



Midpeninsula Regional
Open Space District

R-23-106
Meeting 23-27
September 25, 2023

AGENDA ITEM 1

AGENDA ITEM

Extension of a Lease and Management Agreement with Peninsula Open Space Trust (POST) for POST's 50% interest in the Behroozi Property located near Sierra Azul Open Space Preserve (Santa Clara County Assessor Parcel Numbers: 537-09-007 and 537-09-008).

GENERAL MANAGER'S RECOMMENDATION *den*

Authorize the General Manager to execute a five-year Lease and Management Agreement with four optional five-year terms (for a total of 25 years) with Peninsula Open Space Trust (POST) to continue utilizing and managing POST's 50% interest in the Behroozi property.

SUMMARY

The General Manager's recommendation would renew the Lease and Management Agreement (Agreement) for POST's 50% interest in the 71.34-acre Behroozi property near Sierra Azul Open Space Preserve. The renewed five-year Agreement would allow Midpeninsula Regional Open Space District (District) to execute four optional five-year extensions to the term for a total potential 25-year term expiring in October 2048.

DISCUSSION

At its March 26, 2008 regular meeting, the Board of Directors (Board) approved a Lease and Management Agreement with the Peninsula Open Space Trust (POST) whereby POST agreed to lease its 50% interest in the Behroozi property (Property) to the District for an initial five-year lease term, with the District agreeing to manage and patrol the Property for open space purposes (R-08-26). At such time as the other 50% owner is ready to sell, the District would consider purchasing POST's 50% interest in the Property. As shown in the attached map (Attachment 2), the property is a key inholding within the preserve and provides an opportunity to protect important wildlife corridors and habitat lands that are part of the larger Sierra Azul Range.

The original Agreement expired on April 1, 2013, and a new Lease and Management Agreement was subsequently approved by the Board on October 23, 2013 (R-13-91) and executed with an initial five-year term. The Lease and Management Agreement allowed for one five-year renewal, which was utilized in October of 2018. The current Lease and Management Agreement will expire on October 23, 2023. The District and POST now desire to enter into a renewed Lease and Management Agreement for an additional five-year period with four optional five-year extensions, for a potential term expiring October 2048. The Agreement stipulates that the Property will be under the control of the District for purposes of Public Resources Code Section 5558 and deemed to be "District Lands" as defined in District Ordinance No. 93-1 (subject to the other property owners).

CEQA COMPLIANCE

On March 26, 2008, the Board determined that the Lease and Management Agreement was categorically exempt from the California Environmental Quality Act (CEQA). The proposed renewal of the Lease and Management Agreement is a continuation of the same project with no changes; therefore, no further CEQA review is needed.

TERMS AND CONDITIONS

Location: The 83.08-acre Property is in the Rancho de Guadalupe Area of Sierra Azul Open Space Preserve.

Term: The initial term is 5 years with the option of four additional 5-year extensions.

Rent: The annual rent payment will be POST's half of the property taxes (currently \$828.11 per year).

Use: The District shall use the Property for ecological, recreational and scenic resources or any other related legal uses that are consistent with the purposes for which the District was formed (subject to the other property owners).

FISCAL IMPACT

The Land and Facilities Department would continue to budget for and pay the annual rent payments. The District would continue to be responsible for managing and patrolling the property.

PRIOR BOARD OR COMMITTEE REVIEW

Board Committee review is not required for this agenda item. The Board previously approved the initial execution and renewal of the POST (Behroozi) Lease and Management Agreement on March 26, 2008 ([Board report, minutes](#)) and on October 23, 2013 ([Board report, minutes](#)), respectively.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. Also, the 50% interest private owner has been mailed a copy of the agenda for this public meeting.

NEXT STEPS

Upon approval by the Board of Directors, the General Manager will execute the Lease and Management Agreement in substantially the same form as the attached Agreement. Any minor revisions will not change the material terms of the Agreement.

