



Midpeninsula Regional
Open Space District

R-11-100
Meeting 11-29
October 26, 2011

AGENDA ITEM 4

AGENDA ITEM

Authorization to Execute a New Lease Agreement with VIA Services, Inc. (VIA) and Determination that the Recommended Action is Categorically Exempt from the California Environmental Quality Act (CEQA)

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended action is categorically exempt from the California Environmental Quality Act (CEQA) as set out in this report.
2. Adopt the attached Board Resolution authorizing the President to execute a new Lease Agreement with VIA.

SUMMARY

VIA is seeking approval from the District to continue leasing a riding ring facility located in the Picchetti Ranch Open Space Preserve for the next 25 years as shown in Attachment B. The riding ring is used one to two weekends a month from May to October for a horse therapy program for children and adults with disabilities. VIA's main facility (Camp Coastanoan) is leased from Santa Clara County as a part of Stevens Creek County Park, which is adjacent to the riding ring. Santa Clara County recently extended VIA's lease for an additional 55 years. The original lease provides that the riding ring is available to the public when not in use by VIA.

DISCUSSION

In 1986, the Board approved a lease agreement ("Original Lease") allowing the Crippled Children's Society of Santa Clara County, Inc. to construct a riding ring facility on a portion of the Picchetti Ranch Area of the Monte Bello Open Space Preserve adjacent to Camp Coastanoan (see Board Memorandum M-86-36). The Original Lease term was one year with an automatic renewal at the end of each year. The rent was \$1.00 per year payable annually in advance. The riding ring facility was for use as part of the Camp Coastanoan's Recreation and Rehabilitation Program where adults and children participate in a horse therapy program to assist with their disabilities. As part of the Original Lease, the site is available to the public at no cost and at all

times when the site was not being utilized for the program. The Crippled Children's Society main facility, Camp Coastanoan, was located on and leased from Santa Clara County.

During the Original Lease Term, the Cripple Children's Society of Santa Clara County legally changed its organization's name to VIA Services Inc.

VIA recently amended its lease with Santa Clara County to extend the term by 55 years for Camp Coastanoan, located adjacent to the riding ring. The rent for Camp Coastanoan is \$1.00 per year. VIA approached the District to enter into a similar long term lease arrangement for the riding ring to secure its use for their program. VIA has done an excellent job of maintaining the riding ring over the last 25 years as well as making it available to the public when not in use.

After reviewing the Original Lease and visiting the site, staff is proposing the District enter into a new, five year lease with VIA with four 5-year extensions potentially totaling 25 years for the use of the riding ring as designated in Attachment B. The terms of the proposed lease are outlined below in the Terms and Conditions section of this report.

CEQA COMPLIANCE

District staff concludes that the recommended action is exempt from CEQA because it will not have a significant effect on the environment under CEQA Guidelines Section 15301(e) which exempts minor alterations of existing facilities when less than 2500 square feet in expansion of the existing public structures is proposed.

TERMS AND CONDITIONS

Staff proposes a new five year lease agreement with VIA with four 5-year extensions potentially totaling 25 years. This new lease agreement includes the following terms and conditions:

1. An annual rent for use of the riding ring of \$1.00 per year payable annually in advance.
2. Use of the riding ring will be limited to the months of May through October, generally on the weekends.
3. Five horses that can be in the ring at any one time which is a slight increase from the program's original four horses.
4. Public access to the riding ring would be available at no cost and at all times when the ring is not being utilized for the program.
5. Maintenance of the riding ring is the responsibility of VIA. All maintenance of the riding ring will be inspected by District staff.
6. A trail through the leased premises may be proposed by the District at some time in the future. If the trail passes through the riding ring, VIA agrees the lease is terminable upon 90-day notice and all improvements would be removed within that timeframe.

BUDGET CONSIDERATIONS

As VIA will be maintaining the riding ring, there should be no cost to the District for maintenance over the term of the lease. A total of \$25.00 will be paid to the District over the term of the lease.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. No additional notice is required.

NEXT STEPS

If the VIA Lease Agreement is approved by the Board of Directors, staff will notify the Lessee of Board approval of this item.

Attachments:

1. Resolution
2. Map
3. VIA Lease Agreement

Prepared by:

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Contact person:

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RESOLUTION NO. 11-XX

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING
THE LEASE AGREEMENT WITH VIA SERVICES INC. (PICCHETTI
RANCH OPEN SPACE PRESERVE)**

The Board of Directors of the Midpeninsula Regional Open Space District does hereby resolve:

Section One. The District may, under the provisions of Section 5540 and 5563 of the Public Resources Code, lease property owned by the District for up to twenty-five (25) years, and the Board of Directors hereby finds that the proposed lease premises located in the Picchetti Ranch Open Space Preserve remains presently unnecessary for open space purposes and that continuation of the Lease for riding ring facility is in the best interests of the public.

