



Midpeninsula Regional
Open Space District

R-15-118
Meeting 15-20
August 12, 2015

AGENDA ITEM 7

AGENDA ITEM

Approval of Salary Adjustments and Revised Employment Agreements for Board Appointees
General Counsel and District Controller

BOARD APPOINTEE EVALUATION COMMITTEE'S RECOMMENDATIONS

As a result of the Board's evaluation of the performance of the District's Board Appointees for Fiscal Year 2014-15, the Board Appointee Evaluation Committee recommends the following compensation adjustments for its Board Appointees for Fiscal Year 2015-16: Adjust the General Counsel's base salary upward to \$212,152, plus a one-time bonus of \$10,200 and retain the Controller's base salary of \$45,153 in anticipation of a reduction in hours, plus a one-time bonus of \$2,300.

The Board Appointee Evaluation Committee recommends the adoption of resolutions approving the salary adjustments set out in Recommendations and authorizing the Board President to execute revised Board Appointee Employment Agreements.

DISCUSSION

The Board Appointee Evaluation (BAE) Committee was established to conduct the evaluation process for its Appointees. The BAE Committee was instructed to serve as the District's negotiator and met with the Board Appointees to discuss their performance and compensation. The Board has three appointees: the General Manager, the Controller, and the General Counsel.

The Board, working through the BAE Committee, implemented this process and completed this year's annual evaluation of the performance of its three Board Appointees, the General Manager, General Counsel and the Controller, during several meetings in June through August, 2015.

The Board was very pleased with the performance of its Appointees during the last fiscal year and resulting success of District programs and projects carried out as part of their duties. The accomplishments for FY2014-15, upon which the Appointees' evaluations were based, were described in detail in the Year-End Review of the FY2014-15 Action Plan. Further evaluation comments from the BAE Committee and the full Board were provided to each appointee during their performance evaluations, summarized in the attached resolutions. Based on these performance evaluations in FY2014-15, the BAE Committee recommends providing the General Counsel and Controller compensation noted above. Approval of the General Manager's salary adjustment and revised Employee Agreement will be brought to the Board at a later meeting.

Also working through the BAE, the Board negotiated new employment agreements with the three appointees, updating the compensation and benefit information, and making other changes to reflect the Board's efforts to continue to strive for best practices in management of appointed employees

COMMITTEE REVIEW

The recommended performance review and salary adjustments were thoroughly reviewed by the Board Appointee Evaluation Committee, prior to review by the Board.

FISCAL IMPACT

For the General Counsel: Total annual salary plus adjustments = \$212,152, with a one-time 5% bonus of \$10,200.

For the Controller: Total salary = \$45,153 with a one-time 5% bonus of \$2,300.

PUBLIC NOTICE

All public noticing requirements of the Brown Act have been met. No additional notice is necessary.

CEQA COMPLIANCE

This item is not subject to the California Environmental Quality Act (CEQA).

NEXT STEPS

If approved, the compensation adjustments and merit bonuses will be implemented as set out in the Resolutions attached, and the employment agreements will go into effect immediately.

Attachments:

1. Resolution Approving Salary Adjustment and Revised Employment Agreement for General Counsel
2. Resolution Approving Salary and Revised Employment Agreement for the District Controller
3. General Counsel Employee Agreement
4. District Controller Employee Agreement

Submitted by: Board Appointee Evaluation Committee

Director Kishimoto
Director Harris
Director Siemens, Chair

RESOLUTION NO. 15-__

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING A REVISED EMPLOYMENT AGREEMENT FOR THE DISTRICT GENERAL COUNSEL

WHEREAS, effective March 19, 2012, the Board of Directors of the Midpeninsula Regional Open Space District entered into a District General Counsel Employment Agreement (“Agreement”) with Sheryl Schaffner, employing her as the District's General Counsel; and

WHEREAS, the Agreement provides for an annual review of the General Counsel’s performance and determination of meritorious pay, which the Board has completed; and

WHEREAS, General Counsel’s help with activities leading up to and following the MAA election contributed significantly to facilitating the passage of the measure. Her objectives were met, except where circumstances were beyond her control. Outside counsel selection has been outstanding. General Counsel’s working relationship with the General Manager has been very good. She has been very proactive in anticipating issues, and in ways to respond. General Counsel has used in-house legal expertise where possible, rather than using 100% outside consultants, and making good use of networking contacts.