Attachments:

1. Lease and Management Agreement
2. Location Map

Responsible Department Manager:

Michael Williams, Real Property Manager, Real Property Department

Prepared by:

Jasmine Leong, Real Property Specialist I, Real Property Department

Graphics prepared by:

Anna Costanza, GIS Technician

LEASE AND MANAGEMENT AGREEMENT RENEWAL
BEHROOZI PROPERTY

THIS LEASE AND MANAGEMENT AGREEMENT RENEWAL (“Lease Renewal”), dated for reference purposes as of _____, is between PENINSULA OPEN SPACE TRUST, a California non-profit public benefit corporation (“POST”), and MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a Public District formed pursuant to Section 3 of Chapter 3 of Division 5 of the California Public Resources Code (“District”).

R E C I T A L S:

A. WHEREAS, POST is an undivided one-half owner of a parcel of real property located in unincorporated Santa Clara County, California, generally known as the Behroozi Property, containing approximately 83.08-acres, and more particularly described in Exhibit “A”, which is attached hereto. The Behroozi Property is referred to herein as the “Property;” and;

B. WHEREAS, POST and District previously entered into those certain Lease and Management Agreements dated April 2, 2008 October 23, 2013, whereby POST leased to District the Property for five-year lease terms with optional five-year renewals (collectively, the “Prior Lease”). The Prior Lease will expire on October 23, 2023, and;

C. WHEREAS, the Property is located near to District land and District desires to acquire the property in the future from POST, and;

D. WHEREAS, the parties now desire to renew the Lease and Management Agreement upon the terms and conditions set forth below:

A G R E E M E N T:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, POST and District (collectively, the “Parties”) hereby agree as follows:

1. Lease. For and in consideration of the mutual covenants and agreements by the Parties contained in this Lease and in the Agreement, POST does hereby lease to District, and District does hereby lease from POST, POST’s undivided one-half interest in the Property.
2. Property Leased AS IS. District hereby acknowledges and agrees that, as more fully provided in the Agreement, for the purposes of this Lease (a) District has had an adequate opportunity to inspect, evaluate, investigate and test the Property including, without limitation, the physical, economic and legal condition thereof; and (b) POST has disclaimed the making of any representations or warranties regarding the Property other than those expressly set forth herein. Consequently, District specifically acknowledges and agrees that District hereby leases and accepts the Property in their existing “AS-IS” condition.

3. Lease Term.

3.1 Initial Lease Term. District shall have and hold the Property for a term commencing on the Effective Date and ending on the earlier of (A) the conveyance of fee title to the Property to District by POST; or (B) five (5) years from the Effective Date (the "Lease Term"). As used herein, the term "Effective Date" shall be the date this Lease is executed by both POST and District.

3.2 Renewal/Extension of Lease Term. District may give POST written notice of its desire to renew/extend this Lease. In that event, District and POST agree to meet and negotiate in good faith in an effort to reach mutual agreement upon the terms and conditions of such a lease renewal/extension, including rent. The District's General Manager shall have the authority to execute up to four optional lease renewals, with each term not to exceed five (5) additional years.

3.3 Conveyance to District. The parties acknowledge that, during the Lease Term, it is POST's intention to convey fee title to the Property to District for use and operation as an open space preserve in perpetuity, upon such terms and conditions as are acceptable to POST. Accordingly, the Lease Term, or any renewal or extension thereof, shall terminate upon such conveyance.

4. Rent. District promises to pay rent ("Rent") to POST, at the address of POST set forth in Section 15.5 below (or such other address as POST may designate to District in writing from time to time), in an amount equal to POST's one-half share of the annual property taxes. POST and District agree that this amount is reasonable in view of District's performance of its covenants and agreements contained herein and in the Agreement (including, without limitation, those regarding indemnification, maintenance, operation and insurance of the Property).

5. POST's Representations, Warranties and Covenants: POST covenants, represents and warrants as follows:

5.1 Organization. POST is duly organized and validly existing under the laws of the State of California.

5.2 Requisite Action. All requisite corporate action has been taken by POST in connection with POST's execution of this Lease, and has been taken or will be taken in connection with the agreements, instruments or other documents to be executed by POST pursuant to this Lease and the consummation of the transactions contemplated hereby and thereby.

5.3 Title. To POST's knowledge, POST owns one-half undivided fee simple title to the Property. POST has not executed any contract to sell the Property or any part thereof or granted an option to purchase the Property or any part thereof or granted a right of first refusal with respect to the Property or any part thereof.

