

**MEMORANDUM OF AGREEMENT
AMAH MUTSUN TRIBAL BAND–MIDPENINSULA REGIONAL OPEN SPACE
DISTRICT CULTURAL CONSERVATION EASEMENT
(MOUNT UMUNHUM PROPERTY)**

This Cultural Conservation Easement Memorandum of Agreement (“MOA”) is entered into by and between the Amah Mutsun Tribal Band (“AMTB” or “Tribe”), a California Tribe eligible to hold a Conservation Easement under California Civil Code Section 815.3, and the Midpeninsula Regional Open Space District, a public district under the laws of California (“District”), collectively “the Parties,” dated _____ (“Effective Date”).

RECITALS

WHEREAS, the District manages the Mount Umunhum property, and the associated public access improvements as part of the Sierra Azul Open Space Preserve, for ecologically sensitive public enjoyment and education, and to protect and restore the natural environment;

WHEREAS, the Amah Mutsun Tribal Band is a non-federally recognized California Native American Tribe that is on the contact list maintained by the Native American Heritage Commission and that wishes to protect, preserve, and steward Mount Umunhum, a California Native American cultural, spiritual, prehistoric and ceremonial place, and is qualified to hold conservation easements under California Civil Code Section 815.3;

WHEREAS, the District conveyed a Quitclaim Deed of Cultural Conservation Easement to the AMTB over the Mount Umunhum property owned by the District (“Conservation Easement”), which was recorded December _____, 2017 as document 2017-_____ in the County of Santa Clara attached as Exhibit A;

WHEREAS, as set out in the Conservation Easement, this MOA is intended to further define the processes for implementation and coordination of the activities contemplated thereunder;

WHEREAS, the parties agree that this MOA will be an adaptive document to encourage regular and open communication between the parties on the use, management, protection, stewardship and restoration of Mount Umunhum property for consistency with Conservation Values: a) Cultural and Historic Values, b) Educational Values, c) Natural Resource Values and d) Scenic and Open Space Values, as further defined in Section 1 of the Conservation Easement;

WHEREAS, by means of this MOA, the AMTB and District aim to facilitate a smooth and efficient process concerning the authorized activities of the Tribe in a manner that is compatible with the District’s public open space uses and other reserved rights in the Conservation Easement;

WHEREAS, the following Authorized Activities are identified in Section 3.d of the Conservation Easement, subject to the terms and conditions of the Conservation Easement, as implemented through this MOA:

- A. Restore, conserve and steward natural and cultural resources.
- B. Promote indigenous land and cultural stewardship through the application and sharing of traditional ecological knowledge related to traditional conservation and sustainable resource management practices, including for example: plant gathering; collection of seeds; digging bulbs/roots; cutting and pruning vegetation; tending of plants; planting; and, dispersing seed and bulbs.
- C. Provide educational services about traditional cultural and ecological knowledge, including traditional land management principles and resource management methods that reflect Amah Mutsun values.
- D. Plant and maintain a native plant education garden in the former recreational and housing area of the decommissioned Almaden Air Force Station for Tribal use and educational purposes identified as Tribal Garden Area on Exhibit B.
- E. Host Tribal ceremonies in the Ceremonial Circle (identified as Ceremonial Space on Exhibit B), some of which shall be open to non-tribal public participants and some of which may be reserved for AMTB exclusive use. AMTB may not require fees from participants for these uses; however, voluntary or suggested donations are authorized.
- F. Perform a cultural resources survey of the Mount Umunhum Property to identify and determine whether additional cultural resources or archaeological sites are in need of protection, including ongoing documentation and monitoring of any such cultural resources.
- G. Perform research on how the Guadalupe, Los Gatos and Alamitos River headwaters impacts watersheds and the cultural and natural resources of Mount Umunhum.
- H. Install cultural improvements, subject to District review and approval in the District's Board of Directors' sole discretion, provided such improvements are consistent with the Conservation Values.
- I. Engage in traditional recreational, cultural, and educational activities, including without limitation: ceremonies, dances, games and knowledge sharing workshops.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the promises, obligations and conditions contained herein and in the Conservation Easement, the parties agree as follows:

1. **Special Use Permits Required for Certain Activities** – Except within the Tribal Garden Area, any of the Authorized Activities that are or may become inconsistent with Regulations for the Use of Midpeninsula Open Space District Lands (“District Regulations”) as are now in existence or as may be amended from time-to-time (including, but not limited to, any

activity that may be attended by 30 or more people, the use of fire for any purpose, after hours activities, seed harvesting, etc.) are prohibited unless authorized by special use permit. The AMTB agrees to work to minimize traffic and parking impacts resulting from groups of 20 or more persons by carpooling or other means.

