



Midpeninsula Regional
Open Space District

R-17-98
Meeting 17-18
August 9, 2017

AGENDA ITEM 9

AGENDA ITEM

Amendment Three of the Partnership Agreement with the City of East Palo Alto

GENERAL MANAGER'S RECOMMENDATION

Adopt a Resolution authorizing Amendment Three of a Partnership Agreement with the City of East Palo Alto to facilitate completion of Phases IV and V comprised of six specific park elements of the Cooley Landing Vision Plan, and interagency collaboration to develop a business and operating plan for Cooley Landing Park and Education Center.

SUMMARY

In February 2010, the Board authorized a Partnership Agreement with the City of East Palo Alto (City) for the Cooley Landing Area of Ravenswood Open Space Preserve (Preserve) with the goal of developing the site into a bayfront city park (R-10-29). Since then, the City completed the majority of Phases I through III of Cooley Landing Park, including the new Education Center that opened in 2016. Design for Phases IV and V, which focus on site improvements, is currently under way and construction of the next phase of work is expected to begin as early as September 2017. On March 22, 2017, the Board approved \$1.25 Million in Measure AA funding to design and implement six remaining Cooley Landing Park elements and an additional \$200,000 in General Funds to develop a business/operating plan for the park and education center (R-17-40). The General Manager recommends amending the Partnership Agreement (Agreement) with the City to formalize the District's funding contribution and interagency collaboration to complete this work. The Amendment before the Board is a critical path item that will provide the necessary funding and partner engagement for the City to begin construction.

DISCUSSION

Phases IV and V of the Cooley Landing Vision Plan are the last phases of the park that the City currently plans to implement. These phases focus on site improvements such as secondary paths, a picnic area, new paving, and an outdoor classroom. The Board approved \$1.25M in Measure AA funding for six specific elements, including two outstanding items from earlier phases. The six elements are listed below:

1. Street lighting along access road (Phase IV – remaining item from Phase II)
2. New freestanding restroom building (Phase IV – remaining item from Phase III)
3. Outdoor classroom area (Phase V)
4. Path around education center (Phase V)
5. Secondary unpaved trails (Phase V)
6. New/relocated sign at entry (Phase V)

Site improvements beyond the six elements would be funded by the City. The six District-funded Cooley Landing Park elements will vastly expand the available park amenities for the public. They are the final park improvements that must be completed no later than June 30, 2019 in order for the City to successfully close out a grant agreement with California State Parks and receive their final \$1 million grant disbursement. In addition, the Board has also allocated \$200,000 in General Fund monies to develop a business and operating plan for the park to assist the City with its long-term management and maintenance of the site.

An amendment to the existing Partnership Agreement between the District and City is needed at this time to formalize the District's funding contribution and the interagency coordination to complete the remaining work items. As such, Amendment Three addresses the additional improvements to Cooley Landing Park and does not substantially change the operations and maintenance requirements that are already established in the Agreement.

The City continues to coordinate with the District in the review of designs, construction plans and specifications, and bid packages prepared by City staff and the District will continue to remain involved through construction and project close out. Amendment Three also addresses the close coordination that will occur between the District and City during development of the business plan, which will include active participation in the hiring and selection process for expert consultant services, providing relevant data, reviewing draft documents, and engaging key City representatives and stakeholders.

Included in Amendment Three is the mechanism to provide Measure AA funding for the design, permitting, and implementation of the six park elements approved by the Board (R-17-40). The District will reimburse the City upon receipt of proof of payment of costs and expenses for these Measure AA-funded items.

The City's next steps are to continue working with Callander Associates to complete design and construction drawings for the remaining park elements. To date, District staff has received and provided input on the project schedule and concept design.

Amendment Three also provides a framework within which the District and the City can coordinate in the event that the City secures additional funding and chooses to move forward with Phase VI of the Cooley Landing that includes a viewing pier east of the education center. If the City chooses to pursue implementation of Phase VI at some future date, the details of such plans would be brought back to the Board, and the Agreement further amended to address implementation of this later phase. However, there are no imminent plans to initiate Phase VI.

FISCAL IMPACT

The FY2017-18 budget includes \$139,389 for the Cooley Landing Vision Plan Implementation (MAA 02-001) project and \$200,000 for the Cooley Landing Park Business/Operating Plan. The three-year Capital Improvement Plan also includes \$1,162,350 in FY2018-19 to complete the construction of the capital improvements.

	FY16-17	FY17-18	FY18-19	Total
MAA 02-001 Planning Budget		\$139,389	\$1,162,350	\$1,301,739
Spent-to-Date (as of 7/1/17):	\$34,501	\$0	N/A	\$34,501
Encumbrances:		\$0	N/A	N/A
Native Planting Project (projected):		\$30,000	\$25,000	\$55,000
Cooley Landing Vision Plan Implementation (projected):		\$109,389	\$1,137,350	\$1,246,739
MAA 02-001 Budget Remaining (Proposed):	\$0	\$0	\$0	\$0
Cooley Landing General Fund Operating Budget (Proposed):				
Cooley Landing Park Business/Operating Plan:	\$0	\$200,000	\$0	\$200,000

The following table outlines the Measure AA Portfolio 02 Regional: Bayfront Habitat Protection and Public Access Partnership budget, costs-to-date, and the fiscal impact related to the Cooley Landing Project (MAA 02-001). This proposed capital improvement work serves to “develop city-to-bay trails. Support.... associated interpretive facilities”.

MAA #02 Portfolio Allocation:	\$5,052,000
Life-to-Date Spent (as of 6/30/17):	\$296,730
Grant income received to date (as of 6/30/2017):	(\$104,338)
Encumbrances:	\$60,098
Future Cost for Native Planting Project at Cooley Landing:	\$55,000
Future Cost for Cooley Landing Vision Plan Implementation:	\$1,246,739
MAA #02 Balance Remaining (Proposed):	\$3,497,771

BOARD COMMITTEE REVIEW

The Diversity Ad Hoc Committee met on December 9, 2016 meeting to discuss the Measure AA funding for this project. The Board met on March 22, 2017 to approve Measure AA funding for six specific elements of the Cooley Landing Vision Plan as well as a General Fund allocation to develop a business and operations plan for the park.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. The City also received notice of this item.

CEQA COMPLIANCE

On July 27, 2011, the Board of Directors concurred as a Responsible Agency with the findings made by the City on the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) that was prepared for the Cooley Landing Vision Plan and certified on February 15, 2011. The recommended actions that are part of this Agenda Item are consistent with the MND and MMRP.

NEXT STEPS

The City will continue progress on design and bid drawings. Construction of some elements could begin as early as late 2017 with completion of the remaining work estimated by mid-2019. District staff will continue coordinating with the City throughout design and construction. Also, a Request for Qualifications and Proposals (RFQP) for consultant services to develop the business plan is underway. A draft of the RFQP will be reviewed by the Diversity Ad Hoc Committee and City staff for input, and subsequently brought to the City Council and full Board for final review prior to its release for consultant solicitation.

Attachments:

1. Resolution
2. Partnership Agreement with Amendments One and Two
3. Amendment Three of the Partnership Agreement

Responsible Department Head:

Jane Mark, AICP, Planning Manager

Prepared by:

Tina Hugg, Senior Planner

Contact person:

Tina Hugg, Senior Planner

Dave Jaeckel, Management Analyst II (for Cooley Landing business plan)

RESOLUTION NO. 17-__

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING
AMENDMENT THREE TO THE PARTNERSHIP AGREEMENT WITH
THE CITY OF EAST PALO ALTO FOR THE COOLEY LANDING AREA
OF RAVENSWOOD OPEN SPACE PRESERVE**

The Board of Directors of the Midpeninsula Regional Open Space District ("District") does resolve as follows:

SECTION ONE. The District and City of East Palo Alto are parties to the Partnership Agreement ("Agreement") for the Cooley Landing Project ("Project") dated February 24, 2010 and amended September 11, 2011 and September 3, 2013. District and City wish to enter into a third amendment to the Agreement (Amendment Three) which, among other things, would facilitate funding and development of the next phases of the Project.

SECTION TWO. The Board of Directors of the Midpeninsula Regional Open Space District does hereby approve Amendment Three to the Partnership Agreement ("Amendment") between the District and the City of East Palo Alto. The Board hereby authorizes the Board President to execute said Amendment.

SECTION THREE. The General Manager and General Counsel are further authorized to approve minor revisions to the Amendment which do not substantially change any material terms of the Agreement. The General Manager or the General Manager's designee is further authorized to execute any and all other documents necessary or appropriate to entering into the Amendment.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on _____, 2017, 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

**PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND
THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR THE
COOLEY LANDING PROJECT**

THIS AGREEMENT is entered into by and between the CITY OF EAST PALO ALTO, a municipal corporation, ("CITY") and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a public DISTRICT under the laws of California, ("DISTRICT"), dated February 24, 2010.

RECITALS

WHEREAS, DISTRICT's Mission is to acquire, restore, preserve and protect, in perpetuity, open space land as part of the regional greenbelt, and to provide opportunities for ecologically sensitive public enjoyment and education; and

WHEREAS, District owns those certain lands more specifically identified as San Mateo County Assessor's Parcel Numbers 063-590-040, 063-590-060, 096-230-150 and 096-230-130, comprising a portion of Ravenswood Open Space Preserve ("Preserve") and which have been legislatively dedicated for purposes of public open space pursuant to the California Public Resources Code; and

WHEREAS, CITY owns that certain parcel of land more specifically identified as San Mateo County Assessor's Parcel Number 063-590-030 which it has zoned for Resource Management purposes; and

WHEREAS, the CITY parcel and portions of the DISTRICT parcels make up that certain promontory of land into the San Francisco Bay generally known as Cooley Landing; and

WHEREAS, CITY and DISTRICT desire to further their common goal of providing accessible public open spaces to further the recreational and educational opportunities of their constituents, and

WHEREAS, CITY has undertaken a planning and development process (the "Project") to enhance such public open space and the associated recreational and educational values at Cooley Landing; and

WHEREAS, City intends to apply for grant funding for the Project under the Statewide Park Development and Community Revitalization Program of 2008; and

WHEREAS, DISTRICT desires that the Project include the Cooley Landing Area of Ravenswood Open Space Preserve owned by DISTRICT;

NOW, therefore, in consideration of the mutual promises, covenants and obligations contained herein, CITY and DISTRICT agree:

1. Project Site. DISTRICT owns the real property within the City of Menlo Park, State of California, as shown on Exhibit A, attached hereto and incorporated herein ("Project Site"), which consists of Area A, the upland portions of APNs 096-230-130 and 096-230-150 which are closed to the public, and Area B, within the Cities of East Palo Alto and Menlo Park, State of California, the Preserve public parking lot (portions of APN 063-590-040 and 063-590-060) which is open to the public.
2. Term. The term of this Agreement shall commence upon execution hereof by the duly authorized representatives of the CITY and the DISTRICT and shall consist of:
 - a. Phase I - Plan development, environmental review and permitting
 - b. Phase II - Project construction from completion of Phase I design
 - c. Phase III – Project operation upon completion of Phase II construction

Time is of the essence to this Agreement. City shall diligently pursue completion of Phases I and II consistent with its contractual obligations for grant funding and with all otherwise applicable laws and regulations. The maximum term of this Agreement shall not exceed 30 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body. Before each subsequent phase, CITY and the DISTRICT shall amend this Agreement, as necessary to accommodate evolving conditions, including development of supplemental operations and maintenance agreements. The Parties agree to timely meet, and to negotiate in good faith, toward an extension of this Agreement, as it may be amended from time to time, at such time(s) as appropriate.

3. Site Use, Access, Control and Security.
 - a. CITY is permitted to access and use to the Project site for all purposes reasonably in furtherance of the Project plan development to be completed during such Phase I hereof.
 - b. CITY shall maintain control and security of the Project Site – Area A, including but not limited to restricting public access, securing the site by fencing or other appropriate means and regular law enforcement patrols. DISTRICT shall continue to maintain and secure Area B, except as otherwise noted in this Agreement.
 - c. CITY is responsible for opening the Preserve gate at the end of Bay Road by 9 a.m., each weekday morning (Monday through Friday), excluding CITY holidays. If CITY is unable to fulfill this obligation, City shall immediately notify DISTRICT at DISTRICT's 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate at all other times, i.e. all evenings, all weekends, and on all CITY holidays and any time the City notifies the DISTRICT it is unable to fulfill this obligation.
 - d. CITY, its employees, agents, contractors and consultants shall be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the DISTRICT. DISTRICT, its employees, agents, contractors and consultants shall

be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the CITY. CITY shall inform DISTRICT staff of all of its public meetings related to the design and use of Cooley Landing. CITY shall provide biannual updates to the DISTRICT. All signage and public documents shall recognize the DISTRICT (as appropriate) as a partner. DISTRICT shall inform CITY staff of all of its public meetings related to the design and use of Cooley Landing. DISTRICT shall provide biannual updates to the CITY. All signage and public documents shall recognize the CITY (as appropriate) as a partner.

- e. CITY shall promptly notify DISTRICT's 24-hour Emergency Dispatch telephone number at (650) 903-6395 to report any observed or known fires, trespassing, hunting, or illegal activities on the Project Site or on adjoining District lands. DISTRICT shall promptly notify the Menlo Park Fire Department at (650) 688-8400 to report any observed or known fires and shall promptly notify the CITY's Police Department at (650) 321-1112 to report any observed trespassing, hunting, or illegal activities on the Project Site.
 - f. Except as otherwise provide herein or by express written permission granted by DISTRICT, CITY shall not during Phase I of this Agreement cause or allow any physical changes on the Project site (Area A). Such changes shall include but not be limited to grading, paving, excavating or other earthmoving activities, cutting or removing trees, native shrubs, brush or other vegetation, and damaging or demolition of improvements or structures on the Premises.
 - g. Any use of the Project Site not specifically granted to CITY herein must be approved in writing by DISTRICT prior to such use commencing.
4. Amendment. CITY will diligently pursue development of the Project consistent with this Agreement. CITY and DISTRICT agree to meet and discuss in good faith all necessary amendments that may be needed at the completion of Phase I plan (development, review and permitting) and again at the completion of Phase II (construction) to allow the Project to continue to the next Phase. These shall include operation and maintenance plans for Phases II and III. Should the Proposition 84 Statewide Park Program grant be awarded, and a grant contract is issued, any proposed amendments by City and District shall be submitted to the State Department of Parks and Recreation, Office of Grants and Local Services for approval.
 5. Insurance. At all times during the term of this Agreement CITY shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. DISTRICT shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. CITY shall furnish DISTRICT with a Certificate of Insurance evidencing such insurance coverage. At all times during the term of

this Agreement DISTRICT shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. CITY shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. DISTRICT shall furnish CITY with a Certificate of Insurance evidencing such insurance coverage.

