



Midpeninsula Regional
Open Space District

R-19-123
Meeting 19-24
September 11, 2019

AGENDA ITEM 6

AGENDA ITEM

Bear Creek Road Culvert Replacement Funding Agreement between the County of Santa Clara and Midpeninsula Regional Open Space District

GENERAL MANAGER'S RECOMMENDATIONS

Adopt a resolution authorizing the General Manager to execute a Funding Agreement with the County of Santa Clara for the Briggs Creek Culvert Replacement underlying Bear Creek Road.

SUMMARY

The General Manager recommends entering into a Funding Agreement for Culvert Replacement (Agreement) with the County of Santa Clara (County) for a culvert underlying Bear Creek Road, a County Road. The County will provide \$80,000 for the removal, replacement, and enhancement of the existing Briggs Creek Culvert underlying the County's Bear Creek Road Right-of-Way. The County-owned and -maintained culvert is failing and threatens the stability of Bear Creek Road. Replacement of the culvert is included in the Mud Lake Improvements Project scope of work. On August 28, 2019, the Board of Directors (Board) approved a contract with Graniterock for the construction of the Mud Lake Improvements Project (R-19-118). The County and the Midpeninsula Regional Open Space District (District) have determined that the replacement of the Briggs Creek Culvert benefits both agencies, and the County agrees to provide funding to cover the culvert replacement work completed by Graniterock. Following completion of the project, the County will own and maintain the culvert.

BACKGROUND

In April 2018, the Board awarded a contract to Graniterock for the construction of the Public Access Project at Bear Creek Redwoods Open Space Preserve (Preserve) to open the western area of the Preserve to public access (R-18-39). Substantial completion of the Public Access Project occurred in June 2019, with punch-list items anticipated to be completed in September. In August 2019, the Board authorized a contract change order with Graniterock for the construction of the Mud Lake Improvements Project (R-19-118).

DISCUSSION

The Mud Lake Improvements Project (Project) will repair a degraded drainage system that could potentially cause flood damage to the Preserve's Upper Lake Loop Trail and remnant historic shrine, and structural failures to a portion of Bear Creek Road that overlies a collapsed culvert. The Project will upgrade an existing Corrugated Metal Pipe (CMP) culvert (Briggs Creek

Culvert) underlying the County's Bear Creek Road Right-of-Way with a 60-foot long, 24-inch reinforced concrete pipe (RCP). The RCP will be connected to a drop inlet and storm drain system that collects and conveys surface flows from Mud Lake to the headwaters of Briggs Creek. The scope of work required to remove and replace the existing Briggs Creek Culvert, and return the roadway to its pre-construction condition includes excavation, demolition, base and surface preparation, backfill and compaction, erosion control, roadway repair and resurfacing, and striping. County funding of up to \$80,000 will cover construction, monitoring, and traffic control costs associated with the replacement of the Briggs Creek Culvert portion of the Mud Lake Improvement Project.

The District received the USACE Section 404 and CDFW 1600 permits in July 2019, and the RWQCB Section 401 permit in September 2019 for the Project. Issuance of the jurisdictional permits allows Project construction to begin in September 2019. Installation of the new culvert is anticipated to be completed by October 15, 2019 to avoid the winter wet season.

FISCAL IMPACT

On April 10, 2019, the Board passed a resolution to accept grant funding under the California River Parkways Grant Program – Proposition 68 to offset a majority of the construction costs for the Mud Lake Improvements Project (R-19-42).

The Santa Clara County Funding Agreement for the Briggs Creek Culvert installation portion of the Mud Lake Improvements Project would represent a positive fiscal impact of \$80,000 to the FY2019-20 adopted budget of \$393,393. The positive fiscal impact of this funding agreement is expected to eliminate the use of Measure AA funds for the Project, funding the construction completely by grant funds.

The Mud Lake Improvements Project and Briggs Creek Culvert installation work is included as part of the Bear Creek Redwoods Ponds Restoration and Water Rights project (MAA21-008).

BOARD COMMITTEE REVIEW

No Committee review has occurred for the recommended contract amendment.

