

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF MOUNTAIN VIEW AND THE
MOUNTAIN VIEW SHORELINE REGIONAL PARK COMMUNITY**

This Memorandum of Understanding, dated November 14, 2018 for identification (this "Memorandum"), is made by and between the CITY OF MOUNTAIN VIEW ("City"), a California charter city and municipal corporation, and the MOUNTAIN VIEW SHORELINE REGIONAL PARK COMMUNITY ("Shoreline Community") a public body, corporate and politic.

RECITALS

WHEREAS, the Shoreline Community was formed in 1969 pursuant to Chapter 1109 of the 1969 Regular Session Laws of the California Legislature, which is known as the Shoreline Regional Park Community Act (the "Act"); and

WHEREAS, the Shoreline Community is a public body, corporate and politic, exercising public and essential governmental functions, has perpetual succession, and may exercise the powers enumerated in the Act, including those necessarily implied therefrom and such other powers as the law may provide; and

WHEREAS, the Act is liberally construed to effectuate its purpose; and

WHEREAS, the City, in cooperation with the County of Santa Clara and the United States Department of Interior, designated approximately five hundred forty-four (544) acres within the Shoreline Community to be utilized as a regional park and recreational facility; and

WHEREAS, an express purpose of the Act is to provide a governmental agency to own, maintain, operate, and administer the park which is called Shoreline at Mountain View (the "Park"); and

WHEREAS, the Shoreline Community is a form of local government created by the Act to: (a) contribute to better living conditions through improved overall community design; (b) make substantial contributions to the sound and economic growth of the area; (c) provide needed additions to the general housing supply; (d) provide opportunities for innovation in housing and community development technology and land use planning; (e) enlarge housing, employment, and investment opportunities; (f) encourage a diversified local homebuilding industry; and (g) provide a suitable environment to a significant public regional recreational facility which is the Park; and

WHEREAS, the Shoreline Community is governed by a board of directors (the “Board”), and the members of the City Council serve ex officio as the members of the Board; and

WHEREAS, the Shoreline Community area is located in the City; and

WHEREAS, the Board approved the North Bayshore Area Plan, as amended (the “Plan”) as the official plan for the Shoreline Community pursuant to: (i) Resolution No. S-33, adopted on December 15, 1977 (“Resolution No. S-33”); (ii) Resolution No. S-43, adopted on March 26, 1979; and (iii) Resolution No. S-95, adopted on July 27, 1993; and

WHEREAS, the Board determined in Resolution No. S-33 that the boundaries of the project area covered in the Plan are coextensive with the boundaries of the Shoreline Community as set forth in the Act, and a legal description and map of the project area are attached to Resolution No. S-33; and

WHEREAS, under Section 42 of the Act, the Shoreline Community may acquire, construct, reconstruct, alter, enlarge, lay, renew, and replace certain facilities and works used or useful for the purposes specified in Section 42; and

WHEREAS, under Section 49 of the Act, the Shoreline Community may provide for such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare; and

WHEREAS, under Section 50 of the Act, the Shoreline Community may take, acquire, hold, use, and dispose of property of every kind within the Shoreline Community area necessary, expedient, or advantageous to the full exercise and economic enjoyment of its purposes and powers; and

WHEREAS, under Section 43 of the Act, the Shoreline Community may acquire, develop, improve, enlarge, redevelop, renew, replace, maintain, operate, and administer the Park; and

WHEREAS, the Shoreline Community is authorized under the Plan to use Shoreline Community funds pay the costs of maintaining and operating the improvements and programs described in the Plan;

WHEREAS, under Section 52 of the Act, the Shoreline Community may make and accept contracts that, in the judgment of the Board, are necessary or proper in the exercise of any of the Shoreline Community’s powers, including those powers enumerated in Sections 42, 43, 49 and 50 of the Act; and

WHEREAS, in accordance with Sections 154 to 156 inclusive of the Act, the Shoreline Community is allocated certain property taxes (the “Tax Revenues”) that it pays into a special fund of the Shoreline Community to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the Shoreline Community to finance or refinance, in whole or in part, to implement the Plan; and