Section Two. The Board of Directors of the Midpeninsula Regional Open Space District approves the Lease Agreement between Midpeninsula Regional Open Space District and VIA Services Inc., a copy of which is attached hereto and by this reference made a part hereof, and does hereby authorize the President or other appropriate officers to execute said Lease Agreement on behalf of the District.




Section Three. The General Manager or the General Manager's designee is hereby authorized to negotiate and approve the exercise of each of the four subsequent options of the Lease Agreement as set forth in the Lease Agreement. The General Manager is further authorized to execute any and all other documents necessary or appropriate to the completion of such transactions. The General Manager shall report in writing on any such exercise of an option to continue the subject Lease to the Board of Directors at the meeting immediately following the exercise thereof.

* * * * *

Path: G:\Projects\Picchetti\LeasedPremises\LeasedPremises_v2.mxd
Created By: aroa



Attachment B: Leased Premises

-  Parcel Boundary
-  Leased Premises
-  Road

Midpeninsula Regional
Open Space District
(MROSD)



October, 2011



While the District strives to use the best available digital data, this data does not represent a legal survey and is merely a graphic illustration of geographic features.

LEASE AGREEMENT

THIS LEASE made and entered into this _____ day of _____, 2011, by and between MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a California public agency (“District”), and VIA SERVICES, INC. a California non-profit corporation, hereinafter called (“Lessee”).

RECITALS

A. District, a California public agency, owns certain real property located in Santa Clara County commonly known as the Monte Bello Open Space Preserve (the “Property”).

B. District acquired the Property to protect and restore its natural resources and beauty, to develop its recreational potential, and to continue agricultural uses.

C. The Property is adjacent to a part of Stevens Creek County Park that is owned by Santa Clara County (“County”) and leased by County to the Lessee for use as a recreation therapy camp (“Camp”) for children and adults with disabilities. Lessee has leased a portion the Property from District for over twenty-four years for the primary use as an equestrian riding ring that is part of the Camp.

D. County and Lessee recently amended their lease to extend the term through 2060.

E. District is willing to continue leasing a portion of the Property historically leased to Lessee under the terms and conditions contained in this Lease. The property being leased hereunder (“Leased Premises”) consists of an approximately 85’ by 114’ portion of the Property as more fully described in Exhibit A attached hereto, together with all improvements thereon.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. LEASE. District leases to Lessee the Leased Premises, upon all of the terms, covenants and conditions herein contained (the “Lease”).

1.1 AS-IS. The Leased Premises are being leased “As-Is,” with Lessee accepting all defects, if any; and District makes no representation or warranty of any kind, express or implied, with respect to the Leased Premises (without limitation, District makes no warranty as to the habitability, fitness or suitability of the Leased Premises for a particular purpose nor to the absence of any toxic or otherwise hazardous substances). Lessee acknowledges that it has been given the opportunity to inspect the Leased Premises and to have qualified experts inspect the Leased Premises prior to the execution of this Lease. Lessee acknowledges that it has leased said Leased Premises for the past twenty-four years. Lessee acknowledges that neither District nor any broker or property manager of Districts has made any representation or warranty to Lessee as

to the present or future condition of the Leased Premises or the suitability of the Leased Premises for the conduct of Lessee's use.

2. TERM. The Leased Premises are leased for an initial five (5) term (Initial Term) beginning on _____, 2011 ("Commencement Date") and expiring on _____, 2016 (the "Term"), unless extended as provided for herein. Provided Lessee is in compliance with the terms, covenants, and provisions of this Lease, and a request by Lessee is received by District no more than one hundred eighty (180) days and no less than ninety (90) days prior to the termination of the Initial Term, the District may, in its sole discretion, elect to extend the Lease for one additional five (5) year period ("Subsequent Term"). Such extension would extend the Term for a total of no more than ten (10) years, unless the Lease is earlier terminated by District or Lessee as provided herein. If extended by District, the Subsequent Term shall expire on _____, 2021. Collectively, the Initial Term and Subsequent Term are referred to herein as the "Lease Term."

