File No. 120611

Committee Item No. 7
Board Item No. 31

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee **Date** 7/11/12

Board of Supervisors Meeting **Date** 7/17/12

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Completed by: Victor Young **Date** July 6, 2012
Completed by: Victor Young **Date** 7-11-12

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Funding Agreement to Fund Acquisition of Nolan Ranch Conservation Easement and Endowment Agreement to Fund Compliance Monitoring of the Conservation Easement]

Resolution: 1) authorizing pursuant to Charter Section 9.118(b) (i) a Funding Agreement with The Nature Conservancy and Santa Clara County under which the City would contribute one third of the funds, up to $900,000, for Santa Clara County to acquire the Nolan Ranch and create a conservation easement of which the City would be a third party beneficiary, and (ii) an Endowment Agreement under which the City would provide a permanent endowment of $125,000 to fund The Nature Conservancy's monitoring of compliance with the conservation easement; and 2) authorizing the General Manager of the Public Utilities Commission to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution.

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) initiated the Watershed and Environmental Improvement Program (WEIP) in 2006 to provide $50 million over 10 years for the SFPUC to manage, protect and restore environmental resources critical to or affected by SFPUC operations; and

WHEREAS, Santa Clara County (County) is a political subdivision of the State of California; and

WHEREAS, The Nature Conservancy (Conservancy) is a District of Columbia non-profit organization formed to conserve the lands and waters on which all life depends; and

WHEREAS, The Conservancy has acquired an option (Option) to purchase the 1,157 acre Nolan Ranch, also known as Sulphur Creek Ranch (Land) located in the upper Alameda Creek Watershed in Santa Clara County for a purchase price of $2,600,000 (Purchase Price); and

WHEREAS, The Conservancy proposes to assign the Option to the County, and the

Conservancy and the County propose to work cooperatively with the City and County of San Francisco (City), acting through the SFPUC, to jointly fund the County's acquisition of the Land for the purposes of (i) granting a conservation easement to Conservancy to protect the watershed and other natural resources of such Land in perpetuity (Conservation Easement), and (ii) preserving the Land in its current open space condition to give the County the opportunity to conduct the necessary planning process to develop a proposed management plan for managing the Land as a park for low impact public recreation and to conduct the appropriate environmental review of the plan; and

WHEREAS, The County's appraiser has provided a draft appraisal report with comparable sales data reflecting that the fair market value of the Land exceeds the Purchase Price, which report has been reviewed and approved by the Acting Director of Property, and the appraiser has committed to furnish a final appraisal report (Appraisal Report) by June 15, 2012, which SFPUC staff will submit to the Director of Property for review and approval; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of a Funding and Acquisition Agreement which is part of the record before this Board (Funding Agreement), pursuant to which the SFPUC would provide funding to cover one third the Purchase Price of the Land and certain other acquisition costs as described in the agreement, for a total amount not to exceed $900,000 conditioned upon the County granting the Conservation Easement to the Conservancy through the same escrow in which the County acquires the Land; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of an Endowment Agreement which is part of the record before this Board, pursuant to which the SFPUC would provide $125,000 for a permanent endowment to fund compliance monitoring for the Conservation Easement; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of a Grant Deed of Conservation Easement (Conservation Easement) which is part of the record before this Board, pursuant to which scenic, aesthetic, natural, hydrologic, open space, ecological, and scientific values of the Land, including watershed and water quality protection, would be protected in perpetuity, the County would be permitted to use the Land for low-impact public recreation purposes consistent with such conservation purposes, and the City, acting through the SFPUC, would be a third party beneficiary with rights to enforce certain terms of the Conservation Easement; and

WHEREAS, Funds for SFPUC's obligations under the Funding Agreement and Endowment Agreement will be available at the time of approval of the agreements from Project CUW394. Water System Improvement Program – Watershed and Environmental Improvement Program (Measure A Bond funds); and

WHEREAS, on April 4, 2012, the acquisition of the Land and creation of the conservation easement were determined to be exempt from the California Environmental Quality Act (CEQA) as a Class 25 (Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources) categorical exemption under CEQA Guidelines Section 15325 as described in the determination which is part of the record before this Board;

WHEREAS, on May 22, 2012, the SFPUC, by Resolution No. 12-0088, a copy of which is part of the record before this Board, authorized the General Manager of the SFPUC or his designee, following Board of Supervisors approval of the Funding Agreement and Endowment Agreement, to execute such agreements with such modifications that, in the judgment of the General Manager and/or his designee, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities or material diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of

the Conservation Easement or this Resolution, and are in compliance with applicable laws; now, therefore, be it

RESOLVED, That, provided the SFPUC receives a final Appraisal Report acceptable to the City's Director of Property, reflecting that the fair market value of the Land is not less than the Purchase Price, the Board of Supervisors hereby authorizes the General Manager of the SFPUC or his designee to execute the Funding Agreement and the Endowment Agreement; and be it

FURTHER RESOLVED, That this Board of Supervisors authorizes staff to proceed with actions necessary to implement the Funding Agreement and Endowment Agreement following execution, and to implement City's third party beneficiary rights once the Conservation Easement has been granted, and ratifies, approves and authorizes all actions heretofore taken by any City official in connection with such agreements; and be it

FURTHER RESOLVED, That this Board of Supervisors hereby authorizes the General Manager of the SFPUC and/or his designee to enter into any amendments or modifications to the Funding Agreement and Endowment Agreement, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of the Conservation Easement or this Resolution, and are in compliance with all applicable laws, including the City Charter.

RECOMMENDED:

Ed Harrington
General Manager
San Francisco Public Utilities Commission

FUNDS AVAILABLE:

Controller
Appropriation : ~~Index Code 739409.~~
Project Code
CW 394

Item 7 File 12-0611	Department: Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize (a) a Funding and Acquisition Agreement between (i) the City, through the PUC, (ii) The Nature Conservancy and (iii) Santa Clara County, under which the City would contribute one-third of the funds, up to $900,000, for Santa Clara County to acquire the Nolan Ranch and create a conservation easement to which the City would be a third party beneficiary; (b) an Endowment Agreement between (i) the City, through the PUC, and (ii) The Nature Conservancy, under which the City would provide a permanent endowment of $125,000 to The Nature Conservancy to monitor compliance with the conservation easement; and (c) the PUC General Manager to execute documents, make certain modifications and take certain actions in furtherance of this proposed resolution.

Key Points

- The Nature Conservancy is a nonprofit organization, which entered into an option agreement to purchase the 1,157 acre Nolan Ranch, located in the Arroyo Hondo Watershed in Santa Clara County, for a purchase price of $2,600,000.
- In addition, Santa Clara County also has an interest in purchasing the subject Nolan Ranch property, as part of Santa Clara County's Joseph D. Grant Park, which is located immediately adjacent and contiguous to the Nolan Ranch property.
- The PUC also has an interest in purchasing the Nolan Ranch, because the subject property contains approximately two miles of Smith Creek and Sulphur Creek, both tributaries of the Arroyo Hondo Watershed, which drains into the Calaveras Reservoir, which is a significant part of the PUC's overall Alameda Creek Watershed and regional water system.

Fiscal Impacts

- The privately-owned Nolan Ranch, has a total purchase price of $2,600,000, which would be equally divided among the three parties, such that the PUC, Santa Clara County and The Nature Conservancy would each pay approximately $866,666. In addition, the acquisition costs are estimated at $40,000, or approximately $13,333 for each of the three parties. Therefore, the PUC's total purchase and acquisition costs are estimated at $879,999.
- Hulberg & Associates, Inc., a private appraiser, determined that the subject 1,157 acre Nolan Ranch property has a market value of $2,777,000 based on its current condition, which is $177,000 or 6.8 percent more than the proposed purchase price of $2,600,000. Hulberg & Associates also determined that the subject property, with a permanent conservation easement, was valued at $1,157,000, such that the proposed conservation easement is valued at $1,620,000 ($2,777,000 total market value less $1,157,000 value with easement).
- In addition, the PUC would contribute a one-time $125,000 permanent endowment fund to The Nature Conservancy to monitor and protect the property easement in perpetuity.

Recommendation

Approve the proposed resolution.

MANDATE STATEMENT/BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118, any contract (a) for more than $10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

Background

In FY 2005-06, in parallel with the development of the Public Utilities Commission's (PUC's) Water System Improvement Program (WSIP), the PUC adopted the Water Enterprise Environmental Stewardship Policy and initiated a Watershed and Environmental Improvement Program (WEIP) to allocate $50 million over ten years in order for the PUC to more proactively manage, protect and restore environmental resources critical to or affected by the PUC's operations. Of the total $50 million commitment, (a) the WSIP, as previously approved by the Board of Supervisors, includes approximately $20 million of revenue bonds, which have been previously appropriated by the Board of Supervisors, and (b) a total of approximately $30 million from the PUC's annual operating budget from FY 2005-06 through FY 2012-15, is being appropriated to support this WEIP commitment. As part of the WEIP, the PUC is specifically looking for opportunities to restore and protect the critical watershed lands within the Alameda Creek Watershed, which is shown in the map in the Attachment to this report.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize

(a) a Funding and Acquisition Agreement between (i) the City, through the PUC, (ii) The Nature Conservancy and (iii) Santa Clara County, under which the City would contribute one-third of the funds, up to $900,000, for Santa Clara County to acquire the Nolan Ranch and create a conservation easement to which the City would be a third party beneficiary;

(b) an Endowment Agreement between (i) the City, through the PUC, and (ii) The Nature Conservancy, under which the City would provide a permanent endowment of $125,000 to fund The Nature Conservancy's monitoring of compliance with the conservation easement; and

(c) the General Manager of the PUC to execute documents, make certain modifications and take certain actions in furtherance of this proposed resolution.

The Nature Conservancy is a nonprofit organization whose purpose is to conserve lands and waters on which all life depends. On February 2, 2011, The Nature Conservancy entered into an option agreement with the private owner of the Nolan Ranch, Mr. Owen Nolan, to purchase the

1,157 acre Nolan Ranch, located in the Arroyo Hondo Watershed in Santa Clara County, for a purchase price of $2,600,000. The Nolan Ranch property is outlined on the map in the Attachment to this report. The Nature Conservancy's option agreement to purchase the Nolan Ranch expires on August 1, 2012.

Currently, Santa Clara County also has an interest in purchasing the subject Nolan Ranch property to manage as part of Santa Clara County's Joseph D. Grant Park, which is located immediately adjacent and contiguous to the Nolan Ranch property. The Nature Conservancy is proposing to assign their option to purchase the Nolan Ranch to Santa Clara County, on behalf of the Santa Clara County Parks and Recreation Department.

In addition, the PUC has an interest in purchasing the Nolan Ranch property, because according to Mr. Tim Ramirez, Natural Resources and Lands Management Division Manager for the PUC, the subject Nolan Ranch property contains approximately two miles of Smith Creek and two miles of Sulphur Creek, both tributaries of the Arroyo Hondo Watershed, which drains into the Calaveras Reservoir, which is a significant part of the PUC's overall Alameda Creek Watershed and regional water system. Mr. Ramirez advises that the proposed purchase of the Nolan Ranch is intended to be part of the PUC's overall strategy to, in perpetuity, proactively protect natural areas and open space from development and/or activities that would otherwise degrade water quality within the Alameda Creek Watershed.

Under the proposed resolution, The Nature Conservancy and Santa Clara County would work cooperatively with the City and County of San Francisco, acting through the PUC, to (a) jointly fund Santa Clara County's acquisition of the privately-owned Nolan Ranch property for a shared purchase price of $2,600,000, (b) grant a permanent conservation easement to The Nature Conservancy to protect the watershed and other natural resources on the land in perpetuity, (c) preserve the property in its current open space condition to allow the Santa Clara County Parks and Recreation Department to conduct the necessary planning process and environmental reviews for a proposed management plan for use of the Nolan Ranch property as a park for low-impact public recreation purposes, such as hiking, and (d) grant the City, through the PUC, a third-party beneficiary of the easement, which provides the City the same rights as The Nature Conservancy to enforce certain provisions of the conservation easement.

Under the proposed Funding and Acquisition Agreement between the PUC, The Nature Conservancy and Santa Clara County,

- The (a) PUC, (b) The Nature Conservancy, and (c) Santa Clara County would each pay approximately $866,666 toward Santa Clara County's purchase of the Nolan Ranch property, for a total purchase price of $2,600,000. Including other acquisition costs, such as environmental remediation, appraisal, closing and title insurance, and related staff and attorney fees, the PUC would pay a not-to-exceed $900,000.

- In addition to purchase and closing costs, the Nature Conservancy will contribute $50,000 toward Santa Clara County's cost to (a) repair or install boundary fencing and (b) create a baseline property conditions report.

- Immediately after acquiring the subject Nolan Ranch property, Santa Clara County would place the entire property under permanent conservation easement, such that this easement would be attached to the title on the property and would restrict and protect any future use of the property in perpetuity.

- The City, through the PUC, would be granted third-party beneficiary rights to the permanent easement.

- A copy of the proposed Board of Supervisors approved resolution would be attached as part of the Funding and Acquisition Agreement.