WHEREAS, the Shoreline Community’s financial obligations under contracts entered into by Shoreline Community pursuant to Section 52 of the Act constitute indebtedness for purposes of the Act; and

WHEREAS, the Shoreline Community is authorized under Section 130 of the Act to issue bonds from time to time for any of its corporate purposes; and

WHEREAS, the Shoreline Community has pledged the Tax Revenues to the payment of certain outstanding bonds under an Indenture of Trust, dated as of April 1, 1992 (as amended and supplemented, the “Indenture”), and expects to issue additional bonds that are secured by and payable from Tax Revenues; and

WHEREAS, the City and Shoreline Community wish to ratify and memorialize their respective roles in connection with the effectuation of the purposes of the Act, including certain loans, advances, and indebtedness that are payable from Tax Revenues;

NOW, THEREFORE, the City and Shoreline Community agree as follows:

1. Purpose. The purpose of this Memorandum of Understanding is for the Shoreline Community and City to ratify and memorialize in writing their established procedures and their respective roles to administer, loan, advance, reserve, or expend City and Shoreline Community funds in order to effect the purposes of the Act.

2. Shoreline Community Fund Structure. The Shoreline Community has established the funds described in this Section and may create additional funds and change the fund structure from time to time as it determines is necessary to effect the purposes of the Act.

a. Shoreline Regional Park Community Special Fund. In accordance with the Act, all Tax Revenues received by the Shoreline Community will be deposited into a special fund called the Shoreline Regional Park Community Special Fund (the “Special Fund”). The moneys in the Special Fund will be used to pay the principal of and interest on loans, advances, or other indebtedness of the Shoreline Community.

b. Shoreline Regional Park Community Fund. The Shoreline Regional Park Community Fund (the “Shoreline Community Fund”) shall serve as the Shoreline Community Administrative Fund that is required under Section 107 of the Act. Moneys may be transferred from the Special Fund for deposit into the Shoreline Community Fund to pay the administrative expenses and overhead of the Shoreline Community.

3. Bonds. The Act authorizes the Shoreline Community to issue bonds for any of its corporate purposes. There is a single series of outstanding bonds at this time (the 2011 Series A Revenue Bonds (the “2011 Bonds”)) that are secured by a pledge of and lien on the Tax Revenues under the Indenture, and the Shoreline Community anticipates the issuance of additional bonds from time to time.

Any obligation of the Shoreline Community under this Memorandum to make payments with Tax Revenues shall be subordinate to the payment of debt service on bonds, and the Shoreline Community shall comply with the terms of the Indenture and other similar documents to the extent that they provide for the receipt, deposit, pledge, and payment of Tax Revenues.

4. Administrative Expenses and Overhead. This Section implements and fulfills the intent of Section 107 of the Act. The City Council will appropriate and pay to Shoreline Community or advance to third parties on behalf of the Shoreline Community such amounts as it deems necessary for the Shoreline Community’s administrative expenses and overhead. The funds appropriated and paid by the City to the Shoreline Community or advanced to third parties on behalf of the Shoreline Community for administrative expenses and overhead shall constitute a loan and shall be repaid by the Shoreline Community. The Shoreline Community’s obligation to repay City shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds. The Shoreline Community shall transfer any legally available Tax Revenues from the Special Fund to the Shoreline Community Fund to repay the City’s loan.

The administrative expenses and overhead to be repaid by the Shoreline Community shall be identified and calculated as follows:

a. Staffing and Administration. As part of the annual budget process, the Shoreline Community shall submit to the City Council a proposed budget of its administrative expenses, including, but not limited to, Shoreline Community officers and employees’ compensation (salary and benefits), expenses of development and redevelopment planning, and dissemination of development and redevelopment information. The parties acknowledge that the City hires staff that serve as employees to and within the Shoreline Community and, under this Section 4, the Shoreline Community is obligated to pay from Tax Revenues the cost for such staffing, including costs related to administration and overhead.

b. City Advances for Administrative Overhead. City annually implements a cost allocation study and plan that tracks City services and costs necessary to support the Shoreline Community, including, but not limited to, public safety services (including fire, paramedic, and police), finance and administrative services, legal services, human resources, information technology, administration and management, and other costs related to general liability, equipment maintenance, and replacement. The Shoreline Community is obligated under this Section 4 to repay the City from Tax Revenues for the cost of such services and costs.

