

From: [Jennifer Woodworth](#)
Subject: Responses to 5/24/17 Agenda Questions
Date: Wednesday, May 24, 2017 1:11:39 PM
Attachments: [LSA Fee Schedule FINAL 102016.pdf](#)
[CDFW Fee Schedule.xlsx](#)
[BAERS Contract.pdf](#)

Good afternoon,

Please find the responses below in [blue](#) to questions submitted regarding tonight's agenda packet.

Director Cyr

\$1200 for radar gun?

[Two radar guns were purchased for the Skyline Ranger Staff to enforce our trail speed limits.](#)

Almost \$9,000 for stream alteration permit?

[The \\$9,000 for the streambed alteration agreement is required by the fee schedule developed by Cal. Dept of Fish & Wildlife. The total streambed alteration agreement permit cost is actually \\$13K, but we paid in two separate checks. See the attached LSA Fee Schedule and the CDFW Fee Schedule spreadsheet to see how we calculated the required fee. Basically each culvert, bridge or other crossing that is being removed is counted as an individual "project" and assessed a fee, and we have 15 "projects" within the Hendrys Creek Restoration.](#)

Director Riffle

Can you please ask someone to explain Check 74986 to City of Foster City for Bay Area Employee Relations Service?

[This claim is for our membership and use of BAERS- Bay Area Employee Relations Service. This service allows HR to pull compensation survey data from local agencies for classification and compensation work. We also benefit from updated labor market information with information on the local CPI-which is how our annual salary and benefits increases are determined.](#)

[Midpen was not charged by BAERS for year 2015-16 so we received a larger bill for both 2015-16 and 2016-17. See the attached email from BAERS regarding the lapse in billing.](#)



Jennifer Woodworth, MMC
District Clerk/ Assistant to the General Manager
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E-mail correspondence with the Midpeninsula Regional Open Space District (and attachments, if any) may be subject to the California Public Records Act, and as such may therefore be subject to public disclosure unless otherwise exempt under the Act.

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
LAKE AND STREAMBED ALTERATION
AGREEMENTS AND FEES**

EFFECTIVE OCTOBER 1, 2016

Note: Authority cited: Sections 713, 1609, and 12029, Fish and Game Code; and Section 21089, Public Resources Code. Reference: Sections 713, 1605, 1609, and 12029, Fish and Game Code; and Sections 4629.6(c) and 21089, Public Resources Code.

DEFINITIONS

The following definitions apply:

"Activity" means any activity that by itself would be subject to the notification requirement in subdivision (a) of Section 1602 of the Fish and Game Code.

"Agreement" means a lake or streambed alteration agreement issued by the department.

"Agreement for routine maintenance" means an agreement that:

(A) covers only multiple routine maintenance projects that the entity will complete at different time periods during the term of the agreement; and

(B) describes a procedure the entity shall follow to complete any maintenance projects the agreement covers.

"Agreement for timber harvesting" means an agreement of five years or less that covers one or more projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection.

"Department" means the California Department of Fish and Wildlife.

"Extension" means either a renewal of an agreement executed prior to January 1, 2004, or an extension of an agreement executed on or after January 1, 2004.

"Major amendment" means an amendment that would significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources, or require additional environmental review pursuant to Section 21000 et seq. of the Public Resources Code or Section 15000 et seq., Title 14, California Code of Regulations, as determined by the department.

"Master agreement" means an agreement with a term of greater than five years that:

(A) covers multiple projects that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine

maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement and for which specific detailed design plans have not been prepared at the time of the original notification; and

- (B) describes a procedure the entity shall follow for construction, maintenance, or other projects the agreement covers.
- (C) An example of a project for which the department would issue a master agreement is a large-scale development proposal comprised of multiple projects for which specific, detailed design plans have not been prepared at the time of the original notification. The master agreement will specify a process the department and entity will follow before each project begins and may identify various measures the entity will be required to incorporate as part of each project in order to protect fish and wildlife resources. The process specified in the master agreement may require the entity to notify the department before beginning any project the agreement covers and to submit the applicable fee. After the department receives the notification, it will confirm that the master agreement covers the project and propose measures to protect fish and wildlife resources in addition to any included in the master agreement, if such measures are necessary for the specific project. By contrast, if the large-scale development proposal is comprised of, for example, multiple residences, golf courses, and associated infrastructure projects for which specific, detailed design plans have been prepared by the time the entity notifies the department and the entity is ready to begin those projects, the entity may obtain a standard agreement only.