6. Insurance; Indemnity; Notification.

6.1 District shall maintain and keep in force a policy of general commercial liability insurance with a carrier licensed to do business in California and reasonably acceptable to POST, insuring against claims for personal injury, death or property damage occurring in, on, or about the Property to afford protection to the limit of not less than Two Million Dollars (\$2,000,000) aggregate limit with respect to bodily injury or death and to property damage. All such policies of insurance shall name POST as an additional insured. District may satisfy this subsection by providing self-insurance through a government self-insurance pool, which shall provide no less than the same limits of coverage.

6.2 Indemnification. District agrees to indemnify, defend, and save POST harmless from any liability, loss, cost, expense or claim of any nature resulting from any damage to person or property arising out of the negligent or intentional acts or omissions of the District in the exercise of any of its rights or obligations pursuant to this Lease.

6.3 Notification. POST and District agree to notify each other in writing within ten (10) days after POST or District, as the case may be, receives any written complaint or claim with respect to this Lease or the Property. The delivery of written notification shall include a copy of all pleadings if a complaint is filed, or of all correspondence and exhibits if a claim is not filed.

7. Legal Responsibility and Indemnification. During the life of this Lease, District shall have full legal responsibility for management, control and operation of the Property and the condition thereof and for all activities conducted thereon, and in this respect, except as otherwise set forth herein, District shall hold POST harmless from and defend POST against any and all claim or liability for injury or damage to any persons or property whatsoever occurring during the life of this Lease in, on, or about the Property arising out of any condition of the Property or of any act, neglect, fault or omission by the District with respect to District responsibilities as set out in this Lease. POST likewise agrees to indemnify, defend and hold harmless District and its agents, officers, officials, and employees against any and all claims or liability for injury or damage to persons or property arising out of or resulting from the negligent acts or fault of POST, or its agents, employees, officers, or servants, in connection with the Property. In the event of concurrent negligence, each party will bear responsibility for its acts in proportion to its fault under the doctrine of comparative negligence.

8. Real Property Taxes and Assessments. POST hereby promises to pay, prior to delinquency, all Impositions. For the purpose of this Lease, "Impositions" means all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, if any, lawfully imposed by any governmental authority or entity (other than District), that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Property or any part thereof; or upon the Rent, or upon the income of POST. Impositions also include, but are not limited to, the payment of installments on any bonds or periodic charges imposed or required by any governmental authority or entity (other than District). POST acknowledges that it may be entitled to certain exemptions from real property taxes that otherwise would be

imposed on the Property. POST will use its best efforts and file all necessary documents and applications to obtain such tax exemption. If POST's application for real property tax exemption is disapproved, and during the term of the Lease POST pays real property taxes assessed against the Property, District shall reimburse POST for such payment.

9. Use and Management of the Property.

9.1 Use. During the term of this Lease and any extension thereof, District agrees to use the Property for the purpose of open space preservation and to use the Property as part of the ecological, recreational and scenic resources of the mid-peninsula area, and for any other related legal use that is consistent with the purposes for which District was formed. Without limiting the generality of the foregoing, District shall specifically have the right to maintain all existing trails and improvements incidental thereto on the Property for any purpose consistent with the purposes set forth in Article 3 of Chapter 3 of Division 5 of the California Public Resources Code. Notwithstanding anything herein to the contrary, District shall not, without POST's prior written consent (which consent may be granted or withheld in POST's discretion), make or permit to be made any physical alterations or changes to the Property other than as may be reasonably necessary for the purpose of preventing unauthorized access to the Property or to comply with the terms of this Lease.

9.2 Management. District shall be responsible for management of POST's interests in the Property for that period of time from the date of execution of this Lease until District or another public agency acquires fee title ownership of the Property from POST. District may install gates, appropriate signing, and fencing as necessary in the sole opinion of District and may undertake such other steps as District deems necessary or appropriate for the proper and safe management of the Property, consistent with the rights of any and all owners of an interest in the Property.