Under the proposed Endowment Agreement between the PUC and The Nature Conservancy,

- The City, through the PUC, will pay a one-time $125,000 for a permanent endowment fund to The Nature Conservancy to monitor and protect the property easement in perpetuity.

- The Nature Conservancy will deposit, maintain, manage and administer the one-time $125,000 permanent endowment funds paid by the City, through the PUC, including all interest earnings, to pay direct costs for perpetual monitoring and stewardship of the easement for protection of conservation values.

- The Nature Conservancy will submit an annual compliance monitoring and financial report to the PUC by March 1st of each year.

- The term of the proposed Endowment Agreement is in perpetuity, unless The Nature Conservancy and/or the City, through the PUC, terminates that Agreement.

On April 4, 2012, the proposed acquisition of the Nolan Ranch property and creation of the conservation easement were determined to be exempt from the California Environmental Quality Act (CEAQ).

Under the proposed resolution, the Board of Supervisors would authorize the General Manager of the PUC, in consultation with the City Attorney, to enter into any future amendments to the subject Funding and Acquisition Agreement and Endowment Agreement that are in the best interests of the City, do not materially increase the City's obligations or liabilities or materially diminish the benefits to the City. In addition, the proposed resolution authorizes City staff to proceed with the actions necessary to implement the proposed (a) Funding and Acquisition Agreement and (b) Endowment Agreement to implement the City's third party beneficiary rights.

FISCAL IMPACTS

Under the proposed Funding and Acquisition Agreement for the privately-owned Nolan Ranch, the total purchase price of $2,600,000 would be equally divided among the three parties, such that the PUC, Santa Clara County and The Nature Conservancy would each pay approximately

$866,666. The proposed resolution authorizes the PUC to contribute a not-to-exceed $900,000, in order to cover additional acquisition costs such as environmental remediation, appraisal, closing fees, title insurance fees and staff and attorney costs. According to Ms. Carla Schultheis, PUC's Watershed and Environmental Improvement Program Coordinator, the total additional acquisition costs are estimated at $40,000 or approximately $13,333 for each of the three parties in the proposed purchase. Therefore, the PUC's $866,666 purchase price plus $13,333 in additional related acquisition costs are estimated to total approximately $879,999.

On February 1, 2012, Hulberg & Associates, Inc., a private appraiser, determined that the subject 1,157 acre Nolan Ranch property had a market value of $2,777,000 based on its current condition, which is $177,000 or 6.8 percent more than the proposed purchase price of $2,600,000. Hulberg & Associates also determined that the subject 1,157 acre Nolan Ranch property, with the proposed permanent conservation easement was valued at a reduced $1,157,000, such that the proposed permanent conservation easement was valued at the difference of $1,620,000 ($2,777,000 total market value less $1,157,000 value with easement). Mr. John Updike, the City's Acting Director of Property advises that he has reviewed and approved the subject final appraisal confirming the market value of $2,777,000 for the Nolan Ranch.

As noted above, under the proposed Endowment Agreement, the PUC will also pay a one-time $125,000 for a permanent endowment fund to The Nature Conservancy to provide compliance monitoring in order to protect the permanent conservation easement in perpetuity. Under the proposed Endowment Agreement, The Nature Conservancy will be responsible for managing the one-time $125,000 permanent endowment funds paid by the PUC, including all interest earnings, to pay all direct costs for perpetual monitoring and stewardship of the easement for protection of conservation values. Under the proposed Endowment Agreement, The Nature Conservancy would be specifically limited to expending an initial $10,000, such that the remaining $115,000 would be available to generate interest earnings, which could also be expended by the Nature Conservancy. The Nature Conservancy currently estimates that the cost to monitor the proposed easement would be $5,168 annually.

The Water System Improvement Program's (WSIP) revenue bonds dedicated for the Watershed and Environmental Improvement Program is the PUC's source of funding for both the estimated costs of $879,999 and the $125,000 for the permanent endowment to fund compliance monitoring for the Conservation Endowment, which has been previously appropriated by the Board of Supervisors.

POLICY CONSIDERATION

The Nolan Ranch in Santa Clara County is not located contiguous to any land that is currently owned or managed by the PUC. However, according to Mr. Ramirez, the PUC has an ongoing interest in protecting the water quality and related natural resources within the PUC's regional water system watershed lands, such that the direct purchasing of land and/or conservation

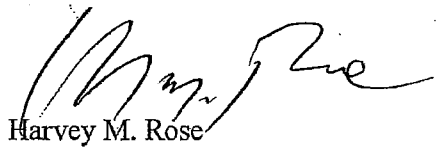
easements is a high priority for the WEIP. Therefore, Mr. Ramirez advises that the PUC's decision to purchase land and/or conservation easements are determined on a case-by-case basis.

As discussed above, the Nolan Ranch is contiguous with Santa Clara County Parks and Recreation Department property. In addition, the Nature Conservancy, which currently has an option to purchase the Nolan Ranch, has experience managing conservation easements, including property in the Arroyo Hondo Watershed. Therefore, the PUC is recommending that the Santa Clara County Parks and Recreation Department purchase the subject Nolan Ranch property, and the Nature Conservancy directly manage the conservation easement on this property in perpetuity, to be jointly funded by the PUC, Santa Clara County and The Nature Conservancy.

Mr. Ramirez notes that this partnership among the PUC, Santa Clara County and The Nature Conservancy allows the PUC to leverage the PUC's funding and ultimately protect more watershed lands than would otherwise be possible if the PUC were to purchase the land and/or easements alone.

RECOMMENDATION

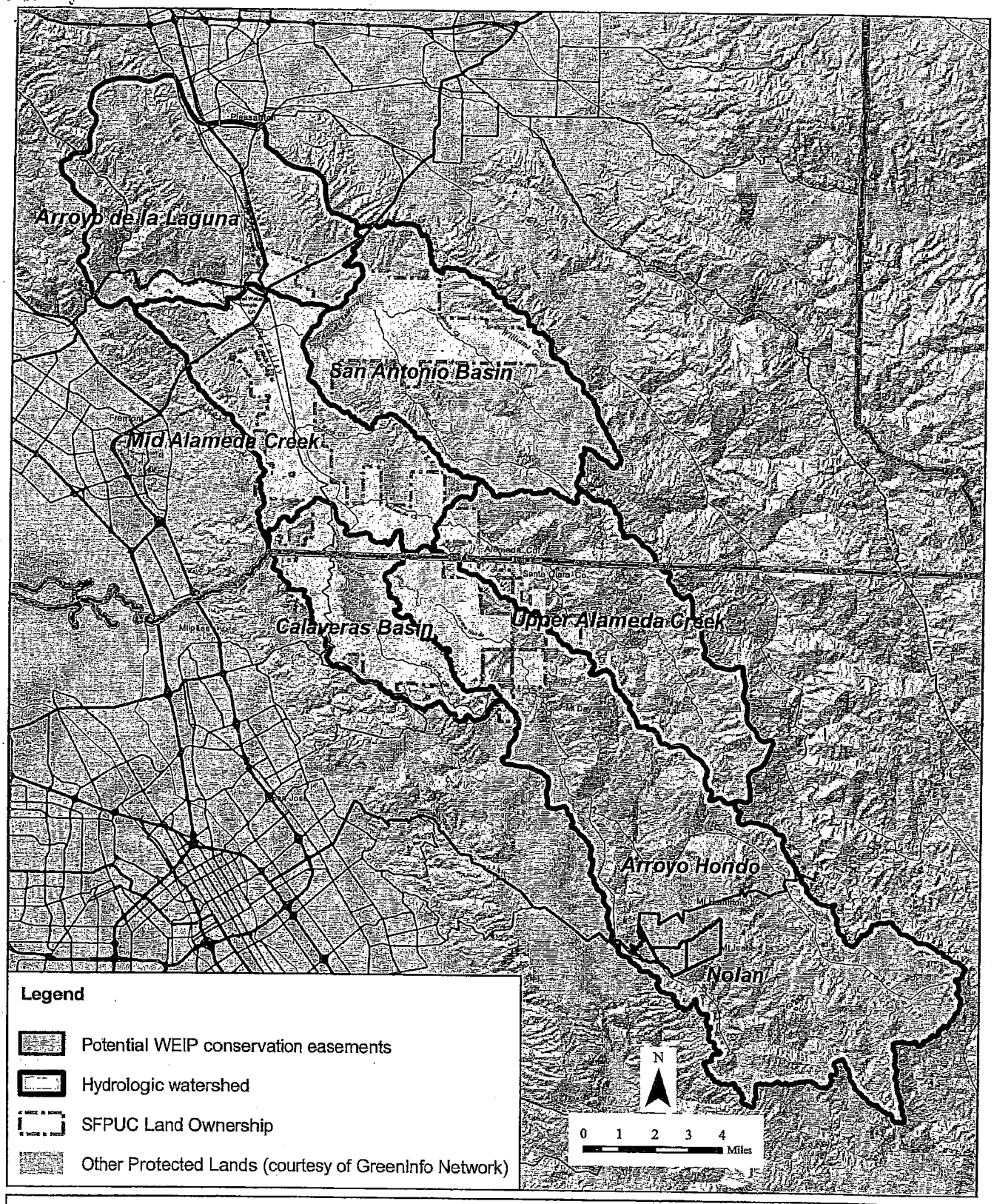
Approve the proposed resolution.



Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Mayor Lee
Controller
Kate Howard

Attachment



Hetch Hetchy
Regional Water System
Services of the San Francisco Public Utilities Commission

Alameda Watershed

Nolan Property

J.Lukins 3-30-12

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 12-0088

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) initiated the Watershed and Environmental Improvement Program (WEIP) in 2006 to provide $50 million over 10 years for the SFPUC to manage, protect and restore environmental resources critical to or affected by SFPUC operations; and

WHEREAS, Santa Clara County (County) is a political subdivision of the State of California; and

WHEREAS, The Nature Conservancy (Conservancy) is a District of Columbia non-profit organization formed to conserve the lands and waters on which all life depends; and

WHEREAS, The Conservancy has acquired an option (Option) to purchase the 1,157 acre Nolan Ranch (Land) located in the upper Alameda Creek Watershed in Santa Clara County for a purchase price of $2,600,000 (Purchase Price); and

WHEREAS, The Conservancy proposes to assign the Option to the County, and the Conservancy and the County propose to work cooperatively with the City and County of San Francisco (City), acting through the SFPUC, to jointly fund the County's acquisition of the Land for the purposes of (i) granting a conservation easement to Conservancy to protect the watershed and other natural resources of such Land in perpetuity (Conservation Easement), and (ii) preserving the Land in its current open space condition to give the County the opportunity to conduct the necessary planning process to develop a proposed management plan for managing the Land as a park for low impact public recreation and to conduct the appropriate environmental review of the plan; and

WHEREAS, The County's appraiser has provided a written opinion with comparable sales data (Appraisal Summary) reflecting that the fair market value of the Land is not less than the Purchase Price, and the appraiser has committed to furnish a full appraisal report (Appraisal Report) by April 30, 2012, which SFPUC staff will submit to the Director of Property for review and approval; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of a funding agreement, set forth in the form of Funding and Acquisition Agreement which is part of the record before this Commission (Funding Agreement), pursuant to which the SFPUC would provide funding to cover one third the Purchase Price of the Land and certain other acquisition costs as described in the agreement, for a total amount not to exceed $900,000 conditioned upon the County granting the Conservation Easement to the Conservancy through the same escrow in which the County acquires the Land; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of the Endowment Agreement, set forth in the form of Endowment Agreement which is part of the record before this Commission, pursuant to which the SFPUC would provide $125,000 for a permanent endowment to fund compliance monitoring for the Conservation Easement; and

WHEREAS, SFPUC staff have negotiated proposed terms and conditions of the Conservation Easement, set forth in the form of Grant Deed of Conservation Easement which is part of the record before this Commission, pursuant to which scenic, aesthetic, natural, hydrologic, open space, ecological, and scientific values of the Land, including watershed and water quality protection, would be protected in perpetuity, the County would be permitted to use the Land for low-impact public recreation purposes consistent with such conservation purposes, and the City, acting through the SFPUC, would be a third party beneficiary with rights to enforce certain terms of the Conservation Easement; and

WHEREAS, Funds for SFPUC's obligations under the Funding Agreement will be available at the time of approval of the agreements from Project CUW394. Water System Improvement Program – Watershed and Environmental Improvement Program (Measure A Bond funds); and

WHEREAS, On April 4, 2012, the acquisition of the Land and creation of the conservation easement were determined to be exempt from the California Environmental Quality Act (CEQA) as a Class 25 (TRANSFERS OF OWNERSHIP OF INTEREST IN LAND TO PRESERVE EXISTING NATURAL CONDITIONS AND HISTORICAL RESOURCES) categorical exemption under CEQA Guidelines Section 15325 as described in the determination which is part of the record before this Commission; now, therefore, be it

RESOLVED, That, provided SFPUC receives an Appraisal Report acceptable to the City's Director of Real Estate, reflecting that the fair market value of the Land is not less than the Purchase Price, this Commission hereby authorizes the General Manager of the SFPUC or his designee, following Board of Supervisors approval of the Funding Agreement and Endowment Agreement, to execute such agreements with such modifications that, in the judgment of the General Manager and/or his designee, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of the Conservation Easement or this Resolution, and are in compliance with all applicable laws, including the City Charter; and be it

FURTHER RESOLVED, That this Commission authorizes staff to proceed with actions necessary to implement the Funding Agreement and Endowment Agreement following execution, and to implement City's third party beneficiary rights once the Conservation Easement has been granted, and ratifies, approves and authorizes all actions heretofore taken by any City official in connection with such agreements; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager of the SFPUC and/or his designee to enter into any amendments or modifications to the Funding Agreement and Endowment Agreement, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of the Conservation Easement or this Resolution, and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 22, 2012

Donna Hood

Secretary, Public Utilities Commission

San Francisco Water Sewer

Services of the San Francisco Public Utilities Commission

AGENDA ITEM
Public Utilities Commission
City and County of San Francisco

DEPARTMENT Water Enterprise AGENDA NO.

