

## **FUNDING AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

This Agreement is entered into this 1st day of September, 2015, 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 political subdivision of the state of California, hereinafter called "MROSD."

\* \* \*

Whereas, pursuant to Section 3100 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, in November 2012, San Mateo County voters approved Measure A, a ten-year half-cent general sales tax, to maintain the quality of life for all County residents; and

Whereas, it is necessary and desirable that MROSD be retained for the purpose of designing, engineering, permitting and constructing the Ravenswood Bay Trail Connection Project.

**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 — Scope of Work, Budget, Performance Goals and Deliverables

**2. Services and/or Actions to be performed by Parties**

In consideration of the payments set forth in this Agreement and in Exhibit A, MROSD shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

The Parties shall cooperatively review and mutually approve all press releases and public relations and outreach material related to the Project prior to publication.

**3. Payments**

In consideration of the services provided by MROSD in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to MROSD upon full and proper completion of each phase in the amounts and manner specified in Exhibit A. Administrative fees charged by MROSD to the County within the distributed funds shall not exceed 10% of the total amount of funds distributed by the County to MROSD under this Agreement. County agrees to make full installment payments to MROSD according to the schedule outlined in Exhibit A within thirty (30) days of receipt of properly prepared invoice(s). County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable.

In no event shall County's total fiscal obligation under this Agreement exceed One Million Dollars (\$1,000,000). Maximum payment for Fiscal Year 2015-16 will be Four Hundred Thousand Dollars (\$400,000). Maximum payment for Fiscal Year 2016-17 will be Six Hundred Thousand Dollars (\$600,000).

In the event that the County makes any advance payments, MROSD agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from September 2, 2015, through June 30, 2017.

**5. Termination; Availability of Funds**

This Agreement may be terminated by MROSD or by the Director of the Parks Department or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, MROSD shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to MROSD as soon as is reasonably possible after County learns of said unavailability of funding.

**6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by MROSD under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, MROSD may make and retain a copy of such contract materials if permitted by law.

**7. Relationship of Parties**

MROSD agrees and understands that the work/services performed under this Agreement and under Exhibit A are performed as an independent contractor and not as an employee of County and that neither MROSD nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

**8. Hold Harmless**

**a. General Hold Harmless**

MROSD 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 and Exhibit A, the performance of any work or services required of MROSD under this Agreement and Exhibit A, or payments made pursuant to this Agreement and Exhibit A brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including MROSD or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;



(C) any sanctions, penalties, or claims of damages resulting from MROSD's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; 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, volunteers or servants. However, MROSD's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own gross negligence or willful misconduct.

(E) any and all claims, suits and actions for or on account of any injuries or damages occasioned by the County's act of negligence or by the act of negligence of any of the County's officers, agents, employees, volunteers or servants. MROSD at its own cost and expense shall defend any and all such claims, suits, or actions.

The duty of MROSD 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.

**9. Assignability and Subcontracting**

MROSD shall not assign this Agreement or any portion of it to a third party without the prior written consent of County. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**10. Payment of Permits/Licenses**

MROSD bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement prior to commencement of said work/services. Failure to do so will result in forfeit of any right to distribution of funds under this Agreement. Costs for any such licenses, permits or approvals are part of the total amount to be distributed under this Agreement, and shall not cause the County's total fiscal obligation to exceed One Million Dollars (\$1,000,000).

**11. Insurance**

**a. General Requirements**

MROSD shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained. MROSD shall furnish County with certificates of insurance evidencing the required coverage. 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**

MROSD shall ensure any contracts or subcontracts made to provide services related to the Ravenswood Bay Trail Connection Project provide for workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, MROSD 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 the performance of work under this Agreement and Exhibit A.

**c. Liability Insurance**

MROSD shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect MROSD and all of its employees/officers/agents/volunteers 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 MROSD's operations under this Agreement, whether such operations be by MROSD, any contractor, any subcontractor, anyone directly or indirectly employed by any of them, or an agent of any of them. Such insurance shall be comprehensive general liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence for single limit bodily injury and property damage (including standard exclusion on vehicles licensed for highway use and on property in the care, custody and control of the policy holder).