5. Capital Improvement Projects. This Section implements and fulfills the intent of Sections 42, 43, 49, 50, and 52 of the Act. Annually, as part of the annual budget process, the City and the Shoreline Community approve a Capital Improvement Program. The City or the Shoreline Community may enter into contracts with third parties and expend or agree to expend funds for capital improvement projects within the Shoreline Community that are authorized by the Act.

The Shoreline Community is obligated under this Section to repay to the City from Tax Revenues any amounts advanced by the City to pay for capital improvement projects within the Shoreline Community area that are authorized by the Act. The Shoreline Community's obligation to repay the City shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds.

In addition, the City and the Shoreline Community hereby acknowledge and agree that the Shoreline Community shall pay with Tax Revenues any amounts owed by Shoreline Community under contracts entered into by Shoreline Community to provide for capital improvements to the Shoreline Community area.

6. The Park. This Section implements and fulfills the intent of Sections 43 and 52 of the Act. The Shoreline Community and the City hereby acknowledge and agree that the Shoreline Community shall pay with Tax Revenues any amounts owed by Shoreline Community under contracts related to the Park, and shall repay the City with Tax Revenues for any amounts loaned or advanced by the City to the Shoreline Community for such purpose. The Shoreline Community's obligation to repay the City shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds.

7. Landfill Maintenance. This Section implements and fulfills the intent of Sections 49 and 52 of the Act. The City and Shoreline Community have agreed that Shoreline Community shall be responsible for paying the ongoing costs of maintaining the Crittenden Landfill within the Shoreline Community. The Shoreline Community's obligations under this Section constitute indebtedness under the Act.

8. Reserves. This Section implements and fulfills the intent of Sections 43, 49, 52, and 107 of the Act. As required by City Council Policy A-11, the Shoreline Community shall maintain the following reserves. The reserves may be maintained in the Shoreline Community Fund and the funding policies described below may be revised following future studies or in response to governmental regulations.

a. General Reserve. The general reserve must be equal to twenty-five percent (25%) of the Shoreline Community's operating expenditures. The purpose of this reserve is cover three (3) months of operating expenses for the coming fiscal year, in advance of annual tax increment and to cover unanticipated expenditures, revenue shortfalls, situations of extreme physical or financial emergency, and advances from the City.

b. Sea Level Rise Reserve. In 2013, the Shoreline Sea Level Rise Study (the "Sea Level Rise Study") evaluated the existing conditions within the Shoreline Community because portions of the Shoreline Community front the San Francisco Bay. The Sea Level Rise Study concluded that flood protection projects are necessary to protect public and private investments within the Shoreline Community as well as sensitive environmental sites. Funding for the recommended improvements identified within the study will include contributions from the Shoreline Community. The City and the Shoreline Community approved the creation of a Sea Level Rise Reserve to be established in Fiscal Year 2018-19, and the Shoreline Community hereby agrees to contribute Three Million Dollars (\$3,000,000) annually to this Reserve until approximately Thirty Million Dollars (\$30,000,000) in funds is accumulated for projects identified in the Sea Level Rise Study.

c. Landfill Reserve. The Shoreline Community prepared the Landfill Master Plan to evaluate the existing condition of the three (3) landfills located in the Shoreline Community (the "Shoreline Landfills"). The Landfill Master Plan identified future funding requirements for the operation and maintenance of the Shoreline Landfills through 2042. As part of the budgeting process for Fiscal Year 2013-14, the Shoreline Community and the City approved the creation of a Twelve Million Dollar (\$12,000,000) reserve (the "Shoreline Landfill Reserve") to rebuild the landfill system within the Shoreline Community in case of a catastrophic event, such as an earthquake or flooding. The Shoreline Landfill Reserve also includes funding required to address a nonwater release at the Shoreline Landfills as required by California law. The Shoreline Community has agreed to contribute One Million Dollars (\$1,000,000) annually to the Shoreline Landfill Reserve until it reaches the required reserve level.