MEETING DATE May 22, 2012

Authorize Funding Agreement and Endowment Agreement: Regular Calendar
Project Manager: Tim Ramirez

Authorize Funding Agreement and Endowment Agreement: Nolan Ranch Acquisition

Summary of Proposed Commission Action:	**Authorize** the General Manager of the San Francisco Public Utilities Commission (SFPUC) to execute on behalf of the City and County of San Francisco, (i) a Funding Agreement with Santa Clara County (County) and The Nature Conservancy (Conservancy) for SFPUC's contribution of an amount not-to-exceed $900,000 toward the County's acquisition of the Nolan Ranch in the Alameda Creek Watershed and the creation of a conservation easement on such land, and (ii) an Endowment Agreement for SFPUC to provide $125,000 to fund the protection of the conservation values of the land through annual monitoring by the Conservancy as the holder of the conservation easement. Due to the duration of the Endowment Funding Agreement and the Conservation Easement, Board of Supervisors approval is required.
Background:	SFPUC has adopted the Water Enterprise Environmental Stewardship Policy and the Alameda Watershed Management Plan and initiated the Watershed and Environmental Improvement Program (WEIP) to more proactively manage, protect and restore environmental resources that affect or are affected by SFPUC operations. As part of this effort, the SFPUC is looking for opportunities to restore and protect critical lands in the Alameda Creek Watershed. The purchase of this property is part of an overall strategy of the WEIP to proactively protect natural areas and open space and prevent development and/or other activities that otherwise may degrade water quality. This property is located in a biologically-rich area of the Arroyo Hondo watershed, adjoins other protected lands, and is available now as a result of the collaborative efforts of the property owner, The Nature Conservancy, and Santa Clara County Parks and Recreation. The SFPUC is partnering with The Nature Conservancy and Santa Clara County to purchase 1,157 acres of agricultural land in the upper Alameda Creek Watershed. The purpose of the project is to protect the property in perpetuity from development and place a conservation easement on the property which will protect source water quality, habitat, watershed lands, and wildlife. The Property contains approximately two miles of Smith Creek and two miles of Sulphur

	Creek, both tributaries of the Arroyo Hondo which drains into Calaveras Reservoir, part of the SFPUC's regional water system. The Conservancy has acquired an option to purchase the Property for a purchase price of $2,600,000. The Conservancy proposes to assign the option to the County. The County's appraiser has issued a written opinion that the fair market value of the Property is not less than $2,600,000, and will follow with a full appraisal report by April 30, 2012. Upon receipt, SFPUC staff will submit the appraisal report to City's Director of Real Estate for review and approval. The SFPUC would provide funding not to exceed $900,000 from the Measure A Bond funds, for the County to acquire the Nolan Ranch. Additional funding for the acquisition will be provided by the Conservancy and the County. Upon acquiring the land, the County would immediately place it under a permanent conservation easement. The City acting through the SFPUC would be a third party beneficiary of the conservation easement, and the Conservancy would be the record holder of the easement. The conservation easement would permit low impact recreational activities such as hiking. Santa Clara County Parks and Recreation Department may eventually include the land in its public park system for low- impact public recreation, provided that the County adopts a park management plan following the appropriate planning and environmental review processes. Additionally, the SFPUC would provide $125,000, from the Measure A Bond funds to create a permanent endowment to support the Conservancy's compliance monitoring of the conservation easement.
Environmental Review:	The funding of the acquisition of the land and creation of the conservation easement endowment were determined to be exempt from the California Environmental Quality Act (CEQA) as a Class 25 (TRANSFERS OF OWNERSHIP OF INTEREST IN LAND TO PRESERVE EXISTING NATURAL CONDITIONS AND HISTORICAL RESOURCES) categorical exemption under CEQA Guidelines Section 15325.
Result of Inaction:	A delay in authorizing this Funding Agreement and Endowment Agreement may jeopardize the acquisition, which must be completed by August 1, 2012 under the terms of an option agreement between the Conservancy and the current owner of the property.
Budget & Costs:	The estimated cost to SFPUC of the acquisition and conservation easement endowment is $1,025,000. Funds will be available upon execution from Project. CUW394. Water System Improvement Program – Watershed and Environmental Improvement Program

Schedule:	Funding to be provided by August 1, 2012
Description of Agreement:	The Funding Agreement and Endowment Agreement will allow the SFPUC to protect drinking water flowing into Calaveras Reservoir.
	Parties to Agreement: Santa Clara County and The Nature Conservancy
	Purpose: Acquiring watershed land and placing it under a conservation easement to protect it in perpetuity
	Location: Mt. Hamilton Road, Santa Clara County
	Commencement Date: Upon execution of the Agreements
Recommendation:	SFPUC staff recommends that the Commission adopt the attached resolution.
Attachments:	1. SFPUC Resolution 2. Acquisition Funding Agreement 3. Endowment Funding Agreement 4. Conservation Easement 5. CEQA document 6. Platt Map 7. Legal Description 8. Location Map 9. Appraisal Letter

FUNDING AND ACQUISITION AGREEMENT
Nolan Property Purchase

This is an Agreement (**Agreement**) between The Nature Conservancy (**Conservancy**), a District of Columbia not-for-profit corporation, the City and County of San Francisco (**CCSF**), a municipal corporation, acting by and through its Public Utilities Commission (**Commission**), and the County of Santa Clara (**County**), a political subdivision of the State of California, for the joint funding of the County's acquisition of real property for protection of conservation values and public park purposes (collectively, **Purposes**). CCSF and Conservancy are referred to collectively as "**Funders.**"

RECITALS

A. Conservancy holds an option to purchase from Owen Nolan (**Seller**) certain real property in Santa Clara County, for TWO MILLION SIX HUNDRED THOUSAND DOLLARS ($2,600,000.00) (**Purchase Price**) (**Option**), pursuant to an Option Agreement for Purchase and Sale of Real Estate dated as of February 2, 2011, between Seller and Conservancy, as amended or extended (**Option Agreement**). The property consists of approximately 1155 acres in the Alameda Creek watershed, described with particularity and shown in **Attachment A** of this Agreement (**Property**).

B. County desires to purchase the Property for park and conservation purposes. Conservancy is willing to assign its rights under the Option Agreement to County, and County is willing to accept the assignment, subject to the terms and conditions of this Agreement.

C. Commission operates a regional water supply system serving 2.5 million customers in San Francisco, Santa Clara, Alameda and San Mateo Counties. The Calaveras Reservoir, located in the Alameda Creek watershed, is part of that system. The Property contains approximately two miles of Smith Creek and two miles of Sulphur Creek, both tributaries of the Arroyo Hondo, which drains into the Calaveras Reservoir. Protection of water quality in the Alameda Creek watershed is important to Conservancy, Commission and the residential, commercial, governmental and industrial customers served by Commission's water system.

D. Conservancy is a non-profit corporation dedicated to conserving the lands and waters on which all life depends.

E. To protect the conservation values of the Property, County is willing to grant to Conservancy, and Conservancy is willing to accept from County, a Grant Deed of Conservation Easement in the form attached as **Attachment B** of this Agreement (**Easement**), immediately after County acquires fee title to the Property.

F. Funders wish to contribute funding for County's Acquisition in order to protect the conservation values of the Property and in consideration of the Easement. Funders and County recognize that County will manage this Property as part of

Joseph Grant Park, in a manner compatible with the Purposes, which are described with more specificity in the Easement.

G. In addition, CCSF and Conservancy are entering into an endowment agreement pursuant to which CCSF will fund an endowment to support and fund the Conservancy's protection of the conservation values of the Property through annual easement compliance monitoring (**Endowment Agreement**). Pursuant to that Endowment Agreement, the Conservancy will cause to be recorded in Santa Clara County Records a notice of unrecorded endowment agreement (**Notice of Endowment Agreement**) immediately after the recording of the Easement. The County consents to the recording of such notice if determined to be a recordable instrument by the Clerk Recorder.

1. PURPOSE OF THIS AGREEMENT; FUNDING

A. PURPOSE OF AGREEMENT. Funders are providing funding for the purpose of facilitating County's acquisition of the Property in fee, in order that the County may grant the Easement and manage and operate the Property for public park purposes in a way that protects the Conservation Values, as defined in the Easement, in perpetuity. In furtherance of that purpose, the Conservancy is also providing additional funding for protection of the boundaries of the Property and preparation of a baseline conditions report as set forth below.

B. FUNDING.

(i) Funders' Contribution. Subject to the conditions contained in **Paragraph 2** below, Funders will each pay one third of (i) the Purchase Price, which one-third share is EIGHT HUNDRED SIXTY-SIX THOUSAND SIX HUNDRED SIXTY-SEVEN DOLLARS ($866,667.00); and (ii) the third party costs of reasonable due diligence, which includes, but is not limited to, cost of appropriate environmental assessment (including the dumped materials and stock pond), appraisal, closing and title insurance. Each party shall bear its own staff costs and attorney fees. The Purchase Price and the costs described in item (ii) are referred to herein as "**Acquisition Costs**" and Funders' one-third shares are referred to collectively as "**Funders' Contribution**." The Option Agreement provides for the Seller's removal of refuse on the Property (Section 4) upon Conservancy's identification of items to be removed. If the Option Agreement is assigned to County after exercise of the Option, Conservancy will cause the Seller to remove all debris located about the Property, including, but not limited to, a tire dump, debris around the concrete pad, removal of a buried tank and steel drum, and any soil or other remedial activities that must be completed in conjunction with such removal (collectively, **Removal Costs**), or, in the absence of Seller's agreement, Conservancy will pay 2/3 of the County's Removal Costs in addition to the other funding provided for under this Agreement.

CCSF's total contribution shall not exceed NINE HUNDRED THOUSAND DOLLARS ($900,000.00).

(ii) Boundary Protection Costs and Baseline Conditions Report. The Conservancy will also contribute FIFTY THOUSAND DOLLARS ($50,000.00) towards the County's cost of repairing or installing boundary fencing to secure the boundary

of the Property (**Boundary Protection Costs**) and for the creation of a baseline conditions report required by the Easement which will record the condition of the Property at closing. Approximate costs are estimated to be FORTY THOUSAND DOLLARS ($40,000) for the fence repair and TEN THOUSAND DOLLARS ($10,000) for the report.

(iii) Conservancy Funding Sources. Conservancy may contribute all or a portion of its share of Funders' Contribution through a State Coastal Conservancy Grant and other grant sources, which Conservancy will either secure and provide at closing, or assign to County as appropriate.

C. EASEMENT CONVEYANCE; CEQA REVIEW. In consideration of such funding and to ensure that Commission's purposes and conditions of funding are met, County or Conservancy will timely exercise the Option (as applicable), County will acquire the Property and convey the Easement to Conservancy. The parties acknowledge that the County is the lead agency for purposes of reviewing the acquisition of the Property and conveyance of the Easement under California Environmental Quality Act.

2. CONDITIONS OF FUNDING

A. CONSERVANCY'S CONDITIONS PRECEDENT. The following shall be conditions precedent to the Conservancy's obligations under this Agreement:

(i) Approval. The Conservancy's Board of Directors, President, Vice President or any other properly authorized agent will have authorized the transaction contemplated by this Agreement.

(ii) Funding. The Conservancy will have received the full amount of its required contribution hereunder from public and/or private funding sources by August 2nd, 2012.

The foregoing conditions are solely for the benefit of the Conservancy, and the Conservancy may only waive any of these conditions in writing.

B. CCSF'S CONDITIONS PRECEDENT. The following shall be conditions precedent to CCSF's obligation hereunder:

(i) Approval. Any amendment of the Option Agreement shall have been approved by the Commission's staff in consultation with counsel.

(ii) Nondiscrimination Declaration or Waiver. County and Conservancy shall each have executed the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission, or shall have cooperated with Commission staff to obtain from the Director of the Human Rights Commission either the findings to support a determination that Chapter 12B of the San Francisco Administrative Code does not apply to this Agreement (pursuant to San Francisco Administrative Code §12B.5-1(b)) or a waiver of the Chapter under Administrative Code § 12B.5-1(a)(1).