Lessee acknowledges that the District may propose that a public trail be constructed through the Leased Premises at some time in the future. In such event, and if District determines that the Lessee's improvements interfere with the proposed public trail, Lessee understands and agrees that this Lease shall be terminable by District upon 90 days prior written notice to Lessee indicating that effect and the Lessee will be required within 90 days to remove the improvements to the satisfaction of the District.

3. RENT.

3.1 RENT, CASH. Lessee agrees to pay a total rent of One Dollar (\$1.00) per year, payable in its entirety, in an amount equal to Five Dollars (\$5.00), upon full execution of this Lease.

3.2 RENT, MAINTENANCE WORK. In addition to the cash rent in Paragraph 3.1 above, for rental payable hereunder, Lessee agrees to compensate District by completing the maintenance work and activities specified in the list and schedule attached as Exhibit B (collectively the "Maintenance Work"). Lessee must review all Maintenance Work with Lessee with District prior to commencing any work. All Maintenance Work shall be completed and the District notified that the Maintenance Work is ready for inspection. The District may inspect the Maintenance Work within forty-five (45) days following notification, otherwise it shall be deemed accepted following such time period. All Maintenance Work may only be performed between May and October. All Maintenance Work shall be completed and delivered free from all liens, claims, demands, setoffs or counterclaims against the District of any kind or character whatsoever. If the Maintenance Work is unsatisfactory, District shall notify Lessee of the deficiency within seven (7) days after the inspection. Upon such notification of deficiency, Lessee shall have twenty (20) days to correct the deficiency. If the deficiency is not corrected, District may do the work or terminate the Lease in accordance with Paragraph 21(b).

4. USE.

4.1 PERMITTED USES. Lessee shall have a non-exclusive right to use and occupy the Leased Premises solely as a riding area for horses as a part of the Via West Campus Recreation and Rehabilitation Program between the months of May and October during the Term. Pursuant to the foregoing, Lessee understands and acknowledges that the Leased Premises shall be available to the public at no cost at all the times that the Leased Premises is not in use by the Lessee accordingly; access to the Leased Premises shall be available to hikers and equestrians. At such times as the Leased Premises is available to the public, the Lessee will allow the public to avail of the water, toilet and picnic facilities at the Lessee's adjacent property in Stevens Creek County Park.

At any one time there shall be no more than five (5) horses on the Leased Premises without the prior written consent of the District.

4.2 INSURANCE PROHIBITION. Lessee shall not make or permit any use of the Leased Premises or act thereon which will increase the existing rate of insurance on any portion of the Property or cause the cancellation of any insurance policy covering any portion of the Property. If any act by Lessee or use of the Leased Premises made or permitted by Lessee shall directly cause any cost increase for District's insurance, such additional expense shall be paid by Lessee to District upon demand as additional rent. Lessee shall not permit to be kept or used in or about the Leased Premises any article which may be prohibited by any of the District's insurance policies.

4.3 WASTE OR NUISANCE. Lessee shall not commit or suffer to be committed any waste upon the Leased Premises, or any public or private nuisance. Lessee shall not burn any trash or garbage of any kind in or about the Leased Premises or Property and shall not use or permit the use of any portion of the Leased Premises or Property for any unlawful purpose or purposes.

5. HUNTING RIGHTS AND OTHER RECREATIONAL ACTIVITIES. In accordance with Section 700 of the Regulations For Use of Midpeninsula Regional Open Space District Lands ("District Regulations") Lessee shall not perform or permit any hunting on the Leased Premises. Further, Lessee may not use the Leased Premises for public or private entertainment events involving more than 10 people without prior written permission of District.

6. BUFFER AREAS. In accordance with Section 702 of the District Regulations, Lessee shall protect adjacent areas of natural habitat and creek corridors from disturbance. Lessee shall not clear trees or vegetation from the banks of streams without prior written approval of the District.

7. PESTS, FIRE HAZARDS AND TREES. Lessee shall protect the Leased Premises from noxious grasses, weeds and plants, and from animal and insect pests, and free from fire hazards. Lessee shall care for, prune and protect all trees on the Leased Premises; provided, however, that Lessee shall not cut any timber or remove any trees from the Leased Premises for any purpose

whatsoever without the prior written consent of District, nor shall Lessee commit or suffer to be committed any waste or nuisance upon the Leased Premises.

8. EROSION CONTROL AND ROAD REPAIR. Lessee shall maintain adequate ground cover in order to prevent erosion. Lessee shall control soil erosion as completely as practicable by filling in or otherwise controlling small washes or ditches that may form. Lessee shall keep and maintain all ditches, roadways, and other improvements on said Leased Premises in good condition and repair. Road repairs and erosion control work shall, as much as possible, meet the applicable standards and practices recommended by the USDA Natural Resources Conservation (NRCS).