"Master agreement for timber operations" means an agreement with a term of greater than five years that:

- (A) covers timber operations on timberland that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and
- (B) describes a procedure the entity shall follow for construction, maintenance, or other projects the agreement covers. For the purposes of this definition, "timberland" and "timber operations" have the same meaning as those terms are defined in sections 4526 and 4527 of the Public Resources Code, respectively.

"Minor amendment" means an amendment that would not significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources, as determined by the department, or an amendment to transfer the agreement to another entity by changing the name of the entity to the name of the transferee.

"Project" means either of the following as determined by the department:

- (A) One activity. An example of such a project is one that is limited to the removal of riparian vegetation at one location along the bank of a river, stream, or lake that will substantially change the bank.
- (B) Two or more activities that are interrelated and could or will affect similar fish and wildlife resources. An example of such a project is the construction of one bridge across a stream that requires the removal of riparian vegetation, the installation of abutments in

or near the stream, and the temporary de-watering of the stream using a diversion structure. Each of those three activities together would constitute one project for the purpose of calculating the fee under this section because they are all related to the single purpose of constructing one bridge at one location. By contrast, the construction of three bridges and two culverts across a stream at five different locations would not constitute one project, but instead would constitute five projects, even if each structure were to provide access to a common development site or were physically connected to each other by a road.

"Project" does not mean project as defined in Section 21065 of the Public Resources Code or Section 15378 of Title 14 of the California Code of Regulations.

"**Standard agreement**" means any agreement other than an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations.

FEES

Standard Agreement

Fee if the term of the agreement is five years or less:

\$561.00 if the project costs less than \$5,000.

\$704.00 if the project costs from \$5,000 to less than \$10,000.

\$1,405.00 if the project costs from \$10,000 to less than \$25,000.

\$2,109.00 if the project costs from \$25,000 to less than \$100,000.

\$3,095.00 if the project costs from \$100,000 to less than \$200,000.

\$4,198.00 if the project costs from \$200,000 to less than \$350,000.

\$5,000.00 if the project costs \$350,000 or more.

Fee submittal: If the entity requests an agreement with a term of five years or less, the applicable fee specified above shall be submitted with the notification.

Fee if the term of the agreement is a Long-term agreement, longer than five years:

\$6,750.00 base fee, plus:

\$561.00 if the project costs less than \$5,000.

\$704.00 if the project costs from \$5,000 to less than \$10,000.

\$1,405.00 if the project costs from \$10,000 to less than \$25,000.

\$2,109.00 if the project costs from \$25,000 to less than \$100,000.

\$3,095.00 if the project costs from \$100,000 to less than \$200,000.

\$4,198.00 if the project costs from \$200,000 to less than \$350,000.

\$6,328.00 if the project costs from \$350,000 to less than \$500,000.

\$11,249.00 if the project costs \$500,000 or more.

Fee submittal: If the entity requests an agreement with a term longer than five years, the base and the applicable project fee specified above shall be submitted with the notification.

For the purpose of this subsection, project cost means the cost to complete each project for which notification is required. Project costs shall include, but are not limited to, the cost of all investigations, surveys, designs, labor, and materials required to complete the project.

A notification for a standard agreement should identify only one project.

If an entity chooses to identify more than one project in a single notification, the fee shall be calculated by adding the separate fees for each project. For example, if a notification identifies three projects, one of which will cost less than \$5,000 to complete, one of which will cost \$7,500 to complete, and one of which will cost \$17,500 to complete, the fee for the first project would be \$561.00, the fee for the second project would be \$704.00, and the fee for the third project would be \$1,405.00. Hence, the total fee the entity would need to submit with the notification that identifies those three projects would be \$2,670.00.

Notwithstanding the above, the department may require the entity to separately notify the department for one or more of the projects included in the original notification based on their type or location. If the department requires the entity to separately notify the department for one or more of the projects included in the original notification, the department shall return the original notification and fee to the entity, after which the entity may submit to the department separate notifications and a fee for each project.

An entity may not obtain a standard agreement for any project identified in the notification that qualifies for an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations unless the department agrees otherwise.

Agreement for Gravel, Sand, or Rock Extraction

Any agreement for commercial or non-commercial mining or extraction of gravel, sand, rock, or other aggregate material.