(iii) Easement and Notice of Endowment Agreement. The Escrow Agent shall be irrevocably committed to record the Easement and the Notice of Endowment Agreement, in Santa Clara County Records immediately after recording Seller's deed conveying the Property in fee to County.

(iv) Document Review. CCSF's counsel shall have reviewed and approved in writing (which may be communicated by email to the escrow holder, County and Conservancy) all documents pertaining to County's acquisition of the Property, including any appraisals, preliminary title reports, agreements for purchase and sale, escrow instructions, closing statements and instruments of conveyance. Such review and approval shall be timely and shall not be unreasonably withheld.

(v) County's Approval. County shall have provided a true copy of such resolution or other formal action of County's governing board as will provide evidence that the signatory hereto has been duly authorized to execute this Agreement on behalf of County.

(vi) CEQA. County shall have provided a copy of the County's findings and/or other form of determination as lead agency of the basis on which the Acquisition and Easement may proceed under CEQA.

These conditions are solely for the benefit of CCSF, and CCSF may only waive these conditions in writing.

3. DISBURSEMENT OF FUNDS; ESCROW INSTRUCTIONS

A. DISBURSEMENT OF FUNDS. Upon satisfaction of the Conditions Precedent in **Paragraph 2** above, each Funder will deposit its portion of the Funders' Contribution into an escrow account with Old Republic Title on or before the later of (i) seven (7) business days before the date County is expected to take title to the Property under the Option Agreement (**Closing Date**), or (ii) twenty (20) business days after the Funder receives a letter signed by an authorized representative of County, containing all of the following:

- Name and address of County;
- Name and date of this Agreement and the names of the parties of this Agreement;
- Dollar amount of the Funding Contribution requested;
- Name, address, telephone number of the title company, and the escrow account number to which the Funding Contribution will be disbursed; and
- A statement certified by County that all funds (exclusive of the Funding Contribution requested) needed for completion of the Acquisition of the Property have been secured and have been or will be deposited in escrow on or about the same date as the requested Funding Contribution and that Seller is prepared to close escrow on the Closing Date. In making this statement, County shall be entitled to reasonably rely on the representations of the Seller of the Property.

In the event County receives Conservancy's share directly from the third party grantor, County will be responsible for ensuring that grant revenues are received in sufficient time prior to the Closing Date.

B. ESCROW INSTRUCTIONS. This section constitutes the joint escrow instructions of the Funders and County, and a duplicate original of the Agreement will be delivered to the Escrow Agent upon the County's opening of escrow. The Funders and County will provide additional joint escrow instructions as is necessary and consistent with the Agreement. Upon Seller's deposit of a fully executed Grant Deed, County's deposit of a fully executed Easement, Funders' deposit of the Funders' Contribution, and County's deposit of the balance of the Purchase Price into escrow, and upon receiving closing confirmation from Conservancy and Commission as provided below, the escrow agent is hereby authorized and instructed to record the documents in the land records of Santa Clara County in the following order: Grant Deed, County Certificate of Acceptance, Easement, and then Notice of Endowment Agreement, and to disburse the escrow funds in accordance with County's separate escrow instructions for the transaction. Prior to closing escrow, the escrow officer shall obtain: (a) telephonic or email confirmation that CCSF's conditions precedent have been satisfied - from either Carla Schultheis [cschultheis@sfwater.org or (415) 554-1558] or Carolyn Stein [carolyn.stein@sfgov.org or (415) 554-4739], and (b) telephonic or email confirmation that Conservancy's conditions precedent have been satisfied - from either Michael Conner [mconner@TNC.ORG or (415) 281-0429 or (530) 848-5759] or Sharon Wasserman [swasserman@TNC.ORG or (415) 281-0466]. Promptly after close of escrow, the escrow holder shall provide to each of County, Commission and Conservancy a conformed copy of the Grant Deed and Easement, with all recording information, and the final buyer's closing statement.

C. COUNTY'S RIGHT TO ADVANCE FUNDS. In County's sole and absolute discretion, and in reliance on the Funders' commitment to timely provide their share of Acquisition Costs as required under this Agreement, if either Funder fails to timely deposit any part of its Funding Contribution in escrow as required in **Paragraph 3.A** above, County may choose to advance the missing portion of that Funder's Funding Contribution in order to meet the Closing Date required in the Option Agreement. In the event County advances a Funder's share of the Funding Contribution under this paragraph, the Funder will pay the amount so advanced within ninety (90) days of the Closing Date, plus simple interest at a rate equivalent to that which is being earned at the time the funds are advanced on deposits in County's pooled money investment account.

D. RELATIONSHIP OF PARTIES WITH RESPECT TO FUNDING. The obligation of CCSF to make payments under the terms of this Agreement is individual, and CCSF shall not have several or joint obligations with Conservancy under this or any other agreement related to the Property. The obligation of the Conservancy to make payments under the terms of this Agreement is individual, and Conservancy shall not have several or joint obligations with CCSF under this or any other agreement related to the Property. No party to this Agreement shall be under the control of or shall be deemed to control any other party or parties collectively. No party shall be the agent of or have the right or power to bind any other party without such party's express written consent, except as expressly provided in this Agreement.

E. CCSF FISCAL LIMITATIONS. This section supercedes any conflicting provision of this Agreement. This Agreement is subject to the fiscal provisions of CCSF's Charter and the budget decisions of its Mayor and Board of Supervisors. No funds will be available hereunder until prior written authorization certified by CCSF's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. CCSF's obligations under this Agreement shall automatically terminate, without liability on the part of CCSF, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. CCSF's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. CCSF, its employees and officers are not authorized to request services, materials, equipment or supplies that are beyond the scope of those expressly described herein, unless this Agreement is amended in writing and approved as required by law. Without such an amendment or approval, CCSF shall not be required to pay County for any costs or in-kind services provided by County. CCSF, its employees and officers are not authorized to offer or promise any additional funding that would exceed the maximum amount specified in **Paragraph 1.B**. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, CCSF shall not be required to provide such additional funding.

F. RECORDS; AUDIT. County agrees to maintain and make available to the Funders, during regular business hours, accurate books and accounting records relating to use of funds provided under this Agreement. Either Funder may at its own expense conduct an audit after full expenditure of the funding provided under this Agreement or the termination of the Agreement.

4. TERM; EARLY TERMINATION

Up until the time that the Option Consideration under the Option Agreement (as amended) becomes non-refundable, any party may terminate this Agreement by written notice to the other party and escrow agent. In the event County incurs any Acquisition Costs prior to such termination, Funders shall pay their proportional share of such costs.

From and after the time that the Option Consideration becomes non-refundable, any party may terminate this Agreement by written notice to the other party and escrow agent. The party terminating the Agreement under this provision shall reimburse the County and the Conservancy for their respective third party due diligence costs, and Option Consideration. The Parties acknowledge that the Conservancy has made the initial Deposit to Escrow with its own funds and shall be reimbursed two/thirds of the Deposit if this Agreement is terminated after the Option Consideration becomes non-refundable. If this Agreement is not terminated during the option term, but the Option is not exercised prior to the expiration of the option term, such failure to exercise the Option shall be deemed to be a termination of this Agreement by the party that then holds the optionee's rights unless the failure to exercise the Option was requested or directed by one or both of the other parties.

5. **INDEMNIFICATION.**

A. Notwithstanding any other provision of this Agreement to the contrary and to the fullest extent permitted by law, the County and CCSF (each as an "**Indemnifying Party**") each agrees to indemnify, defend (by counsel satisfactory to the other), and hold the other, including, without limitation, the other's, as the case may be, directors, officers, commissioners, board members, employees, agents, and contractors, and its successors and assigns (collectively, the "**Indemnified Parties**"), harmless from and against any losses, liabilities, penalties, demands, damages, claims (whether based on negligence or strict liability), costs, and expenses (including, without limitation, attorneys' fees and litigation costs) (collectively, "**Loss**") that the Indemnified Parties may suffer or incur as a result of or arising out of any injury to or the death of any person or physical damage to any property to the extent resulting from the negligence or willful misconduct of the Indemnifying Party or of the Indemnifying Party's employees, agents or contractors on or about the Property, except to the extent that such Loss is the result of the negligence or intentional misconduct of any of the Indemnified Parties.

B. In addition, each Indemnifying Party shall indemnify, defend and hold harmless the Indemnified Parties from any and all Loss suffered or incurred by the Indemnified Parties as a result of any injury to or death of any person or physical damage to any property caused solely by the activities of the Indemnifying Party on the Property.

C. The indemnification obligations in this **Paragraph 5** will survive the Closing and will be effective so long as the Easement remains in effect.

6. COUNTY'S DELEGATION OF AUTHORITY.

The Board of Supervisors of Santa Clara County grants to the Director of Parks and Recreation (Director), or the Director's designee, the power and authority to (i) grant and withhold consents pursuant to this Agreement, (ii) sign on behalf of County all documents contemplated by this Agreement, and (iii) make decisions, give approvals, or terminate the Agreement, as necessary and provided for herein, subject to approval as to form and legality by the County Counsel.

7. CCSF'S STANDARD CONTRACT PROVISIONS.

A. NONDISCRIMINATION. In the performance of this Agreement, County agrees not to discriminate against any employee, CCSF employee working with County or any County contractor, applicant for employment with County or its contractors, or person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired

Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

In the performance of this Agreement, Conservancy agrees not to discriminate against any employee, CCSF employee working with Conservancy or any Conservancy contractor, applicant for employment with Conservancy or its contractors, or person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to CCSF for three times the amount of damages which CCSF sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to CCSF for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to CCSF for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to CCSF if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of CCSF a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by CCSF; (c) conspires to defraud CCSF by getting a false claim allowed or paid by CCSF; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to CCSF; or (e) is a beneficiary of an inadvertent submission of a false claim to CCSF, subsequently discovers the falsity of the claim, and fails to disclose the false claim to CCSF within a reasonable time after discovery of the false claim.

C. CONFLICT OF INTEREST. Through its execution of this Agreement, County and Conservancy each acknowledges that it is familiar with the provision of Section 15.103 of CCSF's Charter, Article III, Chapter 2 of CCSF's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify CCSF if it becomes aware of any such fact during the term of this Agreement.

D. SUNSHINE ORDINANCE. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for

qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit, and nothing will require the disclosure of records otherwise exempt under Government Code 6254(h), until the Property has been acquired. Information provided which is covered by this paragraph will be made available to the public upon request.

E. LIMITATIONS ON CONTRIBUTIONS. Through execution of this Agreement, County and Conservancy each acknowledges that it is familiar with section 1.126 of CCSF's Campaign and Governmental Conduct Code, which prohibits any person who contracts with CCSF for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. County and Conservancy each acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. County and Conservancy each further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of such party's board of directors; such party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such party. Additionally, County and Conservancy each acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

8. MISCELLANEOUS.

A. ATTACHMENTS. The following attachment is incorporated into the terms of this Agreement by reference:

Attachment A: Plat and legal description of Property
Attachment B: Conservation Easement

B. TIME. Time is of the essence for this Agreement.

C. ENTIRE AGREEMENT. This Agreement is the entire agreement between the parties respecting the matters set forth within, and supersedes all prior negotiations or agreements between the parties, if any.

D. NOTICES. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by the then-current method for electronic communication of permanent documents (for example, an Adobe file), but such electronically delivered notice

shall not be binding on either party.

To CCSF or Commission:

Until July 15, 2012:	San Francisco Public Utilities Commission Attn: WEIP Program Coordinator Natural Resources and Lands Management 1145 Market Street, 4th Floor San Francisco, CA 94103
After July 15, 2012:	San Francisco Public Utilities Commission Attn: WEIP Program Coordinator Natural Resources and Lands Management 525 Golden Gate Avenue, 10th Floor San Francisco, CA 94102-3220
with a copy to:	Office of the City Attorney Real Estate/Finance Team City and County of San Francisco Room 234, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682
To Conservancy:	The Nature Conservancy California Regional Office 201 Mission Street, 4th Floor San Francisco, CA 94105 Attn: Legal Department
with a copy to:	The Nature Conservancy Mt Hamilton Project 201 Mission Street, 4th Floor San Francisco, CA 94105 Attn: Project Director
To County:	County of Santa Clara Parks and Recreation Department Real Estate Services 298 Garden Hill Drive Los Gatos, CA 95032
with a copy to:	County Counsel 70 W. Hedding St., 9th Floor San Jose, CA 95110

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery actually occurs or, if transmitted by courier or mail, on the delivery date or date of first attempted delivery shown on the return receipt or commercial courier's confirmation of delivery or attempted delivery.

E. ASSIGNMENT; SUCCESSORS. Neither Agreement nor any duties or obligations hereunder may be assigned or delegated by a party unless first approved the other parties. Subject to the foregoing, this Agreement shall be binding on and

inure to the benefit of the parties and their respective successors and assigns.

F. INVALIDITY OF ANY TERM NOT TO INVALIDATE ENTIRE AGREEMENT. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition shall be held invalid as to any party by any court of competent jurisdiction, all other terms, covenants, or conditions of this Agreement and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this Agreement.