PUBLIC NOTICE

Public notice of this Agenda Item was provided as required by the Brown Act.

CEQA COMPLIANCE

The Project was evaluated as part of the Bear Creek Redwoods Preserve Plan Environmental Impact Report, which the Board certified on January 25, 2017 (R-17-15 & State Clearinghouse #2015062029).

NEXT STEPS

Upon approval by the Board of Directors, the General Manager will execute the Agreement. The Agreement will also go to the County Board of Supervisors for approval.

Attachments:

1. Resolution Approving the Funding Agreement
2. Agreement for Culvert Replacement Project between County of Santa Clara and Midpeninsula Regional Open Space District (APNS: 544-31-003, 544-33-001, & 544-33-002)

Responsible Department Head:

Jason Lin, Engineering & Construction Department Manager

Prepared by:

Zachary Alexander, Capital Project Manager III, Engineering & Construction Department

RESOLUTION NO. 19-__

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT AUTHORIZING THE GENERAL MANAGER TO EXECUTE A FUNDING AGREEMENT WITH SANTA CLARA COUNTY FOR BRIGGS CREEK CULVERT AT BEAR CREEK ROAD AND AUTHORIZING THE GENERAL MANAGER AND GENERAL COUNSEL TO EXECUTE ANY AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE THE AGREEMENT

WHEREAS, the District is the fee owner of that certain real property commonly known as Bear Creek Redwood Open Space Preserve (“Preserve”) located along Bear Creek Road, County of Santa Clara (“County”); and

WHEREAS, Bear Creek Road, a County maintained road, bisects the Preserve; and

WHEREAS, the District is planning to perform the Mud Lake Improvements Project, which includes replacing the Briggs Creek Culvert underlying Bear Creek Road which separates Mud Lake in the western area of the Preserve from Briggs Creek drainage in the eastern area of the Preserve; and

WHEREAS, County agrees to fund the construction, monitoring, and traffic control costs associated with the replacement of the Briggs Creek Culvert portion of the District’s Mud Lake Improvement Project. Upon completion of construction, the County is responsible for the maintenance and repair of the improvements within the County right of way; and

WHEREAS, the District and the County have memorialized the terms and conditions of their understanding in a Funding Agreement (“Agreement”).

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Midpeninsula Regional Open Space District hereby:

1. Authorizes the General Manager or designee to execute the Agreement and any related documents on behalf of the District; and
2. Authorizes the General Manager and General Counsel to approve any technical revisions to the Agreement and execute any other documents, which are necessary or appropriate to effectuate the Agreement.

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on September _____, 2019, at a regular meeting thereof, by the following roll call 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

**AGREEMENT FOR CULVERT REPLACEMENT PROJECT
BETWEEN COUNTY OF SANTA CLARA AND
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
(APNs: 544-31-003, 544-33-001, & 544-33-002)**

THIS AGREEMENT (“Agreement”) is made and entered into as of the date fully executed by and between Mid-peninsula Regional Open Space District, a California independent special district organized pursuant to California Public Resources Code section 5500 *et seq.* (“District”) and the County of Santa Clara, a political subdivision of the State of California, (“County”), collectively referred to herein as the “Parties” and individually, a “Party.”

RECITALS

WHEREAS, the District is the fee owner of that certain real property commonly known as Bear Creek Redwood Open Space Preserve, located along Bear Creek Road, Santa Clara County, State of California, APNs 544-31-003, 544-33-001, and 544-33-002 as depicted on the map labeled as Exhibit A, attached hereto and incorporated herein (the “Preserve”); and

WHEREAS, the District has developed and adopted the Bear Creek Redwoods Preserve Ponds Assessment and Management Plan (“Plan”) that establishes a framework for the long-term enhancement and management of the Preserve’s ponds and waterways to maintain water quality, watershed function, and healthy aquatic habitat; and

WHEREAS, Bear Creek Road, a County-maintained road, bisects the Preserve, and as a result the Preserve can be divided into an eastern Preserve zone and a western Preserve zone on either side of Bear Creek Road as depicted on the attached Exhibit “B”; and