WHEREAS, the Board, based on its annual review of the General Counsel’s performance, in recognition of her outstanding performance during Fiscal Year 2014-2015 desires to grant the General Counsel a 4.0% increase to bring her base salary up to \$212,152, along with a 5 percent meritorious bonus (\$10,200); and

WHEREAS, the Board and General Counsel have agreed on a revised Employment Agreement to incorporate previous amendments, reflect currently accepted formats, and the increased compensation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Midpeninsula Regional Open Space District does grant the General Counsel by adoption of this resolution an increase of her base salary \$212,152 retroactive to April 1, 2015 for Fiscal Year 2015-16, a 5 percent (\$10,200) one-time merit bonus in recognition of her performance during Fiscal Year 2014-2015, and authorizes the President of the Board of Directors or other authorized Board Officer to execute a revised District General Counsel Employment Agreement.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2015, at a Regular Meeting thereof, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

APPROVED AS TO FORM:

General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

District Clerk

RESOLUTION NO. 15-__**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING A REVISED EMPLOYMENT AGREEMENT FOR THE DISTRICT CONTROLLER**

WHEREAS, effective July 8, 2009, the Board of Directors of the Midpeninsula Regional Open Space District entered into a District Controller Employment Agreement (“Agreement”) with Michael L. Foster, employing him as the District’s Controller; and

WHEREAS, the Agreement provides for an annual review of the Controller’s performance and determination of meritorious pay, which the Board has completed; and

WHEREAS, the Controller’s help was critical to passage of Measure AA, as well as in the planning for the future structuring and growth of the District. His long view of the business model for the District has contributed significantly to its current holdings, and now with passage of measure AA, his models will help ensure our future success. All key objectives were met, along with additional ones that developed over time. Largely through Mike’s financial guidance the District has secured excellent bond rates.

WHEREAS, the Controller’s significant accomplishments of the year were [1] Strategic planning for our first tranche of general obligation bonds, [2] completing a very profitable sale of 2015 Refunding Notes, [3] establishing our first comprehensive policies for financial reserves and continuing disclosure, [4] supporting a successful Financial and Operational Sustainability Model Study process, and [5] making initial progress on transferring his responsibilities and knowledge to regular employees and teams. Responding to the Security and Exchange Commission’s Municipalities Continuing Disclosure Cooperation Initiative, including extensive audits of our past continuing disclosures, analyzing and evaluating the discrepancies, and crafting the District’s final response was difficult but led to a positive result.

WHEREAS, the Board, based on its annual review of the Controller’s performance, and in anticipation of a reduction of up to 10 percent in his work hours, desires to retain his base salary of \$45,153 per year, along with a \$2,300 one-time bonus in recognition of his performance during Fiscal Year 2014-2015; and

WHEREAS, the Board and Controller have agreed on a revised Employment Agreement to incorporate previous amendments, reflect currently accepted formats, and his compensation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Midpeninsula Regional Open Space District does grant the Controller by adoption of this resolution an adjustment to retain his base salary of \$45,153 per year for Fiscal Year 2015-16, a \$2,300 one-time bonus in recognition of his performance during Fiscal Year 2014-2015, and authorizes the President of the Board of Directors or other authorized Board Officer to execute a revised District Controller Employment Agreement.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2015, at a Regular Meeting thereof, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

Secretary
Board of Directors

President
Board of Directors

APPROVED AS TO FORM:

General Counsel

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.

District Clerk

DISTRICT GENERAL COUNSEL EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made this ____ day of _____ 2015, by and between Midpeninsula Regional Open Space District, a California public entity (“District”), and Sheryl L. Schaffner (“Schaffner” or “General Counsel”).

