

**AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND MIDPENINSULA REGIONAL OPEN SPACE DISTRICT FOR
THE OPERATION AND MANAGEMENT OF DEER HOLLOW FARM**

This contract is dated for identification this 1st day of July 2015, and is made by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation, whose address is P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a public district under the laws of California, whose address is 330 Distel Circle, Los Altos, California, 94022-1404 (hereinafter "DISTRICT").

RECITALS

WHEREAS, on November 12, 1981, CITY and DISTRICT entered into an Agreement allowing CITY to provide activities for its citizens at Deer Hollow Farm within DISTRICT's Rancho San Antonio Open Space Preserve ("the 1981 Agreement") and thereafter amended said Agreement on June 12, 1986; November 19, 1991; July 1, 1994; and July 1, 1995 (the "1986 Amendment," the "1991 Amendment," the "1994 Amendment," and the "1995 Amendment," respectively); and

WHEREAS, on June 1, 1996, CITY, DISTRICT, and the County of Santa Clara (hereinafter "COUNTY") entered into a new Agreement for the joint operation of Deer Hollow Farm and thereafter amended said Agreement on August 1, 1999, and entered into a further Agreement in July 2000 and June 2001; and

WHEREAS, on July 1, 2010; July 1, 2011; and July 1, 2013, CITY and DISTRICT amended said Agreement (the "2010 Amendment," the "2011 Amendment," and the "2013 Amendment," respectively); and

WHEREAS, DISTRICT and COUNTY have entered into a separate Agreement for Operation and Management of Rancho San Antonio County Park whereby, as of the effective date, DISTRICT has agreed to operate and maintain the COUNTY-owned Rancho San Antonio County Park, which is adjacent to the DISTRICT-owned Rancho San Antonio Open Space Preserve, and in which the DISTRICT and COUNTY agreed to continue funding for the Deer Hollow Farm Program; and

WHEREAS, CITY and DISTRICT have determined that continuation of Deer Hollow Farm is a mutually agreed-upon goal directly furthering the purposes of both agencies, and providing recreational and educational opportunities to constituents of both agencies.

NOW, THEREFORE, in consideration of the recitals, mutual promises, covenants, and obligations contained herein, CITY and DISTRICT agree as follows:

1. **Property Description.** The property consists of the buildings, structures, improvements, fencing, and facilities located at 7550 Saint Joseph Avenue, Los Altos, California, 94024, as described in Exhibit A, attached hereto and incorporated herein. The property and said facilities as shown on Exhibit A will hereafter be collectively referred to as "Deer Hollow Farm."

2. **Program Responsibilities.** CITY will provide, coordinate, and manage a program of environmental education in the form of summer camps and school year classes at Deer Hollow Farm, which is located on Rancho San Antonio Open Space Preserve property owned by DISTRICT (hereinafter "the PROGRAM"). Deer Hollow Farm will be open to the public for drop-in visits Tuesdays, Thursdays, Fridays, Saturdays, and Sundays from 8:00 a.m. to 4:00 p.m., as well as Wednesdays from 8:00 a.m. to 1:00 p.m. CITY will consult with DISTRICT prior to modifying the PROGRAM responsibilities.

3. **Term of Agreement.** The term of this Agreement shall commence on July 1, 2015 and terminate on June 30, 2020, except if terminated earlier pursuant to the provisions of this Agreement. The term may be extended by CITY and DISTRICT for one (1) additional five (5) year period provided both parties agree to the terms. If CITY and DISTRICT elect to extend the term, CITY shall notify DISTRICT or DISTRICT shall notify CITY, in writing, no later than April 30, 2019, for the extension term. DISTRICT or CITY shall have thirty (30) days from the date notified by the other party of its election to the extension, to agree to the extension, which agreement shall be in writing.