6. Indemnification. CITY hereby agrees to indemnify, defend and hold harmless DISTRICT from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of CITY's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of CITY.

DISTRICT hereby agrees to indemnify, defend and hold harmless CITY from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement, to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of DISTRICT's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of DISTRICT.

CITY and DISTRICT agree to cooperate in the event of claims or litigation against either CITY or DISTRICT by a third party. In the event liability arises due to the alleged concurrent negligence of CITY and DISTRICT, or any combination thereof, each party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence.

7. Termination for Default. In the event there is a breach of this Agreement by CITY or DISTRICT, the parties shall meet to resolve the matter. If the parties are unable to resolve a material matter informally, they shall attempt to resolve the matter by mediation through JAMS or other mediator agreeable to the parties. If the parties remain unable to resolve the matter, DISTRICT or CITY may terminate this Agreement sixty days following the giving of notice of such as set forth herein.
8. Applicable Laws. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

9. Notices:

Any notice required to be given to DISTRICT shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

Midpeninsula Regional Open Space District
General Manager
330 Distel Circle
Los Altos, CA 94022
(650) 691-1200

or personally delivered to DISTRICT at such address or at such other address as DISTRICT may designate in writing to CITY.

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

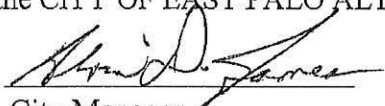
City of East Palo Alto
City Manager
2415 University Avenue, 2nd Floor
East Palo Alto, CA 94303
(650) 853-3100

or personally delivered to CITY at such address or such other address as CITY may designate in writing to DISTRICT, with a receipt and signature from the receiving party.

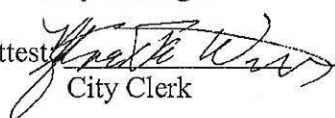
10. Waiver: The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY or DISTRICT may have and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions and covenants contained herein.
11. Severability: If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
12. Captions: The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

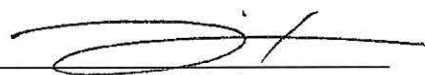
IN WITNESS WHEREOF, CITY and DISTRICT execute this Agreement.

For the CITY OF EAST PALO ALTO


By: 
City Manager

Date: 3/1/10

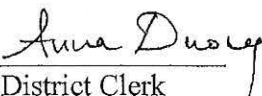
Attest: 
City Clerk

Approved as to form for CITY: 
Vincent C. Ewing
City Attorney

For the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: 
President
Board of Directors

Date: Feb. 24, 2010

Attest: 
District Clerk

Approved as to form for DISTRICT: 
Susan Schectman
General Counsel

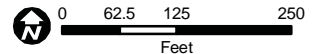
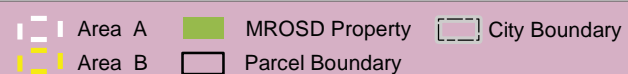


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Exhibit A: Cooley Landing Area, Ravenswood Open Space Preserve

Produced by Midpeninsula Regional Open Space District, December 2009



**AMENDMENT TO PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST
PALO ALTO AND THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR
THE COOLEY LANDING PROJECT**

This Amendment to Partnership Agreement ("Amendment") is entered into by and between the City of East Palo Alto, a municipal corporation ("City"), and the Midpeninsula Regional Open Space District, a public district under the laws of California ("District"), dated SEPT. 20, 2011 ("Effective Date").

WHEREAS, the City and District are parties to that certain Partnership Agreement between the City of East Palo Alto and the Midpeninsula Regional Open Space District for the Cooley Landing Project ("Project") dated February 24, 2010 ("Agreement").

WHEREAS, Section 4 of the Agreement provides that City and District shall meet and discuss in good faith all necessary amendments that may be needed at the completion of each plan review and permitting process to allow the Project to continue to the next Milestone (defined below).

WHEREAS, the plan review and permitting process Milestone for Phase 1 of the Project, remediation and trail access is near completion and the parties have discussed certain terms and conditions that should be reflected in the Agreement going forward.

WHEREAS, District and City desire to enter into this Amendment to, among other things, establish a template of terms and conditions which the parties wish to incorporate into the Agreement to continue facilitating development of future phases of the Project.

WHEREAS, except where specifically stated the terms and conditions set forth herein shall supplement those terms and conditions set forth in the Agreement.

WHEREAS, capitalized terms used but not defined in this Amendment shall have the respective meanings provided in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, City and District agree to the Amendment as follows:

1. **Recitals.** The recitals above are incorporated by reference as though fully stated herein.
2. **Project Milestones.** The term "Phase" as used and described in Section 2 of the Agreement is hereby deleted and replaced with the term "Milestone." The term "Phase," when used herein and in any subsequent amendment, shall refer to a phase or those phases of Construction as more specifically described in the Cooley Landing Vision Plan Project Plans and Specifications approved in concept by the City of East Palo Alto on July 20, 2010 ("Vision Plan") and incorporated herein by reference.

3. **Term.** The third sentence in Section 3 is hereby deleted in its entirety and shall be replaced with the following:

“The maximum term of this Agreement shall not exceed 35 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body.”
4. **Fulfillment of Conditions.** City agrees to cause the construction of the Project (“Construction”) and fulfill all conditions imposed by the City’s Planning Commission, City Council, and all applicable District regulations and other applicable laws and regulations.
5. **Applicability of Mitigated Negative Declaration.** City acknowledges and agrees that all activities performed or caused to be performed on the Preserve and in all Phases of the Project, now and in the future, shall be done in accordance with the Mitigated Negative Declaration and Mitigation Monitoring Program No. 10-13 certified and adopted by the East Palo Alto City Council on February 15, 2011, attached hereto as Exhibit A and made a part hereof.
6. **Grant of Permit to Enter; Conditions.** District hereby grants City a permit to enter the Preserve in connection with the Construction for Phase One of the Vision Plan. District and City understand and acknowledge that while the parties intend for this Amendment to serve as a template of terms and conditions to govern all phases of Project construction, the permit granted by District to City pursuant to this Section 6 is only applicable for Phase One activities as described in the Vision Plan. The parties further understand and acknowledge that City must receive a permit to enter from District prior to commencing any subsequent Project Construction Phase on the Preserve. Activities in connection with this permit to enter are subject to the following conditions, which City shall incorporate into any Phase One Construction agreement:
 - a. City shall at all times comply with all applicable District regulations, and with all other applicable federal, state and local authorities, laws, ordinances and regulations.
 - b. City shall limit the Construction activities on the Preserve to the area specifically depicted on Exhibit B and may not conduct activities on any District property outside of this area without prior written approval of the District.
 - c. If fueling must occur on-site, City shall cause designated areas located away from drainages and a drip pan to catch spills to be used. City shall use its best efforts to ensure that vehicles do not block roadways unless the vehicle is attended and can be moved immediately.
 - d. City shall cause all equipment and tools on the Preserve to be used with reasonable care and diligence, and take such precautions as are necessary to avoid damage to land, property, and people. District assumes no risk and shall

have no responsibility for safeguarding Construction equipment, property, and personnel from injury, death, or damage as a result of the construction of the Project.

- e. All vehicles involved in Project construction shall carry properly maintained ABC fire extinguishers while on the Preserve.
- f. City shall cause all concrete mixing to be done in secure containments. Concrete shall not be mixed within five feet of any waterway. Cleaning of tools shall occur in secure containments; City shall not allow tools to be cleaned in drainages or water bodies. All concrete waste shall be off-hauled; water is allowed to first evaporate in containments for ease of off-haul.
- g. City shall leave the Preserve in a condition equal to or better than the condition at commencement of Construction.
- h. City shall promptly notify the District upon completion of the Construction conducted hereunder.

7. Construction.

- a. Construction Plans and Specifications. District acknowledges that the City has provided, and the District has reviewed and commented on, in-progress plans for Phase One of Construction. For District's review, City will provide District with a final bid package for the Phase One of construction upon completion and prior to public release. City will provide District the opportunity to review and comment on construction plans and specifications and bid packages prepared by City for all subsequent Phases of Project construction prior to their implementation. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- b. Commencement. Construction of the Project improvements shall commence and be performed by the City in an expedited, workmanlike manner. City shall provide District with a Construction schedule ("Construction Schedule") for each Phase of Construction within ten days following pre-Construction meetings that are held for each Phase of Construction. City shall use its best efforts to ensure that each Phase of Construction commences and proceeds in accordance with the Construction Schedule. The City shall notify the District, in writing and in a timely manner, of the timeframes established by the City for each bid opening process for each Phase of Project construction and any modifications thereto.
- c. Completion. City shall take all steps necessary to cause diligent prosecution and completion of the Project construction within the times set forth in the Construction Schedule.

- d. Coordination. City recognizes that the District may concurrently continue to utilize the District portions of Area B (as defined in the Agreement), which may remain open to the public as determined by the District in its sole discretion. District and City shall meet and confer on a regular basis in order to coordinate all development and construction work.
 - e. Construction Safeguards. City shall cause all necessary safeguards for the protection of workers and the public, as required by the conditions and the progress of Project work, to be erected and properly maintained at all times.
8. **Inspection and Access to Work.** All equipment, materials, and work shall be subject to inspection by the District. The District may at any time, subject to and in accordance with all applicable laws and regulations, observe the progress and quality of the work and determine, in general, if Construction is proceeding in accordance with the corresponding Construction plans and specifications. The District is not required to make comprehensive or continuous inspections to check the quality of the work, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the District shall not relieve the City of its obligation to conduct comprehensive inspections of the work and to cause the furnishing of proper materials, labor, equipment and tools, construction of acceptable work, and providing adequate safety precautions, in conformance with the Agreement, as amended. If District discovers an issue during an inspection, the District may contact the City, and the City shall address such issue to the District's satisfaction within 30 days from the date of the District's contact with the City.
9. **Default.**
- a. Default Remedies. Failure by either party to perform any action or covenant required by this Amendment within the time periods provided herein following notice shall constitute a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Amendment, the claimant shall not institute any proceeding against the other party if (i) such party cures the Default within thirty (30) days following receipt of such notice of Default where the failure or delay is capable of being cured within 30 days, or (ii) such party immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence, but in any event no later than 90 days following the notice of Default, where such Default cannot be cured within 30 days.
 - b. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover actual damages for any Default, or to obtain any other remedy consistent with the

purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, neither party shall have the right to recover any consequential, special or punitive damages in the event of a Default by the other party.

10. **Maintenance and Management of Project and Related Infrastructure.** Except as otherwise provided in Section 11 herein, City shall assume responsibility for the patrol, operation, maintenance and management of the Project Site. City shall be responsible for maintaining and operating all Project-related infrastructure in the manner required to serve the Project and in accordance with the use and operating covenants set forth in Section 12.
11. **Parking Area.** City and District shall be jointly responsible for operating, maintaining and managing that area of the Project Site where the visitor parking lot is located. In the event any disagreement between the City and District arises involving the parking lot, including but not limited to issues regarding proportional use and sufficient accommodation for Preserve visitors, the parties agree to make diligent, good faith efforts to meet, discuss and develop a mutually agreeable resolution regarding any such disagreement(s). Additionally, the parties shall meet and confer prior to the commencement of each Construction Phase to assess parking lot usage and operations.
12. **Construction, Use, Operating and Maintenance Covenants.** City and its successors and assigns shall be required to construct, use, operate and maintain the Project in a high-quality manner and in accordance with the Vision Plan and the Project Mitigation Monitoring Program, and as more particularly provided below.
 - a. General. City covenants and agrees on behalf of itself and its successors and assigns that City shall use and continuously operate the Project for the uses herein specified and for no other purpose.
 - b. Governmental Requirements. City shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, labor codes, ordinances, rules and regulations, as well as the Consent Decree entered on November 16, 2005 by the United States District Court for the Northern District of California in the matter captioned United States of America and the State of California, by and through the California Department of Fish and Game and California State Lands Commission v. County of Santa Clara, et al. (No. CV-0373 PVT) (collectively, "Laws") which apply to the operation and use of the Project or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Project or any portion thereof under any Laws now or hereafter adopted, enacted or made and applicable to the Project or any portion thereof,

and payment of any fees, charges or assessments arising out of or in any way related to the Project or any portion thereof. All construction, use, operation and maintenance of the Project shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations.

- c. General Use Prohibitions. City covenants and agrees that in connection with the use and operation of the Project, and any portion thereof, City will not:
 - i. Permit equestrian use; or
 - ii. Permit dogs, except guide and service dogs under physical control either participating in training program or already a specifically trained to assist the blind, deaf or disabled, and wearing an identifying vest or tag; ; or
 - iii. Permit undue accumulations of garbage, trash, rubbish or any other refuse; or
 - iv. Create, cause, maintain or permit any nuisance (as the same may be defined by applicable Law) in, on or about the Project; or
 - v. Commit or suffer to be committed any waste in, on or about the Project; or
 - vi. Use or allow the Project to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Project; or
 - vii. Do or permit to be done anything which in any way unreasonably disturbs the occupants of neighboring property; or
 - viii. Cause or permit any insurance coverage on the Project to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates; or
 - ix. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Project or to any adjacent public or private property or improvements; or
 - x. Violate any Law, ordinance or regulation applicable to the Project.
- d. General Operating Standards. City covenants and agrees that it shall operate the Project in such manner and by such means as will reflect positively upon District and City. City's responsibilities with respect to operating the Project shall include, but are not limited to:

- i. Should any unauthorized use or activity occur in Project, City may exercise its authority to correct these matters, including, where necessary, enforcing City regulations and ordinances and County ordinances.
- ii. City shall cause all necessary precautions to be taken to guard against and eliminate fire hazards. No smoking or open campfires are allowed on the Preserve, per District Ordinance. City shall not allow any vehicles to be parked on dry grass.
- iii. City shall report any encroachments or trespass by the neighboring properties upon the Project to the District.
- iv. The City shall set hours of Project operation to match those of the District's Preserve.
- v. Section 3.c. of the Agreement is hereby deleted and replaced with the following paragraph.