Fee if the term of the agreement is five years or less:

\$1,405.00 if the annual extraction volume identified in the notification is less than 500 cubic yards.

\$2,812.00 if the annual extraction volume identified in the notification is 500 to less than 1,000 cubic yards.

\$5,000 if the annual extraction volume identified in the notification is 1,000 or more cubic yards.

Fee submittal: If the entity requests an agreement with a term of five years or less, the applicable fee specified above shall be submitted with the notification.

Fee if the term of the agreement is longer than five years:

\$28,123.00 base fee, plus an annual fee of \$2,812.00.

Fee submittal: If the entity requests an agreement with a term longer than five years, the base fee shall be submitted with the notification, and the annual fee shall be submitted as specified in the agreement.

Agreement for Timber Harvesting

Pursuant to subdivision (c) of Section 4629.6 of the Public Resources Code, no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Section 1602 or Section 1611 of the Fish and Game Code.

Agreement for Routine Maintenance

Fee if the term of the agreement is five years or less:

\$3,376.00 base fee, plus \$281.00 for each maintenance project completed per calendar year.

Fee if the term of the agreement is longer than five years:

\$6,750.00 base fee, plus \$281.00 for each maintenance project completed per calendar year.

Fee submittal: The base fee shall be submitted with the notification, and the project fee shall be submitted as specified in the agreement.

Master Agreement

Fee: \$84,368.00 base fee, plus:

An annual fee of \$7,030.00, unless the department specifies otherwise.

\$704.00 for each project the agreement covers, unless the department specifies otherwise.

Fee submittal: The base fee shall be submitted with the notification. The annual fee and project fee shall be submitted as specified in the agreement.

Timber Master Agreement

Pursuant to subdivision (c) of Section 4629.6 of the Public Resources Code, no fee shall be required if the department received the notification after July 1, 2013. This includes a notification made to the department pursuant to Section 1602 or Section 1611 of the Fish and Game Code.

Additional Fee for Marijuana Cultivation Sites That Require Remediation

If the purpose of an agreement, or major amendment to an agreement, is to remediate a marijuana cultivation site, the entity shall submit the applicable fee below, which shall be in addition to the fee for the agreement or major amendment, in accordance with subdivision (d) of Section 12029 of the Fish and Game Code.

Fee:

\$3,000.00 if the total remediation area is less than or equal to 1,000 square feet as determined by the department.

\$5,000.00 if the total remediation area is greater than 1,000 square feet as determined by the department.

Fee submittal: The fee specified above shall be submitted with the notification or amendment request by separate check or other method of payment.

Extensions for Agreements

To request an extension for an existing agreement, complete an Extension Request Form, and submit to the appropriate department Regional office with the proper fee. An extension request must be made prior to expiration date of the agreement. An extension is not an amendment.

Fee: \$562.00.

Fee submittal: The fee specified above shall be submitted with the request for an extension.

Amendments

The holder of a Lake or Streambed Alteration Agreement may request the department to amend the agreement, provided the request is submitted to the department in writing prior to the agreement's expiration. To request an amendment for an existing agreement, complete an Amendment Request Form, and submit to the appropriate department Regional office with the proper fee. A project may not be added to an agreement by amendment unless the agreement specifies otherwise.

Minor Amendments -

Fee: \$421.00.

Major Amendments -

Fee: \$1,405.00.

Fee submittal: The fee specified above shall be submitted with the request for an amendment.

California Environmental Quality Act (CEQA)

When the department is required to act as lead agency to administer and enforce Sections 1600-1616 of the Fish and Game Code, the department may charge and collect a reasonable fee from the entity to recover its estimated CEQA-related costs in accordance with Section 21089 of the Public Resources Code. The department may recover its estimated CEQA-related costs by collecting from the entity one or more deposits.

Payment of Fees

The department may refuse to process a notification, or a request for an extension, or a request for a minor or major amendment until the department receives the proper fee or fees.

Method of Payment.

Any fee specified herein shall be made to the Department of Fish and Wildlife by check, money order, or credit card accepted by the department.

To pay a fee by credit card, the department's Credit Card Payment Authorization Form (DFW 1443b (8/15)) shall be completed in full and submitted to the department with the notification form, request for an extension, or request for a minor or major amendment, unless the fee is paid in person at one of the department region offices. The form is available on the internet at: www.wildlife.ca.gov/Conservation/LSA/Forms.