WHEREAS, an existing County of Santa Clara-owned and maintained culvert within the Bear Creek Road right-of-way conveys surface water from Briggs Creek between the eastern Preserve zone and western Preserve zone (“Briggs Creek Culvert”) in the location as depicted on the attached Exhibit “B;” and

WHEREAS, as part of the implementation plan for the Preserve based on the adopted Plan, surveys of the Briggs Creek Culvert indicate that the corrugated metal pipe (“CMP”) culvert requires replacement; and

WHEREAS, the District has applied for permits from regulatory agencies to develop the Preserve, and the replacement of the Briggs Creek Culvert in conjunction with other District projects would be covered under the District’s permits and would provide the most efficient means to perform the culvert replacement while minimizing construction and traffic impacts; and

WHEREAS, County and District have determined that the replacement of the Briggs Creek Culvert benefits both agencies, and therefore the Parties wish to cooperate in good faith to complete the replacement of the Briggs Creek Culvert; and

WHEREAS, California Public Resources Code § 5541 authorizes the District to complete the Project upon such terms as may be mutually agreed to by the District’s Board of Directors and the County’s Board of Supervisors.

CULVERT REPLACEMENT AGREEMENT
APNs: 544-31-003, 544-33-001, and 544-33-002

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation. The above Recitals are hereby incorporated herein and made a part hereof.
2. Project Description. The project is the removal, replacement, and enhancement of the existing Briggs Creek Culvert underlying the County's Bear Creek Road Right-of-Way (as depicted on the attached Exhibit B) ("Project"). The scope of work includes the removal of the existing CMP culvert, and replacement with a 24" concrete reinforced pipe (RCP). The RCP will be connected to a drop inlet and storm drain system that collects and conveys surface flows to the headwaters of Briggs Creek. The scope of work includes all excavation, demolition, base and surface preparation, backfill and compaction, erosion control, roadway repair and resurfacing, and striping required to remove and replace the existing Bear Creek Road Culvert, and return the roadway to its publicly accessible pre-construction condition.

The District shall submit the Project plans and traffic control plan to the County for review and approval prior to the commencement of construction activities. The District shall follow County approved roadway repair details (U3A Typical Utility Trench Construction Standard Detail), and submit roadway repair plans, specifications, and details to the County for review and approval prior to starting construction. County Department of Roads and Airports inspectors shall inspect the Project during construction.

The District has applied for permits from the United States Army Corp of Engineers, the United States Department of Fish & Wildlife, the California Department of Fish & Wildlife, and the Regional Water Quality Control Board to complete the Project. Construction shall not begin until all regulatory permits are issued and CEQA and/or NEPA clearance has been obtained.

3. Funding. Within 60 days after the District records a Notice of Completion for the Project, County shall reimburse District an amount not to exceed eighty thousand dollars (\$80,000) for the District's reasonable, documented construction costs of the Project. The District estimates the full construction costs, including contingency, to be \$80,000.
4. Warranty. The District shall assign to the County the Contractor's one-year warranty for the Project upon recording a Notice of Completion, which shall obligate Contractor to repair or replace Project if it fails to perform as intended within the one-year warranty period.
5. Maintenance and Repair. Upon completion of the Project and recording of a Notice of Completion by the District, County shall, at no cost or expense to District, perform routine maintenance and repairs of the replaced Bear Creek Culvert. The County releases the District from all future inspections, maintenance, and repairs of the Bear Creek Culvert. This paragraph shall survive termination or cancellation of this Agreement.
6. Ownership and Responsibility. Upon completion of the Project and upon recording of a Notice of Completion by the District, County shall release and hold the District harmless of all

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ownership and responsibility of the Bear Creek Culvert. This paragraph shall survive termination or cancellation of this Agreement.

7. County Permit. The County shall issue an encroachment permit or modify an existing encroachment permit to the District for the construction of the Project within County ROW once construction documents are approved by County, as per Paragraph No. 2 above.
8. Term. This Agreement is effective upon the date that all parties hereto have executed this agreement. It shall remain effective until completion of the Project and recording of a Notice of Completion by the District.
9. No Property Interest. District shall not acquire any interest or estate in County's property pursuant to this Agreement.
10. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner.

