

AGREEMENT
BETWEEN

SAN MATEO COUNTY
AND

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
(REGARDING FIRE SERVICES)

RECITALS

WHEREAS, the Midpeninsula Regional Open Space District ("DISTRICT") has submitted an application to the San Mateo County Local Agency Formation Commission ("LAFCo") for the approval of its proposed Coastside Protection Program ("Program") which if approved would expand DISTRICT'S boundaries to the Coastside Protection Area; and

WHEREAS, in the event the Program is approved, and DISTRICT were to acquire land in the Coastside Protection Area, Public Resources Code Section 5561.6 provides that: "For the purposes of the prevention and suppression of fires on such lands, the board may enter into co-operative mutual aid agreements with the federal government, the State, any municipality, county or district..."; and

WHEREAS, the proposed Final Program EIR contains Mitigation Measures which require DISTRICT to undertake specified joint operations with San Mateo County Environmental Services Agency and Fire Department ("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, it is the desire of DISTRICT and COUNTY to work cooperatively to implement these Mitigation Measures to establish a jointly beneficial agreement that will further the mission of both agencies for the public benefit and resolve to COUNTY's satisfaction any previously expressed concerns by COUNTY and its associated volunteer fire programs about potential Program impacts; and

WHEREAS, DISTRICT and COUNTY desire to enter into a contractual agreement for the provision of 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 (CDF).

NOW, THEREFORE, the parties mutually agree as follows:

1. Fire Services Fee. In the event DISTRICT's Coastside Protection Program is approved by LAFCo and becomes effective, DISTRICT will, in exchange for COUNTY's services as set out in this Agreement, compensate COUNTY by means of a Fire Services Fee (hereafter "Service Fee") as set out in this Agreement.

2. Scope.

- a) DISTRICT acquisitions that shall be subject to the provisions of this Agreement shall include any lands acquired by DISTRICT in fee title after the Effective Date of this Agreement that are within the geographic jurisdictional boundaries of the proposed Coastside Protection Area as approved by LAFCo and that are not described in paragraphs (b) and (c) of this Section 2, below. Such acquisitions are hereafter referred to as "Eligible Acquisitions."
- b) Lands acquired by DISTRICT from another government agency and lands located within a municipality or a fire protection district shall be exempt from this 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 August 1 of each year, DISTRICT will report to COUNTY all DISTRICT acquisitions within the Coastside Protection Area completed in the preceding twelve months between July 1 and June 30.
- b) By August 1 of each year, COUNTY shall report to DISTRICT the nature, scope and costs of the fire services set out in Section 6 herein. This report shall include a list and dates of all COUNTY response calls to DISTRICT owned or management lands during its prior fiscal year.

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

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

- a) In consideration for providing the fire services set out in Section 6 herein, for each Eligible Acquisition, 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 Acquisition, based upon the assessed valuation of the Eligible Acquisition and the actual property taxes levied upon the Eligible Acquisition 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 Acquisition on the date it was acquired by DISTRICT, based on the current average assessed valuation per acre of undeveloped vacant lands in the Coastside 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 Coastside 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 Acquisition" 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 Acquisition is conveyed by DISTRICT to a third party person or entity, DISTRICT shall be relieved of any future obligation for payment of a Service Fee to COUNTY for such Eligible Acquisition and such Eligible Acquisition shall thereafter be exempt from this Agreement.
- d) The parties acknowledge that it is anticipated that certain DISTRICT Eligible Acquisitions will be leased for private agricultural, residential, or other private use. Such Acquisitions 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 Acquisition. Therefore, no Service Fee will be due from DISTRICT to COUNTY for services provided to such Eligible Acquisition so long as the Alternative Tax continues to be assessed.
- e) Payment Towards the Purchase of a Fire Engine. As further consideration for COUNTY's services, after acquisition by DISTRICT of 1,000 acres of Eligible Acquisitions within the Coastside Protection Area, DISTRICT shall make a one-time payment of \$50,000 to COUNTY to be applied to the purchase of a four-wheel drive fire engine that will be used by COUNTY to provide fire services to DISTRICT owned and managed lands in the Coastside Protection Area. COUNTY shall provide evidence of such purchase to DISTRICT within twelve (12) months of DISTRICT payment. The engine 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. COUNTY will include the use of the fire engine described in Section 5(e) herein as part of those services. The fire engine shall be housed at a location, that, in the reasonable judgment of COUNTY, will

enable it to serve lands owned or managed by DISTRICT as of the Effective Date of this Agreement as well as Eligible Acquisitions.

- b) Mutual Aid Agreement. DISTRICT and COUNTY will formalize the assistance currently provided by DISTRICT to COUNTY and by COUNTY to DISTRICT and continue the cooperative relationship already established between the two agencies by entering into a Mutual Aid Agreement within 12 months of the Effective Date of this Agreement. The Mutual Aid Agreement will also provide for joint training opportunities.
- 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 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. DISTRICT will purchase a 1,500–2,000 gallon maintenance-style water truck, which DISTRICT will make available for mutual aid calls with COUNTY during fire suppression activities. The terms and conditions for use of the water truck will be included in the Mutual Aid Agreement described in Section 6(b) herein.

7. **Term.** The initial term of this Agreement shall be 15 years. After 10 years from its effective date, DISTRICT and COUNTY shall review this 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 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 Agreement, the services provided by COUNTY, the anticipated COUNTY and DISTRICT needs to be able to continue to participate in this Agreement and collaborative projects, and other factors directly and reasonably related to the purposes and goals of this Agreement.

8. **Effective Date.** This Agreement shall become effective on the date it is fully executed by both DISTRICT and COUNTY.

9. **Conditions Precedent.** The conditions precedent of the parties' obligations and rights under this Agreement are:

- a) The approval by LAFCo of the DISTRICT's October 28, 2003 application for annexation of the Coastside Protection Area in its entirety; and
- b) The issuance by LAFCo of a Certificate of Completion for such annexation and that such annexation becomes final and effective.

10. **Insurance.**

- a) During the term of this 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 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 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 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 Agreement. DISTRICT shall be responsible for the Workers' Compensation coverage and care of DISTRICT employees, volunteers and agents performing any acts under this Agreement.

11. **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 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 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 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 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.

12. **Applicable Laws.** This Agreement shall be construed and enforced pursuant to the laws of the State of California.

13. **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: 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.

14. **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.

15. **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.

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

17. **Assignment.** This 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.

18. **Amendments.** No provision of this Agreement may be amended except by an agreement in writing signed by both parties.

19. **Prior Agreements.** This 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.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

COUNTY OF SAN MATEO

By: Mary Davey
Mary Davey, President
Board of Directors

By: _____
President
Board of Supervisors

Date: 3/8/04

Date: _____

Recommended for Approval:

Attest:

By: _____
L. Craig Britton, General Manager

By: _____
Clerk of the Board of Supervisors

Date: 3/8/04

Date: _____

Approved as to Form:

By: Susan Schactman
Susan Schactman, General Counsel

Date: 3/8/04

Attest:

By: Sally Thiel foldt
Sally Thiel foldt, District Clerk

Date: 3/8/04