9. IMPROVEMENTS AND ALTERATIONS. Lessee shall not, without District's express prior written consent, which may be withheld in District's sole and absolute discretion, make any alterations or additions to the premises, including without limitation the construction of buildings or other structures, new fences or structures of any sort, nor without such consent shall Lessee do any grading, trenching or earth moving of any sort on the Leased Premises. Lessee shall not install or permit the placement of any signs on the Leased Premises of any sort without District's express prior written consent which consent may be withheld in District's sole and absolute discretion.

10. LIENS AND ENCUMBRANCES. Lessee shall not incur or suffer any liens or encumbrances to be levied or asserted against the Leased Premises, any improvement thereon or appurtenance thereto. Lessee shall not execute any other security agreement relating to the Leased Premises, any appurtenance thereto, or any equipment located thereon. Lessee shall promptly notify District of any claims or liens against the Leased Premises, the improvements thereon, appurtenances thereto, or equipment located thereon, so that District may take such steps as District may deem appropriate for the protection of said Leased Premises and appurtenances.

11. PAYMENT OF OPERATING COSTS. Lessee shall pay all costs in connection with Lessee's operations upon the Leased Premises.

12. TAXES AND ASSESSMENTS. Lessee shall pay, prior to delinquency, all personal property taxes or assessments levied upon Lessee's personal property situated in or about the Leased Premises during the Term of this Lease. On demand, Lessee shall pay any taxes resulting from an increase in the value placed on the personal property of Lessee or placed on the Leased Premises by Lessee. On demand, Lessee shall provide to District satisfactory evidence of payment of taxes.

13. POSSESSORY INTEREST TAX. Lessee acknowledges that Lessee's interest in the Premises under this Lease may now or hereafter be subject to a possessory interest tax imposed by the County in which the Premises are situated or by other lawful governmental authority. Lessee shall pay any such possessory tax prior to delinquency thereof, and shall not be entitled to offset the amount of such tax against rent payable under this Lease.

14. INSURANCE. During the full Term hereof, Lessee shall, at its sole cost and expense, procure and maintain public liability insurance from an insurance company satisfactory to District, providing Bodily Injury and Property Damage, combined single limit of not less than Two Million Dollars (\$2,000,000.00). Lessee shall comply with all requirements, applying to the premises, of any insurance organization, necessary for the maintenance of reasonable public liability insurance covering the structures. District shall be listed as an additional insured on said liability policy. Lessee shall provide District with a Certificate of Insurance at the signing of the Lease.

15. INDEMNITY. Lessee expressly assumes for itself, its agents, employees, contractors, patrons, and invitees, all risks and damages to persons or property, either proximate or remote, because of the present or future condition of the Leased Premises. Lessee shall indemnify and hold the District harmless from any and all damages, injuries or claims, including reasonable attorney's fees, in any way related to or arising out of, in or about the Leased Premises or from Lessee's operations on the Leased Premises.

16. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND AGREEMENTS. Lessee shall use the Leased Premises in strict compliance with all laws, statutes, ordinances, rules, regulations and orders of federal, state or county governments, or of any agency thereof which may be applicable to the Leased Premises or the use or occupancy thereof. A copy of the District Regulations, which are applicable to the Leased Premises and Lessee's use or occupancy thereof, is attached hereto as Exhibit C and made a part hereof.

17. RIGHT OF ENTRY AND EMERGENCY LANDING ZONE. Lessee understands and acknowledges that the Leased Premises shall be available to District at all times. The equestrian riding ring may be used by District as a helicopter landing zone during emergency situations only. Access by the public is as noted in section 4.1 - Permitted Uses.

18. ASSIGNMENT AND SUBLETTING. Lessee shall not assign, transfer or encumber this Lease or any part thereof, or sublet the Leased Premises without the prior written consent of District; nor shall Lessee's interest be assignable by operation of law without such prior written consent; provided that such consent shall not be unreasonably withheld but Lessee shall remain liable hereunder notwithstanding such assignment or subletting. Any such assignment or subletting without such consent shall be void and, at the option of District, shall forthwith terminate this Lease, and Lessee shall remain liable hereunder notwithstanding any such assignment or subletting. Lessee shall terminate all existing subleases within thirty (30) days and shall be responsible for the actions of sub lessee until the sub lessee has vacated the Property, including removal of any equipment, junk or debris left by sub lessee.

