



Midpeninsula Regional
Open Space District

R-15-128
Meeting 15-20
August 26, 2015

AGENDA ITEM 8

AGENDA ITEM

Approval of Salary Adjustments and Revised Employment Agreement for Board Appointee General Manager

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 the General Manager for Fiscal Year 2015-16: Adjust the General Manager's base salary upward to \$235,792, plus a one-time bonus of \$10,816.

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

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 the General Manager, during several meetings in June through August, 2015.

The Board was very pleased with his performance during the last fiscal year and resulting success of District programs and projects carried out as part of his duties. The accomplishments for FY2014-15, upon which the evaluation was 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 and summarized in the attached resolution. Based on his performance evaluation in FY2014-15, the BAE Committee recommends providing the General Manager compensation noted above.

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.

BOARD 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 Manager: Total of the annual salary plus adjustment = \$235,792 with a one-time 5% bonus of \$10,816.

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 Manager
2. General Manager 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 MANAGER**

WHEREAS, effective July 8, 2009, the Board of Directors of the Midpeninsula Regional Open Space District entered into a District General Manager Employment Agreement (“Agreement”) with Stephen E. Abbors, employing him as the District's General Manager; and

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

WHEREAS, the General Manager’s leadership was critical to passage of Measure AA. His actions starting prior to and during this evaluation period are seen by the Board as leading to many of last year’s successes. His actions included strategic visioning, enhanced relationships with partner agencies, key staff hiring choices focusing on excellence and energy, excellent choices in Assistant General Manager support, innovative internal assignments and teams, and focus on gaining public support. His look-ahead changes instituted to support our new direction after the passage of Measure AA (“MAA”) include:

1. Revising the financial model;
2. Scoping and prioritizing a much larger capital program to meet GO bond requirements;
3. Restructuring the organization with well-versed consulting help, and, importantly, involving staff;
4. Preparing the District for labor negotiations.

Each was accomplished while existing programs and services continued within capacity limits. This required incredible effort by him and his staff. Ten MAA projects were completed last year and 13 were started and are underway. All performance standards for the year were met, as were critical deadlines. His personal level of effort remained consistent and focused on outcomes.

WHEREAS, the Board, based on its annual review of the General Manager’s performance, in recognition of his outstanding performance during Fiscal Year 2013-2014 desires to grant the General Manager a 4.0 percent adjustment to bring his base salary closer to the comparable median, and an additional 5.0 percent raise to bring his base salary to \$235,792, along with a one-time meritorious bonus of 5 percent (\$10,816); and

WHEREAS, the Board and General Manager 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 Manager by adoption of this resolution an adjustment to his base salary up to \$235,792 retroactive to April 1, 2015 for Fiscal

Year 2015-16, a one-time meritorious bonus of 5 percent (\$10,816), and authorizes the President of the Board of Directors or other authorized Board Officer to execute a revised District General Manager 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 MANAGER 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 Stephen E. Abbors (“Abhors” or “General Manager”).

WHEREAS, the District engaged Abbors as its General Manager under a contract entered into on or about February 27, 2008, 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 Abbors 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 Manager

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

2. Essential Powers and Duties

A) The General Manager’s powers and duties shall be:

- 1) As specified in Sections 5538 and 5549 of the Public Resources Code of the State of California; and
- 2) As provided in the District Personnel Policies and Procedures Manual (“Manual”); and
- 3) Such other duties as the Board of Directors may direct consistent with the District’s enabling legislation;

B) The General Manager 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 Manager; and

The General Manager 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. Compensation and Benefits

- A. Salary. As compensation for the services to be performed hereunder, the General Manager shall receive an annual salary adjustment of nine percent, bringing his annual base salary to \$235,792. The effective date for this adjustment to the General Manager's salary will be retroactive to April 1, 2015.
- B. Annual Salary Adjustment and Performance Review: The Board shall annually review the General Manager's performance pursuant to the Board's labor policy "Board Appointee Performance Evaluation Process." The Board may review Abbors' 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 Manager. 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 Manager a meritorious pay award, ranging from 0% to 5% over and above the General Manager's annual base salary. Such meritorious pay shall be based on the Board's annual review of the General Manager'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. Vacation, Leaves and Holidays. The General Manager shall earn vacation leave at the rate of a regular full-time employee with 15-19 years of service (equivalent to 21 days per year) in accordance with the Manual. The General Manager shall also earn personal, administrative and sick leave at the current rate of accrual for Department Managers in accordance with the Manual. The General Manager may elect to cash-out up to eighty (80) hours of accrued vacation leave in any calendar year. The General Manager will receive District-paid holidays, in accordance with the Manual.
- E. Retirement Plan. The District contracts with the California Public Employees' Retirement System (CalPERS) to provide its miscellaneous employees the Local Miscellaneous 2.5% at 55 retirement plan ("the Plan"). The General Manager 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 General Manager's normal member contribution.

- F. Benefit Plans. The District shall pay the full premium for the General Manager, spouse, and eligible dependents for enrollment in any medical insurance plan offered by the District. The District shall also provide dental, vision, life insurance, and other benefits available to management employees in accordance with the Manual and as approved by the Board of Directors from time to time, including, but not limited to, participation in the sick leave conversion program. The District will also provide the cafeteria plan in accordance with Internal Revenue Code Section 125 as provided in the Manual.
- G. Memberships and Conferences. The District shall pay for the General Manager's membership and/or participation in organizations and conferences relevant for his 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 Manager for travel expenses consistent with the District's travel, lodging, and meal reimbursement policy.
4. Term of Agreement

Abbors 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 Manager 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 Manager 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.

5. Termination and Severance Pay

Notwithstanding any other provision, the General Manager 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 Manager of continued District employment.

The General Manager may terminate this Agreement upon sixty (60) days' written notice to the District. In the event the General Manager resigns or retires, or upon death, he 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 Manager 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 Manager 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 Manager may receive from the District shall be fully reimbursed to the District if the General Manager is convicted of a crime involving an abuse of his 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 Manager 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 Manager any severance pay where the District terminates this Agreement for cause. The General Manager 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 Manager's request. Said meeting may be in closed session, unless the General Manager 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 Manager'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 Manager's conduct causes discredit to the District;
- m. Violation of the Political Reform Act; or
- n. Violation of Government Code Section 1090.

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

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 General Manager.

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, 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 Manager: Stephen E. Abbors, General Manager
At his 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 MANAGER:

By: _____
Board President

Stephen E. Abbors

Date: _____

Date: _____

ATTEST: _____
Jennifer Woodworth, District Clerk