“The parties understand and acknowledge that City intends to install an electric gate which shall open and close in accordance with the District's Preserve hours. Prior to the installation of such electric gate, City is responsible for opening the Cooley Landing and Preserve gate at the end of Bay Road by 9 a.m. and closing the gate one half hour after sunset every day. If City is unable to fulfill this obligation, City shall immediately notify District at District's 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate when the City notifies the District it is unable to fulfill this obligation.”
- vi. Subject to District regulations, City shall issue and administer all permits for vending and special uses for the Project. District and City agree to jointly establish standards regarding the issuance of permits governing commercial solicitations on the Project Site in accordance with District Regulation section 600.1
- vii. City may close portions of the Project where and when deemed necessary to avoid or correct a public health, safety or environmental hazard.
- viii. City shall provide for routine patrols and emergency or urgent response, to, in and around the Project, at or above the level of services existing upon the date of execution of this Agreement.
- e. General Standards of Maintenance. City covenants and agrees that it shall maintain, or cause to be maintained, the Project, and all improvements and landscaping within the Project (including all structures, sidewalks, pedestrian

lighting, landscaping, and any and all other improvements on the Project and associated open space and common areas) in high-quality condition and repair, subject only to normal wear and tear, and in compliance with the Maintenance Standards (defined below). City's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable District open space preserve. To accomplish such maintenance, City shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section 12.e. The following standards ("Maintenance Standards") shall be complied with by City and its maintenance staff, contractors and subcontractors:

- i. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects equal thereto or better in quality, appearance and durability;
- ii. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;
- iii. Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required;
- iv. Clean lighting fixtures and relamp and/or reballast as needed;
- v. Maintain landscaping as necessary to maintain in high-quality condition;
- vi. Maintain signs, including relamping and/or reballasting and/or repairing as required;
- vii. Maintain and keep in first-class condition and repair all benches, shelters, planters, trash containers, and other exterior elements;
- viii. Maintain and keep in a sanitary condition public restrooms and other common use facilities;
- ix. Clean, repair and maintain all common utility systems to the extent that the same are not cleaned, repaired and maintained by public utilities;
- x. Maintain all fountains, water courses and associated structures, drinking fountains, pumps and associated plumbing;

- xi. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;
- xii. Maintain all surface and storm lateral drainage systems;
- xiii. Maintain all sanitary sewer lateral connections;
- xiv. Promptly remove any graffiti on or about the Project;
- xv. Perform landscape maintenance including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris; and
- xvi. Perform other maintenance as required by Law.

13. Indemnification.

- a. City agrees to indemnify, hold harmless, defend, and protect the District, its officers, directors, agents, and employees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments, or obligations whatsoever, made in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities contemplated in this Amendment.
- b. City hereby waives all claims and recourse against the District, including the right of contribution for loss or damage to property, and releases the District from liability to the extent such claims or liability were not caused by the sole negligence or willful misconduct of the District and provided such claims are related to City's activities under this Amendment or City's use of the Preserve.
- c. City shall be responsible for any and all personal injury and property damage on the Preserve caused by its acts or omissions as a result of any activities conducted pursuant to this Amendment, and shall indemnify the District against any and all claims, liabilities, or losses, including attorney's fees, on account thereof.
- d. City shall indemnify, defend, and hold harmless the District from and against any legal or administrative proceedings brought against the District, and all claims, liabilities, losses, damages, cleanup costs, remediation costs or other costs, foreseen and unforeseen, including without limitation, attorney,

engineering, and other professional or expert fees, due to the existence of any hazardous substance of any kind on, in or under the Preserve, when the existence of such hazardous substance, in whole or in part, arises out of, is attributable to or is caused by any activities, acts or omissions by City under this Amendment, whether on-site or off-site.

14. **Signage and Brochures.** City shall include the following in all promotion materials about City's operations in the Project Site:

"Brought to you in partnership with the Midpeninsula Regional Open Space District."

15. **Partnership Agreement Remains in Effect.** The Agreement, except as amended herein, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict between terms in the Agreement and those in the Amendment arises, the provisions of this Amendment shall control the construction and interpretation thereof.

16. **Counterparts.** This Amendment may be executed in duplicate counterparts, which of which will be deemed an original.

17. **Authority.** Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

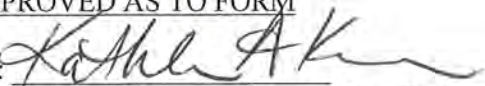
IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

CITY OF EAST PALO ALTO:

By: 
ML Gordon, City Manager


Date: 7-23-12

APPROVED AS TO FORM

By: 
~~Valerie J. Armento, Interim City Attorney~~ Kathleen Kane, City Attorney

Date: 7/23/2012

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT:

By: 
President, Board of Directors

Date: 8/6/12

ATTEST:

[Signature]
District Clerk

Date: 8/6/12

APPROVED AS TO FORM:

By: *[Signature]* AGC FOR
Susan M. Schectman, General Counsel
SHERYL SCHIFFNER

Date: 8/1/12

Exhibit A
Mitigated Negative Declaration

MITIGATION MONITORING AND REPORTING PROGRAM

COOLEY LANDING PARK PROJECT

CITY OF EAST PALO ALTO

JANUARY 2011

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration concluded that the implementation of the project could result in a number of significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
BIOLOGICAL RESOURCES				
Impact BIO-1: Project development could result in significant impacts to federally and state listed endangered salt marsh harvest mouse individuals.	<p>MM BIO-1.1: A qualified biological monitor(s) will be present during all construction work taking place adjacent to salt marsh habitats. This monitoring shall be repeated in each construction phase that occurs adjacent to salt marsh habitats. The monitors must have experience in monitoring sensitive resource issues on construction projects. Prior to the initiation of construction, qualifications of the prospective biological monitor(s) will be submitted to the USFWS and CDFG for review and approval. The monitor(s) will have the authority to halt construction, if necessary, when noncompliance actions occur. The biological monitor(s) will be the contact person for any employee or contractor who might inadvertently kill or injure a listed species or anyone who finds a dead, injured, or entrapped listed species.</p> <p>MM BIO-1.2: Prior to the start of any ground disturbing activities on the site, the biological monitor will provide an endangered species training program to all personnel involved in project construction. This training shall be repeated for new personnel in each of construction phase that involves ground disturbance. At a minimum, the employee education program will consist of a brief presentation by persons knowledgeable about salt marsh harvest mouse biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved with implementation of the project. The program will include the following: a description of the species and their habitat needs; any reports of occurrences</p>	The project proponents are responsible for implementing mitigation measures MM BIO-1.1 to MM BIO-1.12 prior to, during, and after construction.	<p>City Planning Manager shall ensure all measures are implemented</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>City Planning Manager</p> <p>USFWS</p> <p>CDFG</p>

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>in the action area; an explanation of the status of the salt marsh harvest mouse and their protection under FESA and CESA; and a list of measures being taken to reduce impacts to these species during the work. Fact sheets containing this information will be distributed to all involved in the training.</p> <p>MM BIO-1.3: Prior to initiation of ground disturbing activities related to soil remediation or debris removal in the refugial habitat restoration area, the qualified biologist will remove pickleweed and saltgrass by hand. The qualified biologist will then complete a pre-construction survey for salt marsh harvest mouse to ensure that all mice have left the work area. To prevent salt marsh harvest mice from moving through the restoration area during construction activities, temporary exclusion fencing will be placed around a defined work area prior to the start of any ground disturbing activities on the site. The fence will be made of a material that does not allow harvest mice to pass through, and the bottom will be buried to a depth of two inches so that mice cannot crawl under the fence. All support for the exclusion fencing will be placed on the inside of the project area.</p> <p>MM BIO-1.4: If a salt marsh harvest mouse is observed on-site at any time during construction, work will be stopped immediately by the biological monitor until the mouse leaves the vicinity of the work area on its own volition and the USFWS and CDFG are notified. If the mouse does not leave the work area, work will not be reinitiated until the USFWS and CDFG are contacted and has made a decision on how to proceed with work</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>activities. The biological monitor will direct the contractor on how to proceed accordingly. The biological monitor or any other persons at the site will not pursue, capture, handle, or harass any mouse observed. The City will contract with the United States Department of Agriculture (USDA) Wildlife Services to provide predator control services. During construction, if the biological monitor or other personnel observe ravens, crows, or other predators, they will alert USDA staff to address predators appropriately.</p> <p>MM BIO-1.5: All personnel and any equipment will be required to stay within the designated work sites and access corridors and will not be allowed to enter adjacent salt marsh wetlands, drainages, or habitat of listed species. Pets will not be allowed in or near the work site during or after construction. Firearms will not be allowed in or near the work sites. No intentional killing or injury of wildlife will be permitted. The work sites will be maintained in a clean condition. All trash (e.g., food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be placed in closed containers and properly disposed of offsite on a daily basis. No fires will be permitted at any of the work sites.</p> <p>MM BIO-1.6: Prior to the start of construction, a Refugial Habitat Design Plan for the marsh restoration work at the southwestern portion of the site will be prepared by a qualified biologist for review and approval by the USFWS and CDFG. No construction associated with restoration and enhancement activities within this area will be allowed to begin until approval</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>from the USFWS and CDFG has been received. All design components incorporated into the final restoration plan will be considered in light of their benefits to the salt marsh harvest mouse. All long-term habitat restoration and enhancement items will be designed and implemented so that these areas may be utilized by the salt marsh harvest mouse for nearly 100 years given current sea level rise predictions. The restored refugial habitat in the southwestern portion of the site will remain closed to public access in perpetuity.</p> <p>MM BIO-1.7: Appropriate erosion control materials such as straw rolls will be installed as needed during construction activities within the project area. During construction activities, exclusion fencing (silt type) will be placed on both sides of the access road, between the MROSD gate and the east end of the access road. All vehicle speeds on unpaved roads will be limited to 15 mph.</p> <p>MM BIO-1.8: Hazardous materials used during the work period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.</p> <p>MM BIO-1.9: After construction, a final clean-up will include removal of all refuse, materials, and facilities generated by the work. Vegetation will not be removed or disturbed in the clean-up process.</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>MM BIO-1.10: If requested, before, during, or upon completion of construction, the City of East Palo Alto will allow access by USFWS and CDFG personnel to the work areas to inspect effects, if any, upon the activities on the salt marsh harvest mouse.</p> <p>MM BIO-1.11: Subsequent to construction, the City of East Palo Alto will submit a compliance report, prepared by the biological monitor, to the USFWS and CDFG within 60 days after completion of the work. This report will detail the dates the work occurred; information concerning the success of the actions in meeting the recommended avoidance and minimization measures; any effects on the salt marsh harvest mouse; documentation of the worker environmental awareness training; and any other pertinent information.</p> <p>MM BIO-1.12: The following describes various design measures that will further avoid impacts to salt marsh harvest mouse during project operation:</p> <ul style="list-style-type: none"> • Interpretative signage will be placed along the length of the proposed shoreline trail to encourage awareness within the public of wetlands ecology, endangered species life histories, species/predator interactions, and how predation of sensitive species can be minimized. Additional signs will be placed at various points throughout the trail system to remind park users that pets are not allowed, and to indicate that trespassing is not allowed within refugial habitat restoration area. Signage in picnic areas will be provided to 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>indicate that feeding of wildlife is prohibited and why it is not allowed. Enforcement of the ban on dogs will be the responsibility of the City of East Palo Alto Police Department.</p> <ul style="list-style-type: none"> • Educational materials and signage at the kayak/canoe launch will advise against recreational use of canoes and kayaks within or in the vicinity of the marshes of the Laumeister Tract due to danger of stranding during low tide conditions. • Trash cans, recycling containers, and the dumpster will be animal proof to reduce the amount of waste available to vermin and other predators. All loose trash (e.g., litter, food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be properly disposed on a daily basis. • All new lighting poles, interpretative signs, information kiosks, and fencing will be designed and established so as to discourage perching or roosting activities of avian predators (e.g., spikes can be placed on light fixtures and other possible perches). • Native shrubs will be planted along the shoreline below the pedestrian access trail to provide visual screening between wildlife and public trail users. The shrubs will have growth characteristics that discourage perching or roosting of avian predators. Prior to implementing landscaping designs for this area, the proposed planting palette will be submitted for review and approval by the USFWS, CDFG, and predator control staff. • Use of the trail system will be limited to pedestrian and/or 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>bicycle use only. Public users will be prohibited from using all terrain vehicles (ATVs) or other motorized equipment on the parkland trail system. Battery operated wheelchairs or other similar mechanisms associated with access for disabled individuals will be allowed.</p> <ul style="list-style-type: none"> • Educational pamphlets, brochures, and other materials will be provided to park users to educate the public on minimization measures that can be undertaken to prevent feral and domestic pets and rodents from diminishing habitat quality within the project area. • The City will contract with USDA Wildlife Services to provide ongoing predator control services as needed, including trapping. 			
Impact BIO-2: Project construction could result in short-term significant impacts to federally and state listed endangered California clapper rail individuals.	MM BIO-2.1: Construction work will be initiated on or after September 1 and completed on or before January 31 to avoid the nesting season of the California clapper rail. If work in this area is proposed after January 31 and prior to September 1, protocol breeding surveys for California clapper rail will be completed prior to any ground disturbing activities to determine the extent and location of nesting clapper rails. Results of protocol breeding surveys will be submitted to the USFWS and CDFG for a determination of whether work proposed within 700 feet of a clapper rail nest (or the activity center of vocalizing clapper rails) discovered during such surveys will be rescheduled to occur during the period from September 1 to January 31. <ul style="list-style-type: none"> • In addition to the construction period above, the following specific construction work may also be completed June 1 through September 1: 	<p>Prior to the start of construction, if construction is initiated after January 31 and prior to September 1, the project contractor shall retain a qualified biologist to complete the necessary surveys.</p> <p>All additional</p>	<p>A report prepared by a qualified biologist documenting the results to the survey shall be submitted to the City Planning Manager, CDFG, and USFWS prior to construction.</p> <p>All measures shall be printed on all construction</p>	<p>City Planning Manager</p> <p>CDFG</p> <p>USFWS</p>

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<ul style="list-style-type: none"> ▪ Tree pruning and installation of temporary fencing around trees to remain ▪ Tree removal ▪ Removal of barbed wire fence, unused pedestrian bridge, utility poles, water tank ▪ Removal of asphalt paving (16,000 sf) and gravel access road (6,000 sf) ▪ Temporary construction fencing at east end of existing parking lot ▪ Stormwater pollution prevention measures (silt fences, truck tire wash-offs, wattles, etc.) ▪ Clearing and grubbing understory vegetation east of parcel line (avoiding wetland, shoreline, and tidal marsh areas) ▪ Rough grading of upland areas ▪ No more than 4 trucks per day importing clean soil and rough grading to distribute soil and placing only on the eastern half of the peninsula, farthest from the marsh area. • The following construction activities may only take place between September 1 and January 31: <ul style="list-style-type: none"> ▪ Removal/relocation of concrete debris in wetland area ▪ Rip rap augmentation along shoreline ▪ Disassembly of steel boat launch structure between jetties ▪ Revegetation efforts near the wetland or tidal marsh areas ▪ Import clean fill onto the site <p>MM BIO-2.2: Implement MM BIO-1.5 through MM BIO-1.12. The California clapper rail and salt marsh harvest mouse are</p>	measures shall be completed according to the specified construction timeframe by the project proponents.	documents, contracts, and project plans.	