19. DEFAULT BY LESSEE. All covenants and agreements contained in this Lease are conditions to this Lease. Should Lessee default in the performance of any covenant, condition or agreement contained in this Lease, and such default continues for thirty (30) days after written notice thereof, or for five (5) days after written notice of failure to pay rent, District may resort to the remedies described below under "DISTRICT'S REMEDIES."

20. DISTRICT'S RIGHTS TO CURE LESSEE'S DEFAULTS. If Lessee should fail to pay any charges, tax or other amounts herein required to be paid by him when due, or in the event that Lessee fails to pay any sums required to be paid hereunder to protect District's interest herein, the same may be paid by District and all sums so expended by District shall immediately become due and payable from Lessee to District and shall bear interest until paid at the rate of ten percent (10%) per annum.

21. DISTRICT'S REMEDIES.

(a) CONTINUATION OF LEASE. Upon default of this Lease by Lessee, District may, without notice to Lessee, elect to allow this Lease to continue in full force and effect and to enforce all of District's rights and remedies hereunder, including without limitation, the right to collect rent as it becomes due, as long as District does not terminate Lessee's right to possession of the Leased Premises.

(b) TERMINATION OF LEASE. Upon default of this Lease by Lessee, or at some later date if a default has occurred and is continuing and District has not theretofore elected to terminate Lessee's right of possession, District may elect to terminate Lessee's right to possession and may remove all persons and property from the said premises; District may store the property removed in a public warehouse or elsewhere at Lessee's expense and for his account.

22. EXPENSES. In the event of litigation or arbitration between the parties arising out of or relating to this Lease, the prevailing party will be entitled to recover court or arbitration costs and reasonable fees of attorneys, accountants and expert witnesses incurred by such party in connection with the action or arbitration, including such costs and fees incurred because of any appeals. The prevailing party also shall be entitled to recover all such costs and fees that may be incurred in enforcing any judgment or award, and this provision shall not be merged into any judgment but shall survive any judgment.

23. WAIVER. No express or implied waiver by District of any default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent default of Lessee or a waiver of any of the rights of District under the terms hereof.

24. NOTICES. Any notice required or permitted to be given hereunder shall be deemed given three (3) days after deposit thereof in the United States mail, first class postage prepaid, and addressed to the appropriate party as follows, or at such other address as may have been given by that party to the other during the Term of the Lease. Notice may also be given by personal delivery, courier, and facsimile.

To District:

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
(650) 691-1200
Attn: Real Property Manager

To Lessee:

Via Services
2851 Park Avenue
Santa Clara, CA 95050
(408) 243-7861
Attn: Vice President of Administration

25. MISCELLANEOUS.

a. GOVERNING LAW. This agreement shall be governed by and construed in accordance with the laws of California.

b. INTEGRATION. This Lease contains the entire agreement between the parties regarding the subject matter of the Lease, and this Lease expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties regarding those matters.

c. AMENDMENTS. This Lease may be amended only in writing signed by the party whom or against whose successors and assigns enforcement of the change is sought.

d. PUBLICATIONS. Lessee shall reference District on all print and/or online publications regarding the horse rehabilitative program or any other matters arising out of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

Via Services

Date: _____

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

APPROVED AND ACCEPTED:

By: _____
Stephen E. Abbors, General Manager

Date: _____

ATTEST:

By: _____
Michelle Radcliffe, District Clerk

APPROVED AS TO FORM:

By: _____
Susan M. Schectman, General Counsel

EXHIBIT A
LEASED PREMISES

EXHIBIT B

MAINTENANCE WORK

1. Maintenance of the arena area – Lessee has permission to clear and grade, subject to any applicable laws and regulations and at Lessee's expense, the area inside the arena of the Leased Premises between the months of May and October for the sole purpose of maintaining a level surface for horse usage and an emergency helicopter landing zone.
2. Fence and Structure repair – All fences and shade structures in the Leased Premise shall be maintained by Lessee at Lessee's expense.
3. Defensible Space – Lessee at all times during the term of this Lease Lessee shall maintain as a fire break an area at least thirty (30) feet in width, surrounding the perimeter of the structures comprising the Leased Premise which shall be free of all low-lying brush, dry weeds, and similar flammable materials.
4. Weed abatement – Star thistle and other herbaceous (non-woody) plant materials may be trimmed on the Leased Premises to aid in the Lessee's programs.

EXHIBIT C
DISTRICT REGULATIONS