9.3 Patrol. District will patrol and manage the Property in a manner consistent with adjacent District holdings to ensure that the Property is kept in a safe and sanitary condition and that deleterious or incompatible uses of the Property are prohibited. Should any trespass or other unauthorized use or activities occur upon the Property, District may exercise its authority to correct these matters including, where necessary, enforcing District regulations and ordinances on the Property. The Property shall be deemed to be property under the control of District for purposes of Public Resource Code Section 5558 and shall be deemed to be "District Lands" as defined in the District Ordinance No. 93-1, subject to the rights of any and all owners of any interest in the Property.

9.4 Compliance with Laws. District shall comply with any and all federal, state, and local laws, statues, codes, ordinances, regulations, rules, orders, permits, licenses, approvals and requirements applicable to the use and occupancy of the Property by District and District shall not commit and shall not knowingly permit others to commit waste upon the Property.

9.5 Surrender of Property. Except as otherwise provided in this Lease, upon the expiration or earlier termination of the Lease Term, to the maximum extent the same is reasonably within the control of District, District shall surrender the Property in substantially the

same condition as it was in upon the Effective Date, except for any changes to such condition made or caused to be made by POST or any of POST's agents, lenders, contractors, engineers, consultants, employees, subcontractors, licensees, invitees and representatives.

9.6 Maintenance and Utilities. During the Lease Term, District shall not use the Property for any purpose whatsoever except as expressly provided in this Lease. District shall be solely responsible for the cost of providing any utilities or other services necessary for District's use and occupancy of the Property and District shall promptly pay and/or discharge any liens that may be recorded against the Property or District's leasehold interest therein resulting from any work performed or materials ordered by or on behalf of District. During the Lease Term, District shall maintain and repair the Property in such manner as reasonably necessary to preserve its existing character; provided, however, that District shall not be obligated to make any material capital improvements to the Property.

9.7 Removal of Improvements; Damage to Property. Except as POST may otherwise agree or direct in writing, in POST's sole discretion, upon expiration or termination of this Lease, District shall remove from the Property any improvements made or installed by or on behalf of District. District further acknowledges and agrees that this Lease shall continue in full force and effect notwithstanding any damage, destruction or casualty to the Property or any portion thereof, and District expressly waives any right to terminate this Lease as a result of such damage, destruction or casualty (including, without limitation, any rights granted under Section 1932, subdivision 2, and Section 1933 of the California Civil Code).

10. Assignment and Subletting. District may not assign or sublease this Lease to any other party without the prior written consent of POST, which consent shall not be unreasonably withheld or delayed with respect to an assignment to a party that expressly assumes in writing all of District's obligations and liabilities hereunder; provided, however, that under no circumstances will POST withhold its consent to an assignment to another governmental entity or to a non-profit organization whose principal purpose is environmental conservation and/or habitat preservation so long as such entity or organization expressly assumes in writing all of District's obligations and liabilities. In the event of an assignment or subletting, District shall remain liable for the payment of all Rent and the performance of all of District's obligations under this Lease, except if and to the extent such obligations are released in writing by POST.

11. Mortgaging of Leasehold Estate. During the Lease Term, District may not encumber its leasehold estate without the prior consent of POST, which consent shall not be unreasonably withheld or delayed.

12. Mortgaging of Fee. During the Lease Term POST may not encumber its fee estate in the Property without the prior consent of District, which consent shall not be unreasonably withheld or delayed.

13. Remedies Upon Default.

13.1 POST Remedies. POST shall have the right to terminate this Lease only on condition that (a) District has failed or refused to perform any of the material covenants or conditions of this Lease on District's part to be kept and performed; (b) POST has provided

written notice to District of such material default, specifying in reasonable detail the alleged nature of the default and specifically referencing each article, section and subsection of this Lease POST believes in default; and (c) within thirty (30) days of its receipt of such written notice, District has failed to commence a cure or, if said default is of such nature that the same cannot be rectified or cured within said thirty (30) day period, and District has failed to commence the rectification or curing thereof within said thirty (30) day period and/or District fails thereafter diligently to cause such rectification or curing to proceed to completion.

POST shall have the right to terminate this Lease in the event District defaults under any of the terms or conditions of this Lease and such default remains uncured for a period of thirty (30) days following written notice to District of the nature of such default. Notwithstanding the foregoing, however, if the nature of such default is such that it cannot be cured within thirty (30) days, District shall not be considered in default of this lease so long as District commences the cure of such default within thirty (30) days and thereafter diligently attempts to complete such cure as soon as reasonably practical.