If the fee is paid by credit card, the department shall assess a separate credit card processing fee of 1.6% to recover handling costs and credit card company charges.

Refunds

The department may not refund or return any fee specified herein except as specified below.

- (A) If an entity requests an agreement with a term longer than five years and the department denies the entity's request, the department shall return the fees paid and instruct the entity to submit the applicable fee for an agreement with a term of five years or less.
- (B) If an entity identifies more than one project in a single notification, and the department requires the entity to separately notify the department for one or more of the projects in accordance with subsection (b)(4)(A), the department shall return to the entity the fee with the original notification.
- (C) If after receiving a notification the department determines that the fee submitted was more than the amount required, the department shall refund to the entity the excess amount.
- (D) If after receiving a notification the department determines that notification is not required because the project is not subject to subdivision (a) of Section 1602 of the Fish and Game Code, the department shall refund to the entity any fees submitted with the notification.

Type of Agreement

The department shall determine at its sole discretion the type of agreement the entity may obtain for a project or projects.

Midpeninsula Regional Open Space District
Hendrys Creek Restoration Project
Notification # 1600-2016-0381-R3
Streambed Alteration Application Addl Pages

Revised Cost Assessment with Reduced projects

Project	Site Name	Type	Fee	2012 Estimate	2017 Estimate
1	T12	Culvert Removal	\$704	\$7,200	\$9,660
2	H5	Box Culvert Removal	\$704	\$3,100	\$5,560
3	H4	Bridge Removal	\$1,405	\$10,500	\$12,960
4	H3	Bridge Removal	\$704	\$2,900	\$5,360
5	H2	Bridge Removal	\$561	\$1,400	\$3,860
6	T9	Fill Removal	\$561	\$2,000	\$4,460
7	T8	Culvert Removal	\$1,405	\$9,400	\$15,720
11	T7	Culvert Removal	\$1,405	\$7,200	\$22,980
12	T6	Fill Removal	\$1,405	\$12,300	\$14,760
13	T5	Box Culvert Removal	\$1,405	\$7,800	\$10,260
14	T4	Fill Removal	\$1,405	\$7,800	\$10,260
15	H1	Fill & Culvert Removal	\$1,405	\$10,000	\$12,460
SUM			\$13,069	\$81,600	\$128,300
Total Fee			\$13,069		
Paid			\$4,198		
Revised Fee			\$8,871		

From: David Liu
To: [Candice Basnight](#)
Cc: [Carol Smith](#)
Subject: BAERS Contract
Date: Tuesday, February 21, 2017 4:55:36 PM
Attachments: [BAERS Agreement - Mid-Peninsula Regional Open Space District.pdf](#)
[BAERS fee schedule - effective 7-1-16.pdf](#)

Hi Candice,

Per our phone conversation with Carol Smith Thursday, attached please find the BAERS agreement and fee schedule. Base on the number of employees and MOUS for your agency, your annual membership fee will be \$6,950. Since we didn't bill you for the service last year, the new invoice will reflect billing for fiscal year 15/16 and 16/17. The total due will be \$13,900. Please take you time to review the agreement and the fee schedule. Feel free to contact me if you have any questions.

Thanks,
David Liu
HR Analyst
Phone: (650)286-3297
Fax: (650)286-2597

Bay Area Employee Relations Service External Website Development, Support, and Shared Hosting Services Agreement

This Agreement is made and entered into as of the 1st day of September, 2015 by and between Midpeninsula Regional Open Space District, hereinafter referred to as "CLIENT", and the City of Foster City/Estero Municipal Improvement District, a Municipal Corporation, hereinafter referred to as "CITY/DISTRICT". CLIENT and CITY/DISTRICT shall be referred to hereinafter as the "PARTIES."

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CLIENT has the need to secure expert consulting services to provide CLIENT with a system of hosting an Internet based website; and
- B. That CITY/DISTRICT is specially experienced and qualified to perform the specialized consulting services desired by the CLIENT and is willing to perform such services which shall be known as Bay Area Employee Relations Service (BAERS); and
- C. That CLIENT has elected to engage the services of CITY/DISTRICT upon the terms and conditions as hereinafter set forth.

AGREEMENT

- 1. **Services.** The services to be performed by CITY/DISTRICT under this Agreement shall include those services set forth in Appendix A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Appendix A is hereby made an obligation of CITY/DISTRICT under this Agreement, subject to CLIENT's obligations set forth in Appendix A. Any changes to the Agreement shall be made only upon the mutual written agreement of the Parties.

