of a DISTRICT 1,500-2,000 gallon maintenance-style water truck for mutual aid calls, and formalizing a mutual aid agreement; and

WHEREAS, the 2004 Agreement sets forth arrangements between the DISTRICT and the COUNTY to address these Mitigation Measures and the parties desire to continue working cooperatively to implement these Mitigation Measures to maintain a jointly beneficial agreement that will further the mission of both agencies for the public benefit.

NOW, THEREFORE, the parties mutually agree as follows:

1. Fire Services Fee. DISTRICT, in exchange for COUNTY's services as set out in this Agreement, will compensate COUNTY by means of a Fire Services Fee (hereafter "Service Fee") as set out in this Successor Agreement.

2. Scope.

- a) DISTRICT properties that are subject to this Successor Agreement include all lands owned or acquired by DISTRICT in fee title during the term of this Successor Agreement and the 2004 Agreement that are within the geographic jurisdictional boundaries of the Coastside Protection Area as approved by LAFCo and that are not described in paragraphs (b) and (c) of this Section 2, below: Such properties are hereafter referred to as "Eligible Properties."
- b) Lands owned or acquired by DISTRICT from another government agency and lands located within the boundaries of a municipality or the boundaries of a fire protection district are exempt from this Successor Agreement.
- c) Lands served by another fire services entity, or which remain subject to property-related taxes which fund COUNTY Services, are exempt from this Agreement.

3. Reports.

- a) By January 15 of each year during the term of this Successor Agreement, DISTRICT will report to COUNTY all lands owned by the DISTRICT and all new acquisitions by the DISTRICT of lands within the Coastside Protection Area completed in the preceding twelve months between January 1 and December 31, and provide GIS shapefiles to the County Manager's Office.
- b) By January 15 of each year during the term of this Successor Agreement, DISTRICT will update COUNTY of all lands that are opened for public trail and recreational use within the Coastside Protection Area, and provide updated GIS shapefiles to the County Manager's Office.

4. Payment Schedule. The Service Fee from DISTRICT shall be forwarded to COUNTY in two semi-annual installments, on January 1 and July 1 of each calendar year.

5. Calculation. The Service Fee shall be calculated based on the following formula:

- a) In consideration of the Fire Services set forth in Section 6 herein, for each Eligible Property, DISTRICT will pay COUNTY an annual Service Fee equal to the greater of either:
 - (i) The pro rata share of property tax COUNTY would otherwise have received from tax levied upon the Eligible Property, based upon the assessed valuation of

the Eligible Property and the actual property taxes levied upon the Eligible Property on the date it was acquired by DISTRICT; or

- (ii) The pro rata share of property tax COUNTY would otherwise have received from tax levied upon the Eligible Property on the date it was acquired by DISTRICT, based on the current average assessed valuation per acre of undeveloped vacant lands in the Coastsides Protection Area. The current average assessed valuation per acre will be calculated based on the Fiscal Impact Analysis dated June 6, 2003 prepared by Economics Research Associates, and submitted to LAFCo in connection with the application to approve the Coastsides Protection Program.

As used in this Subsection (a), the term "pro rata share of property tax COUNTY would otherwise have received from tax levied upon the Eligible Property" shall mean solely that share of property tax that would have been allocated to the COUNTY for COUNTY fire protection services, and shall not mean that share of property tax that would have been allocated to COUNTY generally.