13.2 District Remedies. If POST fails or refuses to perform any of the provisions, covenants or conditions of this Lease on POST's part to be kept or performed, District shall have the right to take any action permitted at law or in equity to enforce the provisions, covenants and conditions of this Lease. However, prior to exercising such right or remedy under this Lease that District may have against POST on account of any such default, District shall provide thirty (30) days' written notice to POST of such default, specifying in reasonable detail the alleged nature of the default and specifically referencing each article, section and subsection of this Lease District believes to be in default. Notwithstanding any other provision hereof, District agrees that if said default is of such a nature that the same cannot be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if POST within said thirty (30) day period shall have diligently commenced the rectification or curing thereof and shall diligently continue thereafter to cause such rectification or curing to proceed to completion.

14. Condemnation.

14.1 Condemnation Award. If the whole or any part of the Property is taken or condemned by any authority (other than District) for any public use or purpose during the Lease Term or any extension thereof, any remaining proceeds shall be paid to and retained by POST.

14.2 District Rights. Notwithstanding the foregoing, District hereby reserves the right to bring any and all separate claims as may permitted by law to compensate District for any and all claims it may have for the taking of any of District's property in connection with such condemnation or other taking, as well as to assert any legal rights or challenges to the authority of the condemning agency to institute such condemnation proceedings.

14.3 Condemnation of Less Than Entire Property. If less than the entire Property shall be taken pursuant to such condemnation action, then this Lease shall continue in effect with respect to the portion of the Property not so taken, except that the Rent payable shall be reduced by a fraction, the numerator of which shall be the number of acres taken or condemned, and the denominator of which shall be the acreage of the Property prior to such condemnation.

15. Miscellaneous Provisions.

15.1 Invalidity. If any term or provision of this Lease or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected.

15.2 Successors and Assigns. Subject to the limitations set forth above, the terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the Parties, their heirs, personal representatives, successors or assigns, and shall run with the land; and where more than one party shall be lessors or lessees under this Lease, the words "POST" and "District" whenever used in this Lease shall be deemed to include all lessors or all lessees, as the case may be, jointly and severally.

15.3 Writing. No waivers, alterations or modifications of this Lease or any agreements in connection with this Lease shall be valid unless in writing duly executed by both POST and District.

15.4 Construction. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Lease or in any way affect this Lease. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

15.5 Notices. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) telephonic facsimile transmission; (c) nationally recognized overnight commercial mail service; or (d) registered or certified, first class U.S. mail, return receipt requested.

If intended for District, shall be addressed as follows:

Midpeninsula Regional Open Space District
5050 El Camino Real
Los Altos, CA 94022
Attn: Real Property Manager
TEL: (650) 691-1200
FAX: (650) 691-0485

If intended for POST, shall be addressed to:

Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94301
Attn: Walter Moore, President
TEL: (650) 854-7696

FAX: (650) 854-7703

Such addresses may be changed by notice to the other Party given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b), above, shall be deemed received upon such personal service or upon dispatch by electronic means (provided, however, that a dispatch by facsimile transmission that occurs on any day other than a business day or after 5:00 p.m. Pacific time shall not be deemed received until 9:00 a.m. Pacific time on the next business day). Any notice, demand, or request sent pursuant to clause (c), above, shall be deemed received on the business day immediately following deposit with the commercial mail service and, if sent pursuant to clause (d), above, shall be deemed received forty-eight (48) hours following deposit in the U.S. mail.

15.6 Authority to Sign. The parties executing this Lease on behalf of POST and District represent that they have authority and power to sign this Lease on behalf of POST and District, respectively.

15.7 Indemnification. District and POST each agree to indemnify and hold harmless the other against and from any and all causes, claims, actions or proceedings arising from any breach or default in the performance of any obligation on the other's part to be performed pursuant to the terms of this Lease, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such claim or any action or proceeding brought thereon. If any action or proceeding is brought against POST or District by reason of any such claim, District or POST, upon notice to the other, shall defend the same at their expense by counsel reasonably satisfactory to the defended entity.