WHEREAS, the District engaged Schaffner as its General Counsel under a contract entered into on February 29, 2012, which contract continues in force as of the date of entry into this contract; and

WHEREAS, in the time that has passed since entry into the existing contract, the Board of Directors (“Board”) for the District and Schaffner have agreed to a series of compensation and benefits changes, which are reflected in the District’s records but not in the employment contract, rendering it out-of-date;

WHEREAS, with this new contract the District wishes to replace and supersede the prior contract, updating the compensation and benefit information, and to make other changes to reflect the Board’s efforts to continue to strive for best practices in management of appointed employees.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Appointment of District General Counsel

The District’s Board of Directors (hereinafter Board) hereby enters into this Agreement with Schaffner to continue in the position of General Counsel of the District. The parties to this Agreement are the District, through its Board, and Schaffner.

2. Essential Duties

The General Counsel shall perform her duties consistent with due diligence, according to the highest and most professional standards, and in compliance with all federal, state and local laws, ordinances, rules and regulations which are applicable to or associated with the performance of such duties.

A. Administrative Duties

- 1) The General Counsel shall attend all regular and special meetings of the District Board of Directors as needed, and may, when appropriate, delegate this duty to an Assistant General Counsel. The General Counsel’s duties in this connection shall be to render advice and opinions with respect to legal matters which may arise during such meetings, except legal matters which may pertain to proceedings wherein specialized legal services are to be provided by special counsel or which do not fall within the General Counsel’s scope of duties.

- 2) The General Counsel shall also attend meetings of committees and staff of the District when requested to do so by the District Board of Directors or the District General Manager and when necessary to render legal advice to committees and project teams.
- 3) When requested to do so by the District Board of Directors, District General Manager, or Department Managers, the General Counsel shall prepare and review resolutions, notices, contracts, leases, ordinances and other legal documents and papers in matters pertaining to the District, and shall also examine for legal sufficiency all documents submitted to her by the District.
- 4) The General Counsel shall perform legal research as required to attend to the legal needs of the District and shall review legislation and court decisions to determine their effect upon District affairs.
- 5) The General Counsel shall cooperate with and assist the District, its officers, directors, agents and employees on all general legal matters pertaining to the District, including the enforcement of District laws, ordinances and codes.
- 6) The General Counsel shall also perform such other related and appropriate legal services for the District as may be requested by the District Board of Directors or the District General Manager.
- 7) The General Counsel shall properly supervise, evaluate and manage those District employees that report to her.
- 8) The General Counsel shall be responsible for the District's risk management program in coordination with the California Joint Powers Insurance Authority for all matters except the Worker's Compensation Program.

B. Litigation Duties

When requested to do so by the District Board of Directors, the General Counsel shall represent the District in legal and administrative proceedings to which the District may be a party.

3. Acting General Counsel

The General Counsel shall assign an Assistant General Counsel to serve as Acting General Counsel to the District in cases where the General Counsel is unable to act due to illness, vacation or other reason. The selection of Acting General Counsel shall be subject to the approval of the District Board of Directors where the appointment exceeds three weeks.

4. Other Duties and Responsibilities

It is recognized that the District normally contracts with special counsel in certain matters pertaining to the District, such as labor relations, worker's compensation, general liability and bond issues. In the event legal services are provided by special counsel, the General Counsel will be responsible for general oversight in such cases to ensure the District is effectively represented in a cost-effective manner and for providing general legal assistance and support to the special counsel as needed.