4. **Description of Repair and Maintenance Services.**

a. DISTRICT will provide repair and maintenance services for the operation of Deer Hollow Farm, including the maintenance of all buildings, structures, improvements, fencing, and facilities in Deer Hollow Farm.

b. DISTRICT shall provide the services of a maintenance worker, pursuant to a mutually agreed-upon schedule. DISTRICT shall provide skilled work crews and supervision as required.

c. Said maintenance worker and crews will remain employees of DISTRICT and shall not be deemed agents, servants, or employees of CITY.

d. DISTRICT shall be responsible for provision of all janitorial-, plumbing-, electrical-, and maintenance-related supplies, including, but not limited to, toilet paper, sanitizing chemicals, lumber, nails, pipe, and wire. DISTRICT shall be responsible for

routine maintenance of Deer Hollow Farm. CITY shall provide for supplies and materials as related to preapproved special projects funded by Friends of Deer Hollow Farm grants.

e. CITY and DISTRICT shall be jointly responsible for maintaining the current inventory of hand and power tools at Deer Hollow Farm. Each agency shall be responsible for an inventory list and such tools shall remain the property of CITY and/or DISTRICT, as applicable.

f. Any alterations, additions, or improvements to or of Deer Hollow Farm or any part thereof, including, but not limited to, outbuildings, fences, signs, or structures of any kind, shall require the prior written approval of DISTRICT (e-mail communication is acceptable). DISTRICT shall consult with CITY prior to making any major changes to buildings or facilities.

5. **Statement of Cost of Services.**

a. DISTRICT and CITY shall meet by each December 31 of the term of this Agreement to review DISTRICT's and CITY's proposed upcoming fiscal year budgets for Deer Hollow Farm (defined as July 1 to June 30 for the purposes of this Agreement). It is the intent of the parties that their budgets and expenses shall be approximately equal, unless the parties agree otherwise.

b. During the term of this Agreement, DISTRICT will provide Seventy-Five Thousand Dollars (\$75,000) per year to CITY for the funding of the PROGRAM. DISTRICT shall remit these funds to CITY no later than December 31 of each calendar year during the term of the Agreement, provided that DISTRICT continues to receive funding from COUNTY under its separate Agreement wherein COUNTY funds DISTRICT's operation and management of Rancho San Antonio County Park. CITY shall apply said funds exclusively to the PROGRAM. In addition to the foregoing, DISTRICT will provide personnel and maintenance services for Deer Hollow Farm as more particularly set forth herein.

6. **DISTRICT-Owned Residence.**

a. Notwithstanding any of the foregoing, CITY shall be solely responsible for the cost of all utilities (including, but not limited to, electricity, gas, and solid-waste disposal), and for any possessory interest tax, at the DISTRICT-owned residence located at 7500 Saint Joseph Avenue, Los Altos, California, 94024, and currently occupied by CITY's designated staff, so long as it is occupied by CITY designated staff. At CITY's discretion, CITY may elect to have its employee pay any or all of the costs of the utilities, but this shall not relieve CITY of its obligation to pay such utility costs.

b. CITY shall negotiate in good faith to enter into an Agreement with CITY employee for occupancy of the DISTRICT-owned residence to further the purposes of the PROGRAM. The consideration for the lease shall be the parties' mutual agreements and promises herein as well as nominal rent.

7. **Extraordinary Expenses.**

a. In the event the total cost of any single repair or replacement of structures or facilities at Deer Hollow Farm, including the DISTRICT-owned residence occupied by CITY's designated staff, exceeds Two Thousand Dollars (\$2,000) in materials and/or labor, CITY and DISTRICT will meet to determine whether to proceed with the repair and, if so, the parties will mutually agree upon cost sharing.

b. If CITY declines to pay for a project reviewed pursuant to this subsection, DISTRICT may, but is not required to, undertake such a project if DISTRICT, in its reasonable discretion, believes such a project is necessary for the protection of the public safety, health, welfare, or the environment.

c. If DISTRICT approves of a project, but declines to pay for said project, CITY may, but is not required to, undertake such project if CITY, in its reasonable discretion, believes that such project is necessary for the protection of the public safety, health, welfare, or the environment.