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	found in similar locations in the vicinity of the project site and the measures necessary for species protection are similar for both. Thus, implementing Mitigation Measures BIO-1.5 through 1.12 relevant to the salt marsh harvest mouse would also mitigate impacts to the California clapper rail.			
Impact BIO-3.: Project construction could result in significant short-term impacts to federally and state listed threatened Central California coast steelhead and green sturgeon.	MM BIO-3.1: Bank stabilization work along the shoreline will be subject to the following measures: <ul style="list-style-type: none"> • disturbance and removal of aquatic vegetation will be avoided; • limit the duration and extent of in-water work to the minimum necessary to complete the work; • implement best management practices and use of silt fence or straw wattles to control sedimentation in runoff; and • complete in-water work only during low tides to minimize the number of fish in the vicinity, and when steelhead are less likely to be in the project vicinity (from June 1 through November 30). MM BIO-3.2: Hazardous materials used during the construction period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.	During all bank stabilization work along shoreline by project contractors.	The City Planning Manager and/or designated project representative will ensure that the contractors implement the bank stabilization measures. All measures shall be printed on all construction documents, contracts, and project plans.	City Planning Manager
Impact BIO-4: The project would result in significant impacts to nesting birds, if present	MM BIO-4.1: If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors will be completed by a qualified ornithologist	Prior to the start of construction the project proponents shall	A report prepared by a qualified ornithologist documenting the	City Planning Manager CDFG

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
on-site prior to project construction.	to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys will be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys will be completed no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist will inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist will, in consultation with CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The ornithologist will submit a report to the City's Planning Manager indicating the results of the survey and any designated buffer zones to the satisfaction of the City prior to the issuance of any grading or building permit. The City will contract with the USDA Wildlife Services to address any nests found during construction in a manner they determine appropriate.	retain a qualified ornithologist to complete the required surveys.	results to the survey and any designated buffer zones shall be submitted to the City's Planning Manager prior to construction. All measures shall be printed on all construction documents, contracts, and project plans.	
CULTURAL RESOURCES				
Impact CUL-1: Implementation of the proposed project could adversely impact buried cultural resources.	MM CUL-1.1: Should any archaeological or paleontological indicators be exposed or discovered during either site preparation or subsurface construction activities, all construction work within a 50-foot radius of the find will be halted, the City Planning Manager and City Engineer will be notified, and a qualified archaeologist or paleontologist will be retained to examine the find and make recommendations. The City of	To be implemented if any significant archaeological or paleontological resources are encountered.	If cultural resources are encountered a report will be submitted by qualified archaeologist/	City Planning Manager City Engineer

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>Menlo Park Community Development Director will also be notified.</p> <p>MM CUL-1.2: If human remains are discovered, the San Mateo County Coroner will be notified. The Coroner will determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he/she will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased.</p> <p>MM CUL-1.3: If an archeologist or paleontologist determines that the find is not a significant resource, work will resume only after the submittal of a preliminary report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of the deceased Native American and for reburial will follow the protocol set forth in the CEQA Guidelines Section 15126.4. If the site is found to be a significant archaeological site, a mitigation program will be prepared and submitted to the City Planning Manager for consideration and approval, in conformance with the protocol set forth in the CEQA Guidelines Section 15126.4.</p> <p>MM CUL-1.4: A final report will be prepared when a find is determined to be a significant archaeological or paleontological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, testing, other recovered information, and conclusions.</p>	Contractors shall stop work, in the immediate area of the find, and notify the City representative and Coroner as appropriate.	<p>paleontologist to the City Planning Manager and the City Engineer</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
HYDROLOGY AND WATER QUALITY				
Impact HYD-1: Implementation of the proposed project could result in significant water quality impacts during construction.	<p>MM HYD-1.1: Prior to the commencement of any clearing, grading or importing soil, the project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the East Palo Alto Director of Public Works, as follows:</p> <ul style="list-style-type: none"> The City will develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and The City will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). <p>MM HYD-1.2: The project will include Best Management Practices (BMPs) to control the discharge of stormwater pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit by the City of East Palo Alto, the project may be required to submit an Erosion Control Plan to the City Project Engineer. The Erosion Control Plan will include applicable BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City of East Palo Alto's storm drainage system from construction activities.</p> <p>MM HYD-1.3: The project will comply with the City of East Palo Alto's Grading Ordinance, including erosion and dust control measures during site preparation and with the City of</p>	<p>Prior the start of grading and demolition by the project engineer</p>	<p>The City Engineer shall review and approve the finalized SWPPP.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>City Planning Manager</p> <p>City Engineer</p> <p>RWQCB</p>

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>East Palo Alto's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:</p> <ul style="list-style-type: none"> • Restrict grading to the dry season (April 15 through October 15) or meet City of East Palo Alto requirements for grading during the rainy season; • Utilize on-site sediment control BMPs to retain sediment on the project site; • Utilize stabilized construction entrances and/or wash racks; • Implement damp street sweeping; • Provide temporary cover of disturbed surfaces to help control erosion during construction; • Provide permanent cover to stabilize the disturbed surfaces after construction has been completed; • No equipment will be operated in tidal water areas of the shorelines on or adjacent to the site; • All in-water work will only be completed during low tide to minimize the number of fish in the vicinity; • No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material will be allowed to enter into or be placed where it may be washed by rainfall or runoff into aquatic or wetland habitat; • Standard erosion control and slope stabilization measures will be required for work completed in any area where erosion could lead to sedimentation of a water body. For 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>example, silt-fencing will be installed just outside the limits of grading and construction in any areas where such activities will occur upslope from, and within 50 feet of, any wetland, aquatic, or marsh habitat. This fencing will be inspected and maintained regularly throughout the duration of construction;</p> <ul style="list-style-type: none"> • Machinery will be refueled at least 60 feet from any aquatic habitat, and a spill prevention and response plan will be developed and approved by the City of East Palo Alto. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur. • Soil stockpiling, equipment staging, construction access, and other intensive soil-disturbing activities will not occur immediately adjacent to any wetlands. The limits of the construction area will be clearly demarcated with Environmentally Sensitive Area fencing by a qualified biologist to avoid inadvertent disturbance outside the fence during construction activities. • Dust suppression (e.g., using watering trucks) will be implemented during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust to keep dust from being transported to vegetated wetlands nearby. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they will be hydro-seeded so that vegetation will suppress dust and inhibit erosion. 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
LAND USE				
Impact LU-1: Implementation of the fishing and boating provision of the project could result in a conflict with MROSD land use ordinances.	MM LU 1.1: Prior to opening the Cooley Landing area to fishing and boating, project proponents shall obtain MROSD designation of the area as a permitted fishing and boating area. In the event that such designation is not obtained, facilities will be designed to discourage such uses and signs prohibiting fishing and boating will be posted.	The project proponents shall obtain necessary designation for fishing and boating from MROSD	Approval from MROSD	MROSD and City Planning Manager

SOURCE

City of East Palo Alto, *Cooley Landing Park Project Initial Study*, December 2010.

Exhibit B
Construction Area



Plan Set

**AMENDMENT TWO TO THE PARTNERSHIP AGREEMENT BETWEEN THE CITY
OF EAST PALO ALTO AND THE MIDPENINSULA REGIONAL OPEN SPACE
DISTRICT FOR THE COOLEY LANDING PROJECT**

This Amendment Two to the Partnership Agreement ("Amendment Two") is entered into by and between the City of East Palo Alto, a municipal corporation ("City"), and the Midpeninsula Regional Open Space District, a public district under the laws of California ("District"), dated September 3, 2013 ("Effective Date").

WHEREAS, the City and District are parties to that certain Partnership Agreement between the City of East Palo Alto and the Midpeninsula Regional Open Space District for the Cooley Landing Project ("Project") dated February 24, 2010 ("Agreement"), attached hereto as Exhibit A; and

WHEREAS, in contemplation of the construction of Phase I of the Vision Plan, the City and the District entered into an Amendment to the Partnership Agreement, in which the District granted the City a permit to enter the Preserve to construct Phase I of the Vision Plan, effective September 20, 2011, attached hereto as Exhibit B ("Amendment One"); and

WHEREAS, the construction of Phase I of the Vision Plan, as described in Amendment One, was completed by the City in 2012 for which the City filed a Notice of Completion on November 28, 2012; and

WHEREAS, following the construction of Phase I, the applicable regulatory agencies approved, and the City implemented, a post-closure maintenance plan, the "Revised Operations and Maintenance Plan," dated July 13, 2012 ("O&M Plan"); and

WHEREAS, in April 2012 the City was notified that it was awarded a grant of \$5 million in California Proposition 84 funding for the purpose of completing construction of Phases II through IV of the Vision Plan (Phases II and III pertaining to access road improvements and a nature education center); and

WHEREAS, Section 4 of the Agreement provides that City and District shall meet and discuss in good faith all necessary amendments that may be needed at the completion of each plan review and permitting process to allow the Project to continue to the next Milestone; and

WHEREAS, the plan review and permitting process for Phase II of the Project (access road improvements) is near completion, and the design for Phase III of the Project (a nature education center) is anticipated to be complete for construction in Fall 2014, and the parties have discussed certain terms and conditions that should be reflected in the Agreement going forward; and

WHEREAS, District and City desire to enter into this Amendment Two to facilitate Phases II and III of the Project; and

WHEREAS, except where specifically stated, the terms and conditions set forth herein shall supplement those terms and conditions set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, City and District agree to this Amendment Two as follows:

1. **Recitals.** The recitals above are incorporated by reference as though fully stated herein.
2. **Grant of Permit to Enter; Conditions.** District hereby grants City a permit to enter the Preserve in connection with the upcoming construction of Phase II, consisting of the installation of utilities and construction of improvements to the existing access road primarily on District property, and Phase III, consisting of the construction of a new nature education center on City property, of the Vision Plan. The permit granted by District to City pursuant to this Amendment Two to the Agreement is only applicable to Phases II and III as described in the Vision Plan. The parties further understand and acknowledge that City must receive a permit to enter from District prior to commencing any subsequent Project Construction Phase on the Preserve. Activities in connection with this permit to enter are subject to the following conditions, which City shall incorporate into its construction agreement(s) for Phases II and III:
 - a. City shall at all times comply with all applicable District regulations, and with all other applicable federal, state and local authorities, laws, ordinances and regulations.
 - b. City shall limit the Construction activities on the Preserve to the areas generally described in its construction plans and specifications, and may not conduct activities on any District property outside of this area without prior written approval of the District.
 - c. If fueling must occur on-site, City shall cause designated areas located away from drainages and a drip pan to catch spills to be used. City shall use its best efforts to ensure that vehicles do not block roadways unless the vehicle is attended and can be moved immediately.
 - d. City shall cause all equipment and tools on the Preserve to be used with reasonable care and diligence, and take such precautions as are necessary to avoid damage to land, property, and people. District assumes no risk and shall have no responsibility for safeguarding Construction equipment, property, and personnel from injury, death, or damage as a result of the construction of the Project.
 - e. All vehicles involved in Project construction shall carry properly maintained ABC fire extinguishers while on the Preserve.
 - f. City shall cause all concrete mixing to be done in secure containments. Concrete shall not be mixed within five feet of any waterway. Cleaning of tools shall occur in secure containments; City shall not allow tools to be cleaned in drainages or water bodies. All concrete waste shall be off-hauled; water is allowed to first evaporate in containments for ease of off-haul.
 - g. City shall leave the Preserve in a condition equal to or better than the condition at commencement of Construction.
 - h. City shall promptly notify the District upon completion of the Construction conducted hereunder.

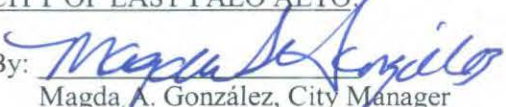
3. **Construction.**

- a. Construction Plans and Specifications for Phase II. District acknowledges that the City has provided, and the District has reviewed and commented on, in-progress plans for Phase II of Construction. For District's review, City will provide District with a final bid package for the Construction upon completion and prior to public release. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- b. Construction Plans and Specifications for Phase III. District and City agree that the City will provide the District with plans for Phase III of Construction for District review of planned work as it pertains to District property. City will provide District with a final bid package for the Construction upon completion and prior to public release. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- c. Coordination. City recognizes that the District may concurrently continue to utilize the District portions of Area B (as defined in the Agreement), which may remain open to the public except when it is necessary to close or restrict the area for safety reasons as deemed necessary by City during the course of construction of Phases II and III of the Project. District and City will meet and confer on a regular basis in order to coordinate all development and construction work.
- d. Construction Safeguards. City shall cause all necessary safeguards for the protection of workers and the public, as required by the conditions and the progress of Project work, to be erected and properly maintained at all times.

4. **Maintenance and Management of Project and Related Infrastructure.** City shall retain responsibility for the patrol, operation, maintenance and management of the Project Site as described in the Agreement and its Amendment One. City further agrees and covenants that it will continue to observe and implement the requirements of the O&M Plan and ensure that Construction documents and activities incorporate all applicable requirements of the O&M Plan as it may be amended from time to time.
5. **Partnership Agreement Remains in Effect.** The Agreement, except as amended from time to time, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict between terms in the Agreement and those in this Amendment Two arises, the provisions of this Amendment Two shall control the construction and interpretation thereof. The Parties agree that a subsequent amendment to the Agreement shall be implemented before the City initiates subsequent phases of the Project, including but not limited to Phase IV, as described in the Vision Plan.
6. **Counterparts.** This Amendment Two may be executed in duplicate counterparts, each of which will be deemed an original.
7. **Authority.** Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment Two as of the Effective Date.