5. Compensation and Benefits

- A. Salary. As compensation for the services to be performed hereunder, the General Counsel shall receive an annual salary adjustment of \$_____, bringing her annual base salary to \$212,152. The effective date for this adjustment to the General Counsel's salary will be retroactive to April 1, 2015.
- B. Annual Salary Adjustment and Performance Review: The Board shall annually review the General Counsel's performance pursuant to the Board's labor policy "Board Appointee Performance Evaluation Process." The Board may review Schaffner's performance at any time as determined necessary and appropriate by the Board. During the annual performance review, or such other time as determined appropriate by the Board, either party may propose to modify, amend, or terminate this Agreement. The Board may consider an annual salary adjustment for the General Counsel. Unless the parties agree otherwise, any such annual salary adjustment will retroactively apply to the beginning of the District's fiscal year..
- C. Meritorious Pay: The District may grant the General Counsel a meritorious pay award, ranging from 0% to 5% over and above the General Counsel's annual base salary. Such meritorious pay shall be based on the Board's annual review of the General Counsel's performance and pursuant to the Board's labor policy "Board Appointee Performance Evaluation Process" which sets out the conditions and eligibility for such merit pay and the criteria and objectives to be considered during the evaluation. Meritorious pay shall not be a salary adjustment, but rather recognition for performance during the previous year of service.
- D. Benefits: The General Counsel shall receive the benefits available to regular full time employees of the District including those set out in the District Personnel Policies and Procedures Manual ("Manual") on the same terms available to these employees. The General Counsel may participate in any District optional benefit plan at her own cost.
- E. Retirement Plan: The District contracts with the California Public Employees' Retirement System ("PERS") to provide its miscellaneous employees the Local Miscellaneous 2.5% at 55 retirement plan ("the Plan"). Schaffner is eligible to participate in the Plan. Pursuant to the Board resolution No. 15-14, effective

February 11, 2015, the District does not pay any portion of the employee's normal member contribution.

- F. Leaves and Holidays: The General Counsel shall earn vacation, administrative and sick leave at the current rate of accrual for Department Managers and will receive District-paid holidays, in accordance with the Manual.
 - G. Mileage Allowance: The General Counsel will be eligible to receive mileage reimbursement at the applicable District rate for use of her personal vehicle on District business.
 - H. Membership and Conferences. The District shall pay for the General Counsel's membership and/or participation in organizations and conferences relevant for her continued professional growth and advancement and/or related to the District's business, in addition to any membership payments offered to employees in the Manual or Administrative Policy (Professional Dues, Membership Program & Tuition Reimbursement). The District shall reimburse the General Counsel for travel expenses consistent with the District's travel, lodging, and meal reimbursement policy.
6. Term of Agreement

Schaffner shall begin service under this Agreement on the last date signed below and this Agreement shall remain in effect up to, and including, the last day of the 2016-2017 fiscal year, June 31, 2017), or until terminated by either party pursuant to Section 7 of this Agreement, or modified by mutual written agreement.

The District may elect not to renew this Agreement by providing written notice to the General Counsel one hundred and eighty (180) days prior to the expiration of the Agreement, including any succeeding term.

Beginning July 1, 2017, and every six (6) month period commencing on the first day of the succeeding month thereafter, the term of this Agreement shall be automatically extended by six (6) months, without any action taken by the Parties, unless: A) this Agreement is otherwise modified by mutual written agreement; B) the District provides written notice of non-renewal no later than 180 days before the expiration of the term; or, C) pursuant to Paragraph 7, either party terminates the Agreement. The terms and conditions of each six-month renewal period shall be the same as those within this Agreement.

Notwithstanding any other provision, the General Counsel shall not be entitled to, nor receive, any severance pay upon expiration, or the District's timely notice of non-renewal, of this Agreement. Expiration by timely notice of non-renewal of the Agreement shall not constitute an action by the District to terminate the Agreement, as described in Paragraph 7 of this Agreement.

7. Termination and Severance Pay

Notwithstanding any other provision, the General Counsel is an at-will employee serving at the pleasure of the District Board of Directors and may be discharged at any time without cause. There is no express or implied promise made to the General Counsel of continued District employment.

The General Counsel may terminate this Agreement upon forty-five (45) days' written notice to the District. In the event the General Counsel resigns or retires, or upon death, she shall not be entitled to, nor receive, any severance pay as set forth in this section.

The District may terminate this Agreement by written notice to the General Counsel at any time.

In the event that the District terminates this Agreement for reasons other than cause, and the Agreement does not otherwise expire, the District shall compensate the General Counsel with severance pay in the amount equal to six (6) months' base salary as of the date of termination. This section is intended to comply with Section 53260 et seq. of the California Government Code. This severance payment shall be made within five (5) days of the effective date of the termination, and is subject to applicable withholding taxes.