8. **Operational Responsibilities.**

a. The operation of the PROGRAM at Deer Hollow Farm shall be under the direction of CITY's Community Services Director or his/her designee. CITY will provide one (1) staff person to manage/supervise the PROGRAM on a day-to-day basis. The staff person will also provide day-to-day direction to the maintenance workers provided by DISTRICT. CITY's designated staff members shall comply with all applicable current DISTRICT ordinances.

b. CITY and DISTRICT shall abide by DISTRICT's Integrated Pest Management policy.

9. **Selection Process.**

a. CITY may participate in the selection process for DISTRICT's maintenance workers assigned to Deer Hollow Farm. CITY's participation will consist of one (1) CITY representative sitting as a member of DISTRICT's oral interview board for this position and providing CITY comment if desired. However, DISTRICT shall have the sole authority to make the final determination with regard to any assignment or employment of its employees.

b. DISTRICT may participate in the selection process for CITY's resident staff person assigned to manage/supervise the PROGRAM. DISTRICT's participation will consist of one (1) DISTRICT representative sitting as a member of CITY's oral interview board for this position and providing DISTRICT comment if desired. However, CITY shall have the sole authority to make the final determination with regard to any employment or assignment of its employees.

10. **PROGRAM Components.** Registration for school class visits shall be allocated by CITY as follows:

a. One-third (1/3) of all available openings for the school year will be reserved for schools located in Mountain View.

b. One-third (1/3) of all available openings for the school year will be reserved for schools located both within COUNTY and DISTRICT boundaries.

c. One-third (1/3) of all available openings for the school year will be reserved for schools located in either COUNTY or DISTRICT boundaries.

d. Mountain View schools are included in all three (3) categories listed above.

e. Any remaining openings will be available for schools located outside both COUNTY and DISTRICT boundaries.

11. **Fees.**

a. Class Visits: CITY will establish and collect fees for class visits to the PROGRAM. All proceeds from the fees for such visits shall belong to CITY. Fees for class visits shall be based upon a schedule to be developed by February 1 of each year, to be applicable for the upcoming fiscal year. CITY shall advise DISTRICT prior to the development of the fee schedule. Fees must provide a preferential rate for schools located within DISTRICT's boundaries, CITY limits, and COUNTY boundaries. Fees are subject to final approval by CITY's City Council.

b. Summer Camp: CITY will establish and collect fees for individuals and groups participating in the "summer camp" component of the PROGRAM. All proceeds from the fees for the summer camp shall belong to CITY. Fees for the summer camp shall be based upon a schedule to be developed by February 1 of each year, to be applicable for the upcoming fiscal year. CITY shall advise DISTRICT prior to the development of the fee schedule. Fees must provide a preferential rate for residents

living within DISTRICT's boundaries, CITY limits, and COUNTY boundaries. Fees are subject to final approval by CITY's City Council.

12. **Insurance.**

a. **Commercial General Liability/Automobile Liability Insurance:**

DISTRICT shall obtain and maintain Commercial General Liability insurance and Automobile Liability insurance in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. DISTRICT's insurance coverage shall be written on an occurrence basis.

CITY shall obtain and maintain Commercial General Liability insurance and Automobile Liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. CITY's insurance coverage shall be written on an occurrence basis.

The requirements of this Section may be satisfied by delivery to the other party of evidence of equivalent insurance coverage provided by membership in a governmental agency self-insured program.

b. **Workers' Compensation Insurance:**

DISTRICT shall be responsible for the Workers' Compensation coverage and care of DISTRICT employees, volunteers, and agents, including those employees, volunteers, and agents performing any acts at Deer Hollow Farm under this Agreement in accordance with California statutory limits. CITY shall be responsible for the Workers' Compensation coverage and care of CITY employees, volunteers, and agents performing any acts at Deer Hollow Farm under this Agreement in accordance with California statutory limits.

c. **Acceptability of Insurers:** Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to CITY.

d. **Verification of Coverage:** Insurance, deductibles, or self-insurance retentions shall be subject to CITY's approval. Original Certificates of Insurance with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or

a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

e. Other Insurance Provisions:

(1) The City of Mountain View, its officers, officials, employees, and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by CITY's Risk Manager for Commercial General Liability and Automobile Liability coverage.