G. CONSTRUCTION OF TERMS. This Agreement is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than another party.

H. NON-WAIVER OF RIGHTS. The omission by a party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other parties at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

I. GOVERNING LAW. This Agreement is made under and shall be governed by the laws of the State of California.

J. AMENDMENT. This Agreement may not be amended except by written instrument executed by the parties. Prior to assigning the Option Agreement to County, Conservancy shall not amend the Option Agreement without the written consent of County and Commission, which shall not be unreasonably withheld of delayed. After the Option Agreement is assigned to County, County shall not amend the Option Agreement without the written consent of Conservancy and Commission, which shall not be unreasonably withheld or delayed.

J. EFFECTIVE DATE OF AGREEMENT. This Agreement takes effect on the latest date signed below.

[Signatures on next page]

COUNTY OF SANTA CLARA

By:_____ Date:_____
George Shirakawa, President
Board of Supervisors

Date:_____

Attest:

_____
Lynn Regadanz
Interim Clerk, Board of Supervisors

Approved as to form and legality:

_____
Katherine Harasz, Deputy County Counsel

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:_____
Ed Harrington
General Manager
San Francisco Public Utilities
Commission

Date:_____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Carolyn J. Stein
Deputy City Attorney

Approved by:

SFPUC Resolution No. _____
adopted _____, 2012

San Francisco Board of Supervisors
Resolution No. _____,
adopted _____, 2012

THE NATURE CONSERVANCY

By:_____

Date:_____

1506

ATTACHMENT A
LEGAL DESCRIPTION AND PLAT

ATTACHMENT B
FORM OF CONSERVATION EASEMENT

Agreement No, _____

(TNC Endowment Agreement)

Accounting Information
TNC Center No: _____
Subcenter: ____
TNC Account No: ____

ENDOWMENT AGREEMENT

THIS ENDOWMENT AGREEMENT ("**Agreement**"), dated for reference purposes _____, 2012, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Public Utilities Commission (the "**Commission**") and THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, (the "**Conservancy**").

RECITALS

A. Pursuant to a Funding and Acquisition Agreement among the City, the Conservancy and Santa Clara County, a political subdivision of the State of California (the "**County**") dated as of _____ (the "**Funding Agreement**") and other agreements among the parties, County will be acquiring fee title to real property located in Santa Clara County (the "**Property**") more particularly described in **Exhibit A** to this Agreement, and the Conservancy will be acquiring a conservation easement over the Property, the form of which is attached hereto as **Exhibit B** (the "**Easement**"). The City will be a third party beneficiary of the Easement.

B. Pursuant to the Funding Agreement, the City will pay up to $900,000 toward the purchase of the Property and the Easement. In addition, the City has agreed to fund an endowment for the Conservancy's stewardship costs as holder of the Easement in the amount of $125,000 (the "**Endowment**") to be held by the Conservancy pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual promises, covenants, and conditions contained in this Agreement, the City and the Conservancy agree as follows:

AGREEMENT

1. **OBJECTIVE AND ENDOWMENT MANAGEMENT**

A. The Conservancy shall deposit, maintain, manage and administer the Endowment as a permanent endowment, the earnings from which will be used to pay direct costs incurred for the Purpose, as defined below. A portion of the Endowment, in the amount of One Hundred Fifteen Thousand Dollars ($115,000), shall be non-wasting. Based on the diligent inquiry, experience and expertise of the Conservancy in monitoring conservation easements in California, including the region where the Property is located, the Conservancy has calculated the Endowment as its good faith, reasonable estimate of the amount necessary to pay those costs associated with the perpetual monitoring of the Easement. The Endowment shall be the only amount payable by City to the Conservancy for the perpetual monitoring and stewardship

of the Easement. The future interest, income and/or funds derived from or accruing to the Endowment ("**Endowment Income**") and the Endowment will be accounted for separately, but may be invested with centrally pooled investment funds maintained by the Conservancy and will be used exclusively for the Purpose, as defined below. Without limiting the foregoing, the Conservancy shall at all times maintain complete, separate records of the balance of the Endowment, Endowment Income generated by the Endowment, any withdrawals made from the Endowment and the purpose of each such withdrawal. All Endowment Income earned or generated on the Endowment funds shall become a part of the Endowment. The Conservancy shall not use or otherwise invade the non-wasting portion of the Endowment.

B. The Endowment shall be deposited, maintained, managed and administered as provided above and otherwise in compliance with the Conservancy's Board of Directors approved investment policy, the current version of which is attached hereto as **Exhibit C**, as it may be revised from time to time; provided, however, that the Endowment may be deposited, maintained, managed and administered in compliance with an alternative investment policy if such alternative investment policy is approved by the City in writing in advance of its use. The City may not unreasonably withhold its approval of an alternative investment policy. The City's approval of an alternative investment policy is procedural and shall not be construed or deemed investment advice. It shall be unreasonable for the Conservancy to rely on any City approval as evidence of the adequacy or quality of an alternative investment policy, and the Conservancy may not rely on any such approval in any manner that creates any liability for the City.

C. The purpose of the Endowment ("**Purpose**") is to support and fund the Conservancy's protection of the Conservation Values (as defined in the Easement) of the Property through annual easement compliance monitoring ("**Monitoring**"). The Purpose of the Endowment, the permitted uses of the Endowment Income, the management and investment of the Endowment, and reporting and record-keeping related to same are referred to herein collectively as the "**Program.**"

2. TERM

The effective date of this Agreement is the date first above written and this Agreement shall expire upon the delivery of the final financial and programmatic reports, as described below, or as otherwise provided in this Agreement.

3. MONITORING AND REPORTING

A. The Conservancy shall monitor the compliance of County (and successor fee owners of the Property) with the Easement in accordance with a monitoring protocol approved in advance by the City (which approval shall not be unreasonably withheld, conditioned or delayed) and shall take reasonable follow-up steps and undertake supplemental monitoring, consistent with the terms of the Easement, as reasonably needed to address and resolve problems identified in routine annual monitoring. The Conservancy shall promptly provide to the City a copy of each written notice, demand, request, consent or approval given by the Conservancy or the County to the other, in connection with the Easement.

B. On or before March 1st of each year, the Conservancy shall submit to the City an annual compliance monitoring report which shall describe the Conservancy's Monitoring activities of the preceding year, the condition of the Property, any changes that occurred (natural or constructed) since the commencement of the Easement or the last report, as the

case may be, and representative photographs. The report will state if the terms of the Easement are being upheld by the County or any future underlying fee owner and shall include the status of any actions taken by the Conservancy to resolve any compliance issues. The report will also include a financial summary that describes the current Endowment balance, the Endowment Income from the past year, and how Endowment Income was used during the past year. The written report shall include any proposed revisions to the Conservancy's internal endowment rules and/or investment policy and their potential impact on the Endowment Income.

C. All reports shall be submitted to the City's addresses for notices, below.

4. PAYMENTS

The City will make a single disbursement to the Conservancy for the Endowment of One Hundred Twenty-Five Thousand Dollars ($125,000), on the close of escrow for the Conservancy's acquisition of the Easement in accordance with the terms of the Funding Agreement (**Closing**).

5. EXPENDITURE LIMITED TO DESIGNATED PURPOSES

A. The Endowment Income may be spent only on the direct costs of Monitoring and reporting unless otherwise authorized in writing by the City. Direct costs include staff salary and overhead for time spent on site visits, contract management and reporting, staff travel expense for site visits, and insurance. Capital equipment expenditures are not allowable expenditures. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized by the City shall be borne by the Conservancy.

B. The City may monitor and evaluate the Monitoring activities, which may include visits to the Conservancy's offices by City personnel and agents, visits with the Conservancy's staff on the Property, discussions with the Conservancy's personnel, and review of financial and other records and materials related to the Monitoring financed by the Endowment Income in an effort to determine whether the Conservancy's use of the Endowment Income and management and investment of the Endowment are consistent with the terms of this Agreement.

6. NO FINANCIAL BENEFIT TO OTHER CONSERVANCY REAL ESTATE

The Endowment Income may not be used to fund any other program or project or any activity on any other real property owned by the Conservancy or any other person or entity.

7. RECORDED NOTICE

The Conservancy shall record, concurrently with the Closing, a Notice of Unrecorded Grant Agreement (the "Notice"), incorporating by reference this Agreement and giving constructive notice that the Conservancy received funds under this Agreement in order to support and fund the Conservancy's protection of the Conservation Values through annual easement compliance monitoring, and that, in consideration of the receipt of the Endowment, the Conservancy has agreed to the terms of this Agreement. The Notice shall be substantially in the form set forth in attached **Exhibit D**.

8. PROCUREMENT

The Conservancy will invest the Endowment in accordance **Section 1** above and follow reasonable policies with regard to documentation of procurements and maintain that documentation in their files.

9. RECORDS AND AUDITS

A. The Conservancy agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Agreement to the extent and in such detail as will properly reflect all costs and expenses attributed to the Program. These records shall be maintained for a period of three (3) years after the final financial and programmatic report is submitted to the City.

B. The City and its auditors (internal and external) will have access to all records relating to the Endowment for three (3) years after the final financial and programmatic report for the Endowment have been submitted to the City, unless local law requires a longer retention period.

C. The Conservancy shall be responsible for reimbursing for any disallowance of any expenditure related to the Monitoring activities the Conservancy has performed, but only to the extent that such expenditure was not in accordance with this Agreement.

10. SEGREGATION OF COSTS

The Conservancy will segregate the costs of the Program from other projects that it currently administers.

11. JUSTIFICATION OF SALARY EXPENSES

Employee time spent on implementing the Program is a direct cost, not an indirect cost. The Conservancy must track employees' actual time funded by the Endowment Income in a time and effort reporting system.

12. TERMINATION

A. Effect of Easement Termination. If the Easement is terminated or extinguished by any means, including without limitation, exercise of the power of eminent domain, purchase in lieu of condemnation, or sale, exchange or involuntary conversion by judicial proceedings, this Agreement shall terminate and the provisions of **Section 12.C** shall apply.

B. Termination Prior to Closing. Prior to the Closing, either party may terminate this Agreement for any reason or no reason, by providing the other party with a minimum of 15 days written notice of such termination. Upon such termination any Endowment funds previously deposited into escrow by the City shall be immediately returned to the City.

C. Termination After Closing. If this Agreement is terminated after the Closing, pursuant to **Section 12.A, 13, 15.C** or any other provision of this Agreement or applicable law, upon receipt of notice of the termination from the City: (i) the Conservancy shall take all necessary action to cancel outstanding commitments relating to the Monitoring, (ii) the Conservancy may use Endowment Income to pay any outstanding expenses permitted under this Agreement that

could not reasonably be canceled, and (iii) the Conservancy shall thereafter (within 60 days of the receipt of the termination notice) return the balance of the Endowment and any unspent Endowment Income and provide any reimbursement that may be owed for disallowed expenditures pursuant to **Section 9.C**, to the City with a final financial and programmatic report.

13. ASSIGNMENT; SUCCESSORS

The Endowment may not be assigned by the Conservancy in whole or in part without the prior written consent of the City. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. The City may assign its rights and delegate its obligations under this Agreement to a third party at the City's sole and absolute discretion. In the event that the Conservancy assigns or conveys its interest as holder of the Easement to a third party acceptable to the City, who accepts it and assumes the obligations and responsibilities of the easement holder, then concurrently with that assignment and assumption the Conservancy shall assign its rights and interest under this Agreement to that successor easement holder, the successor shall assume and agree to be bound by the terms of this Agreement, and the Endowment will be transferred to the successor, all pursuant to an assignment and assumption agreement in form acceptable to the City. If the Conservancy conveys its interest as easement holder to a third party not acceptable to the City, then in addition to any remedies available to the City under the Easement, the City shall have the right to terminate this Agreement by written notice to the Conservancy, in which event the provisions of **Section 12.C** shall apply. All references herein to "the Conservancy" are intended to refer to The Nature Conservancy and each of its successors and assigns under this Agreement as may be approved by the City to the extent such approval is required under this Agreement. References herein to the "City" are intended to refer to the City and each of its successors and assigns under this Agreement.

14. NO AGENCY

No legal partnership or agency is established by this Agreement. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.

15. DEFAULT AND REMEDIES

A. Default. If the City considers the Conservancy to have breached any of its obligations under this Agreement, the City shall give written notice to the Conservancy describing such breach. If the Conservancy does not cure a breach asserted by the City within ninety (90) days of notice thereof, or, if the breach is curable but not curable within such 90-day period, if the Conservancy fails within such ninety (90) days to commence the cure and thereafter diligently pursue it to completion, then the City may deem the Conservancy to be in default under this Agreement (**Default**).

B. Remedies. If the Conservancy commits a Default under this Agreement, the City shall be entitled to the following remedies, which shall be cumulative:

1. Transfer of the Easement by the Conservancy to an entity that is qualified as provided in Section 7 of the Easement and acceptable to the City, assignment by the Conservancy of all of the Conservancy's rights, obligations and responsibilities under this Agreement to such transferee and the written assumption by such transferee of the obligations

and responsibilities of the Conservancy under the Easement and this Agreement accruing from and after the effective date of such transfer, assignment and assumption, in form and content acceptable to the City.

