



Midpeninsula Regional  
Open Space District

# ATTACHMENT C

## AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AND [CONSULTANT'S NAME] FOR [PROJECT NAME]

**THIS AGREEMENT** is by and between [REDACTED] ("Consultant") and the Midpeninsula Regional Open Space District, a public body of the State of California ("District"). Consultant and District agree:

- 1. Services.** Consultant shall provide the Services set forth in Exhibit A, attached hereto and incorporated herein.
- 2. Compensation.** Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum compensation amount, Consultant agrees to perform the Scope of Services herein required of Consultant for \$ [REDACTED] including all materials and other reimbursable amounts ("Maximum Compensation"). Additionally, in the event of unforeseen circumstances, District may in its sole discretion elect to authorize Consultant to perform additional services on an as-needed basis for a not to exceed amount of \$ \_\_\_\_\_ at the hourly rates set forth in Exhibit A. Consultant shall only be compensated for additional hourly work that is approved in advance by District in writing. Total compensation under this agreement shall not exceed \$ \_\_\_\_\_. Consultant shall submit invoices on a monthly basis. All bills submitted by Consultant shall contain sufficient information to determine whether the amount deemed due and payable is accurate. Bills shall include a brief description of services performed, the date services were performed, the number of hours spent and by whom, a brief description of any costs incurred and the Consultant's signature.
- 3. Term.** This Agreement commences on full execution hereof and terminates on \_\_\_\_\_ unless otherwise extended or terminated pursuant to the provisions hereof. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence. Time extensions for delays beyond the Consultant's control, other than delays caused by the District, shall be requested in writing to the District's Contract Administrator prior to the expiration of the specified completion date.
- 4. Assignment and Subcontracting.** A substantial inducement to District for entering into this Agreement is the professional reputation and competence of Consultant. Neither this Agreement nor any interest herein may be assigned or subcontracted by Consultant without the prior written approval of District. It is expressly understood and agreed by both parties that Consultant is an independent contractor and not an employee of the District.
- 5. Insurance.** Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof, acceptable to the District, the insurance coverages specified in Exhibit B, "District Insurance Requirements," attached hereto and incorporated herein by reference. Consultant shall demonstrate proof of required insurance coverage prior to the commencement of services required under this Agreement, by delivery of Certificates of Insurance to District.
- 6. Indemnification.** Consultant shall indemnify, defend, and hold District, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the negligence, recklessness or willful misconduct of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of the Services, except for any such claim arising out of the sole negligence or willful misconduct of the District, its officers, employees, agents, or volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil

Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify District shall be limited to that allowed pursuant to California Civil Code section 2782.8. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**7. Termination and Abandonment.** This Agreement may be cancelled at any time by District for its convenience upon written notice to Consultant. In the event of such termination, Consultant shall be entitled to pro-rated compensation for authorized Services performed prior to the effective date of termination provided however that District may condition payment of such compensation upon Consultant's delivery to District of any or all materials described herein. In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the Services described in this Agreement, Consultant shall, without delay, deliver to District all materials and records prepared or obtained in the performance of this Agreement. Consultant shall be paid for the reasonable value of the authorized Services performed up to the time of Consultant's cessation or abandonment, less a deduction for any damages or additional expenses which District incurs as a result of such cessation or abandonment.

**8. Ownership of Materials.** All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of District and are assumed to be public records within the meaning of the California Public Records Act unless expressly deemed otherwise by District. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this Section, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to District at no additional charge and without restriction or limitation on their use. Upon District's request, Consultant shall execute appropriate documents to assign to the District the copyright or trademark to work created pursuant to this Agreement. Consultant shall return all District property in Consultant's control or possession immediately upon termination.

**9. Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances, regulations, and policies of the District. Consultant warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. If a license or registration of any kind is required of Consultant, its employees, agents, or subcontractors by law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this Agreement, and that any applicable bond shall be posted in accordance with all applicable laws and regulations.

**10. Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify District of the existence of such conflict of interest so that the District may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code § 81000 et seq.) respecting this Agreement.

**11. Whole Agreement and Amendments.** This Agreement constitutes the entire understanding and Agreement of the parties and integrates all of the terms and conditions mentioned herein or incidental hereto

and supersedes all negotiations or any previous written or oral Agreements between the parties with respect to all or any part of the subject matter hereof. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement may be amended only by a written document, executed by both Consultant and District's General Manager, and approved as to form by the District's General Counsel. Such document shall expressly state that it is intended by the parties to amend certain terms and conditions of this Agreement. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of District's District Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

**12. Capacity of Parties.** Each signatory and party hereto warrants and represents to the other party that it has all legal authority and capacity and direction from its principal to enter into this Agreement and that all necessary actions have been taken so as to enable it to enter into this Agreement.

**13. Severability.** Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

**14. Notice.** Any notice required or desired to be given under this Agreement shall be in writing and shall be personally served or, in lieu of personal service, may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth in Exhibit A; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier ("Courier"), postage paid and addressed to the other at its street address set forth below; (iii) transmitting the same by facsimile, in which case notice shall be deemed delivered upon confirmation of receipt by the sending facsimile machine's acknowledgment of such with date and time printout; or (iv) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the receipt for acceptance or rejection of the notice. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

**15. Miscellaneous.**

- a. Except to the extent that it provides a part of the definition of the term used herein, the captions used in this Agreement are for convenience only and shall not be considered in the construction of interpretation of any provision hereof, nor taken as a correct or complete segregation of the several units of materials and labor.
- b. Capitalized terms refer to the definition provide with its first usage in the Agreement.
- c. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.
- d. The terms "shall", "will", "must" and "agree" are mandatory. The term "may" is permissive.
- e. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.
- f. When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right to reimbursement from the other party unless specific provision is made otherwise.
- g. Where any party is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing such act, including its agents, invitees, contractors, subcontractors and employees.

