

## AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY

This AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY (hereinafter, "**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**") 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, a Public District formed pursuant to Article 3 of Chapter 3 of Division 5 of the California Public Resources Code, hereinafter called "**District**" who will collectively be referred to as the "**Parties**".

### RECITALS

WHEREAS, COUNTY owns certain real property commonly known as 200 Edmonds Road in unincorporated San Mateo County State of California, and identified as San Mateo County Assessor Parcel Number 050-470-050 (hereinafter, the "**COUNTY Property**"); and

WHEREAS, District owns certain real property within the County of San Mateo, State of California, commonly known as the Pulgas Ridge Open Space Preserve, and identified as San Mateo County Assessor Parcel Number 050-470-090 (hereinafter, the "**District Property**"); and

WHEREAS, Cordilleras Creek is a northward-flowing stream that originates in the Pulgas Ridge Open Space Preserve in the foothills of the Santa Cruz Mountains which runs adjacent to and along the southerly property boundaries of the COUNTY Property and District Property; and

WHEREAS, the Cordilleras Creek culvert flows from COUNTY Property onto District Property, and County, as part of its Cordilleras Center reconstruction project ("**Cordilleras Center Project**"), requires certain improvements, clean-up and erosion measures in the culvert area; and

WHEREAS, COUNTY desires to perfect its rights over District Property by acquiring from District a perpetual, non-exclusive easement through a portion of the District Property for the purpose of installing a new 60-inch culvert storm-water outfall and making certain erosion control improvements that will better handle storm flows in Cordilleras Creek and for the associated repair and maintenance of the outfall; and

WHEREAS, COUNTY desires to perfect its rights over District Property by acquiring from District a perpetual, non-exclusive easement through a portion of District Property for the purpose of certain tiebacks and underpinnings required to prevent erosion and to support and stabilize COUNTY Property; and

WHEREAS, District desires to expand its rights for parking at the Pulgas Ridge Open Space Preserve at Edmonds Road by acquiring from COUNTY a perpetual, non-exclusive easement over a portion of COUNTY's Property for District parking purposes; and

WHEREAS, COUNTY must meet certain mitigation requirements to obtain U.S. Fish and Wildlife permits, and District may have the ability to provide such mitigation; and

WHEREAS, COUNTY and District desire to exchange and transfer certain real property interests as set forth in this Agreement and such exchange shall be conditional on approval authorizing Boards of the respective Parties to enter such agreements; and

WHEREAS, District has determined that this exchange of interests in real property is of equal or greater value to the public and has determined the exchange to be in accordance with District's enabling legislation set out at Section 5540.5 of the Public Resources Code of the State of California; and

WHEREAS, COUNTY has determined that the real property interest it is conveying to District is not required for exclusive COUNTY purposes, and the non-exclusive real property interests to be acquired by COUNTY from District are required for COUNTY purposes.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is mutually agreed and understood as follows:

1. EXCHANGE OF REAL PROPERTY INTERESTS AGREEMENT. COUNTY and District agree to the following exchanges and transfer of real property interests, to be effective as of the Closing (defined below):

- a. COUNTY Easements: District shall grant a non-exclusive stormwater outfall easement (hereinafter "Outfall Easement") over a portion of the District Property in a form similar to the one outlined in Attachment 1, attached hereto and made a part hereof and a non-exclusive perpetual subsurface easement (hereinafter "Subsurface Easement") over a portion of the District Property in a form similar to the one outlined in Attachment 2, attached hereto and made a part hereof. COUNTY shall be responsible for all necessary survey work (legal description and plat map), and recording costs associated with the Outfall Easement and Subsurface Easement.
- b. District Parking Easement: COUNTY shall grant a non-exclusive parking easement (hereinafter "Parking Easement") over a portion of the COUNTY Property in a form substantially similar to that set forth in Attachment 3, attached hereto and made a part hereof. District shall be responsible for all necessary survey work (legal description and plat map), and recording costs associated with the Parking Easement Agreement.

2. MITIGATION FUNDING. COUNTY shall offer District the opportunity to perform a Red-Legged Frog mitigation project to mitigate for the biological impacts of COUNTY's Cordilleras Center Project. COUNTY'S mitigation project funding contribution shall be an amount not to exceed THREE HUNDRED EIGHTY THOUSAND DOLLARS (\$380,000.00) or as prescribed by regulatory agencies in order to fulfill the mitigation requirements related to the Cordilleras Center Project specified by regulatory agencies. District and County shall enter into a separate mitigation funding agreement in a form substantially similar to that set forth in Attachment 4.