CITY OF EAST PALO ALTO:

By: 
Magda A. González, City Manager

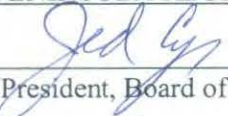
Date: 9-3-13

APPROVED AS TO FORM

By: 
Valerie J. Armento, Interim City Attorney

Date: 9/11/13

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT:

By: 
President, Board of Directors

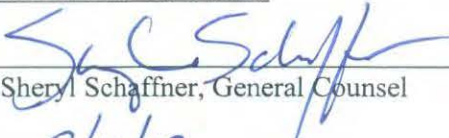
Date: 9/10/13

ATTEST:


Jennifer Woodworth, District Clerk

Date: 9-11-13

APPROVED AS TO FORM:

By: 
Sheryl Schaffner, General Counsel

Date: 9/11/13

Exhibit A

Partnership Agreement

**PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST PALO ALTO AND
THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR THE
COOLEY LANDING PROJECT**

THIS AGREEMENT is entered into by and between the CITY OF EAST PALO ALTO, a municipal corporation, ("CITY") and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a public DISTRICT under the laws of California, ("DISTRICT"), dated February 24, 2010.

RECITALS

WHEREAS, DISTRICT's Mission is to acquire, restore, preserve and protect, in perpetuity, open space land as part of the regional greenbelt, and to provide opportunities for ecologically sensitive public enjoyment and education; and

WHEREAS, District owns those certain lands more specifically identified as San Mateo County Assessor's Parcel Numbers 063-590-040, 063-590-060, 096-230-150 and 096-230-130, comprising a portion of Ravenswood Open Space Preserve ("Preserve") and which have been legislatively dedicated for purposes of public open space pursuant to the California Public Resources Code; and

WHEREAS, CITY owns that certain parcel of land more specifically identified as San Mateo County Assessor's Parcel Number 063-590-030 which it has zoned for Resource Management purposes; and

WHEREAS, the CITY parcel and portions of the DISTRICT parcels make up that certain promontory of land into the San Francisco Bay generally known as Cooley Landing; and

WHEREAS, CITY and DISTRICT desire to further their common goal of providing accessible public open spaces to further the recreational and educational opportunities of their constituents, and

WHEREAS, CITY has undertaken a planning and development process (the "Project") to enhance such public open space and the associated recreational and educational values at Cooley Landing; and

WHEREAS, City intends to apply for grant funding for the Project under the Statewide Park Development and Community Revitalization Program of 2008; and

WHEREAS, DISTRICT desires that the Project include the Cooley Landing Area of Ravenswood Open Space Preserve owned by DISTRICT;

NOW, therefore, in consideration of the mutual promises, covenants and obligations contained herein, CITY and DISTRICT agree:

1. Project Site. DISTRICT owns the real property within the City of Menlo Park, State of California, as shown on Exhibit A, attached hereto and incorporated herein ("Project Site"), which consists of Area A, the upland portions of APNs 096-230-130 and 096-230-150 which are closed to the public, and Area B, within the Cities of East Palo Alto and Menlo Park, State of California, the Preserve public parking lot (portions of APN 063-590-040 and 063-590-060) which is open to the public.
2. Term. The term of this Agreement shall commence upon execution hereof by the duly authorized representatives of the CITY and the DISTRICT and shall consist of:
 - a. Phase I - Plan development, environmental review and permitting
 - b. Phase II - Project construction from completion of Phase I design
 - c. Phase III – Project operation upon completion of Phase II construction

Time is of the essence to this Agreement. City shall diligently pursue completion of Phases I and II consistent with its contractual obligations for grant funding and with all otherwise applicable laws and regulations. The maximum term of this Agreement shall not exceed 30 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body. Before each subsequent phase, CITY and the DISTRICT shall amend this Agreement, as necessary to accommodate evolving conditions, including development of supplemental operations and maintenance agreements. The Parties agree to timely meet, and to negotiate in good faith, toward an extension of this Agreement, as it may be amended from time to time, at such time(s) as appropriate.

3. Site Use, Access, Control and Security.
 - a. CITY is permitted to access and use to the Project site for all purposes reasonably in furtherance of the Project plan development to be completed during such Phase I hereof.
 - b. CITY shall maintain control and security of the Project Site – Area A, including but not limited to restricting public access, securing the site by fencing or other appropriate means and regular law enforcement patrols. DISTRICT shall continue to maintain and secure Area B, except as otherwise noted in this Agreement.
 - c. CITY is responsible for opening the Preserve gate at the end of Bay Road by 9 a.m., each weekday morning (Monday through Friday), excluding CITY holidays. If CITY is unable to fulfill this obligation, City shall immediately notify DISTRICT at DISTRICT's 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate at all other times, i.e. all evenings, all weekends, and on all CITY holidays and any time the City notifies the DISTRICT it is unable to fulfill this obligation.
 - d. CITY, its employees, agents, contractors and consultants shall be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the DISTRICT. DISTRICT, its employees, agents, contractors and consultants shall

be helpful and courteous in all contacts with visitors, neighbors, agents, officials, tenants, lessees and employees of the CITY. CITY shall inform DISTRICT staff of all of its public meetings related to the design and use of Cooley Landing. CITY shall provide biannual updates to the DISTRICT. All signage and public documents shall recognize the DISTRICT (as appropriate) as a partner. DISTRICT shall inform CITY staff of all of its public meetings related to the design and use of Cooley Landing. DISTRICT shall provide biannual updates to the CITY. All signage and public documents shall recognize the CITY (as appropriate) as a partner.

- e. CITY shall promptly notify DISTRICT's 24-hour Emergency Dispatch telephone number at (650) 903-6395 to report any observed or known fires, trespassing, hunting, or illegal activities on the Project Site or on adjoining District lands. DISTRICT shall promptly notify the Menlo Park Fire Department at (650) 688-8400 to report any observed or known fires and shall promptly notify the CITY's Police Department at (650) 321-1112 to report any observed trespassing, hunting, or illegal activities on the Project Site.
 - f. Except as otherwise provide herein or by express written permission granted by DISTRICT, CITY shall not during Phase I of this Agreement cause or allow any physical changes on the Project site (Area A). Such changes shall include but not be limited to grading, paving, excavating or other earthmoving activities, cutting or removing trees, native shrubs, brush or other vegetation, and damaging or demolition of improvements or structures on the Premises.
 - g. Any use of the Project Site not specifically granted to CITY herein must be approved in writing by DISTRICT prior to such use commencing.
4. Amendment. CITY will diligently pursue development of the Project consistent with this Agreement. CITY and DISTRICT agree to meet and discuss in good faith all necessary amendments that may be needed at the completion of Phase I plan (development, review and permitting) and again at the completion of Phase II (construction) to allow the Project to continue to the next Phase. These shall include operation and maintenance plans for Phases II and III. Should the Proposition 84 Statewide Park Program grant be awarded, and a grant contract is issued, any proposed amendments by City and District shall be submitted to the State Department of Parks and Recreation, Office of Grants and Local Services for approval.
5. Insurance. At all times during the term of this Agreement CITY shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. DISTRICT shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. CITY shall furnish DISTRICT with a Certificate of Insurance evidencing such insurance coverage. At all times during the term of

this Agreement DISTRICT shall carry general liability insurance, or a policy of self-insurance, including owned, non-owned and hired auto; property damage; and death and bodily injury, covering its risks arising out of the performance of any acts pursuant to this Agreement or relating to its operation of the Project. CITY shall be named as additional insured on the policy. Said policy shall be in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability in aggregate per occurrence combined single limit and One Million Dollars (\$1,000,000) combined single limit for auto liability. DISTRICT shall furnish CITY with a Certificate of Insurance evidencing such insurance coverage.

6. Indemnification. CITY hereby agrees to indemnify, defend and hold harmless DISTRICT from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of CITY's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of CITY.

DISTRICT hereby agrees to indemnify, defend and hold harmless CITY from and against all liability for all claims, suits, damages, injuries, costs, losses and expenses, including reasonable attorney's fees and court costs, in any manner related to or arising out of the Project, and/or the operation and/or the use of Cooley Landing under this Agreement, to the extent that the matter giving rise to the liability is directly attributable to the negligent or wrongful acts or omissions of DISTRICT's employees or agents or otherwise arises out of matters which, by the terms of this Agreement, are the responsibility of DISTRICT.

CITY and DISTRICT agree to cooperate in the event of claims or litigation against either CITY or DISTRICT by a third party. In the event liability arises due to the alleged concurrent negligence of CITY and DISTRICT, or any combination thereof, each party shall contribute costs of any such suits, defense, damages, costs and liability in proportion to its fault as determined under the principles of comparative negligence.

7. Termination for Default. In the event there is a breach of this Agreement by CITY or DISTRICT, the parties shall meet to resolve the matter. If the parties are unable to resolve a material matter informally, they shall attempt to resolve the matter by mediation through JAMS or other mediator agreeable to the parties. If the parties remain unable to resolve the matter, DISTRICT or CITY may terminate this Agreement sixty days following the giving of notice of such as set forth herein.
8. Applicable Laws. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

9. Notices:

Any notice required to be given to DISTRICT shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

Midpeninsula Regional Open Space District
General Manager
330 Distel Circle
Los Altos, CA 94022
(650) 691-1200

or personally delivered to DISTRICT at such address or at such other address as DISTRICT may designate in writing to CITY.

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed, postage prepaid with a receipt and signature from the receiving party, and addressed to:

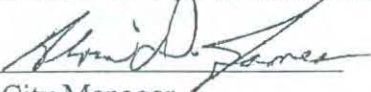
City of East Palo Alto
City Manager
2415 University Avenue, 2nd Floor
East Palo Alto, CA 94303
(650) 853-3100

or personally delivered to CITY at such address or such other address as CITY may designate in writing to DISTRICT, with a receipt and signature from the receiving party.


10. Waiver: The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY or DISTRICT may have and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions and covenants contained herein.
11. Severability: If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
12. Captions: The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

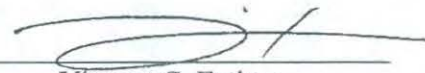
IN WITNESS WHEREOF, CITY and DISTRICT execute this Agreement.

For the CITY OF EAST PALO ALTO

By: 
City Manager

Date: 3/1/10

Attest: 
City Clerk

Approved as to form for CITY: 
Vincent C. Ewing
City Attorney

For the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: Mary Dancy
President
Board of Directors

Date: Feb. 24, 2010

Attest: Anna Dancy
District Clerk

Approved as to form for DISTRICT: Susan Schectman
Susan Schectman
General Counsel



File: G:\Projects\Ravenswood\Cooley Landing\AreaA_AreaB.mxd



Exhibit A: Cooley Landing Area, Ravenswood Open Space Preserve

Produced by Midpeninsula Regional Open Space District, December 2009

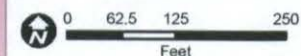
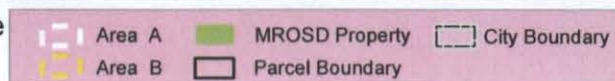


Exhibit B

Amendment One to Partnership Agreement

**AMENDMENT TO PARTNERSHIP AGREEMENT BETWEEN THE CITY OF EAST
PALO ALTO AND THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR
THE COOLEY LANDING PROJECT**

This Amendment to Partnership Agreement ("Amendment") is entered into by and between the City of East Palo Alto, a municipal corporation ("City"), and the Midpeninsula Regional Open Space District, a public district under the laws of California ("District"), dated SEPT. 20, 2011 ("Effective Date").

WHEREAS, the City and District are parties to that certain Partnership Agreement between the City of East Palo Alto and the Midpeninsula Regional Open Space District for the Cooley Landing Project ("Project") dated February 24, 2010 ("Agreement").

WHEREAS, Section 4 of the Agreement provides that City and District shall meet and discuss in good faith all necessary amendments that may be needed at the completion of each plan review and permitting process to allow the Project to continue to the next Milestone (defined below).

WHEREAS, the plan review and permitting process Milestone for Phase 1 of the Project, remediation and trail access is near completion and the parties have discussed certain terms and conditions that should be reflected in the Agreement going forward.

WHEREAS, District and City desire to enter into this Amendment to, among other things, establish a template of terms and conditions which the parties wish to incorporate into the Agreement to continue facilitating development of future phases of the Project.

WHEREAS, except where specifically stated the terms and conditions set forth herein shall supplement those terms and conditions set forth in the Agreement.

WHEREAS, capitalized terms used but not defined in this Amendment shall have the respective meanings provided in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, City and District agree to the Amendment as follows:

1. **Recitals.** The recitals above are incorporated by reference as though fully stated herein.
2. **Project Milestones.** The term "Phase" as used and described in Section 2 of the Agreement is hereby deleted and replaced with the term "Milestone." The term "Phase," when used herein and in any subsequent amendment, shall refer to a phase or those phases of Construction as more specifically described in the Cooley Landing Vision Plan Project Plans and Specifications approved in concept by the City of East Palo Alto on July 20, 2010 ("Vision Plan") and incorporated herein by reference.

3. **Term.** The third sentence in Section 3 is hereby deleted in its entirety and shall be replaced with the following:

 "The maximum term of this Agreement shall not exceed 35 years without a written renewal or extension entered into by the parties acting on the authority of their appropriate legislative body."
4. **Fulfillment of Conditions.** City agrees to cause the construction of the Project ("Construction") and fulfill all conditions imposed by the City's Planning Commission, City Council, and all applicable District regulations and other applicable laws and regulations.
5. **Applicability of Mitigated Negative Declaration.** City acknowledges and agrees that all activities performed or caused to be performed on the Preserve and in all Phases of the Project, now and in the future, shall be done in accordance with the Mitigated Negative Declaration and Mitigation Monitoring Program No. 10-13 certified and adopted by the East Palo Alto City Council on February 15, 2011, attached hereto as Exhibit A and made a part hereof.
6. **Grant of Permit to Enter; Conditions.** District hereby grants City a permit to enter the Preserve in connection with the Construction for Phase One of the Vision Plan. District and City understand and acknowledge that while the parties intend for this Amendment to serve as a template of terms and conditions to govern all phases of Project construction, the permit granted by District to City pursuant to this Section 6 is only applicable for Phase One activities as described in the Vision Plan. The parties further understand and acknowledge that City must receive a permit to enter from District prior to commencing any subsequent Project Construction Phase on the Preserve. Activities in connection with this permit to enter are subject to the following conditions, which City shall incorporate into any Phase One Construction agreement:
 - a. City shall at all times comply with all applicable District regulations, and with all other applicable federal, state and local authorities, laws, ordinances and regulations.
 - b. City shall limit the Construction activities on the Preserve to the area specifically depicted on Exhibit B and may not conduct activities on any District property outside of this area without prior written approval of the District.
 - c. If fueling must occur on-site, City shall cause designated areas located away from drainages and a drip pan to catch spills to be used. City shall use its best efforts to ensure that vehicles do not block roadways unless the vehicle is attended and can be moved immediately.
 - d. City shall cause all equipment and tools on the Preserve to be used with reasonable care and diligence, and take such precautions as are necessary to avoid damage to land, property, and people. District assumes no risk and shall

have no responsibility for safeguarding Construction equipment, property, and personnel from injury, death, or damage as a result of the construction of the Project.