2. Recovery of damages in the amount reasonably necessary to compensate for the violation of the terms of this Agreement.

3. Termination of this Agreement by written notice from the City to the Conservancy, in which event **Section 12.C** shall apply.

16. LOBBYING AND POLITICAL CAMPAIGNING

A. The Conservancy shall not use Endowment Income to engage in any lobbying activities.

B. The Conservancy shall not use any Endowment Income to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

17. LIABILITY

The Conservancy shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of the Monitoring. The Conservancy agrees to indemnify, defend and hold the City and its directors, officers, commissioners, board members, employees, agents, and contractors, and its successors and assigns (collectively, **"Indemnified Parties"**) harmless from any and all claims, loss, damages, liabilities, judgments, penalties, costs and expenses, including attorney fees through the appellate levels, made against or incurred by the Indemnified Parties arising out of work performed by The Conservancy under this Agreement, or arising out of any act or omission of The Conservancy. The Conservancy shall be solely responsible for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of the Program. The Conservancy agrees to indemnify, defend and hold the City and the other Indemnified Parties harmless from any and all claims, loss, damages, liabilities, judgments, penalties, costs and expenses, including attorney fees through the appellate levels, made against or incurred by the Indemnified Parties arising out of work performed by The Conservancy under this Agreement, or arising out of any act or omission of The Conservancy; including, without limitation, any act or omission related to or arising from the promulgation of an alternative investment policy or the implementation or compliance with The Conservancy's investment policy or any alternative investment policy. The provisions of this Section shall survive the expiration or termination of this Agreement.

18. USE OF NAME/LOGO

Neither the Commission nor the City may use the other party's name and/or logo in any way without prior written consent from the other party.

The Conservancy shall recognize the cooperative nature of this project and shall provide credit to the Commission on demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by the Conservancy referencing this project, as appropriate.

19. TAXES

The Conservancy agrees to be responsible for any and all filing and payment of applicable taxes and for compliance with any and all provisions and requirements arising under any applicable tax laws. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld or paid by the Conservancy on behalf of the City, or employees of the City.

20. COMPLIANCE WITH LAWS

The Conservancy represents, warrants, and agrees that, in connection with the Program, the Conservancy shall comply with all applicable statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of California, and any other jurisdiction(s) in which the Conservancy is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Conservancy under this Agreement (in each case, an "**Applicable Law**"). The Conservancy shall not take any actions that might cause the City to be in violation of any of such Applicable Laws.

21. CHOICE OF LAW/FORUM

This Agreement shall be interpreted, construed and governed by the laws of the State of California and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Conservancy and the City agree that litigation shall be conducted in the State of California.

22. BINDING EFFECT/AMENDMENTS

This Agreement supersedes all prior or contemporaneous communications and negotiations regarding the Endowment, both oral and written and constitutes the entire Agreement between the parties relating to the Endowment. No amendment shall be effective except in writing signed by both parties.

23. SEVERABILITY

If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of the Agreement.

24. NOTICES

Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by the then-current method for electronic communication of permanent documents (for

example, an Adobe file), but such electronically delivered notice shall not be binding on either party.

To City or Commission:

Until July 15, 2012: San Francisco Public Utilities Commission
Attn: WEIP Program Coordinator
Natural Resources and Lands Management
1145 Market Street, 4th Floor
San Francisco, CA 94103

After July 15, 2012: San Francisco Public Utilities Commission
Attn: WEIP Program Coordinator
Natural Resources and Lands Management
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102-3220

with a copy to: Office of the City Attorney
Real Estate/Finance Team
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

To Conservancy: The Nature Conservancy
California Regional Office
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department

with a copy to: The Nature Conservancy
Mt Hamilton Project
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Project Director

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery actually occurs or, if transmitted by courier or mail, on the delivery date or date of first attempted delivery shown on the return receipt or commercial courier's confirmation of delivery or attempted delivery.

7. CITY'S STANDARD CONTRACT PROVISIONS

A. Nondiscrimination. In the performance of this Agreement, Conservancy agrees not to discriminate against any employee, City employee working with Conservancy or any Conservancy contractor, applicant for employment with Conservancy or its contractors, or person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height,

weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to City for three times the amount of damages that City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

C. Conflict of Interest. Through its execution of this Agreement, Conservancy acknowledges that it is familiar with the provision of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

D. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit, and nothing will require the disclosure of records otherwise exempt under Government Code 6254(h), until the Easement has been acquired. Information provided which is covered by this paragraph will be made available to the public upon request.

E. Limitations on Contributions. Through execution of this Agreement, Conservancy acknowledges that it is familiar with section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Conservancy acknowledges that the foregoing

restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Conservancy further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of such party's board of directors; such party's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in such party; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by such party. Additionally, Conservancy acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

F. City Fiscal Limitations. This section supercedes any conflicting provision of this Agreement. This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors. No funds will be available hereunder until prior written authorization certified by the City's Controller. The Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. The City's obligations under this Agreement shall automatically terminate, without liability on the part of the City, if funds are not properly appropriated by the Mayor and Board of Supervisors or certified by the Controller. The City's obligations hereunder shall never exceed the amount certified by the Controller for the purpose and period stated in such certification. The City, its employees and officers are not authorized to request services, materials, equipment or supplies that are beyond the scope of those expressly described herein, unless this Agreement is amended in writing and approved as required by law. Without such an amendment or approval, the City shall not be required to pay the Conservancy for any such costs or in-kind services provided by the Conservancy. The City, its employees and officers are not authorized to offer or promise any additional funding that would exceed the amount specified in **Recital B**. Such additional funding requires lawful approval and certification by the Controller. Without such lawful approval and certification, the City shall not be required to provide such additional funding.

26. MISCELLANEOUS

A. This Agreement is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than the other party.

B. The omission by a party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions of this Agreement by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

C. The recitals set forth above and the following attachments are incorporated into the terms of this Agreement by reference:

Exhibit A: Description of Property
Exhibit B: Form of Conservation Easement
Exhibit C: Form of Notice of Unrecorded Grant Agreement

D. Time is of the essence for this Agreement.

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have duly authorized and caused this Agreement to be executed as of the date first above written.

Conservancy:

The Nature Conservancy, a District of Columbia non-profit corporation

By: _____
Mike Sweeney, State Director

City:

City and County of San Francisco, a municipal corporation

By: _____
Ed Harrington
General Manager
Its Public Utilities Commission

EXHIBIT A

Legal Description of the Property

Exhibit B

Form of Conservation Easement

5.25/2012~~4/25/2012~~

Exhibit C

Conservancy's Current Investment Policy

Exhibit D

Notice of Unrecorded Endowment Agreement
[See next page]

Recording requested by, and
When recorded, return to:

San Francisco Public Utilities
Commission
Attn: Carla Schultheis
525 Golden Gate Avenue
San Francisco, CA 94102-3220

Exempt from recording fees pursuant to Government Code §§6103 and 27383

NOTICE OF UNRECORDED ENDOWMENT AGREEMENT

This Notice of Unrecorded Endowment Agreement (**Notice**), dated for reference purposes as of _____, 2012, is recorded to provide notice of an agreement between The Nature Conservancy, a District of Columbia not-for-profit corporation (**Conservancy**), the City and County of San Francisco, a municipal corporation (**City**)

RECITALS

A. The Conservancy has acquired a conservation easement (**Easement**) in real property in Santa Clara County more particularly described in **Exhibit A**, attached hereto and incorporated by reference (**Property**).

B. The Conservancy and the City have entered into a certain Endowment Agreement pursuant to which the City agreed to contribute certain funds for a permanent endowment (the **Endowment**) to support the Conservancy's monitoring of Easement compliance.

B. Under the terms of the Endowment Agreement, the City reserved certain rights with respect to the conservation easement.

C. The Conservancy is required under the terms of the Endowment Agreement to execute this Notice to provide constructive notice to all third parties regarding the City's reserved rights under the Endowment Agreement.

NOTICE

1. In the event of a default under the Endowment Agreement by the Conservancy or any successor in interest (Endowment Holder), the City may require the Endowment Holder to convey its interest in the Easement to a successor Easement holder that meets the requirements set forth in the Easement and is acceptable to the City, and to transfer the endowment and assign the Endowment Agreement to such successor Easement holder.

2. For additional terms and conditions of the Endowment Agreement, reference should be made to the Endowment Agreement which is on file with the San Francisco Public Utilities Commission, Attn: WEIP Program Coordinator, Natural Resources and Lands

Management, 525 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102-3220, and with The Nature Conservancy, 201 Mission Street, 4th Floor, San Francisco, CA 94105, or at such successor address as may be available on such party's respective websites.

3. The terms and conditions of the Endowment Agreement are incorporated by this reference as though fully set forth herein.

CONSERVANCY:

The Nature Conservancy,
a District of Columbia non-profit corporation

By: _____
Mike Sweeney, State Director

Attachment: Exhibit A (Property Description)

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Formatted: Font: 9 pt, Do not check spelling or grammar

Recording requested by and when recorded please return to:

The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department

Please mail tax statements to:

County of Santa Clara
Parks and Recreation Department
Real Estate Services
298 Garden Hill Drive
Los Gatos, CA 95032

(space above this line reserved for recorder's use)

GRANT DEED OF CONSERVATION EASEMENT

(Sulphur Creek Ranch • Mount Hamilton • Santa Clara County)
Joseph Grant Park

This Grant Deed of Conservation Easement (the "**Deed**"), dated for reference purposes as of _____ ("**Agreement Date**"), is entered into by and between the County of Santa Clara (the "**County**"), a political subdivision of the State of California, as the **Property Owner**, and **The Nature Conservancy**, a District of Columbia non-profit corporation (the "**Conservancy**"), as **Easement Holder**.

RECITALS

A. Property Owner acquired the real property described in **Exhibit A** and shown on **Exhibit A-1** to this Deed ("**Property**") for a park purpose. The County's park purposes include, but are not limited to, provision of low intensity recreation opportunities, protection of Conservation Values, and providing open space for the citizens of the County of Santa Clara.

B. The Property consists of approximately one thousand one hundred and fifty-five (1,157) acres located within the Alameda Creek watershed and is comprised primarily of rangeland.

C. The Property possesses significant conservation values (collectively, the "**Conservation Values**"), including, but not limited to, scenic, aesthetic, natural, hydrologic, open space, ecological, and scientific values, that are of great importance to the Conservancy, the people of Santa Clara County, and the people of the State of California. Particular Conservation Values include, without limitation, watershed and water quality protection, oak woodlands, native grasses and forbs, riparian and montane forest, chamise and montane chaparral, perennial streams, unfragmented open space, corridors for the unimpaired passage of wildlife, and natural communities that provide habitat for native wildlife species, including, without limitation, native trout, Foothill Yellow-legged Frog, Coast Range Newt, and many species of common and rare plants and animals.

D. The Property contains approximately two miles of Smith Creek and two miles of Sulphur Creek, both tributaries of the Arroyo Hondo, which drains into the Calaveras Reservoir in the Alameda Creek watershed. The Calaveras Reservoir is part of the regional water system owned and operated by the City and County of San Francisco ("**CCSF**"), acting by and through its Public Utilities Commission ("**SFPUC**"). Protection of water quality in the Alameda Creek watershed is important to the Conservancy, SFPUC and SFPUC's customers in San Francisco, Santa Clara, Alameda and San Mateo Counties.

E. CCSF and the Conservancy contributed funds for County's acquisition of the Property pursuant to the Funding Agreement entered into between the Conservancy, CCSF and the County dated _____ ("**Funding Agreement**"). CCSF and the Conservancy have entered into an endowment agreement dated _____ ("**Endowment Agreement**"), pursuant to which CCSF funded an endowment for the Easement Holder's administration of the Easement created by this Deed. A notice of the Endowment Agreement will be recorded concurrently with the recording of this Deed. In the event of conflict between the Endowment Agreement and this Deed, the terms of the Deed will prevail. The CCSF is a third party beneficiary of this Deed, entitled to certain rights as set forth in Section 6.6 ("**Third Party Beneficiary**").

F. In providing funds for the acquisition, CCSF and Conservancy intend that the Conservation Values be monitored, preserved, protected, and maintained in perpetuity, subject to the terms and conditions of this Deed.

G. The State of California has recognized the public importance and validity of conservation easements by enactment of Section 815 et seq. of the California Civil Code.

H. As of the Agreement Date, the Conservancy is a nonprofit corporation incorporated under the laws of the District of Columbia as a tax-exempt public charity described in Section 815.3 of the California Civil Code and in Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, organized to protect and conserve natural areas and ecologically significant land for scientific, charitable, and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code, qualified to acquire and hold conservation easements.