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

**12. Compliance With Laws**

All services to be performed by MROSD pursuant to this Agreement and Exhibit A shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

MROSD will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**13. Non-Discrimination and Other Requirements**

**a. General Non-discrimination**



No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

**b. Equal Employment Opportunity**

MROSD shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement and Exhibit A. MROSD's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

MROSD shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

With respect to the provision of benefits to its employees, MROSD shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, MROSD must certify which of the following statements is/are accurate:

- ☒ MROSD complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ MROSD complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to MROSD's cost of providing the benefit to an employee with a spouse.
- ☐ MROSD is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ MROSD does not comply with Chapter 2.84, and a waiver must be sought.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and MROSD and any contractor or subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

MROSD must check one of the two following options, and by executing this Agreement, MROSD certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against MROSD by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against MROSD within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, MROSD shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

**g. Reporting; Violation of Non-discrimination Provisions**

MROSD shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified MROSD that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the MROSD to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the MROSD from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to MROSD under this Agreement or any other agreement between MROSD and County.

**14. Compliance with County Employee Jury Service Ordinance**

MROSD shall comply with Chapter 2.85 of the County's Ordinance Code, which states that MROSD shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the MROSD, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with MROSD or that the MROSD may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, MROSD certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for MROSD to provide the following written statement



to County: "For purposes of San Mateo County's jury service ordinance, MROSD certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, MROSD shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 3, above, is less than one-hundred thousand dollars (\$100,000), but MROSD acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**15. Retention of Records; Right to Monitor and Audit**

(a) MROSD shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and MROSD shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) MROSD shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) MROSD agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**16. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement 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 not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by all parties.

**17. 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.

**18. 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 facsimile to the telephone number listed below or 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.

The persons named below are hereby designated to serve the Parties' respective representatives in the implementation of this Agreement. The Parties may designate a replacement representative by giving at least ten (10) days' notice to the other party prior to the change occurring.

In the case of County, to:

Name/Title: Marlene Finley, Parks Director  
Address: 455 County Center, 4<sup>th</sup> Floor, Redwood City, CA 94063  
Telephone: (650) 599-1394  
Facsimile: (650) 599-1721  
Email: mfinley@smcgov.org

In the case of MROSD, to:

Name/Title: Stephen E. Abbors, General Manager  
Address: 330 Distel Circle, Los Altos, CA 94022  
Telephone: (650) 691-1200  
Facsimile: (650) 691-0485  
Email: Sabbors@openspace.org

#### **19. Electronic Signature**

If both County and MROSD 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, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by MROSD, MROSD consents to the use of electronic signatures in relation to this Agreement.

\* \* \*



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

COUNTY OF SAN MATEO

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

President, Board of Supervisors, San Mateo County

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

ATTEST:

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

Clerk of Said Board

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: 

Stephen E. Abbors, General Manager

Date: 8.25.15

Approved as to form



Sheryl Schaffner, General Counsel

**Exhibit A**

**Scope of Work, Budget, Performance  
Goals and Deliverables**

**San Mateo County Measure A Program**

**Grantee: Midpeninsula Regional Open Space District  
(MROSD)**

**Design, Engineering, Permitting and Construction Ravenswood Bay Trail Connection  
Project**

Phase	Task	Total Budget	San Mateo County Measure A Funds	Santa Clara County Stanford Mitigation Funds	MROSD Measure A Funds
Phase 1 Design and Engineering		\$265,000	\$265,000	\$0	\$0
1	Design Development				
2	Public Outreach				
3	Topographic Survey and Geotechnical Report				
4	Construction Documents				
5	Interpretive Signage Design				
6	Pre-construction Trail Use Counts				
Phase 2 Permitting		\$100,000	\$100,000	\$0	\$0
1	Permitting Coordination				
2	Permit Processing Fees				



Phase 3 Construction		\$1,735,000	\$635,000	\$400,000	\$700,000
1	Bidding and Construction Management				
2	Biological Monitor				
3	Construction				
4	Landscaping				
5	Site Finishings				
6	Post-construction trail use counts				
<b>Total Project Budget</b>		<b>\$2,100,000</b>	<b>\$1,000,000</b>	<b>\$400,000</b>	<b>\$700,000</b>

**Performance  
Goals**

FY 15-16 Targets: Complete environmental review and obtain trail easement over SPFUC parcels. Initiate development of construction document preparation, permitting and agency coordination.

FY 16-17 Targets: Complete preparation of construction documents and permitting and agency coordination. Construct trail and install site furnishings.

**Deliverable  
s**

Phase 1	Topographic Survey and Geotechnical Report
Phase 1	30% Plan Set and Elevations (PS&E)
Phase 1	Pre-construction Trail Use Counts
Phase 1	65% Plan Set and Elevations (PS&E)
Phase 1	90% Plan Set and Elevations (PS&E)
Phase 1	Final Bid Set

- Phase 2 Submit permit applications & secure permits
- Phase 3 Post-construction Trail Use Counts