**IN WITNESS WHEREOF**, Consultant and District execute this Agreement.

**MIDPENINSULA REGIONAL OPEN  
SPACE DISTRICT**

330 Distel Circle  
Los Altos, CA 94022-1404

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

Name  
Title

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

Attest: \_\_\_\_\_

Jennifer Woodworth  
District Clerk

Approved as to form:

\_\_\_\_\_  
Hilary Stevenson  
Acting General Counsel

**CONSULTANT**

Name  
Address

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

Name  
Title

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

Federal Employer ID Number: \_\_\_\_\_

License Number: \_\_\_\_\_

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

Attachments:  
Exhibit A Scope of Services  
Exhibit B District Insurance Provisions

**EXHIBIT A**  
**Scope of services and compensation**  
**[PROJECT NAME]**

**1. Scope of Services:**

**2. Compensation** [Select a compensation option a through e below, and delete the remaining compensation options]

(a) ( ) **Single Fixed Fee Agreement.** For performance of all of the Scope of Services by Consultant as herein required, District shall pay a single fixed fee in the amounts, and at the times or milestones, set forth below:  
 [Contract Fee(s) : \$ \_\_\_\_\_]

(b) ( ) **Phased Fixed Fee Agreement.** For the performance of each phase or portion of the Scope of Services by Consultant as separately identified below, District shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless District shall have issued a notice to proceed to Consultant as to said Phase.

Phase 1	\$ _____
Phase 2	\$ _____

(c) ( ) **Hourly Rate Arrangement** For performance of the Scope of Services by Consultant as herein required, District shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Rate Schedule below according to the following terms and conditions:

(d) ( ) **Not to exceed Limitation on Time and Materials Arrangement:**  
 Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum compensation amount, Consultant agrees that consultant will perform all of the Scope of Services herein required of Consultant for \_\_\_\_\_ including all Materials, and other reimbursable (“Maximum Compensation”).

(e) ( ) **Limitation without Further Authorization on Time and Materials Arrangement.** At such time as Consultant shall have incurred time and materials equal to \_\_\_\_\_ (“Authorization Limit”), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the District. Nothing herein shall preclude Consultant from providing additional Services at consultant’s own cost and expense.

	<b>RATE SCHEDULE</b>	
<b>Category of Consultant</b>	<b>Name</b>	<b>Hourly Rate</b>

**3. Consultant's Expenses**

( ) The compensation to be paid to Consultant set out in Section 2 includes all incidental expenses incurred by Consultant in performing services required by this Agreement.

( ) District shall pay consultant for the reasonable and necessary cost of the following incidental expenses incurred by consultant in providing the services required herein: document reproduction, postage, printing, mileage, telephone, authorized travel expenses.

( ) Consultant's expenses shall not exceed \_\_\_\_\_.

**4. Contract Administrators**

District: [enter name of staff here]

Consultant: [enter consultant's name here]

**5. Permitted Subconsultants, if any:**

## **EXHIBIT B INSURANCE REQUIREMENTS**

Before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the District, the insurance specified herein.

### **Insurance Requirements.**

- ❑ Statutory Worker's Compensation Insurance and Employer's Liability Insurance coverage: \$1,000,000
- ❑ Commercial General Liability Insurance: \$1,000,000 (Minimum), \$2,000,000 Aggregate
- ❑ Business Automobile Liability Insurance-with coverage evidencing "any auto" and with limits of at least \$1,000,000 per occurrence.
- ❑ Errors and Omissions Insurance (or Professional Liability): \$1,000,000

**Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant shall be provided if required under the California Labor Code.

**Commercial General and Automobile Liability.** Consultant, at Consultant's own cost and expense, shall maintain Commercial General and Business Automobile Liability insurance for the period covered by this Agreement in an amount not less than the amount set forth in this Exhibit B, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of hired, owned and non-owned automobiles. Coverage shall be at least as broad as the latest edition of the Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.

- a. A policy endorsement must be delivered to District demonstrating that District, its officers, employees, agents, and volunteers are to be covered as insured as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District, its officers, employees, agents, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.
- c. An endorsement must state that coverage is primary insurance and that no other insurance affected by the District will be called upon to contribute to a loss under the coverage.
- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.
- e. Insurance is to be placed with California-admitted insurers.

**Professional Liability.** Where Consultant is a licensed professional, Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount set forth in this Exhibit B covering the licensed professionals' errors and omissions, as follows:

- a. The policy must contain a cross liability or severability of interest clause.
- b. The following provisions shall apply if the professional liability coverages are written on a claims made form:
  - 1) The retroactive date of the policy must be shown and must be before the date of the Agreement. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work.

If coverage is canceled or not renewed and it is not replaced with another claim made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise at the Consultant's cost, any extended reporting provisions of the policy should the Consultant cancel or not renew the coverage.

A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

**Deductibles and Self-Insured Retentions.** Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Any self-insured retention or deductible is subject to approval of District. During the period covered by this Agreement, upon express written authorization of District Legal Counsel, Consultant may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The District Legal Counsel may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

**Notice of Reduction in Coverage.** In the event that any coverage required under the Agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to District at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**Remedies.** In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option:

Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

Order Consultant to stop work under this Agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;

Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies District may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.