I. To accomplish the Conservation Purposes (as defined in Section 1 below) consistent with the County's Public Park Purpose (as defined in Section 1 below), and in consideration of the payments received under the Funding Agreement, the Property Owner desires to convey to the Easement Holder, and the Easement Holder desires to obtain from the Property Owner, a perpetual conservation easement ("**Easement**") in, on, over and across the Property that restricts the uses of the Property, and that grants rights to the Easement Holder to monitor, preserve, protect, and maintain the Conservation Values subject to the covenants and conditions of this Deed.

GRANT OF EASEMENT

NOW THEREFORE, in consideration of the recitals set forth above, payments provided under the Funding Agreement, and the mutual covenants, conditions, and restrictions contained in this Deed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, and in particular California Civil Code Section 815 et seq., the Property Owner and Easement Holder acknowledge and agree, for themselves and their successors and assigns, that the use of the Property is hereby restricted in perpetuity in the manner set out in this Deed and that the Property Owner hereby grants the Easement to the Easement Holder on the following terms and conditions.

1. PURPOSES. The purposes of the Easement are to monitor, preserve, protect, and maintain the Conservation Values of the Property ("**Conservation Purposes**") in a manner consistent with the Property Owner's public park purposes ("**Public Park Purpose**") in perpetuity, and the Property Owner and the Easement Holder intend that this Deed will confine the use of the Property to such uses as are consistent with both of these purposes (collectively, "**Easement Purposes**").

2. BASELINE RESOURCE CONDITIONS REPORT. The parties acknowledge that the Easement Holder has prepared or will prepare a Baseline Resource Conditions Report ("**Report**") of the Property. A copy of the Report is or will be on file with the Property Owner and Easement Holder at their respective addresses for notices set forth in Section 12.3. Selected portions of the Report are attached to this Deed as **Exhibit E**. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this Deed. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the Property, the parties will not be foreclosed from utilizing any and all other relevant documents, surveys, or other evidence or information to assist in the resolution of the controversy.

3. THE EASEMENT HOLDER'S RIGHTS.

The Easement Holder desires to protect the Conservation Values. Subject to the Meet and Confer procedures that may apply as stated in Section 3.4, Easement Holder has the right by this Deed to undertake any of the following actions:

3.1. Monitor, Preserve and Protect. The right to monitor, preserve, protect, and maintain the Conservation Values defined in Recital C.

3.2. Entry and Access Rights. The right to enter upon the Property, using appurtenant easements and rights of way, if any, at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Deed, to determine whether the County's activities are in compliance with the terms of this Conservation Easement and to take all actions deemed necessary by the Conservancy to preserve, protect, identify, monitor in perpetuity the Conservation Values. Subject to the Meet and Confer requirement applicable to certain activities that Easement Holder may wish to conduct on the Property as set forth in Section 3.4, and except in cases of Emergency as defined in Section 6.3, Easement Holder will enter the

Property only after giving general notice of the anticipated entry date and purpose of entry to the Property Owner as described in Section 12.1 (as may be amended from time to time) at least ten (10) business days in advance of such entry, and a subsequent notice at least 48 hours in advance of such entry identifying the specific proposed entry date (considering weather and personnel commitments). Easement Holder's rights will be authorized as long as the proposed entry will not unreasonably interfere with the Property Owner's use of the Property.

3.3. Enforcement. The right to enforce this Conservation Easement as set forth in Section 6.

3.4. Meet and Confer. Prior to exercising any of the Easement Holder's rights in **Exhibit B**, or rights provided in this Section 3 excepting the right to monitor, the Easement Holder will initiate these Meet and Confer procedures ("**Meet and Confer**"), except as otherwise provided in Section 6.3. Except in cases of an Emergency (defined in Section 6.3), Easement Holder will provide the Property Owner and the Third Party Beneficiary with a written request to meet and confer, which request shall identify the issue or issues that Easement Holder wishes to discuss. Property Owner will meet with Easement Holder within thirty (30) calendar days of Easement Holder's request. If the parties cannot agree on the issues discussed, Easement Holder may pursue remedies under Section 6. The Third Party Beneficiary may participate in the Meet and Confer within the Third Party Beneficiary's sole and absolute discretion. In the event the parties are unable to meet within sixty (60) calendar days of Easement Holder's request due to no fault of Easement Holder or Third Party Beneficiary, the Easement Holder may proceed with the remedies under Section 6.

4. PERMITTED USES OF THE PROPERTY. The Easement Holder acknowledges that the Property Owner will manage the Property as public parkland consistent with the Easement Purposes. Property Owner's management will include the planning, design and construction of certain projects to support the permitted uses in Exhibit C of this Deed. Prior to initiating any project, Property Owner will develop and approve one or more plans, including but not limited to, a master plan, a trails plan, a site plan, and a natural resource management plan (including a grazing plan). Property Owner will further comply with review that may be required under California's Environmental Quality Act. Prior to making any draft plan public, or soliciting public comment for any planning effort, Property Owner will

invite the Easement Holder and the Third Party Beneficiary to meet with the Property Owner to discuss any preliminary draft plans, or the preparation of a draft plan. The Easement Holder and Third Party Beneficiary may participate in their sole and absolute discretion; however, if the Easement Holder or Third Party Beneficiary do not agree to meet within sixty (60) days of the County's written request to meet, the County may proceed with its planning efforts. The Property Owner will give the Easement Holder and Third Party Beneficiary an additional sixty (60) days before final adoption of any plan for Easement Holder and Third Party Beneficiary to reasonably approve the plan and its compliance with the Easement Purposes. In the event Easement Holder and Third Party Beneficiary do not provide comments or approval within sixty (60) days of the Property Owner's written notice, the Easement Holder and Third Party Beneficiary will be deemed have approved the plan to be in compliance with the Easement Purposes. The Property Owner and the Easement Holder intend that this Deed will limit the uses of the Property to uses that are consistent with the Easement Purposes. Permitted uses of the Property are set forth in **Exhibit C**, incorporated by reference.

5. PROHIBITED USES OF THE PROPERTY. Any activity on or use of the Property that is not permitted pursuant to **Exhibit C**, and that is inconsistent with either the Public Park Purpose or the Conservation Purposes is prohibited. Although **Exhibit D** is not an exhaustive list of prohibited uses, none of the uses described in **Exhibit D** will be made of the Property. In agreeing to the terms of this Deed, the Property Owner has considered the possibility that uses prohibited by the terms of this Deed may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Property Owner and Easement Holder that any such changes will not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Deed. In addition, the inability of the Property Owner, or the Property Owner's successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed will not impair the validity of the Easement or be considered grounds for its termination, extinguishment, or modification.

6. REMEDIES. Subject to the Meet and Confer requirements, the Easement Holder shall have the following rights and remedies in the enforcement of this Easement.

6.1 Notice of Violation; Corrective Action. If the Easement Holder becomes aware that the Property Owner's actions, or actions of Property Owner's employee, agent, contractor, successor or assign, have violated the terms of this Deed, or Property Owner's actions, or the actions of Property Owner's employee, agent, contractor, successor or assign threaten to significantly harm the Conservation Values, the Easement Holder will initiate the Meet and Confer provisions in Section 3.4. If the County has not addressed the violation to the reasonable satisfaction of Easement Holder, Easement Holder may give written notice to the Property Owner of such violation. If the Property Owner fails to cure the violation within ninety (90) days after receipt of notice from the Easement Holder, or under circumstances where the violation cannot reasonably be cured within a ninety (90)-day period, fails to begin curing such violation within the ninety (90)-day period or fails to continue diligently to cure such violation until finally cured, the Easement Holder will have all remedies available at law or in equity to enforce the terms of this Deed, including, without limitation, the right to seek a temporary or permanent injunction with respect to Property Owner's activity, and to cause the restoration of that portion of the Property affected by Property Owner's activity to the condition that existed prior to the undertaking of such prohibited activity (regardless of whether the costs of restoration exceed the value of the Property).

The Easement Holder's rights under this Section 6.1 apply equally to actual or threatened violations of the terms of this Deed. The Easement Holder's consideration of actual or threatened violations may take into account the cumulative effects of other activities or uses on the Property that may threaten to significantly harm the Conservation Values. The Property Owner agrees that the Easement Holder's remedies at law for any violation of the terms of this Deed are inadequate and that the Easement Holder will be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which the Easement Holder may be entitled, including specific performance of the terms of this Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 6.1 will be cumulative and will be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 et seq. are incorporated into this Deed by this reference, and this Deed will include all of the rights and remedies set forth therein.

6.2 Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Deed, the prevailing party will be entitled to recover from the non-prevailing party all reasonable costs and expenses including attorneys' fees, and if such prevailing party recovers judgment in any action or proceeding, such costs and expenses will be included as part of the judgment.

6.3 Emergency Enforcement. Sections 3.4 and 6.1 to the contrary notwithstanding, if the Easement Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate imminent, significant damage to the Conservation Values ("**Emergency**"), the Easement Holder may pursue its remedies under this Section 6 after giving the Property Owner such notice as is reasonable under the circumstances considering the requirements of Section 12.1 and without waiting for the cure period to expire.

6.4 The Easement Holder's Discretion. Enforcement of the terms and provisions of this Deed will be at the sole discretion of the Easement Holder, and the failure of the Easement Holder to discover a violation or to take action under this Section 6 will not be deemed or construed to be a waiver of the Easement Holder's rights under this Deed. In no event will any delay or omission by the Easement Holder in exercising any right or remedy constitute an impairment of or a waiver of such right or remedy.

6.5 Acts Beyond the Property Owner's Control. Nothing contained in this Deed will be construed to entitle the Easement Holder to bring any action against the Property Owner for any injury to or change in the Property resulting from causes beyond the Property Owner's control, including actions of third parties who are not Property Owner's contractor, agent, tenant or employee, or by fire, flood, storm, and earth movement. Notwithstanding the foregoing, at the request of either party, the parties will Meet and Confer concerning adverse impacts of third parties on the Conservation Values, and will use reasonable efforts to develop solutions to mitigate or prevent the adverse impacts, which may involve sharing of costs.

6.6 Third Party Beneficiary. All rights and remedies conveyed to Easement Holder under this Deed shall extend to and are enforceable by the Third-Party Beneficiary in accordance with the terms hereof. Property Owner and Easement Holder acknowledge that the Third-Party Beneficiary shall have the same rights of access to the Property granted to Easement Holder in Section 3 above, and with rights to enforce all of the provisions of

this Deed. If at any time in the future Property Owner uses, allows the use of, or threatens to use or allow use of, the Property for any purpose that is inconsistent with or in violation of this Deed then the Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Deed.

7. CONVEYANCE. Easement Holder may assign and convey the Easement in accordance with this Section 7. If Easement Holder decides to assign and convey its interest under the Easement, Easement Holder shall provide Property Owner and Third Party Beneficiary at least 90 days in advance of the proposed assignment date, notice of the proposed assignee, including sufficient information about the proposed assignee to enable Property Owner and Third Party Beneficiary to confirm that the assignee meets the following requirements. The assignee must be a governmental or non-governmental, not for profit entity qualified, at the time of assignment, under applicable law, to hold a conservation easement, not be a lessee of the Property, be willing and financially able to assume all of the responsibilities imposed on Easement Holder under this Deed, including without limitation monitoring and enforcement, and be willing and financially able to assume by written assignment the obligations and responsibilities imposed under the Endowment Agreement. The parties intend that, in the selection of a transferee, preference be given to a qualified organization with experience in preserving and protecting the Conservation Values. The proposed assignee shall be subject to Third Party Beneficiary's prior written approval, which shall not be unreasonably withheld if the assignee meets the above requirements.

8. RUNNING WITH THE LAND. The rights and obligations created by this Deed will burden and run with the Property forever. Every provision of this Deed that applies to the Easement Holder and Property Owner will also apply forever to and will burden or benefit, as applicable, their respective agents, administrators, employees, personal representatives, and all other successors as their interest may appear. The Property Owner agrees that Property Owner's transfer of any interest in the Property will be in accordance with the terms of Section 19.

9. REPRESENTATIONS AND WARRANTIES.

9.1. State of Title. The County represents that the County has good and sufficient title to the Property (including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water

and water rights) and that the County has full right and authority to grant the Deed.

9.2. Compliance with Laws. The County represents that the County has not received notice of and has no knowledge of any material violation of any federal, state, county, or other governmental or quasi-governmental statute, ordinance, rule, regulation, law, or administrative or judicial order with respect to the Property.

9.4. No Litigation. The County represents that there is no action, suit, or proceeding that is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county, or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

9.5. Authority To Execute. The person or persons executing this Deed on behalf of the Conservancy represent and warrant that the execution of this Deed has been duly authorized by the Conservancy's governing body. The person or persons executing this Deed on behalf of the County represent and warrant that the execution of this Conservation Easement has been duly authorized by the County.

10. COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. The Property Owner retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property and agrees that the Easement Holder will have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions on the Property, or the protection of the Easement Holder, the Third Party Beneficiary, the public, or any third parties from risks relating to conditions on the Property. The Property Owner agrees to pay before delinquency any and all real property taxes and assessments levied on the Property. If the Property Owner is a public agency, the Easement Holder and Third Party Beneficiary recognize that a public agency may be self-insured and is not subject to liens. The Property Owner remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Deed, and any activity or use will be undertaken in accordance with all applicable federal, state, and local laws, rules, regulations, and requirements.