The Shoreline Community's obligations under this Section constitute indebtedness under the Act. The Shoreline Community's obligations under this Section

shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds.

9. Other Contractual Obligations. This Section implements and fulfills the intent of Section 52 of the Act. The City and Shoreline Community acknowledge and agree that Shoreline Community may from time to time make and accept contracts, deeds, releases, and documents that, in the judgment of the Board, are necessary or proper in the exercise of any of the powers of Shoreline Community, and Shoreline Community's obligations thereunder shall constitute indebtedness and shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds.

10. City Advances to Shoreline Community for Contractual Obligations. This Section implements and fulfills the intent of Section 52 of the Act. The City and Shoreline Community acknowledge and agree that the City may from time to time enter into contracts on behalf of the Shoreline Community to effect the purposes of the Act and that Shoreline Community shall pay or reimburse the City for its payment of these contractual obligations. The Shoreline Community's obligations under this Section constitute indebtedness under the Act. The Shoreline Community's obligations under this Section shall be secured by a pledge and lien of the Tax Revenues that is subordinate to the pledge of Tax Revenues to any bonds.

11. Capital Assets. The City and Shoreline Community acknowledge and agree that the Act describes the manner in which real property and facilities in the Shoreline Community area shall be owned and that they will comply with such provisions. For example, Section 42 of the Act describes the ownership of the facilities and works that may be financed under that Section, Section 43 authorizes Shoreline Community to own the Park, and Section 50 authorizes Shoreline Community to take, acquire, hold, use, and dispose of property of every kind within the Shoreline Community Area necessary, expedient, or advantageous to the full exercise and economic enjoyment of its purposes and powers.

12. Miscellaneous Provisions.

a. California Law. This Memorandum shall be construed and interpreted in accordance with the laws of the State of California.

b. Entire Agreement. Subject to any subsequent agreements authorized pursuant to this Memorandum, this Memorandum contains all of the representations and the entire agreement between the parties with respect to the subject matter of the Memorandum.

c. Amendments. No amendment of this Memorandum or any part thereof shall be valid unless it is in writing and signed by City and Shoreline Community.

d. Severability. Except as is otherwise specifically provided for this Memorandum, invalidation of any provision of this Memorandum, or of its application to any person, by judgment or court order, shall not affect any other provision of this Memorandum or its application to any other person or circumstance, and the remaining portions of this Memorandum shall continue in full force and effect, unless enforcement of this Memorandum as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Memorandum.

e. Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Memorandum or to exercise any right, power, or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Memorandum consideration during the continuance of any such breach shall constitute a waiver of such breach or of the right to demand strict compliance with such term, covenant, or condition. A party's consent to or approval of any act by the other party requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. Any waiver of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Memorandum.

f. Further Assurances. The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this Memorandum.

g. Application. The parties intend for this Memorandum to establish their shared understanding as to matters described therein and shall not confer any rights on any other person to mandate or enjoin any action by the parties hereto.

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IN WITNESS WHEREOF, this Memorandum of Understanding is executed by the Shoreline Community and the City.

"CITY":
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

"SHORELINE COMMUNITY":
MOUNTAIN VIEW SHORELINE
REGIONAL PARK COMMUNITY,
a public body, corporate and politic

By: _____
City Manager

By: _____
Community Manager

FINANCIAL APPROVAL:

FINANCIAL APPROVAL

By: _____
Finance and Administrative
Services Director

By: _____
Community Treasurer

APPROVED AS TO FORM:

APPROVED AS TO FORM

By: _____
City Attorney

By: _____
Community Counsel

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