The District reserves the right, however, to drop the permit trigger from 30 back down to 20 or more participants, if parking or other impacts typically arising from large groups become a site management issue for staff and/or the general public. Such change shall only be upon written notice to the AMTB at 30 days in advance of the change in the permit requirement.

2. Collaborative Approach - The District agrees to process any special use permit application required by this Agreement or District Regulations in a timely and collaborative manner, with the least restrictions feasible, while maintaining public access, safety, and meeting the District's natural resource objectives. All special use permit applications shall be submitted to:

Visitor Services Department
Attn: Visitor Services Manager
Email: permits@openspace.org
Telephone: (650) 625-6512

The Visitor Services Department will be responsible for communicating and coordinating with other District departments on the issuance of an Annual Special Use Permit.

- A. **Preference for Annual Special Use Permits.** All required special use permits shall be issued for the longest term reasonable under the circumstances, with a preference for annual permits, where possible.
- B. **After Hours Access.** There shall be jointly-developed between the parties a special use permit for after-hours access by the AMTB to the Tribal Garden and Ceremonial Space at the Summit Area (Ceremonial Space), laying out the conditions and mutual expectations of the parties, uses of gates, advance notification of and coordination with Field Staff regarding dates of such access, numbers of vehicles anticipated, and any event-specific details.
- C. **Tribal Garden Area.** The parties agree to meet and confer in good faith each year to discuss the Tribal Garden Area, including AMTB's planned Tribal Garden Area activities, and to identify any potential impacts. So long as the parties comply with the natural resource collaboration and consultation process set forth below in section 3 ("Natural Resource Collaboration and Consultation"), no permits shall be required for AMTB's use of the Tribal Garden Area, except that District reserves the right, after consultation with AMTB, to require a permit in the Tribal Garden Area if District operations or resources staff identify potential, substantial adverse impacts outside the Tribal Garden area. Any such permits shall be developed in a collaborative manner and, whenever possible, on an

annual basis.

The parties agree that AMTB shall procure, carry and maintain commercial general liability coverage, and shall list the District as an additional insured on such policy or policies, before commencing any development of, or improvements to, the Tribal Garden Area.

- D. **Ceremonial Space.** A general, annual calendar shall be developed for the use of the Ceremonial Space providing for an annual overview of dates when the AMTB wishes to set aside the space for ceremonial uses. The calendar shall provide for close coordination and adequate advance scheduling with Field Staff and Visitor Services, to ensure that there is minimal conflict with other uses and to ensure that the District can allocate its staff resources accordingly, and manage related road and parking demands in a way to avoid conflicts with other uses or maintenance activities. Special use permits will be required for any ceremonial use that conflicts with District Regulations (i.e. includes the use of fire, after hours use or involves 30 or more participants per section 1 above and 8.D.b below).
- E. **Annual Meetings.** The AMTB and the District representatives will meet at least annually to discuss the successes and challenges of the permitting system and this Agreement, and to make adjustments to the process as needed to meet the parties' respective needs and the Conservation Easement's purpose.
- F. **Grants and Fundraising.** The AMTB and District intend to collaborate and jointly pursue grant and fundraising opportunities that are consistent with Conservation Values to carry out the purposes of the Conservation Easement.

3. **Natural Resource Collaboration and Consultation** - The parties recognize that the Mount Umunhum Summit area has a unique community of plants and animals, and it has suffered a long history of disturbance, generating invasive species challenges, as well as loss of culturally significant ethnobotany resources important to the AMTB.

- A. The AMTB and the District agree to collaborate to find opportunities for the AMTB and its Amah Mutsun Land Trust ("AMLT") to advance culturally significant ethnobotanical restoration goals in the Easement Area, in a manner consistent with the District's reserved rights under the Easement.
- B. The District has encountered significant threats in its restoration efforts on the Summit from plant pathogens being introduced through soil amendments and nursery plants. In recognition of this problem, the AMTB agrees to confer with District Natural Resources staff before bringing in new plants, soils and soil amendments for use in the Tribal Garden Area or elsewhere, and to comply with all applicable requirements addressing this issue. The District agrees to work in good faith with the AMTB to facilitate a process that will meet the AMTB's goals for the Tribal Garden Area while minimizing risk to the larger plant community

from such pathogens.

4. **Hazardous Materials** - AMTB acknowledges that there may be hazardous materials present on the site or buried underground. If any hazardous materials are discovered or uncovered, AMTB will cease their activity and notify the District immediately, in no event later than 48 hours after discovery. The District reserves the right, responsibility and authority to enter all areas to investigate, remove, remediate or otherwise clean up any hazardous materials if required.