(2) For any claims related to this project, DISTRICT's insurance coverage shall be primary and any insurance or self-insurance maintained by CITY, its officers, officials, employees, and volunteers shall not contribute to it.

(3) Each insurance policy required shall be endorsed that a thirty (30) day notice be given to CITY in the event of cancellation or modification to the stipulated insurance coverage.

(4) In the event DISTRICT employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of DISTRICT to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by CITY or acceptance of the Certificate of Insurance by CITY shall not relieve or decrease the extent to which DISTRICT may be held responsible for payment of damages resulting from DISTRICT's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

(6) If, for any reason, DISTRICT fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. CITY, at its sole option, may terminate this contract and obtain damages from DISTRICT resulting from said breach. Alternately, CITY may purchase such required insurance coverage, and without further notice to DISTRICT, CITY may deduct from sums due to DISTRICT any premium costs advanced by CITY for such insurance.

13. **Mutual Indemnification.** In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the CITY and DISTRICT agree that pursuant to Government Code Section 895.4, CITY and DISTRICT shall fully indemnify and hold the other party, their officers, board members, employees, and agents harmless from any claim, expense or cost, damage or liability imposed for injury (as

defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement.

No party, nor any officer, board member, employee, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such other parties under this Agreement.

If liability arises due to the alleged concurrent negligence of CITY and DISTRICT, or any combination thereof, in the event of a claim, action, or suit by a third party, CITY and DISTRICT 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.

14. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office and DISTRICT's General Counsel, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

15. **Nondiscrimination.** DISTRICT shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.

16. **Amendment.** This Agreement may be amended in writing and signed by both parties.

17. **Termination.**

a. Any party may, without cause, withdraw unilaterally from this Agreement upon one hundred eighty (180) days' written notice to the other party prior to July 1 of each year of this Agreement.

b. In the event DISTRICT receives notice from COUNTY of termination of its funding for DISTRICT's operation and management of Rancho San Antonio County

Park, DISTRICT will notify CITY in writing of such termination as soon as practicable. DISTRICT shall not be obligated to submit subsequent payments due to CITY under this Agreement unless both parties agree to the terms of such payment(s) in writing.

c. Termination of this Agreement will also result in the termination of the right of any CITY employee, agent, or sublessee to occupy the DISTRICT-owned residence at Deer Hollow Farm, and all residents must vacate the premises upon termination of this Agreement. Any agreement between CITY and any CITY employee, agent, or sublessee for occupation of the DISTRICT-owned residence must include this provision.

18. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If any attachments or exhibits to this Agreement are inconsistent with this Agreement, this Agreement shall control.

19. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

20. **Public Records.** The parties recognize and acknowledge that CITY and DISTRICT are subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

21. **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.

22. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

23. **Captions.** The captions in the articles of this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

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24. **Notices.** Any notice required to be given to DISTRICT shall be deemed to be duly and properly given if mailed to DISTRICT, postage prepaid, addressed to:

Midpeninsula Regional Open Space District
General Manager
330 Distel Circle
Los Altos, CA 94022-1404

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

Any notice required to be given CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Community Services Director
c/o Recreation Supervisor Deer Hollow Farm
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

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

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IN WITNESS WHEREOF, this Agreement, dated July 1, 2015, between the City of Mountain View and Midpeninsula Regional Open Space District for the operation and management of Deer Hollow Farm, is executed by CITY and DISTRICT.

APPROVED AS TO CONTENT:

Community Services Director

“CITY”:
CITY OF MOUNTAIN VIEW,
a California Charter City and municipal
corporation

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

“DISTRICT”:
MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT, a public district
under the laws of California

By: _____
Stephen E. Abbors
General Manager

By: _____
Sheryl Schaffner
General Counsel

Taxpayer I.D. Number

DEER HOLLOW FARM MAP