15.8 Broker. POST and District represent to each other that it has had no dealings with any real estate broker or agent or finder in connection with this Lease and each shall indemnify and defend the other from and against any and all claims for commissions or finder's fees that may be claimed as a result of the action of either party.

15.9 Entry by POST. POST reserves and shall at any and all times have the right to enter the Property at reasonable business times upon giving at least forty-eight (48) hours' prior written or oral notice to District, to inspect the same for compliance with this Lease or to post notices of nonresponsibility, except in the event of an emergency for which notice will not be required, all without being deemed guilty of an eviction of District and without abatement of Rent, provided that the use of the Property by District and its employees, licensees and invitees shall be interfered with as little as is reasonably practicable.

15.10 Quiet Enjoyment. So long as District shall perform the terms to be performed by District hereunder, District shall have the absolute peaceful, quiet use and possession of the Property without interference or hindrance on the part of POST until the termination of this Lease and the end of the Lease Term.

15.11 Estoppel Certificate. POST and District shall, at any time and from time to time upon not less than twenty (20) days' prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (a) certifying that this Lease is unmodified and in

full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified, is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, and (b) acknowledge that there is not, to such party's knowledge, any uncured defaults on the part of the other party, or specifying such defaults, if any, that are claimed, and (c) certifying such other items as any party may reasonably request. The failure of either party to deliver such statement within such time shall be conclusive upon the other party (a) that this Lease is in full force and effect, without modification except as may be represented by POST, (b) that there are no uncured defaults in the other party's performance, and (c) that not more than one month's Rent has been paid in advance.

15.12 Conflict of Laws. This Lease shall be governed by and construed pursuant to the laws of the State of California.

15.13 Attorneys' Fees. If either party should bring suit or seek arbitration under this Lease, or because of the breach of any provision of this Lease, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action or arbitration and shall be enforceable whether or not the action is prosecuted to judgment.

15.14 Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained nor shall any custom or practice that may arise between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of POST or District to insist upon the performance by District or POST in accordance with said terms.

15.15 Time. Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

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

15.17 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the Parties or their respective successors-in-interest.

15.18 Applicable Law; Severability. As used herein the term "all Applicable Laws" shall mean and refer to all state, federal and local ordinances, statutes and laws including but not limited to all such statutes, laws and ordinances referred to in Section 0 below. Any provision of this Lease that shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provisions hereof, and such other provisions shall remain in full force and effect.

15.19 Signs. With POST's prior consent (which consent shall not be unreasonably withheld or delayed), District shall have the right to place signs on or about the Property so long as such signs comply with all Applicable Laws, including applicable zoning laws.

16. Hazardous Substances.

16.1 Use. District shall not store, use, generate, transport, introduce, or dispose of any Hazardous Substances in or on the Property, or knowingly allow or permit any other person or entity to do so, except in compliance with all Applicable Laws, including any obligation to notify POST of same, except that District may store, use, generate, transport, introduce, or dispose of such quantities of Hazardous Substances normally used for the purpose of District's routine and customary janitorial, pest control, and vegetation management and control operations. District shall submit to POST copies of all permits, reports, or other documentation pertaining to Hazardous Substances, if any, submitted by District to any governmental agency at the same time such documents are submitted to the governmental agency.

16.2 Definition. "Hazardous Substances" means any hazardous substance, pollutant, or contaminant as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized, hydrocarbon and petroleum products and byproducts; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended; asbestos, polychlorinated biphenyl and other substances regulated under the Toxic Substances Control Act, as amended; chemicals and compounds subject to the Occupational Safety and Health Standards, Hazard Communication, as amended; radioactive materials or radioactive wastes; toxic wastes under the Resource Conservation and Recovery Act, as amended; hazardous substances as defined in Chapter 6.5, Division 20 of the California Health and Safety Code, and any other hazardous substance, pollutant or contaminant defined in regulations promulgated pursuant to statutes described above. Hazardous Substances shall not include any substance that occurs naturally in the soil or the Property or in the groundwater thereunder.

16.3 District's Obligations. District shall be responsible for all investigation, remediation and monitoring for any Hazardous Substances to the extent required by all Applicable Laws with respect to Hazardous Substances.