Any severance pay that the General Counsel may receive from the District shall be fully reimbursed to the District if the General Counsel is convicted of a crime involving an abuse of her office or position. This Agreement shall be subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement to the District under circumstances stated therein.

If the District determines this Agreement should be terminated for cause, then the District shall, at any time, provide the General Counsel with written notice of termination that specifies the effective date of the termination. The District shall provide the general reasons for termination in this notice. The District will not be required to provide any notice period or pay the General Counsel any severance pay where the District terminates this Agreement for cause. The General Counsel will be provided an opportunity to appeal by asking for a meeting with the Board, which will be held within 10 days of the General Counsel's request. Said meeting may be in closed session, unless the General Counsel asks that it be in open session. The Board's decision on the appeal will be final.

As used in this section, "cause" shall include:

- a. Violation of administrative policies and procedures;
- b. Abuse of office or position;
- c. Theft of District property;
- d. Insubordination;

- e. Conviction of a felony, or conviction of a misdemeanor relating to General Counsel's fitness to perform assigned duties;
- f. Unauthorized or excessive absences from the District;
- g. Failure to maintain satisfactory working relationships with other employees or the public;
- h. Improper use of District funds;
- i. Unauthorized use of District property;
- j. Willful misconduct or malfeasance;
- k. Any act of moral turpitude or dishonesty;
- l. Other failure of good behavior either during or outside of employment such that General Counsel's conduct causes discredit to the District;
- m. Violation of the Political Reform Act;
- n. Loss or disbarment or suspension of California State Bar license, and/or
- o. Violation of Government Code Section 1090.

Termination for cause shall also include an agreement by the District that the General Counsel may resign in lieu of termination for cause.

8. Entire Agreement

This Agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

9. Effect of Waiver

No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or subsequent breach of the same or of any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

10. Supersedes Prior Agreement

This Agreement supersedes any and all previous employment agreements and amendments thereto entered into by and between the District and the General Counsel.

11. Amendment

This Agreement cannot be changed or supplemented orally. No amendment, modification, alteration, or variation in the terms of this Agreement is valid unless made in writing and signed by both parties.

12. Notices

Any notices to be given by either party to the other shall be made in writing by personal delivery, or the United States Postal Office via Service Priority Mail Express, postage prepaid, with return receipt requested. Notices delivered personally shall be deemed received as of actual receipt; mailed notices shall be deemed received as of three days after the date postmarked. Mailed notices shall be addressed to the respective parties as follows:

To the District: Midpeninsula Regional Open Space District
Attention: President, Board of Directors
330 Distel Circle
Los Altos, CA 94022

To the General Counsel: Sheryl L. Schaffner, General Counsel
At her last known home address as reflected in the
District's personnel records.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective this ____ day of _____ 2015, at Los Altos, California.

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:

GENERAL COUNSEL:

By: _____
Board President

Sheryl L. Schaffner

Date: _____

Date: _____

ATTEST: _____
Jennifer Woodworth, District Clerk

DISTRICT CONTROLLER EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into this ___th day of _____, 2015, by and between Midpeninsula Regional Open Space District, a California public entity (“District”), and Michael L. Foster (“Foster” or “Controller”).

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Appointment of District Controller

The District’s Board of Directors (hereinafter Board) hereby enters into this Agreement with Foster to continue in the position of Controller of the District. The parties to this Agreement are the District, through its Board, and Foster.

2. Essential Powers and Duties

- A) The Controller’s powers and duties shall be as specified in Sections 5538, 5552 and 5553 of the Public Resources Code of the State of California; and
- B) Such other duties as the Board may direct consistent with the District’s enabling legislation; and
- C) The Controller shall perform his duties and exercise his powers consistent with due diligence, according to the highest and most professional standards, and in compliance with all federal, state and local laws, ordinances, rules and regulations which are applicable to or associated with the performance of such duties.

3. Hours, Compensation and Benefits

Hours, compensation and benefits shall be as set forth herein.