- e. All vehicles involved in Project construction shall carry properly maintained ABC fire extinguishers while on the Preserve.
- f. City shall cause all concrete mixing to be done in secure containments. Concrete shall not be mixed within five feet of any waterway. Cleaning of tools shall occur in secure containments; City shall not allow tools to be cleaned in drainages or water bodies. All concrete waste shall be off-hauled; water is allowed to first evaporate in containments for ease of off-haul.
- g. City shall leave the Preserve in a condition equal to or better than the condition at commencement of Construction.
- h. City shall promptly notify the District upon completion of the Construction conducted hereunder.

7. Construction.

- a. Construction Plans and Specifications. District acknowledges that the City has provided, and the District has reviewed and commented on, in-progress plans for Phase One of Construction. For District's review, City will provide District with a final bid package for the Phase One of construction upon completion and prior to public release. City will provide District the opportunity to review and comment on construction plans and specifications and bid packages prepared by City for all subsequent Phases of Project construction prior to their implementation. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- b. Commencement. Construction of the Project improvements shall commence and be performed by the City in an expedited, workmanlike manner. City shall provide District with a Construction schedule ("Construction Schedule") for each Phase of Construction within ten days following pre-Construction meetings that are held for each Phase of Construction. City shall use its best efforts to ensure that each Phase of Construction commences and proceeds in accordance with the Construction Schedule. The City shall notify the District, in writing and in a timely manner, of the timeframes established by the City for each bid opening process for each Phase of Project construction and any modifications thereto.
- c. Completion. City shall take all steps necessary to cause diligent prosecution and completion of the Project construction within the times set forth in the Construction Schedule.

- d. Coordination. City recognizes that the District may concurrently continue to utilize the District portions of Area B (as defined in the Agreement), which may remain open to the public as determined by the District in its sole discretion. District and City shall meet and confer on a regular basis in order to coordinate all development and construction work.
 - e. Construction Safeguards. City shall cause all necessary safeguards for the protection of workers and the public, as required by the conditions and the progress of Project work, to be erected and properly maintained at all times.
8. **Inspection and Access to Work.** All equipment, materials, and work shall be subject to inspection by the District. The District may at any time, subject to and in accordance with all applicable laws and regulations, observe the progress and quality of the work and determine, in general, if Construction is proceeding in accordance with the corresponding Construction plans and specifications. The District is not required to make comprehensive or continuous inspections to check the quality of the work, and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the District shall not relieve the City of its obligation to conduct comprehensive inspections of the work and to cause the furnishing of proper materials, labor, equipment and tools, construction of acceptable work, and providing adequate safety precautions, in conformance with the Agreement, as amended. If District discovers an issue during an inspection, the District may contact the City, and the City shall address such issue to the District's satisfaction within 30 days from the date of the District's contact with the City.
9. **Default.**
- a. Default Remedies. Failure by either party to perform any action or covenant required by this Amendment within the time periods provided herein following notice shall constitute a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Amendment, the claimant shall not institute any proceeding against the other party if (i) such party cures the Default within thirty (30) days following receipt of such notice of Default where the failure or delay is capable of being cured within 30 days, or (ii) such party immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence, but in any event no later than 90 days following the notice of Default, where such Default cannot be cured within 30 days.
 - b. Institution of Legal Actions. Except as otherwise specifically provided herein, upon the occurrence of a Default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any Default, or to recover actual damages for any Default, or to obtain any other remedy consistent with the

purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California. Notwithstanding anything herein to the contrary, neither party shall have the right to recover any consequential, special or punitive damages in the event of a Default by the other party.

10. **Maintenance and Management of Project and Related Infrastructure.** Except as otherwise provided in Section 11 herein, City shall assume responsibility for the patrol, operation, maintenance and management of the Project Site. City shall be responsible for maintaining and operating all Project-related infrastructure in the manner required to serve the Project and in accordance with the use and operating covenants set forth in Section 12.
11. **Parking Area.** City and District shall be jointly responsible for operating, maintaining and managing that area of the Project Site where the visitor parking lot is located. In the event any disagreement between the City and District arises involving the parking lot, including but not limited to issues regarding proportional use and sufficient accommodation for Preserve visitors, the parties agree to make diligent, good faith efforts to meet, discuss and develop a mutually agreeable resolution regarding any such disagreement(s). Additionally, the parties shall meet and confer prior to the commencement of each Construction Phase to assess parking lot usage and operations.
12. **Construction, Use, Operating and Maintenance Covenants.** City and its successors and assigns shall be required to construct, use, operate and maintain the Project in a high-quality manner and in accordance with the Vision Plan and the Project Mitigation Monitoring Program, and as more particularly provided below.
 - a. General. City covenants and agrees on behalf of itself and its successors and assigns that City shall use and continuously operate the Project for the uses herein specified and for no other purpose.
 - b. Governmental Requirements. City shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, labor codes, ordinances, rules and regulations, as well as the Consent Decree entered on November 16, 2005 by the United States District Court for the Northern District of California in the matter captioned United States of America and the State of California, by and through the California Department of Fish and Game and California State Lands Commission v. County of Santa Clara, et al. (No. CV-0373 PVT) (collectively, "Laws") which apply to the operation and use of the Project or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Project or any portion thereof under any Laws now or hereafter adopted, enacted or made and applicable to the Project or any portion thereof,

and payment of any fees, charges or assessments arising out of or in any way related to the Project or any portion thereof. All construction, use, operation and maintenance of the Project shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations.

- c. General Use Prohibitions. City covenants and agrees that in connection with the use and operation of the Project, and any portion thereof, City will not:
 - i. Permit equestrian use; or
 - ii. Permit dogs, except guide and service dogs under physical control either participating in training program or already a specifically trained to assist the blind, deaf or disabled, and wearing an identifying vest or tag; ; or
 - iii. Permit undue accumulations of garbage, trash, rubbish or any other refuse; or
 - iv. Create, cause, maintain or permit any nuisance (as the same may be defined by applicable Law) in, on or about the Project; or
 - v. Commit or suffer to be committed any waste in, on or about the Project; or
 - vi. Use or allow the Project to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Project; or
 - vii. Do or permit to be done anything which in any way unreasonably disturbs the occupants of neighboring property; or
 - viii. Cause or permit any insurance coverage on the Project to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates; or
 - ix. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Project or to any adjacent public or private property or improvements; or
 - x. Violate any Law, ordinance or regulation applicable to the Project.
- d. General Operating Standards. City covenants and agrees that it shall operate the Project in such manner and by such means as will reflect positively upon District and City. City's responsibilities with respect to operating the Project shall include, but are not limited to:

- i. Should any unauthorized use or activity occur in Project, City may exercise its authority to correct these matters, including, where necessary, enforcing City regulations and ordinances and County ordinances.
- ii. City shall cause all necessary precautions to be taken to guard against and eliminate fire hazards. No smoking or open campfires are allowed on the Preserve, per District Ordinance. City shall not allow any vehicles to be parked on dry grass.
- iii. City shall report any encroachments or trespass by the neighboring properties upon the Project to the District.
- iv. The City shall set hours of Project operation to match those of the District's Preserve.
- v. Section 3.c. of the Agreement is hereby deleted and replaced with the following paragraph.

"The parties understand and acknowledge that City intends to install an electric gate which shall open and close in accordance with the District's Preserve hours. Prior to the installation of such electric gate, City is responsible for opening the Cooley Landing and Preserve gate at the end of Bay Road by 9 a.m. and closing the gate one half hour after sunset every day. If City is unable to fulfill this obligation, City shall immediately notify District at District's 24-hour Emergency Dispatch telephone number at (650) 903-6395. The District is responsible for opening and closing the gate when the City notifies the District it is unable to fulfill this obligation."
- vi. Subject to District regulations, City shall issue and administer all permits for vending and special uses for the Project. District and City agree to jointly establish standards regarding the issuance of permits governing commercial solicitations on the Project Site in accordance with District Regulation section 600.1
- vii. City may close portions of the Project where and when deemed necessary to avoid or correct a public health, safety or environmental hazard.
- viii. City shall provide for routine patrols and emergency or urgent response, to, in and around the Project, at or above the level of services existing upon the date of execution of this Agreement.
- e. General Standards of Maintenance. City covenants and agrees that it shall maintain, or cause to be maintained, the Project, and all improvements and landscaping within the Project (including all structures, sidewalks, pedestrian

lighting, landscaping, and any and all other improvements on the Project and associated open space and common areas) in high-quality condition and repair, subject only to normal wear and tear, and in compliance with the Maintenance Standards (defined below). City's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable District open space preserve. To accomplish such maintenance, City shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section 12.e. The following standards ("Maintenance Standards") shall be complied with by City and its maintenance staff, contractors and subcontractors:

- i. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects equal thereto or better in quality, appearance and durability;
- ii. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;
- iii. Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required;
- iv. Clean lighting fixtures and relamp and/or reballast as needed;
- v. Maintain landscaping as necessary to maintain in high-quality condition;
- vi. Maintain signs, including relamping and/or reballasting and/or repairing as required;
- vii. Maintain and keep in first-class condition and repair all benches, shelters, planters, trash containers, and other exterior elements;
- viii. Maintain and keep in a sanitary condition public restrooms and other common use facilities;
- ix. Clean, repair and maintain all common utility systems to the extent that the same are not cleaned, repaired and maintained by public utilities;
- x. Maintain all fountains, water courses and associated structures, drinking fountains, pumps and associated plumbing;

- xi. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;
- xii. Maintain all surface and storm lateral drainage systems;
- xiii. Maintain all sanitary sewer lateral connections;
- xiv. Promptly remove any graffiti on or about the Project;
- xv. Perform landscape maintenance including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris; and
- xvi. Perform other maintenance as required by Law.

13. Indemnification.

- a. City agrees to indemnify, hold harmless, defend, and protect the District, its officers, directors, agents, and employees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments, or obligations whatsoever, made in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities contemplated in this Amendment.
- b. City hereby waives all claims and recourse against the District, including the right of contribution for loss or damage to property, and releases the District from liability to the extent such claims or liability were not caused by the sole negligence or willful misconduct of the District and provided such claims are related to City's activities under this Amendment or City's use of the Preserve.
- c. City shall be responsible for any and all personal injury and property damage on the Preserve caused by its acts or omissions as a result of any activities conducted pursuant to this Amendment, and shall indemnify the District against any and all claims, liabilities, or losses, including attorney's fees, on account thereof.
- d. City shall indemnify, defend, and hold harmless the District from and against any legal or administrative proceedings brought against the District, and all claims, liabilities, losses, damages, cleanup costs, remediation costs or other costs, foreseen and unforeseen, including without limitation, attorney,

engineering, and other professional or expert fees, due to the existence of any hazardous substance of any kind on, in or under the Preserve, when the existence of such hazardous substance, in whole or in part, arises out of, is attributable to or is caused by any activities, acts or omissions by City under this Amendment, whether on-site or off-site.

14. **Signage and Brochures.** City shall include the following in all promotion materials about City's operations in the Project Site:

"Brought to you in partnership with the Midpeninsula Regional Open Space District."

15. **Partnership Agreement Remains in Effect.** The Agreement, except as amended herein, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict between terms in the Agreement and those in the Amendment arises, the provisions of this Amendment shall control the construction and interpretation thereof.

16. **Counterparts.** This Amendment may be executed in duplicate counterparts, which of which will be deemed an original.

17. **Authority.** Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

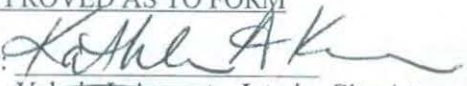
IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

CITY OF EAST PALO ALTO:

By: 
ML Gordon, City Manager

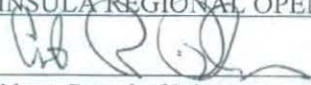
Date: 7-23-12

APPROVED AS TO FORM

By: 
~~Valerie J. Armento, Interim City Attorney~~ Kathleen Kane, City Attorney

Date: 7/23/2012

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT:

By: 
President, Board of Directors

Date: 3/6/12

ATTEST:

[Signature]
District Clerk

Date: 8/6/12

APPROVED AS TO FORM:

By: [Signature] AGC FOR
Susan M. Schectman, General Counsel
SHERYL SCHAFFNER

Date: 8/1/12

Exhibit A
Mitigated Negative Declaration

MITIGATION MONITORING AND REPORTING PROGRAM

COOLEY LANDING PARK PROJECT

CITY OF EAST PALO ALTO

JANUARY 2011

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration concluded that the implementation of the project could result in a number of significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
BIOLOGICAL RESOURCES				
Impact BIO-1: Project development could result in significant impacts to federally and state listed endangered salt marsh harvest mouse individuals.	<p>MM BIO-1.1: A qualified biological monitor(s) will be present during all construction work taking place adjacent to salt marsh habitats. This monitoring shall be repeated in each construction phase that occurs adjacent to salt marsh habitats. The monitors must have experience in monitoring sensitive resource issues on construction projects. Prior to the initiation of construction, qualifications of the prospective biological monitor(s) will be submitted to the USFWS and CDFG for review and approval. The monitor(s) will have the authority to halt construction, if necessary, when noncompliance actions occur. The biological monitor(s) will be the contact person for any employee or contractor who might inadvertently kill or injure a listed species or anyone who finds a dead, injured, or entrapped listed species.</p> <p>MM BIO-1.2: Prior to the start of any ground disturbing activities on the site, the biological monitor will provide an endangered species training program to all personnel involved in project construction. This training shall be repeated for new personnel in each of construction phase that involves ground disturbance. At a minimum, the employee education program will consist of a brief presentation by persons knowledgeable about salt marsh harvest mouse biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved with implementation of the project. The program will include the following: a description of the species and their habitat needs; any reports of occurrences</p>	The project proponents are responsible for implementing mitigation measures MM BIO-1.1 to MM BIO-1.12 prior to, during, and after construction.	<p>City Planning Manager shall ensure all measures are implemented</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>City Planning Manager</p> <p>USFWS</p> <p>CDFG</p>