3. REPRESENTATIONS AND WARRANTIES. For the purpose of consummating the exchange of interests in real property contemplated herein, each party makes the following

representations and warranties to the other party, each of which is material, is being relied upon by the Parties, and shall survive the recording of the property rights being exchanged and conveyed herein.

- a. Authority. Upon approval of their respective Boards, the Parties have the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.
  - b. Valid and Binding Agreements. This Agreement and all other documents delivered by the Parties have been or will be duly authorized and executed, and are legal, valid and binding obligations of the Parties to complete this exchange and conveyance of real property.
4. **TIMING**. The Parties shall exchange fully executed and recordable easements upon approval of their respective Boards. COUNTY shall be responsible for recording the Outfall and Subsurface Easements, and District shall be responsible for recording the Parking Easement.
5. **"AS-IS" CONVEYANCE**. Both Parties are acquiring the respective real property interests on an "As-Is" basis, without warranties, express or implied, regarding the physical condition of the properties to be exchanged. Both Parties shall rely on their own inspections of the condition of the respective properties.
6. **MISCELLANEOUS PROVISIONS**.
- a. Choice of Law. The laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties.
  - b. Amendment. The Parties hereto may by mutual written agreement amend this Agreement in any respect.
  - c. Rights Cumulative. Each and all of the various rights, powers and remedies of the Parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the Parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such Party.
  - d. Notice. Whenever any Party hereto desires or is required to give any notice, demand, or request with respect to this Agreement, each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service and addressed as indicated as follows:

County: San Mateo County  
Attention: Real Property Manager  
555 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
TEL: 650-363-4047

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

Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either Party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to whom such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either Party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

- e. Severability. If any of the provisions of this Agreement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the parties, the Parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Agreement. The Parties further agree to replace such void or unenforceable provisions, which will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provisions.
- f. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed as an original, and when executed, separately or together, shall constitute a single original instrument, effective in the same manner as if the parties had executed one and the same instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- g. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.
- h. Entire Agreement. This Agreement is intended by the Parties to be the final expression of their agreement; it embodies the entire agreement and understanding between the Parties hereto; it constitutes a complete and exclusive statement of the terms and conditions thereof, and it supersedes any and all prior correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter.

- i. Time of the Essence. Time is of the essence of each provision of this Agreement in which time is an element.
- j. Survival of Covenants. All covenants of District or COUNTY which are expressly intended hereunder to be performed in whole or in part after the Closing, including but not limited to the covenants set out herein, and all representations and warranties by either Party to the other, shall survive the Closing and be binding upon and inure to the benefit of the respective Parties hereto and their respective heirs, successors and permitted assigns.
- k. Terms Run with the Land. The terms, covenants and conditions set out in this Agreement shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Parties hereto pursuant to California Civil Code Section 1468.
- l. Assignment. Except as expressly permitted herein, neither Party to this Agreement shall assign its rights or obligations under this Agreement to any third party without the prior written approval of the other Party.
- m. Further Documents and Acts. Each of the Parties hereto agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Agreement.
- n. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties hereto.
- o. Pronouns and Gender. In this Agreement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.
- p. Inconsistencies. In the event of any inconsistencies between the provisions of this Agreement and the terms of the various agreements set forth in Exhibits A through D, inclusive, the terms of the latter shall prevail.
- q. Recordation. District may, at its sole expense, record a Memorandum of this Agreement in the County of San Mateo.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

COUNTY OF SAN MATEO,  
a political subdivision of the State of California

Midpeninsula Regional Open Space District,  
a Special District of the State of California

By: \_\_\_\_\_

\_\_\_\_\_  
Ana M. Ruiz, General Manager

Its: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Jennifer Woodworth, District Clerk

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

APPROVE AS TO FORM:

\_\_\_\_\_  
Hilary Stevenson, General Counsel

**List of Attachments**

- Attachment 1: Outfall Easement
- Attachment 2: Subsurface Easement
- Attachment 3: Parking Easement
- Attachment 4: Mitigation Funding Agreement

**ATTACHMENT 1**  
**Outfall Easement**

**ATTACHMENT 2**  
**Subservice Easement**

**ATTACHMENT 3**  
**Parking Easement**

**ATTACHMENT 4**  
**Mitigation Agreement**