- b) For the purpose of calculating each payment for which a Service Fee is to be paid to COUNTY, if the Service Fee is calculated based upon the formula described in Subsection (a) (ii) above, the initial amount of such Service Fee shall be the amount of the Service Fee as calculated under Subsection (a) (ii), increased by 2% per year for each full year which has elapsed between June 30, 2003, and the date of acquisition. Thereafter, regardless of whether the Service Fee to be paid hereunder is based upon the formula set out in Subsection (a) (i) or (a) (ii) above, the Service Fee shall be increased at an annual rate of 2%, effective June 30 of each year.
- c) In the event the Eligible Property is subsequently conveyed by DISTRICT to a third party person or entity, DISTRICT shall, as of the effective date of such conveyance, be relieved of any future obligation for payment of a Service Fee to COUNTY for such Eligible Property and such Eligible Property shall thereafter cease to be an Eligible Property within the meaning of this Agreement.
- d) The parties acknowledge that certain DISTRICT Eligible Properties may be leased for private agricultural, residential, or other private use. Such Eligible Properties may be subject to a Possessory Interest Tax or other real property tax (hereafter "Alternative Tax"). In such cases, COUNTY will continue to receive the Alternative Tax revenue generated by such Eligible Property. Therefore, no Service Fee will be due from DISTRICT to COUNTY for services provided to such Eligible Properties so long as the Alternative Tax continues to be assessed.
- e) Payment Towards the Purchase of Emergency Rescue Vehicle. As further consideration for COUNTY's specialized medical rescue services which are provided to public trail users, DISTRICT shall provide a one-time reimbursement of up to \$60,000 to COUNTY to be applied to the purchase of an equipped Emergency Rescue Vehicle that will be used by COUNTY to provide emergency services to DISTRICT owned and managed lands in the Coastsides Protection Area. COUNTY shall provide evidence of such purchase to

DISTRICT in order to receive reimbursement. The vehicle will display an authorized DISTRICT logo identifying DISTRICT as a participating funding agency.

6. Fire Services. DISTRICT will pay COUNTY the Service Fee in consideration for COUNTY providing DISTRICT fire services as follows:

- a) Fire and Emergency Medical Services. COUNTY will provide wildland and structure fire prevention and suppression services, and emergency medical services, to DISTRICT owned and managed lands in the Coastside Protection Area.
- b) Mutual Aid Agreement. DISTRICT and COUNTY will continue the cooperative relationship already established between the two agencies. In March 2005, DISTRICT and COUNTY entered into an Operating Plan between San Mateo County Fire and the DISTRICT and, during the term of this Successor Agreement, the parties will confer in good faith to maintain in place the Operating Plan or a successor operating plan. Additionally, DISTRICT and COUNTY will endeavor to meet and confer every 5 years in order to discuss trends in calls for service in order to assess whether changes to the Operating Plan are warranted.
- c) Site-Specific Fuel Modification and Management Program. In addition to continuing its current fuel management practices, as new lands are acquired, DISTRICT will consult with COUNTY on an annual basis or when requested by COUNTY in developing site-specific fuel modification and management programs for specific lands acquired, as part of DISTRICT's Use and Management Planning Process.
- d) Additional Water Resources. DISTRICT will consult with COUNTY to determine whether the construction of dry hydrants on specific lands acquired by DISTRICT in the Coastside Protection Area is feasible in order to provide additional remote area water supplies for fire suppression activities. During the term of this Successor Agreement, the DISTRICT will continue to maintain in service a 1,500-2,000 gallon maintenance-style water truck and the District will make this truck available for mutual aid calls when feasible, at DISTRICT's sole discretion. When available, water truck assistance provided by DISTRICT would be in accordance with DISTRICT policy (i.e., non-fire line assistance). DISTRICT will work cooperatively with COUNTY to identify additional water source resources on DISTRICT lands that would be mutually beneficial.

7. Term. The term of this Successor Agreement shall be for 15 years from the Effective Date of the Successor Agreement. After 13 years from its Effective Date, DISTRICT and COUNTY shall review this Successor Agreement and shall meet and negotiate in good faith to agree upon a successor agreement. Such negotiations shall include discussion of whether amendments to the provisions herein are necessary or appropriate to accomplish the purpose and goals of the Successor Agreement. Such negotiations shall be based on the principles set out in this Agreement, taking into consideration the past experience of both agencies in carrying out the provisions of this Successor Agreement, the services provided by COUNTY, the anticipated COUNTY and DISTRICT needs to be able to continue to participate in this Successor Agreement and collaborative projects, and other factors directly and reasonably related to the purposes and goals of this Successor Agreement.

8. **Effective Date.** This Successor Agreement shall become effective on March 16, 2019.