- 2. **Term; Termination.** (a) The term of this Agreement shall commence upon the date hereinabove written and continue for a period of twelve (12) months. At the end of each twelve (12) month period, the Agreement shall automatically renew for an additional twelve (12) month period, provided neither party terminates the Agreement as specified herein.

(b) Neither Party shall be authorized to terminate this Agreement within the first six (6) months after execution. Thereafter, either Party may terminate this Agreement without cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, CLIENT shall compensate

CITY/DISTRICT for MAC services, as defined below, rendered to the date of termination. If CLIENT terminates the Agreement, there shall be no refund of the yearly fee paid for Network Administration. Nothing herein contained shall be deemed a limitation upon the right of either party to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue hereunder.

3. Compensation; Expenses; Payment. CITY/DISTRICT shall provide BAERS services to CLIENT pursuant to the following fee:
 - A. BAERS Member Fees: Six Thousand, Nine Hundred and Fifty Dollars (\$6,950.00) initial participation fee
 - B. Annual Fee
 1. Six Thousand, Nine Hundred and Fifty Dollars (\$6,950.00) for each subsequent year of contract renewal pending changes in number of postings and MOUs.
 2. In all subsequent years, provided CLIENT does not terminate the Agreement, the yearly System Administration, Maintenance and Support Fee may be adjusted based on increased costs as described in Appendix A.
 - C. In all subsequent years, the MAC rate shall be adjusted based on changes in labor costs.
 - D. The annual fee for System Administration, Maintenance and Support shall be due and payable on the anniversary date of this Agreement, provided CLIENT elects to renew. Payment for MAC shall be due thirty (30) days after billing for same.
 - E. CLIENT shall promptly review invoicing and notify CITY/DISTRICT of any objection thereto in writing within ten (10) business days of receipt of the invoice, and absent such objection, the invoice shall be deemed proper and acceptable, and shall be due thirty (30) days after billing. Absent such objection, unpaid fees shall bear interest from the date due at the maximum rate then allowable by law.
4. Records. CITY/DISTRICT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CITY/DISTRICT hereunder. Said records shall be available to CLIENT for review and copying during regular business hours at CITY/DISTRICT's place of business or as otherwise agreed upon by the Parties.
5. Authorization. This Agreement becomes effective when endorsed by both Parties in the space provided below.
6. Reliance on Professional Skill of CITY/DISTRICT. CITY/DISTRICT represents that it has the necessary professional skills to perform the services required and

the CLIENT shall rely on such skills of the CITY/DISTRICT to do and perform the work. In performing services hereunder CITY/DISTRICT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CITY/DISTRICT hereunder.

7. Relationship of Parties. It is understood that the relationship of CITY/DISTRICT to the CLIENT is that of an independent contractor and all persons working for or under the direction of CITY/DISTRICT are its agents or employees and not agents or employees of the CLIENT.

8. Defaults/Remedies. The occurrence of any one or more of the following events shall constitute a material default or breach of this Agreement by CLIENT:

A. Failure by the CLIENT to make any payment of fees required under this Agreement where such failure shall continue for a period of thirty (30) business days after written notice by CITY/DISTRICT.

B. Violation of any of the terms of Content Agreements as listed in Appendix A to this Agreement.

In the event of a material default or breach by CLIENT, the CITY/DISTRICT may, without limiting the CITY/DISTRICT's rights or remedies, terminate CLIENT access to BAERS website and all other services provided herein.

9. Indemnity. CLIENT hereby agrees to defend, indemnify, and save harmless CITY/District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, CITY/DISTRICT, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, negligence, intentional tortious act or omission, or willful misconduct of CLIENT, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

CITY/DISTRICT hereby agrees to defend, indemnify, and save harmless CLIENT, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, CLIENT, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, negligence, intentional tortious act or omission, or willful misconduct of CITY/DISTRICT, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.

PATENT INFRINGEMENT

CITY/DISTRICT shall indemnify and defend the CLIENT in any actions against the CLIENT to the extent that they are based on a claim of infringement for the

use of BAERS related to this Agreement, provided that CITY/DISTRICT is notified in writing of such claim. CITY/DISTRICT shall have the right to control the defense of all such claims, lawsuits and other proceedings. CLIENT shall use its best efforts to aid CITY/DISTRICT in conducting any such defense.