5. **Future Tribal and Collaborative Use Area** - Downslope of the Tribal Garden Area, an area is set aside for future tribal use and collaborative restoration and revegetation projects performed by AMTB and/or District identified as “Tribal Use Area” on Exhibit B. The parties shall consult and cooperate on restoration and maintenance work at Tribal Use Area in accordance with Section 3 (“Natural Resource Collaboration and Consultation”) of this Agreement. Any proposed future improvements to the Tribal Use Area shall be subject to District review and approval in the District’s Board of Directors’ sole discretion, provided such improvements are consistent with the Conservation Values of the Conservation Easement. Conversely, any proposed District restoration action shall be in accordance with the consultation process in Section 3.

6. **CEQA Compliance Required** - Any activities by the AMTB or the District under the Conservation Easement or this Agreement that may have a significant effect on the environment, as defined by California Environmental Quality Act (CEQA), shall be analyzed under CEQA and may not commence until compliance with CEQA is determined by the District in consultation with the AMTB.

7. **AMTB Statement of Work** - AMTB agrees to:

- A. Work in cooperation with the District staff including Land & Facilities, Visitor Services and Natural Resources Departments (District staff) to manage the Conservation Easement Property through development and revitalization of Traditional Resource Environmental Management practices (TREM) (as defined by Fowler and Lepofsky (2011:186) from “Traditional Resource and Environmental Management” in *Ethnobotany*), scientific and historical research, and educational-cultural learning exchange opportunities.
- B. Provide public interpretation and education in cooperation with the District concerning natural and cultural resources of Conservation Easement Property, with a focus on tribal values and their implications regarding the human condition from a scientific and educational perspective.
- C. Consult as appropriate with the District to provide the tribal perspectives and beliefs concerning its TREM, traditional cultural practices, spiritual beliefs, oral histories, and efforts to regain traditional knowledge that was lost resulting from

European colonization via the Mission system, subsequent Mexican rule and American settlement.

8. Implementation of Authorized Activities - AMTB and District staff will meet and consult each year in conjunction with the annual monitoring of the Conservation Easement to share and develop work plans, and establish and evaluate a collaborative and complementary approach to addressing the following goals to protect the Conservation Values of the Conservation Easement including:

- A. Resource and Vegetation Management:** District goals for the restoration of the plant communities at the Mount Umunhum summit are to restore the disturbed areas of the mountain summit to a native plant community species assemblage consistent with the diversity and relative abundance of native plant species found in the immediate surrounding undisturbed habitats, ridgelines, and peaks. The plant materials (seeds and propagules) used in restoring the disturbed areas will be from locally collected plants to maintain the local genetic integrity of the plant species to the greatest extent possible.

District goals for the maintenance of the Mount Umunhum Summit are to control invasive, non-native vegetation ('weed') so that these species do not exceed 5% cover within a restoration area and where any given weed patch does not exceed 100 square feet at 50% cover.

District staff will meet with AMTB staff at least once each year to coordinate AMTB restoration, conservation and stewardship activities to complement and support District's natural resource and site management program addressing, but not limited to:

- i. Vegetation management.
- ii. Seed harvesting and native plant collection for traditional practices including use of traditional foods, medicines, ceremonies and crafts.
- iii. Collection and sharing with District for scientific research.
- iv. Collection for and education or interpretation of the natural and cultural resources of Mount Umunhum.

- B. Cultural, Tribal and Ceremonial Uses and Activities:** District staff will meet with AMTB to discuss and schedule events and activities and identify educational and interpretive opportunities for the public. These events and activities will be scheduled on a Master Activities Calendar for Mount Umunhum.

- C. Education and Interpretation:** AMTB will work with District staff to develop and provide interpretive and educational opportunities to interpret and share:

- i. Traditional cultural practices, oral histories, spiritual beliefs, and efforts to revive traditional tribal knowledge.

- ii. Traditional ethno biological resources and traditional practices of foods, medicines, ceremonies and crafts.