9. **Insurance.**

- a) During the term of this Successor Agreement DISTRICT shall carry general liability insurance, or a policy of self-insurance, covering its risks arising out of the performance of any acts pursuant to this Successor Agreement in an amount not less than Five Million Dollars (\$5,000,000). DISTRICT shall furnish COUNTY with a Certificate of Insurance evidencing such insurance coverage.
- b) During the term of this Successor Agreement COUNTY shall carry general liability insurance, or a policy of self-insurance, covering its risks arising out of the performance of any acts pursuant to this Successor Agreement in an amount not less than Five Million Dollars (\$5,000,000). COUNTY shall furnish DISTRICT with a Certificate of Insurance evidencing such insurance coverage.
- c) COUNTY shall be responsible for the Workers' Compensation coverage and care of COUNTY employees, volunteers, and agents performing any acts under this Successor Agreement. DISTRICT shall be responsible for the Workers' Compensation coverage and care of DISTRICT employees, volunteers, and agents performing any acts under this Successor Agreement.

10. **Hold Harmless.**

- a) COUNTY hereby agrees to indemnify, defend and hold harmless DISTRICT from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of this Successor Agreement to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of COUNTY employees or agents or otherwise arises out of matters which, by the terms of this Successor Agreement, are the responsibility of COUNTY.
- b) DISTRICT hereby agrees to indemnify, defend and hold harmless COUNTY from and against all liability for all claims, suits, damages, injuries, costs, losses, and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of this Successor Agreement, to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of DISTRICT's employees or agents or otherwise arises out of matters which, by the terms of this Successor Agreement, are the responsibility of DISTRICT.
- c) COUNTY and DISTRICT agree to cooperate in the event of claims or litigation against either COUNTY or DISTRICT by a third party. In the event liability arises due to the alleged concurrent negligence of COUNTY and DISTRICT, or any combination thereof, each party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence.

11. Applicable Laws. This Successor Agreement shall be construed and enforced pursuant to the Laws of the State of California and any judicial proceedings related to this Successor Agreement shall be brought in the California Superior Court for the County of San Mateo.

12. Notices.

- a) Any notice required to be given to DISTRICT shall be deemed to be duly and properly given if mailed to DISTRICT, postage prepaid, addressed to:

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
Attn: Ana Maria Ruiz, General Manager

or personally delivered to DISTRICT at such address or at such other addresses as DISTRICT may designate in writing to COUNTY.

- b) Any notice required to be given to COUNTY shall be deemed to be duly and properly given if mailed to COUNTY, postage prepaid, addressed to:

San Mateo County
400 County Center, Hall of Justice
Redwood City, CA 94063
Attn: County Manager

or personally delivered to COUNTY at such address or at such other addresses as COUNTY may designate in writing to DISTRICT.

13. Waiver. The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a waiver of any rights or remedies that COUNTY or DISTRICT may have and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions and covenants contained herein.

14. Severability. If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

15. Captions. The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.


16. Assignments. This Successor Agreement may not be assigned, transferred, or conveyed by either party without the prior written consent of the other party. Any assignment without such prior written consent shall be void.

17. Prior Agreements. This Successor Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

Exhibits:

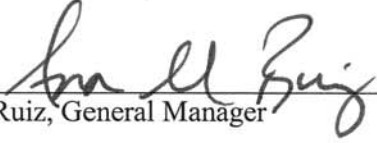
1. Map of Coastside Protection Area
2. Map of County Fire Service Area

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT

By: 
Pete Siemens, President
Board of Directors

Date: 3/27/2019

Recommended for Approval:

By: 
Ana M. Ruiz, General Manager

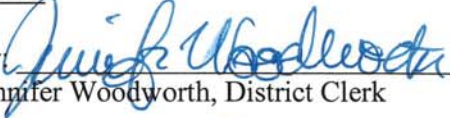
Date: 3-27-19

Approved as to Form:

By: 
Hilary Stevenson, General Counsel

Date: 3/27/19

Attest:

By: 
Jennifer Woodworth, District Clerk

Date: 3-27-19

COUNTY OF SAN MATEO

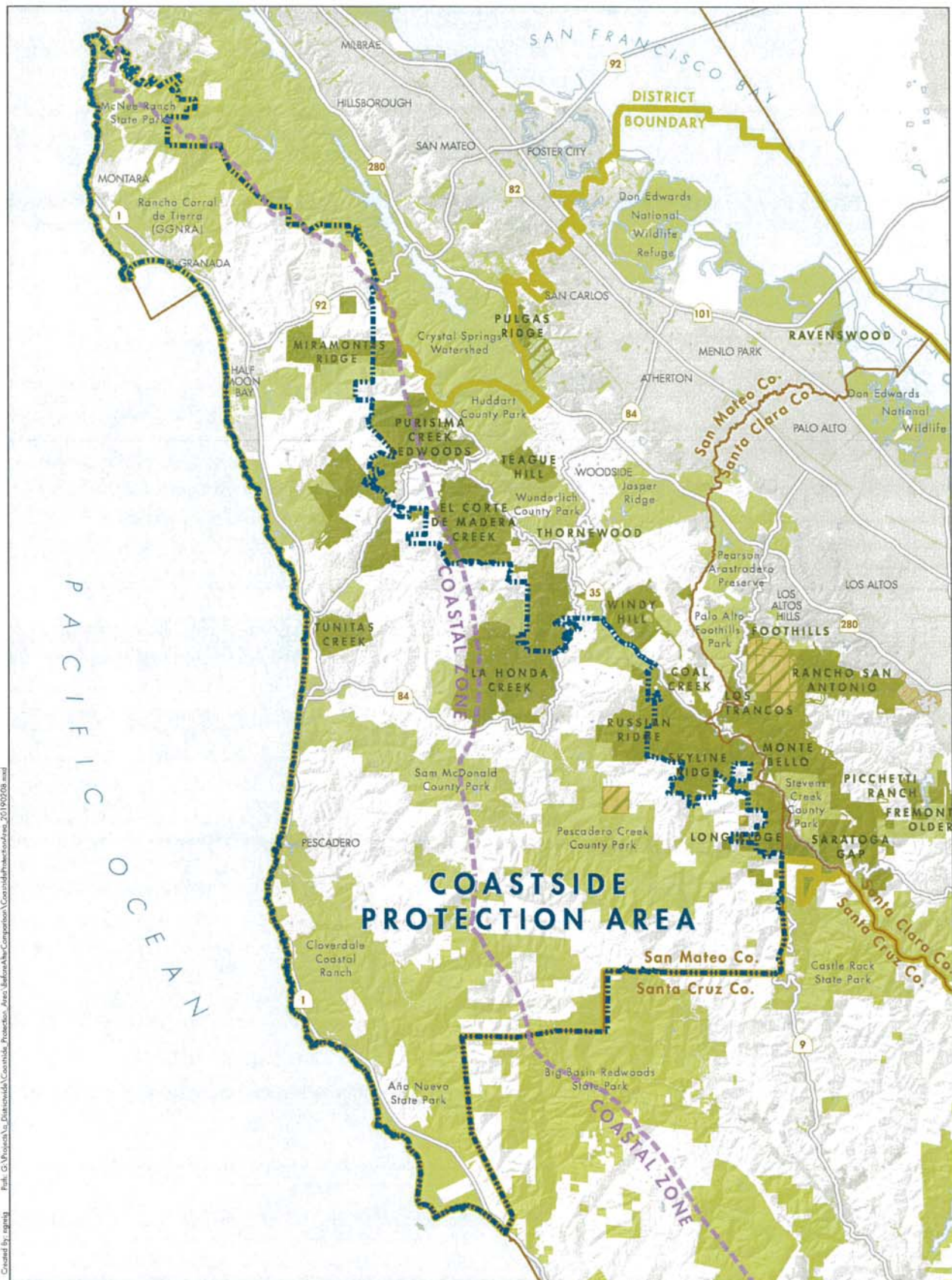
By: _____
Carole Groom, President
Board of Supervisors

Date: _____

Attest:

By: _____
Clerk of the Board of Supervisors

Date: _____



Created by agency: Park, G:\Projects\Coastside\Coastside_Protection_Area\Info\Map\Coastside_Protection_Area\Map\Coastside_Protection_Area_20180208.mxd

Coastside Protection Area - 2018

Exhibit 1

Midpeninsula Regional
Open Space District
(MROSD)

February 2019

- | | | |
|-----------------------|---|--------------|
| MROSD Preserves | MROSD Conservation or Agriculture Easement | Coastal Zone |
| Other Protected Lands | Management Agreement | |
| Private Property | Non MROSD Conservation or Agricultural Easement | |
| Land Trust | | |



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While the District strives to use the best available digital data, these data do not represent a legal survey and are merely a graphic illustration of geographic features.