In case of a judgment adverse to the CLIENT or CITY/DISTRICT, CITY/DISTRICT shall make reasonable efforts to purchase the right to continued use of any infringing software on the CLIENT's behalf, or to modify BAERS to make it non-infringing.

10. Notice. All notices required by this Agreement shall be given to the CITY/DISTRICT and CLIENT in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of Foster City
 610 Foster City Boulevard
 Foster City, CA 94404-2299
 Attention: HR Director

CLIENT: Midpeninsula Regional Open Space District
 330 Distel Circle
 Los Altos, CA 94022-1404
 Attention: HR Director

11. Non-Assignment. This Agreement is not assignable either in whole or in part.
12. Amendments. This Agreement may be amended or modified only by written agreement signed by both Parties.
13. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
14. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the Parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
15. Mediation. Should any dispute arise out of this Agreement, the Parties shall first meet in mediation within the first 60 days and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting at least once in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.

16. Entire Agreement. This Agreement, including its Appendix A and Appendix B, comprises the entire Agreement between the PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY
A Municipal Corporation

Dated: _____

Kevin M. Miller, City Manager

ATTEST:

Dated: _____

Doris L. Palmer, City Clerk

Agency: Mid-Peninsula Regional Open
Space District

Dated: _____

PRINT NAME

(SIGNATURE & TITLE)

Dated: _____

PRINT NAME

(SIGNATURE & TITLE)

Appendix A

Maintain and Host www.bayareaers.org also known as “BAERS”

Definitions:

‘CITY/DISTRICT’ shall mean the City of Foster City/Estero Municipal Improvement District.

‘CLIENT’ shall mean Participating Public Agency in BAERS.

‘Project Manager’ shall mean the CITY/DISTRICT’s Information Technology Manager or any other CITY/DISTRICT staff member so designated by the CITY/DISTRICT’s Human Resources Director to define any project scope, project management, coordinate and manage ‘CITY/DISTRICT’ staff, and purchase necessary hardware or software.

‘Software Support’ shall mean the CITY/DISTRICT’s Human Resources Department staff or any other CITY/DISTRICT staff so designated by the CITY/DISTRICT’s Human Resources Director to provide day to day support to CLIENT agencies during Normal Working Hours.

‘System Administrator’ shall mean the CITY/DISTRICT’s Human Resources Director or any other CITY/DISTRICT staff so designated by the CITY/DISTRICT’s Human Resources Director to provide administrative oversight of the BAERS website including marketing strategies, participant contracts, and CLIENT communication.

‘Normal Working Hours’ shall mean Monday through Friday, 7:00 a.m. to 6:00 p.m. PST or PDT (depending on the time of year), excluding Holidays observed by CITY/DISTRICT.

Website Hosting / Support

CITY/DISTRICT’s Obligation

CITY/DISTRICT will manage the hosting, maintenance and support of the BAERS Application and website.

Support requests shall be provided during Normal Working Hours of CITY/DISTRICT Staff.

CITY/DISTRICT will, subject to the limitations enumerated below, maintain 24x7 up time for the website, but critical hours of operation will be ‘Normal Working Hours’.

CITY/DISTRICT shall provide CLIENT with a point of contact and contact procedures for emergency service requests, including call escalation procedures.

CITY/DISTRICT shall respond to inquiries submitted to the website administrator within four (4) hours of receipt, during normal business hours.

CITY/DISTRICT shall complete maintenance procedures outside of Normal Working Hours to minimize downtime. When planned maintenance is scheduled, CITY/DISTRICT staff will give CLIENT's contact person, via e-mail, 48 hours notice.

Emergency or immediate maintenance may require the BAERS server to be down during Normal Working Hours. The CITY/DISTRICT will attempt to minimize any disruptions in service to CLIENT website. CITY/DISTRICT will not be responsible for loss of business to the CLIENT site due to circumstances outside of the CITY/DISTRICT's direct control. Examples of such circumstances include, but are not limited to, Internet outages, unavailability of the server to users caused by the CITY/DISTRICT's Internet Service Provider, damage to telecommunications infrastructure not caused by the CITY/DISTRICT, or major hardware failure of BAERS servers.