D. **Uses and Improvements:** AMTB shall have the right to use and/or develop the following improvements:

- a. **Native Education Garden.** AMTB is authorized to plant, maintain, improve and use a Native Education Garden (Tribal Garden) in the former housing and recreation area as provided for in Section 3.d.iv of the Conservation Easement. The Tribal Garden will be open to the public for viewing and educational purposes, and docent led tours during the Preserve hours.
- b. **Ceremonial Space Use.** AMTB will schedule activities and tribal ceremonies through the Visitor Services Department using the Mount Umunhum Master Activities Calendar. The Ceremonial Space is part of the Mount Umunhum public staging area improvements, and will be open to the public daily. AMTB may schedule up to six (6) tribal events each year that include 30 or more people or which uses do not comply with District Regulations (i.e. the use of the ceremonial space after hours; ceremonies that intend to use fire; or, for activities that are intended to be closed to the general public). Such events will require a special use permit. Events with a maximum number of 29 participants will not require a special use permit as long as the use complies with District Regulations and the purposes of the Conservation Easement.
- c. **Public Use and Access.** AMTB acknowledges and agrees that public access to the Mount Umunhum property, including the Tribal Garden and Ceremonial Space, is mutually beneficial and in furtherance of the purposes of the Conservation Easement. In this regard, AMTB and District will work together to increase the extent of public outreach and education, including displays of interpretive materials. Access will be consistent with the requirements of the Americans with Disabilities Act (ADA).
- d. **Request for New Activities and Improvements:**
 - i. **New Activities.** In the future, AMTB may propose new activities and uses on the Mount Umunhum property, which District will evaluate for consistency with the Conservation Values, District Regulations and existing site conditions and public use.
 - ii. **New Improvements.** In the future, AMTB may propose new improvements on the Mount Umunhum property, which

District will evaluate for consistency with the Conservation Values, District Regulations and existing site conditions and public use. If determined to be complementary to these uses and regulations, new improvements may require a CEQA finding and approval by the District's Board of Directors at a public meeting.

E. Cultural and Archeological: District staff and AMTB will consult and collaborate on cultural and archeological surveys and projects. Both parties will share archeological information with the other party in accordance with applicable state and federal laws.

9. Permitting Costs Recovery - While no costs are being assessed or contemplated at this time, the District reserves the right to assess a cost-recovery fee for permits, if staffing demands associated with large or frequent special events dictate such a need in the future, but only upon prior good faith consultation with the AMTB regarding such fees, review and approval by the District's Board of Directors.

10. Master and Activities Calendar - District will keep a master calendar of all scheduled events or management activities on the Mount Umunhum summit property. District will share the calendar with the AMTB. AMTB may request special use permits for any activities which do not comply with District Regulations.

11. Good Faith Consultation Required - District and AMTB will consult in good faith regarding any conflicts that arise between District's Reserved Public Open Space Uses and AMTB's Authorized Activities.

12. Emergency Response - For emergency or law enforcement incidents contact:

Midpeninsula Regional Open Space District
24-Hour Ranger Radio Dispatch
(650) 968-4411

13. Indemnity - Each party shall be responsible for, indemnify, and hold harmless the other party, its officers, directors, agents, contractors, and employees from any and all liabilities, claims, demands, damages, or costs caused by that party's acts or omissions which produced injury to or the death of any person or physical damage to the Easement Property, unless such injury, death, or damage was due solely to the gross negligence or intentional misconduct of the other party, its officers, agents, contractors or employees.

14. Applicable Law; Venue - This Agreement shall be construed and enforced in accordance with the laws of the State of California. The venue for any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be in Santa Clara County, or such other venue as is mutually agreed to by the parties in writing.

15. **Dispute Resolution** - In the event of a dispute, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to legal action. Either party may request consultation in writing to address any conflict or dispute arising out of this Agreement between the parties at any time. The parties agree to make a good faith effort to engage in the consultation process promptly. Should any dispute not be resolved by informal consultation between the parties, it shall be submitted to alternate dispute resolution, with each party bearing its own costs and legal fees, in accordance with section 9 of the Conservation Easement (“Disputes and Remedies”). Should litigation result, the court shall determine who bears legal fees and costs.

16. **Notification** - Any notice or communication required between the parties must be in writing and may be given either personally, email, by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. A party may at any time, by giving ten (10) days written notice to the other parties, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

District:

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
Attn: General Manager
Tel: (650) 691-1200
Fax: (650) 691-0485

AMTB:

Amah Mutsun Tribal Band
P.O. Box 5272
Galt, CA 95632
Attn: Tribal Chair
Tel: (916) 743-5833
(508) 254-0746
Email: vjltestingcenter@aol.com

17. **Execution of Agreement; Counterparts** - This Agreement may be executed by the parties in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

18. **Modification** - This Agreement may only be amended by the mutual written agreement of the parties.

19. **Authority to Execute Agreement** - Each party covenants that the individual executing this Agreement on behalf of the party is a person duly authorized and empowered to execute this Agreement for such party.

///

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last signed below.

AMAH MUTSUN TRIBAL BAND:

Approved as to Form:

By: _____
Valentin Lopez, Chairman

By: _____
Rovianne A. Leigh, Attorney

Date: _____

Date: _____

**MIDPENINSULA REGIONAL OPEN
SPACE DISTRICT:**

Approved as to Form:

By: _____
Stephen E. Abbors, General Manager

By: _____
Sheryl Schaffner, General Counsel

Date: _____

Date: _____