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>in the action area; an explanation of the status of the salt marsh harvest mouse and their protection under FESA and CESA; and a list of measures being taken to reduce impacts to these species during the work. Fact sheets containing this information will be distributed to all involved in the training.</p> <p>MM BIO-1.3: Prior to initiation of ground disturbing activities related to soil remediation or debris removal in the refugial habitat restoration area, the qualified biologist will remove pickleweed and saltgrass by hand. The qualified biologist will then complete a pre-construction survey for salt marsh harvest mouse to ensure that all mice have left the work area. To prevent salt marsh harvest mice from moving through the restoration area during construction activities, temporary exclusion fencing will be placed around a defined work area prior to the start of any ground disturbing activities on the site. The fence will be made of a material that does not allow harvest mice to pass through, and the bottom will be buried to a depth of two inches so that mice cannot crawl under the fence. All support for the exclusion fencing will be placed on the inside of the project area.</p> <p>MM BIO-1.4: If a salt marsh harvest mouse is observed on-site at any time during construction, work will be stopped immediately by the biological monitor until the mouse leaves the vicinity of the work area on its own volition and the USFWS and CDFG are notified. If the mouse does not leave the work area, work will not be reinitiated until the USFWS and CDFG are contacted and has made a decision on how to proceed with work</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>activities. The biological monitor will direct the contractor on how to proceed accordingly. The biological monitor or any other persons at the site will not pursue, capture, handle, or harass any mouse observed. The City will contract with the United States Department of Agriculture (USDA) Wildlife Services to provide predator control services. During construction, if the biological monitor or other personnel observe ravens, crows, or other predators, they will alert USDA staff to address predators appropriately.</p> <p>MM BIO-1.5: All personnel and any equipment will be required to stay within the designated work sites and access corridors and will not be allowed to enter adjacent salt marsh wetlands, drainages, or habitat of listed species. Pets will not be allowed in or near the work site during or after construction. Firearms will not be allowed in or near the work sites. No intentional killing or injury of wildlife will be permitted. The work sites will be maintained in a clean condition. All trash (e.g., food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be placed in closed containers and properly disposed of offsite on a daily basis. No fires will be permitted at any of the work sites.</p> <p>MM BIO-1.6: Prior to the start of construction, a Refugial Habitat Design Plan for the marsh restoration work at the southwestern portion of the site will be prepared by a qualified biologist for review and approval by the USFWS and CDFG. No construction associated with restoration and enhancement activities within this area will be allowed to begin until approval</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>from the USFWS and CDFG has been received. All design components incorporated into the final restoration plan will be considered in light of their benefits to the salt marsh harvest mouse. All long-term habitat restoration and enhancement items will be designed and implemented so that these areas may be utilized by the salt marsh harvest mouse for nearly 100 years given current sea level rise predictions. The restored refugial habitat in the southwestern portion of the site will remain closed to public access in perpetuity.</p> <p>MM BIO-1.7: Appropriate erosion control materials such as straw rolls will be installed as needed during construction activities within the project area. During construction activities, exclusion fencing (silt type) will be placed on both sides of the access road, between the MROSD gate and the east end of the access road. All vehicle speeds on unpaved roads will be limited to 15 mph.</p> <p>MM BIO-1.8: Hazardous materials used during the work period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.</p> <p>MM BIO-1.9: After construction, a final clean-up will include removal of all refuse, materials, and facilities generated by the work. Vegetation will not be removed or disturbed in the clean-up process.</p>			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>MM BIO-1.10: If requested, before, during, or upon completion of construction, the City of East Palo Alto will allow access by USFWS and CDFG personnel to the work areas to inspect effects, if any, upon the activities on the salt marsh harvest mouse.</p> <p>MM BIO-1.11: Subsequent to construction, the City of East Palo Alto will submit a compliance report, prepared by the biological monitor, to the USFWS and CDFG within 60 days after completion of the work. This report will detail the dates the work occurred; information concerning the success of the actions in meeting the recommended avoidance and minimization measures; any effects on the salt marsh harvest mouse; documentation of the worker environmental awareness training; and any other pertinent information.</p> <p>MM BIO-1.12: The following describes various design measures that will further avoid impacts to salt marsh harvest mouse during project operation:</p> <ul style="list-style-type: none"> • Interpretative signage will be placed along the length of the proposed shoreline trail to encourage awareness within the public of wetlands ecology, endangered species life histories, species/predator interactions, and how predation of sensitive species can be minimized. Additional signs will be placed at various points throughout the trail system to remind park users that pets are not allowed, and to indicate that trespassing is not allowed within refugial habitat restoration area. Signage in picnic areas will be provided to 			

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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>indicate that feeding of wildlife is prohibited and why it is not allowed. Enforcement of the ban on dogs will be the responsibility of the City of East Palo Alto Police Department.</p> <ul style="list-style-type: none"> • Educational materials and signage at the kayak/canoe launch will advise against recreational use of canoes and kayaks within or in the vicinity of the marshes of the Laumeister Tract due to danger of stranding during low tide conditions. • Trash cans, recycling containers, and the dumpster will be animal proof to reduce the amount of waste available to vermin and other predators. All loose trash (e.g., litter, food scraps, cans, bottles, containers, wrappers, cigarette butts, and other discarded items) will be properly disposed on a daily basis. • All new lighting poles, interpretative signs, information kiosks, and fencing will be designed and established so as to discourage perching or roosting activities of avian predators (e.g., spikes can be placed on light fixtures and other possible perches). • Native shrubs will be planted along the shoreline below the pedestrian access trail to provide visual screening between wildlife and public trail users. The shrubs will have growth characteristics that discourage perching or roosting of avian predators. Prior to implementing landscaping designs for this area, the proposed planting palette will be submitted for review and approval by the USFWS, CDFG, and predator control staff. • Use of the trail system will be limited to pedestrian and/or 			

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Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>bicycle use only. Public users will be prohibited from using all terrain vehicles (ATVs) or other motorized equipment on the parkland trail system. Battery operated wheelchairs or other similar mechanisms associated with access for disabled individuals will be allowed.</p> <ul style="list-style-type: none"> • Educational pamphlets, brochures, and other materials will be provided to park users to educate the public on minimization measures that can be undertaken to prevent feral and domestic pets and rodents from diminishing habitat quality within the project area. • The City will contract with USDA Wildlife Services to provide ongoing predator control services as needed, including trapping. 			
Impact BIO-2: Project construction could result in short-term significant impacts to federally and state listed endangered California clapper rail individuals.	MM BIO-2.1: Construction work will be initiated on or after September 1 and completed on or before January 31 to avoid the nesting season of the California clapper rail. If work in this area is proposed after January 31 and prior to September 1, protocol breeding surveys for California clapper rail will be completed prior to any ground disturbing activities to determine the extent and location of nesting clapper rails. Results of protocol breeding surveys will be submitted to the USFWS and CDFG for a determination of whether work proposed within 700 feet of a clapper rail nest (or the activity center of vocalizing clapper rails) discovered during such surveys will be rescheduled to occur during the period from September 1 to January 31. <ul style="list-style-type: none"> • In addition to the construction period above, the following specific construction work may also be completed June 1 through September 1: 	<p>Prior to the start of construction, if construction is initiated after January 31 and prior to September 1, the project contractor shall retain a qualified biologist to complete the necessary surveys.</p> <p>All additional</p>	<p>A report prepared by a qualified biologist documenting the results to the survey shall be submitted to the City Planning Manager, CDFG, and USFWS prior to construction.</p> <p>All measures shall be printed on all construction</p>	<p>City Planning Manager</p> <p>CDFG</p> <p>USFWS</p>

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<ul style="list-style-type: none"> ▪ Tree pruning and installation of temporary fencing around trees to remain ▪ Tree removal ▪ Removal of barbed wire fence, unused pedestrian bridge, utility poles, water tank ▪ Removal of asphalt paving (16,000 sf) and gravel access road (6,000 sf) ▪ Temporary construction fencing at east end of existing parking lot ▪ Stormwater pollution prevention measures (silt fences, truck tire wash-offs, wattles, etc.) ▪ Clearing and grubbing understory vegetation east of parcel line (avoiding wetland, shoreline, and tidal marsh areas) ▪ Rough grading of upland areas ▪ No more than 4 trucks per day importing clean soil and rough grading to distribute soil and placing only on the eastern half of the peninsula, farthest from the marsh area. • The following construction activities may only take place between September 1 and January 31: <ul style="list-style-type: none"> ▪ Removal/relocation of concrete debris in wetland area ▪ Rip rap augmentation along shoreline ▪ Disassembly of steel boat launch structure between jetties ▪ Revegetation efforts near the wetland or tidal marsh areas ▪ Import clean fill onto the site <p>MM BIO-2.2: Implement MM BIO-1.5 through MM BIO-1.12. The California clapper rail and salt marsh harvest mouse are</p>	measures shall be completed according to the specified construction timeframe by the project proponents.	documents, contracts, and project plans.	

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	found in similar locations in the vicinity of the project site and the measures necessary for species protection are similar for both. Thus, implementing Mitigation Measures BIO-1.5 through 1.12 relevant to the salt marsh harvest mouse would also mitigate impacts to the California clapper rail.			
Impact BIO-3.: Project construction could result in significant short-term impacts to federally and state listed threatened Central California coast steelhead and green sturgeon.	MM BIO-3.1: Bank stabilization work along the shoreline will be subject to the following measures: <ul style="list-style-type: none"> • disturbance and removal of aquatic vegetation will be avoided; • limit the duration and extent of in-water work to the minimum necessary to complete the work; • implement best management practices and use of silt fence or straw wattles to control sedimentation in runoff; and • complete in-water work only during low tides to minimize the number of fish in the vicinity, and when steelhead are less likely to be in the project vicinity (from June 1 through November 30). MM BIO-3.2: Hazardous materials used during the construction period (e.g., fuels, lubricants, solvents, etc.) will be controlled, cleaned up, and properly disposed of outside the tidal marsh areas. Refueling areas for any equipment will be located at upland sites outside of wetlands.	During all bank stabilization work along shoreline by project contractors.	The City Planning Manager and/or designated project representative will ensure that the contractors implement the bank stabilization measures. All measures shall be printed on all construction documents, contracts, and project plans.	City Planning Manager
Impact BIO-4: The project would result in significant impacts to nesting birds, if present	MM BIO-4.1: If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors will be completed by a qualified ornithologist	Prior to the start of construction the project proponents shall	A report prepared by a qualified ornithologist documenting the	City Planning Manager CDFG

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
on-site prior to project construction.	to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys will be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys will be completed no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist will inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist will, in consultation with CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The ornithologist will submit a report to the City's Planning Manager indicating the results of the survey and any designated buffer zones to the satisfaction of the City prior to the issuance of any grading or building permit. The City will contract with the USDA Wildlife Services to address any nests found during construction in a manner they determine appropriate.	retain a qualified ornithologist to complete the required surveys.	results to the survey and any designated buffer zones shall be submitted to the City's Planning Manager prior to construction. All measures shall be printed on all construction documents, contracts, and project plans.	
CULTURAL RESOURCES				
Impact CUL-1: Implementation of the proposed project could adversely impact buried cultural resources.	MM CUL-1.1: Should any archaeological or paleontological indicators be exposed or discovered during either site preparation or subsurface construction activities, all construction work within a 50-foot radius of the find will be halted, the City Planning Manager and City Engineer will be notified, and a qualified archaeologist or paleontologist will be retained to examine the find and make recommendations. The City of	To be implemented if any significant archaeological or paleontological resources are encountered.	If cultural resources are encountered a report will be submitted by qualified archaeologist/	City Planning Manager City Engineer

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>Menlo Park Community Development Director will also be notified.</p> <p>MM CUL-1.2: If human remains are discovered, the San Mateo County Coroner will be notified. The Coroner will determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he/she will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased.</p> <p>MM CUL-1.3: If an archeologist or paleontologist determines that the find is not a significant resource, work will resume only after the submittal of a preliminary report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of the deceased Native American and for reburial will follow the protocol set forth in the CEQA Guidelines Section 15126.4. If the site is found to be a significant archaeological site, a mitigation program will be prepared and submitted to the City Planning Manager for consideration and approval, in conformance with the protocol set forth in the CEQA Guidelines Section 15126.4.</p> <p>MM CUL-1.4: A final report will be prepared when a find is determined to be a significant archaeological or paleontological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, testing, other recovered information, and conclusions.</p>	Contractors shall stop work, in the immediate area of the find, and notify the City representative and Coroner as appropriate.	<p>paleontologist to the City Planning Manager and the City Engineer</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
HYDROLOGY AND WATER QUALITY				
Impact HYD-1: Implementation of the proposed project could result in significant water quality impacts during construction.	<p>MM HYD-1.1: Prior to the commencement of any clearing, grading or importing soil, the project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the East Palo Alto Director of Public Works, as follows:</p> <ul style="list-style-type: none"> • The City will develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and • The City will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). <p>MM HYD-1.2: The project will include Best Management Practices (BMPs) to control the discharge of stormwater pollutants including sediments associated with construction activities. Prior to the issuance of a grading permit by the City of East Palo Alto, the project may be required to submit an Erosion Control Plan to the City Project Engineer. The Erosion Control Plan will include applicable BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City of East Palo Alto's storm drainage system from construction activities.</p> <p>MM HYD-1.3: The project will comply with the City of East Palo Alto's Grading Ordinance, including erosion and dust control measures during site preparation and with the City of</p>	Prior the start of grading and demolition by the project engineer	<p>The City Engineer shall review and approve the finalized SWPPP.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	City Planning Manager City Engineer RWQCB

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>East Palo Alto's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:</p> <ul style="list-style-type: none"> • Restrict grading to the dry season (April 15 through October 15) or meet City of East Palo Alto requirements for grading during the rainy season; • Utilize on-site sediment control BMPs to retain sediment on the project site; • Utilize stabilized construction entrances and/or wash racks; • Implement damp street sweeping; • Provide temporary cover of disturbed surfaces to help control erosion during construction; • Provide permanent cover to stabilize the disturbed surfaces after construction has been completed; • No equipment will be operated in tidal water areas of the shorelines on or adjacent to the site; • All in-water work will only be completed during low tide to minimize the number of fish in the vicinity; • No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material will be allowed to enter into or be placed where it may be washed by rainfall or runoff into aquatic or wetland habitat; • Standard erosion control and slope stabilization measures will be required for work completed in any area where erosion could lead to sedimentation of a water body. For 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
	<p>example, silt-fencing will be installed just outside the limits of grading and construction in any areas where such activities will occur upslope from, and within 50 feet of, any wetland, aquatic, or marsh habitat. This fencing will be inspected and maintained regularly throughout the duration of construction;</p> <ul style="list-style-type: none"> • Machinery will be refueled at least 60 feet from any aquatic habitat, and a spill prevention and response plan will be developed and approved by the City of East Palo Alto. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur. • Soil stockpiling, equipment staging, construction access, and other intensive soil-disturbing activities will not occur immediately adjacent to any wetlands. The limits of the construction area will be clearly demarcated with Environmentally Sensitive Area fencing by a qualified biologist to avoid inadvertent disturbance outside the fence during construction activities. • Dust suppression (e.g., using watering trucks) will be implemented during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust to keep dust from being transported to vegetated wetlands nearby. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they will be hydro-seeded so that vegetation will suppress dust and inhibit erosion. 			