To the County:

Director
County of Santa Clara
Roads and Airports Department
101 Skyport Drive
San Jose, CA 95110
Ph. No: (408) 573-2400
Fax No: (408) 441-0276

To the District:

General Manager
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
Phone: (650) 691-1200
Fax: (650) 691-0485

Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

11. Governing Law and Venue. This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.
12. Miscellaneous. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party. This Agreement may be modified or amended only by a writing duly executed by both Parties. The invalidity or unenforceability of any provision of this Agreement or the applicability or inapplicability to either Party, as determined by a court, shall in no way affect

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the validity or enforceability of any of the remaining provisions hereof or their applicability to the other Party.

13. Indemnification. To the fullest extent allowed by law, District shall indemnify, defend, and hold harmless the County its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the construction activities of the Project by District and/or its agents, employees or contractors, excepting any loss, injury or damage caused by the sole negligence or willful misconduct of County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. District shall reimburse District for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the District is obligated to indemnify, defend and hold harmless the County under this Agreement. The District's indemnification obligations pursuant to this Section 13, Indemnification, shall be extinguished upon filing of the Notice of Completion for the Project.

14. County's Mandatory Policy Provisions

14.1 Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by DISTRICT with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, DISTRICT shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the DISTRICT should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero transfat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

14.2 No Smoking

DISTRICT and its employees, agents and contractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to

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time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

14.3 Compliance With All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

(1) Compliance with All Laws. DISTRICT shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, “Laws”), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: Except with respect to contracts awarded by DISTRICT prior to the effective date of this Agreement, DISTRICT shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County’s policies for nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, DISTRICT shall not discriminate against any contractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall DISTRICT discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: DISTRICT shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(4) Definitions: For purposes of this Section 9.03, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under

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Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the District of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against DISTRICT: By signing this Agreement, DISTRICT affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that DISTRICT violated an applicable wage and hour law or pay equity law. DISTRICT further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, DISTRICT receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then DISTRICT shall promptly satisfy and comply with any such Final Judgment. DISTRICT shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. DISTRICT shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to DISTRICT's records, DISTRICT shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, DISTRICT shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during DISTRICT's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: DISTRICT shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to DISTRICT for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of DISTRICT's Employees and Job Applicants.

(9) Material Breach: Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County

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may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to DISTRICT until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
- (iii) Offer DISTRICT an opportunity to cure the breach.

(10) Contractors: Except with respect to contracts awarded by DISTRICT prior to the effective date of this Agreement, DISTRICT shall impose all of the requirements set forth in this Subsection 14.3 on any contractors permitted to perform work under this Agreement. This includes ensuring that any contractors receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

14.4 Living Wage

Unless otherwise exempted or prohibited by law or County policy, and except with respect to contracts awarded by DISTRICT prior to the effective date of this Agreement, contractors that contract with the County to provide Direct Services, as defined in County of Santa Clara Ordinance Code Division B36 (“Division B36”) and Board Policy section 5.5.5.5 (“Living Wage Policy”), and their contractors, where the contract value is \$100,000 or more, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If DISTRICT and/or a contractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- i. Suspend, modify, or terminate the Direct Services Contract.
- ii. Require the DISTRICT and/or contractor to comply with an appropriate remediation plan developed by the County.
- iii. Waive all or part of Division B36 or the Living Wage Policy.

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This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, DISTRICT certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

IN WITNESS WHEREOF, the Parties have entered into this Agreement.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Ana Ruiz
General Manager
Date _____

APPROVED AS TO FORM:

By: _____
Hilary Stevenson
General Counsel
Date _____

COUNTY OF SANTA CLARA

S. Joseph Simitian, President
Board of Supervisors
Date _____

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest: _____
MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

Christopher R. Cheleden

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Lead Deputy County Counsel

Exhibit "A": Assessor's Parcel Map Showing Preserve

Exhibit "B": Briggs Culvert Replacement Project Map