16.4 District's Indemnity. District shall indemnify, defend, and hold POST harmless from any expenses, fees, claims, liabilities or costs arising from, and shall perform (or cause others to perform), all investigation, remediation and monitoring required by any Applicable Laws with respect to any Hazardous Substances, to the extent required by any Applicable Laws with respect to Hazardous Substances.

16.5 POST's Obligations. POST shall be responsible for all investigation, remediation and monitoring for any Hazardous Substances introduced or permitted to be introduced in, on, or under the Property by POST or any of its employees, agents, contractors, invitees, or licensees ("POST Hazardous Substances") to the extent required by any Applicable Laws with respect to Hazardous Substances.

16.6 POST's Indemnity. POST shall indemnify, defend, and hold District harmless from any expenses, fees, claims, liabilities or costs, and shall perform (or cause others to perform), all investigation, remediation and monitoring required by any Applicable Laws with respect to Hazardous Substances arising from any POST Hazardous Substances.

16.7 Survival. POST’s and District’s obligations under this Article 16 shall survive the expiration or earlier termination of this Lease, including, without limitation, any termination resulting from any default by POST or District under the Lease.

17. Arbitration of Disputes. If a dispute arises out of or relates to this Lease or the performance or breach thereof, the parties agree first to participate in non-binding mediation in order to resolve their dispute. If the parties are unable to resolve their dispute through mediation, or if there is any remaining unresolved controversy or claim subsequent to mediation, any remaining unresolved controversy or claim shall be settled by arbitration. The parties shall jointly select one arbitrator who shall be a retired or former judge of the Superior Court of California. The arbitration shall be conducted in accordance with the rules set forth in California Code of Civil Procedure Sections 1280 *et seq.* Hearings shall be held in San Mateo County, California. If the parties are unable to agree upon an arbitrator, the arbitration shall be conducted by Judicial Arbitration and Mediation Services, Inc. in accordance with the rules thereof. If arbitration is required to resolve a dispute, it shall in all cases be final and binding.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING FROM THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING FROM THE MATTER INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

POST INITIAL _____ DISTRICT INITIAL _____

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Lease and Management Agreement

POST AND DISTRICT, by their execution below, indicate their consent to the terms of this Lease.

DISTRICT:

POST:

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a Public District formed pursuant to Section 3 of Chapter 3 of Division 5 of the California Public Resources Code

PENINSULA OPEN SPACE TRUST, a California non-profit public benefit corporation

By: _____

Ana M. Ruiz

Its: General Manager

By: _____

Walter Moore

Its: President

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Hilary Stevenson, General Counsel

Date: _____

ATTEST:

By: _____

Maria Soria, District Clerk

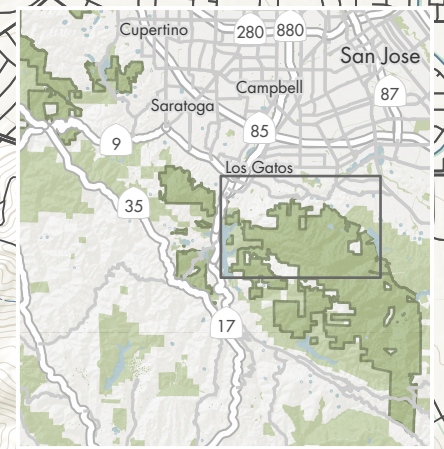
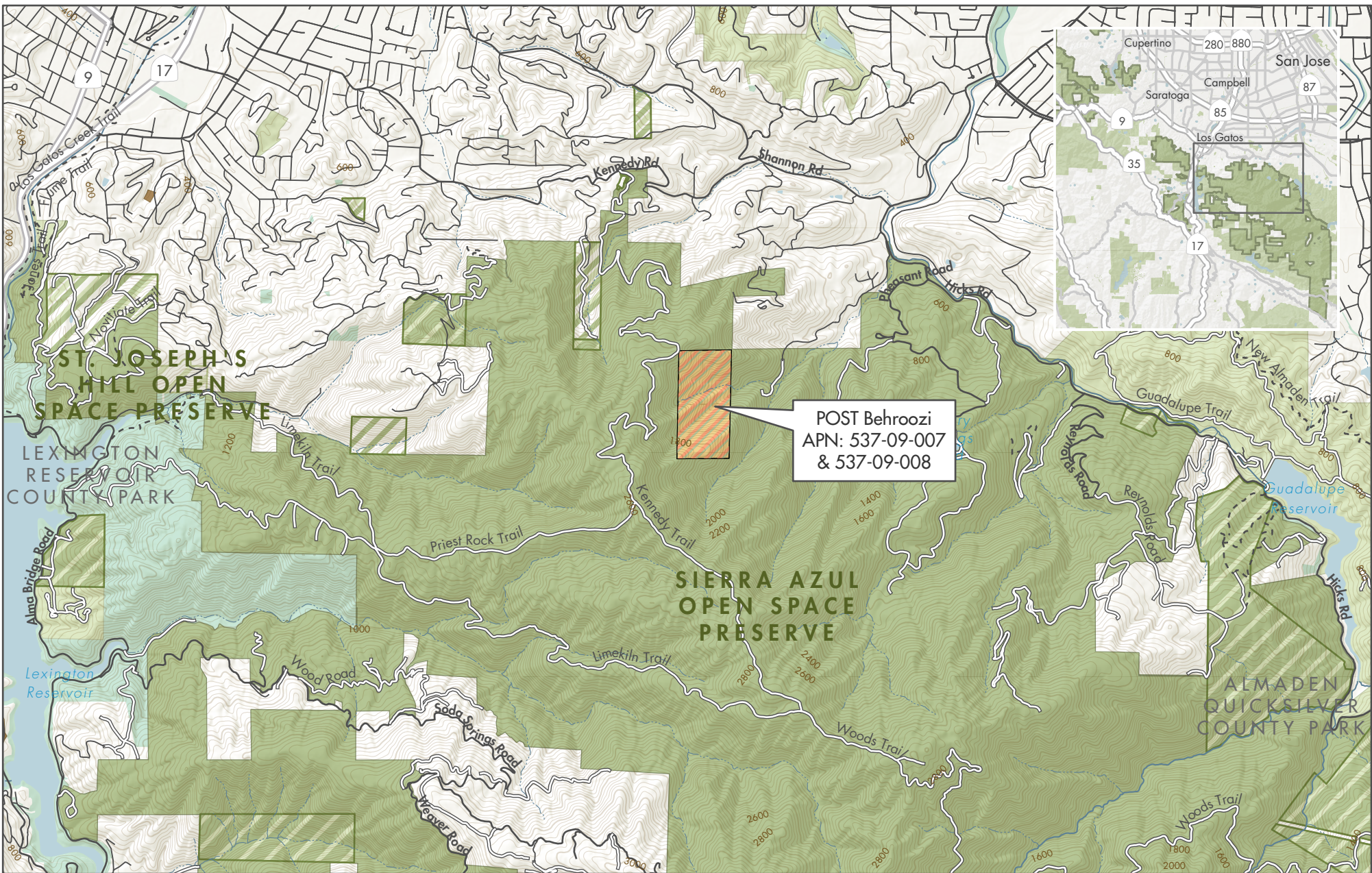
Date: _____

EXHIBIT A







The following described real property in the unincorporated area in the County of Santa Clara, State of California:




ALL OF LOTS 12 AND 13, OF SECTION 25, TOWNSHIP 8 SOUTH, RANGE 1 WEST, MOUNT DIABLO BASE AND MERIDIAN ACCORDING TO THE OFFICIAL PLAT OF SURVEY OF THE SAID LAND RETURNED TO THE GENERAL LAND OFFICE BY SURVEYOR GENERAL OF THE UNITED STATES ON APRIL 17, 1882.

Path: G:\Projects\Districtwide\LeaseManagement\AgreementRenewals\LeaseManagement\AgreementRenewals.aprx
Created By: acostanza



POST Behroozi

-  Midpen preserves
-  Other protected lands
-  Private property
-  Watershed land
-  Non MROSD Conservation or Ag. Easement
-  MROSD Conservation or Ag. Easement

-  Management Agreement
-  Trail
-  Unpaved road
-  Paved road

Midpeninsula Regional
Open Space District
(Midpen)
9/11/2023



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.