MITIGATION MONITORING AND REPORTING PROGRAM COOLEY LANDING PARK PROJECT CITY OF EAST PALO ALTO				
Impact	Mitigation and Standard Measures	Timeframe and Responsibility for Implementation	Method of Compliance	Oversight of Implementation
LAND USE				
Impact LU-1: Implementation of the fishing and boating provision of the project could result in a conflict with MROSD land use ordinances.	MM LU 1.1: Prior to opening the Cooley Landing area to fishing and boating, project proponents shall obtain MROSD designation of the area as a permitted fishing and boating area. In the event that such designation is not obtained, facilities will be designed to discourage such uses and signs prohibiting fishing and boating will be posted.	The project proponents shall obtain necessary designation for fishing and boating from MROSD	Approval from MROSD	MROSD and City Planning Manager

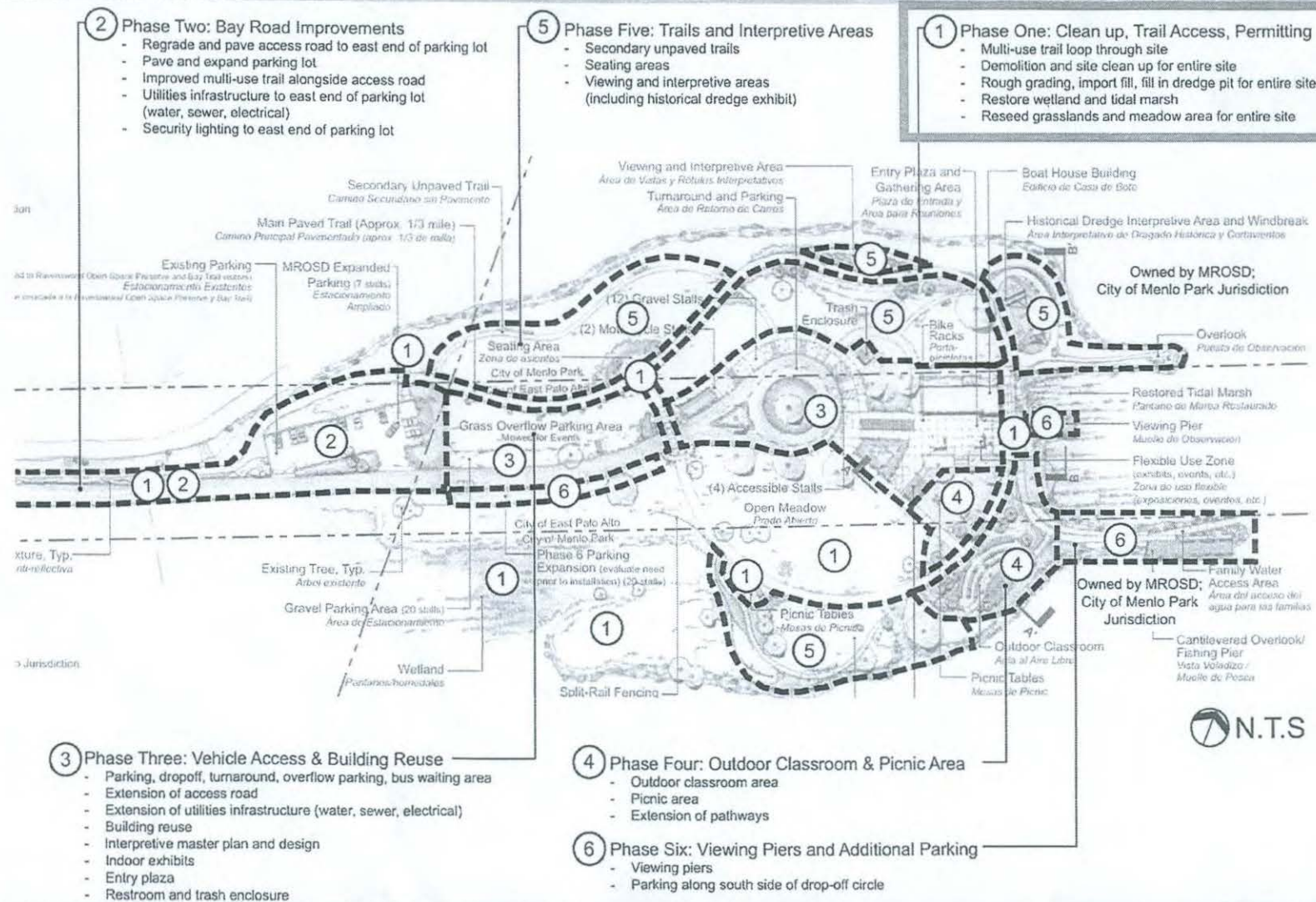
SOURCE

City of East Palo Alto, *Cooley Landing Park Project Initial Study*, December 2010.

Exhibit B
Construction Area

COOLEY LANDING

CITY OF EAST PALO ALTO



Plan Set

**AMENDMENT THREE TO THE PARTNERSHIP AGREEMENT BETWEEN THE
CITY OF EAST PALO ALTO AND THE MIDPENINSULA REGIONAL OPEN SPACE
DISTRICT FOR THE COOLEY LANDING PROJECT**

This Amendment Three to the Partnership Agreement (“Amendment Three”) is entered into by and between the City of East Palo Alto, a municipal corporation (“City”), and the Midpeninsula Regional Open Space District, a public district under the laws of California (“District”), dated _____ (“Effective Date”).

WHEREAS, the City and District are parties to a Partnership Agreement between the City of East Palo Alto and the Midpeninsula Regional Open Space District for the Cooley Landing Project (“Project”) dated February 24, 2010 (“Agreement”), attached hereto as Exhibit A; and

WHEREAS, in contemplation of the construction of Phase I of the Vision Plan, the City and the District entered into Amendment One to the Partnership Agreement, in which the District granted the City a permit to enter the Preserve (as defined in the Agreement) to construct Phase I of the Vision Plan, effective September 20, 2011, attached hereto as Exhibit B; and

WHEREAS, in 2012, the City completed the construction of Phase I of the Vision Plan, as described in Amendment One, for which the City filed a Notice of Completion on November 28, 2012; and

WHEREAS, following the construction of Phase I, the applicable regulatory agencies approved, and the City implemented, a post-closure maintenance plan, the “Revised Operations and Maintenance Plan,” dated July 13, 2012 (“O&M Plan”); and

WHEREAS, in April 2012 the City was notified that it was awarded a grant of \$5 million in California Proposition 84 funding for the purpose of completing construction of Phases II through IV of the Vision Plan (Phases II and III pertaining to access road improvements and an education center); and

WHEREAS, the construction of Phases II and III of the Vision Plan, was described in Amendment Two, attached hereto as Exhibit C, and was partially completed by the City in September 2015; and

WHEREAS, elements related to Phases II and III are yet to be completed (roadway lights of Phase II and standalone restroom of Phase III); however, construction of these elements is anticipated to be completed no later than June 2019; and

WHEREAS, Section 4 of the Agreement provides that City and District shall meet and discuss in good faith all amendments that may be necessary to effectuate the completion of the project; and

WHEREAS, the design process for Phases IV and V of the Project has begun and the construction is anticipated to be completed no later than June 2019 ; and

WHEREAS, District and City desire to enter into this Amendment Three to facilitate Phases IV and V of the Project; and

WHEREAS, District has agreed to fund consultant costs to develop a business and operating plan for Cooley Landing Park; and

WHEREAS, except where specifically stated, the terms and conditions set forth herein shall supplement those terms and conditions set forth in the Agreement and its previous amendments.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, City and District agree to this Amendment Three as follows:

1. **Recitals.** The recitals above are incorporated by reference as though fully stated herein.
2. **Grant of Permit to Enter; Conditions.** District hereby grants City a permit to enter the Preserve in connection with the upcoming construction of Phases IV and V, consisting of the remaining site improvements depicted on the Phasing Plan for the Vision Plan (attached hereto as Exhibit D (“Phasing Plan”). The permit granted by District to City pursuant to this Amendment Three to the Agreement is only applicable to Phases IV and V as described in the Vision Plan. The parties further understand and acknowledge that City must receive a permit to enter from District prior to commencing any subsequent Project Construction Phase on the Preserve. Activities in connection with this permit to enter are subject to the following conditions, which City shall incorporate into its construction agreement(s) for Phases IV and V:
 - a. City shall at all times comply with all applicable District regulations, and with all other applicable federal, state and local authorities, laws, ordinances and regulations.
 - b. City shall limit the Construction activities on the Preserve to the areas generally described in its construction plans and specifications, and may not conduct activities on any District property outside of this area without prior written approval of the District.
 - c. If fueling must occur on-site, City shall cause designated areas located away from drainages and a drip pan to catch spills to be used. City shall use its best efforts to ensure that vehicles do not block roadways unless the vehicle is attended and can be moved immediately.
 - d. City shall cause all equipment and tools on the Preserve to be used with reasonable care and diligence, and take such precautions as are necessary to avoid damage to land, property, and people. District assumes no risk and shall have no responsibility for safeguarding Construction equipment, property, and personnel from injury, death, or damage as a result of the construction of the Project.
 - e. All vehicles utilized for purposes of Project construction shall carry properly maintained ABC fire extinguishers while on the Preserve.
 - f. City shall cause all concrete mixing to be done in secure containments. Concrete shall not be mixed within five feet of any waterway. Cleaning of

tools shall occur in secure containments; City shall prohibit tools from being cleaned in drainages or water bodies. All concrete waste shall be off-hauled; water is allowed to first evaporate in containments for ease of off-haul.

- g. City shall leave the Preserve in a condition equal to or better than the condition at commencement of Construction.
- h. City shall promptly notify the District upon completion of the Construction conducted hereunder.

3. **Design and Construction.**

- a. Design Development and Construction Plans and Specifications for Phases IV and V. District and City agree that the City will include the District as part of the project team during design development and construction and will also provide the District with plans for Phases IV and V for District review of planned work as it pertains to District property. City will provide District with a final bid package for the Construction upon completion and prior to public release. All improvements shall be installed in accordance with all such corresponding construction plans and specifications.
- b. Coordination. City recognizes that the District may concurrently continue to utilize the District portions of Area B (as defined in the Agreement), which may remain open to the public except when it is necessary to close or restrict the area for safety reasons as deemed necessary by City during the course of construction of Phases IV and V of the Project. District and City will meet and confer on a regular basis in order to coordinate all development and construction work.
- c. Construction Safeguards. City shall cause all reasonably necessary safeguards for the protection of workers and the public, as required by the conditions and the progress of Project work, to be erected and properly maintained at all times. Closure of Areas A and B (as defined in the Agreement) to the public will be coordinated with the District and communicated to the public prior to Construction.

4. **Funding for Construction.** District will contribute an amount not to exceed one million two hundred fifty thousand dollars (\$1,250,000.00) in Measure AA funds toward the funding for construction of Phases IV and V and for the two remaining elements of Phases II and III of the Project. District will reimburse City upon receipt of proof of payment of costs and expenses for Project work. Elements of the Project that are eligible for this funding are as listed below:

- a. Motion-sensor street lighting along access road, drop-off circle, building, and entry plaza (Phase II)
- b. New freestanding restroom building (Phase III)
- c. Outdoor classroom area (Phase IV)
- d. Path around education center (Phase V)

- e. Secondary unpaved trails (Phase V)
- f. New/relocated sign at entry

5. **Funding for Business and Operating Plan.** District will contribute an amount not to exceed two hundred thousand dollars (\$200,000.00) in general funds toward the funding of consultant costs to develop a business and operating plan for Cooley Landing Park (including the Education Center) working jointly with the City. District will reimburse City upon receipt of proof of payment of costs and expenses for Project work.
6. **Maintenance and Management of Project and Related Infrastructure.** City shall retain responsibility for the patrol, operation, maintenance and management of the Project Site as described in the Agreement and previous amendments. City further agrees and covenants that it will continue to observe and implement the requirements of the O&M Plan and ensure that Construction documents and activities incorporate all applicable requirements of the O&M Plan as it may be amended from time to time.
7. **Partnership Agreement Remains in Effect.** The Agreement, except as amended from time to time, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict arises between terms in the Agreement or its previous amendments and those in this Amendment Three, the provisions of this Amendment Three shall control the construction and interpretation thereof.
8. **Counterparts.** This Amendment Three may be executed in duplicate counterparts, each of which will be deemed an original.
9. **Authority.** Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment Three on the day and year shown below the name of each of the parties.

MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:

CITY OF EAST PALO ALTO,
a municipal corporation:

By: _____
Larry Hassett
President, Board of Directors

By: _____
Carlos Martínez
City Manager

DATE: _____

DATE: _____

ATTEST:

ATTEST:

By: _____
Jennifer Woodworth
District Clerk

By: _____
Terrie Gillen
Deputy City Clerk

Date: _____

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

By: _____
Kamal Fallaha
Public Works Director

By: _____
Sheryl Schaffner
General Counsel

APPROVED AS TO FORM:

Date: _____

By: _____
Rafael E. Alvarado Jr.
City Attorney

Exhibit A

Partnership Agreement

Exhibit B

Amendment One to Partnership Agreement

Exhibit C

Amendment Two to Partnership Agreement

Exhibit D

Phasing Plan of the 2010 Cooley Landing Vision Plan