- A) Hours. The Controller’s position shall be part time, and his regular work hours shall be generally 10 hours of service per week, with anticipated reduction of up to 10% as new financial personnel are hired.
- B) Salary. As compensation for the services to be performed hereunder, the Controller shall receive an annual base salary of \$45,153, and the effective date of this is April 1, 2015.
- C) Annual Salary Adjustment and Performance Review. The Board shall annually review the Controller’s performance pursuant to the Board’s labor policy “Board Appointee Performance Evaluation Process.” The Board may review Foster’s performance at any time as determined necessary and appropriate by the Board. During the annual performance review, or such other time as determined appropriate by the Board, either party may propose to modify, amend, or terminate this Agreement. The Board may consider an annual salary adjustment for the Controller. Unless the parties agree otherwise, any such annual salary

adjustment will retroactively apply to the beginning of the District's fiscal year (e.g., April 1st).

D) Meritorious Pay. The Board may grant the Controller a meritorious pay award, ranging from 0% to 5% over and above the Controller's annual salary and in addition to consideration of a possible annual salary increase. Such meritorious pay award shall be based on the Board's annual review of the Controller's performance and pursuant to the Board's labor policy "Board Appointee Performance Evaluation Process" which sets out the conditions and eligibility for such merit pay and the criteria and objectives to be considered during the evaluation. Meritorious Pay shall not be a salary adjustment, but rather recognition for exceptional performance during the previous year of service which exceeds regular and expected duties, such as complex or time-consuming special projects.

E) Benefits. Unless required by law (e.g., AB 1522 Paid Sick Leave Law), and other than as set forth in Section 4 of this Agreement, the Controller shall not receive any District Benefits, including but not limited to paid leave or health benefits.

4. Retirement Plan.

The District contracts with the California Public Employees' Retirement System (CalPERS) to provide its miscellaneous employees a retirement plan ("the Plan"). The Controller will be eligible to become a member of the Plan upon working the specified number of hours set out in Government Code Section 20305. The Controller's membership in the Plan shall be effective not later than the first day of the first pay period of the month following the month in which the required number of hours has been worked by the Controller. The applicable retirement formula under the Plan is dependent upon whether CalPERS considers the Controller to be a new or classic member. Pursuant to the Board resolution No. 15-14, effective February 11, 2015, the District does not pay any portion of the Controller's normal member contribution.

5. Termination

Notwithstanding any other provision, the Controller is an at-will employee serving at the pleasure of the District Board of Directors and may be discharged at any time, without cause and without right of appeal of any kind. The Controller may terminate this Agreement upon sixty (60) days' written notice to the District. The Controller is not entitled to receive any severance pay upon either party's termination of this Agreement.

This Agreement shall be subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement to the District under the circumstances stated therein.

6. Entire Agreement

This Agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

7. Effect of Waiver

No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or subsequent breach of the same or of any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

8. Supersedes Prior Agreement

This Agreement supersedes any and all previous employment agreements and amendments thereto entered into by and between the District and the Controller.

9. Amendment

This Agreement cannot be changed or supplemented orally. No amendment, modification, alteration, or variation in the terms of this Agreement is valid unless made in writing and signed by both parties.

10. Notices

Any notices to be given by either party to the other shall be made in writing, by personal delivery, United States Postal Service, or by Federal Express/overnight mail, with postage prepaid. Notices delivered personally shall be deemed received as of actual receipt; mailed notices shall be deemed received as of one business day following the date of mailing of the notice. Mailed notices shall be addressed to the respective parties as follows:

To the District: Midpeninsula Regional Open Space District
Attention: President, Board of Directors
330 Distel Circle
Los Altos, California 94022

To the Controller: Michael L. Foster, District Controller
[at his last known home address as reflected in the District's personnel records]

Any party may change his/its address for the purpose of this section by giving written notice of such change to the other party in the manner herein provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective this ___ day of _____ 2015, at Los Altos, California.

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:

DISTRICT CONTROLLER:

By: _____
Board President

By: _____
Michael L. Foster

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

Jennifer Woodworth, District Clerk

Sheryl Schaffner, General Counsel

DRAFT