Annual System Administration, Maintenance and Support

Includes:

- Services to allow BAERS availability via the Internet. Hardware Support Costs
- Software Assurance for non-FC software
- Normal Operating Expenses (i.e.; copy, marketing/trade shows, consultant fees as needed)
- Development on an as needed basis.

CLIENT's Obligation

CLIENT shall provide to the CITY/DISTRICT a designated contact Administrator "the CLIENT Administrator". All communications from the CITY/DISTRICT to CLIENT will be through the CLIENT'S Administrator, or, in his/her absence, a designated alternate. The CLIENT'S Administrator will be responsible for minor maintenance work, including but not limited to, setting up and maintaining CLIENT's agency profile interface. The CLIENT'S Administrator shall disseminate all communication from the CITY/DISTRICT to the CLIENT as necessary.

CLIENT shall meet all deadlines for review of date timelines and database information. CLIENT shall not hold the CITY/DISTRICT liable for any database records deleted from system due to missed deadlines for review and download of database records.

Ownership of Hardware / Non CITY/DISTRICT Licensed Software

CITY/DISTRICT shall be responsible for providing/procuring the necessary infrastructure to support the BAERS Application and website, including but not limited to hosting the website on City-owned assets or under a Managed Services Agreement with a 3rd party provider chosen at the CITY/DISTRICT's sole discretion). CITY/DISTRICT shall obtain sufficient licenses for all software in use by all participating public agencies (CLIENTs) and public visitors using the BAERS site. CLIENT's initial costs will allow the CITY/DISTRICT to invest in the technology and/or provide sufficient capacity to host CLIENT's data under the Managed Services

Agreement under this Agreement. CITY/DISTRICT shall obtain and use an annual maintenance contract to fund maintenance and replacement costs for the hardware and software.

Domain Name

The CITY/DISTRICT owns and must maintain registration of the domain name Bayareaers.org at all times. The CITY/DISTRICT shall be listed as the 'technical contact' for said domain name. The IP address assigned to CLIENT domain shall be owned by the CITY/DISTRICT and may be changed at anytime at the CITY/DISTRICT's discretion. CITY/DISTRICT shall maintain the domain registration and IP address at no additional cost to CLIENT.

Security Agreements

An administrator password will be provided to the Administrator. In addition, CLIENT shall be assigned passwords to update and access the site. It is the responsibility of the CLIENT to keep this information confidential. If any damage is done to the website via an assigned account, it is the responsibility of the CLIENT. The CITY/DISTRICT will repair the damage and charge the CLIENT accordingly.

CITY/DISTRICT shall abide by the data privacy policy as established on the BAERS website CITY/DISTRICT shall use commercially reasonable best efforts to ensure the security and integrity of CLIENT's data, and shall use its best efforts to notify CLIENT of any known or suspected security breach within four business hours of occurrence of such breach.

Content Agreements

CITY/DISTRICT will cooperate fully with any law enforcement agency in connection with any and all illegal activities occurring on or through this service.

Appendix B

INSURANCE

(a) WORKERS' COMPENSATION. During the term of this Agreement, CITY/DISTRICT shall fully comply with the terms of the law of California concerning workers' compensation,

(b) GENERAL LIABILITY INSURANCE. CITY/DISTRICT shall obtain at its sole cost and keep in full force and effect during the term of this agreement commercial general liability insurance in the amount of \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. Said insurance shall operate as primary insurance. Except as provided in Section 9 (Indemnity) of this agreement, no other insurance affected by the CLIENT or other named insureds will be called upon to cover a loss covered thereunder.

(c) AUTOMOBILE LIABILITY INSURANCE. CITY/DISTRICT shall obtain at its sole cost and keep in full force and effect during the term of this agreement automobile liability insurance in the amount of \$1,000,000 per occurrence covering bodily injury and property damage per occurrence. Said insurance shall operate as primary insurance for City/District employees. No other insurance effected by the CLIENT or other named insureds will be called upon to cover a loss covered thereunder.

(d) CERTIFICATES OF INSURANCE. CITY/DISTRICT shall provide that no cancellation, expiration, or nonrenewal will be made during the term of this agreement, without thirty (30) calendar days advance written notice to the Director of Human Resources.

(e) SELF-INSURANCE CERTIFICATION. It is understood that CITY/DISTRICT may be insured for one or more of the above insurance coverages by a self-insured program, and that evidence of coverage from such program, in lieu of commercial insurance, shall be satisfactory, provided all other conditions of coverage are satisfied.