11. INDEMNIFICATION OF THE PARTIES. Notwithstanding any other provision of this Deed to the contrary and to the fullest extent permitted by law, the Easement Holder and Property Owner ("**Indemnifying Party**") agree to indemnify, defend (by counsel satisfactory to the other party), and hold the other party, including, without limitation, the other party's, as the case may be, directors, officers, employees, agents, and contractors, and its successors and assigns (collectively, the "**Indemnified Parties**"), harmless from and against any losses, liabilities, penalties, demands, damages, claims (whether based on negligence or strict liability), costs, and expenses (including, without limitation, attorneys' fees and litigation costs) that the Indemnified Parties may suffer or incur as a result of or arising out of: (i) the activities of the Indemnifying Party on the Property; (ii) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, due to the negligence of the Indemnifying Party.

12. NOTICE; APPROVAL.

12.1. Notice for Entry. When notice to the Property Owner of the Easement Holder's entry upon the Property is required under this Deed, the Easement Holder will notify the Property Owner's authorized agents by telephone, or in person, or by written notice in the manner described in Section 12.3 prior to such entry. The County's authorized agent is the Director of the Parks and Recreation Department and designees.

12.2. Other Notice. Except as provided in Section 12.1, whenever express agreement or consent is required by this Deed, the initiating party will give written notice, in the manner described in Section 12.3, and detailed information to the other party. The receiving party will respond as required under the applicable provision of this Deed. Any objections by a party will be based upon its reasonable judgment that the proposed activity is inconsistent with the terms of this Deed.

12.3. Written Notices. Any written notice called for in this Deed will be delivered: (i) in person; (ii) by regular mail, postage prepaid; or (iii) by next-business-day delivery through a reputable overnight courier that guarantees next-business-day delivery and provides a receipt. Notices will be addressed as follows:

To the Conservancy:

The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department
Fax: 415-777-0244

with a copy to:

The Nature Conservancy
Mount Hamilton Project
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Project Director
Fax: 415-777-0244

To the County:

County of Santa Clara
Parks and Recreation Department
Real Estate Services
298 Garden Hill Drive
Los Gatos, CA 95032
Fax: 408-355-2290

To CCSF through SFPUC:

Before July 1, 2012:
San Francisco Public Utilities Commission
1145 Market Street, 4th Floor
San Francisco, CA 94103
Attn: Watershed and Environmental Improvement Program Coordinator

After June 30, 2012:
San Francisco Public Utilities Commission
Natural Resources and Lands Management Division
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102-3220
Attn: Watershed and Environmental Improvement Program Coordinator

Either party may, from time to time, by written notice to the other, designate a different address that will be substituted for the relevant address or addresses set forth above. Notice is deemed to be given upon receipt. To facilitate communication, the preference is for parties to provide notice through multiple methods, which may include electronic mail or telefacsimile as a duplicative method; however, neither telefacsimile nor electronic mail shall be a sufficient method of providing notice.

13. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Deed are intended to be perpetual. If any provision or purpose of this Deed or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions and purposes of this Deed, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, will not be affected thereby.

14. CONDEMNATION. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement ("**Condemnation**"), the Property Owner, Easement Holder and Third Party Beneficiary shall each be deemed to hold one-third (1/3) of the full value of the interest taken or acquired in the Condemnation, including any severance damages. Each party shall each bear one-third (1/3) of the attorneys' fees, expert witness fees and other expenses of the condemnation proceeding.

15. INTERPRETATION.

15.1. Liberally Construed. It is the intent of the Deed to preserve the condition of the Property and each of the Easement Purposes, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Deed will be liberally construed to effectuate the Easement Purposes and to allow the Property Owner's use of the Property to the extent consistent with the Easement Purposes. Liberal construction is expressly required for purposes of effectuating the Deed in perpetuity, notwithstanding changed conditions of any kind. The Easement Purposes are the intended best and most productive use of the Property. No remedy or election given by any provision in this Deed will be deemed exclusive unless so indicated, but it will, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Deed and that no

rule of construction that ambiguities are to be resolved against the drafting party will be employed in the interpretation of this Deed.

15.2. Governing Law. This Deed will be interpreted in accordance with the laws of the State of California.

15.3. Captions. The captions have been inserted solely for convenience of reference and are not part of this Deed and will have no effect upon construction or interpretation.

15.4. No Hazardous Materials Liability. Nothing in this Deed will be construed such that it creates in or gives to the Easement Holder, solely by virtue of their status as Easement Holder, (i) the obligations or liabilities of an "owner" or "operator" as those words are defined and used in Environmental Laws (as that term is defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.) ("**CERCLA**"); (ii) the obligations or liabilities of a person described in 42 USC Section 9607(a)(3); (iii) the obligations of a responsible person under any applicable Environmental Law; (iv) any obligation to investigate or remediate any Hazardous Materials, as defined below, associated with the Property; or (v) any control over the County's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property. This provision will not apply to Easement Holder's activities conducted on the Property.

15.5. Definition Hazardous Material.

The term "**Hazardous Materials**" includes, without limitation, any of the following wastes, materials, chemicals, or other substances (whether in the form of liquids, solids, or gases, and whether or not airborne) which are ignitable, reactive, corrosive, toxic, or radioactive, or which are deemed to be pollutants, contaminants, or hazardous or toxic substances under or pursuant to, or which are to any extent regulated by or under or form the basis of liability under any statute, regulation, rule, ordinance, order, or requirement concerning such wastes, materials, chemicals, or other substances (in each case, an "**Environmental Law**"), including, but not limited to, petroleum-based products and any material containing or producing any polychlorinated biphenyl, dioxin, or asbestos, as well as any biocide, herbicide, insecticide, or other agrichemical, at any level that may (i) constitute a present or potential threat to human health, safety,

welfare, or the environment, (ii) exceed any applicable or relevant and appropriate cleanup standard, or (iii) cause any person to incur any investigation, removal, remediation, maintenance, abatement, or other cleanup expense; it being understood that such Environmental Laws include, but are not limited to: CERCLA, as defined above; the Hazardous Materials Transportation Act (49 USC Sections 6901 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Sections 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Sections 25300 et seq.); and any rule, regulation, or other promulgation adopted under any of the foregoing laws.

16. SUBSEQUENT LIENS ON PROPERTY. No provision of this Deed should be construed as impairing the ability of the Property Owner to use the Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing must, at all times, be subordinated to this Deed by means of a subordination document acceptable to the Easement Holder in the Easement Holder's reasonable discretion.

17. RE-RECORDING. The Easement Holder is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of the Deed. The Property Owner will cooperate in executing any necessary instruments for that purpose.

18. ACCESS. Nothing contained in this Deed will give or grant to the public a right to enter upon or use the Property or any portion of the Property where no such right existed in the public immediately prior to the execution of this Deed.

19. SUBSEQUENT TRANSFERS.

The County agrees that the terms, conditions, restrictions, and purposes of this Deed or reference thereto will be inserted by the County in any subsequent deed or other legal instrument by which the County divests either the fee simple title or a possessory interest (including, but not limited to, any leases) of all or any permitted portion of the Property; and the County further agrees to notify the Easement Holder of any pending transfer at least forty five (45) days in advance of the transfer. Leasing all or any portion of the Property for a period of five (5) or more years is subject to prior written approval by the Easement Holder, which approval will not be unreasonably withheld, conditioned, or delayed. The failure of the County to comply with this Section 19 will not impair the validity of the Deed or limit

its enforceability in any way. Any successor in interest of the County, by acceptance of a deed, lease, or other document purporting to convey an interest in all or any portion of the Property, will be deemed to have consented to, reaffirmed, and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Deed.

20. NO MERGER. It is the intent of the County and the Easement Holder that, if the Easement Holder ever acquires fee title to all or any portion of the Property, such fee title will not merge (whether by operation of law or otherwise) with any of the rights granted by this Deed but will remain in full force and effect as to all portions of the Property until and unless explicitly terminated (and then, only to the extent so terminated) in an instrument that is executed and acknowledged by all requisite parties under all applicable laws and that is recorded in the official records of the county or counties in which the Property is located.

21. RESERVED.

22. JUDICIAL EXTINGUISHMENT. The Deed may not be extinguished, unless a later unexpected change in the conditions surrounding the Property means that it is impossible or impractical for it to serve any of the Conservation Purposes at all, and in any event such extinguishment may only be accomplished by appropriate judicial proceedings. If, at the time of any proposed extinguishment, the Easement is then held by an easement holder other than the Conservancy, the current easement holder will make a reasonable effort to give the Conservancy written notice of proposed extinguishment, and the Conservancy will have the right to prevent such extinguishment, which will include (at a minimum) the right to be heard by the court considering the approval of the extinguishment. In addition, no such extinguishment will affect the value of the Easement Holder's interest in the Property, and if the Property, or any interest therein, is sold, exchanged, or taken by the power of eminent domain after such extinguishment, the Property Owner, Easement Holder and Third Party Beneficiary will each be entitled to receive its pro-rata share of the proceeds of such sale, exchange, or taking as described in Section 14, but each party will apply such proceeds in a manner consistent with the Easement Purposes, or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystems," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code.

23. AMENDMENT. This Deed may not be modified, amended, or otherwise changed in any manner, except by a written amendment executed by all of the parties hereto (including the Third Party Beneficiary), or their successors in interest, it being understood that no party will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Deed may allow to be made from time to time by a party will operate to modify any of the terms of this Deed to any extent or in any manner. Any such amendment will be consistent with the Easement Purposes and will not affect the perpetual duration of the Deed. If circumstances arise under which an amendment to this Deed would be appropriate, the then-current Easement Holder and then-current Property Owner may jointly amend this Deed; any such amendment must be in writing, must refer to this Deed by reference to its recordation data, and must be recorded in the official public records of the County of Santa Clara.

24. EXHIBITS. The following exhibits are attached to and are incorporated into this Deed:

Exhibit A: Description of the Property
Exhibit A-1: Map of the Property
Exhibit B: The Easement Holder's Rights
Exhibit C: Permitted Uses of the Property
Exhibit D: Prohibited Uses of the Property
Exhibit E: Selected Portions of the Report
Exhibit F: Prohibited Plants List.

25. ENTIRE AGREEMENT; NO WAIVER. The Recitals in this Deed are a part of this Deed. This Deed, together with the attached exhibits and schedules, if any, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter of the Deed and supercedes all prior agreements and understandings of the parties. A party may waive any of the conditions contained in this Deed or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such

conditions or obligations. Permission to carry out, or failure to object to, any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature.

IN WITNESS WHEREOF, the parties have executed this Grant Deed as of the Agreement Date.

THE COUNTY:

_____

_____

_____

THE CONSERVANCY:

THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF THE PROPERTY

THE COUNTY'S INITIALS: _____

EXHIBIT A-1

MAP OF THE PROPERTY

(Sulphur Creek Ranch • Mount Hamilton • Santa Clara County)

[MAP TO DEPICT: (I) THE ENTIRE PROPERTY;

THE COUNTY'S INITIALS: _____

EXHIBIT B

THE EASEMENT HOLDER'S RIGHTS

(Sulphur Creek Ranch • Mount Hamilton • Santa Clara County)

In accord with Section 3 of the Deed, and subject to the Meet and Confer and notice prior to entry provisions in that section and Section 6.3, the Easement Holder, through its employees, contractors or authorized agents, may employ any of the rights in this **Exhibit B**, subject to the County's Code of Ordinances regarding use of pesticides on County property (as long as County is the Property Owner), applicable Property Owner management plans and policies that may apply to the proposed activity, and other federal, state and local laws that may apply to the Easement Holder's proposed activity.

In carrying out Easement Holder's rights under this Deed, Easement Holder and Property Owner recognize that protection of natural resources is best performed through an adaptive management program. The parties to this Deed cannot anticipate future management techniques, the effects of climate change, or the availability of funding for preservation and protection of natural resources on the Property

Consistent with the foregoing, the Easement Holder will have the right, at its sole cost and expense:

1. RESEARCH WILDLIFE AND HABITAT STUDIES. To conduct wildlife and habitat studies and research the Conservation Values and sensitive communities identified in Exhibit C. Any data collected must be shared with the Property Owner.

2. PLANTING AND REMOVAL OF PLANTS. To plant, maintain, and restore native vegetation, and remove or eradicate non-native vegetation. This right shall include the ability to use herbicides, controlled burning and cattle grazing, provided that the activity shall be done at times and under conditions reasonably acceptable to the Property Owner.

3. CONTROL OF ANIMALS. To control or eradicate non-native fish and other feral and non-native animals, excepting livestock, horses, burros, mules and domestic animals permitted under the terms of this Deed.

THE COUNTY'S INITIALS: _____

4. INTRODUCTION OF ANIMALS. To undertake actions to introduce or reintroduce those native animal species known to occur, or to have occurred in the area of the Property.

5. FENCING. To erect, maintain, and/or remove fencing on the Property, including (but not limited to) the right to erect additional fencing to protect areas that may have sensitive natural resources or from which cattle and pets should be excluded, considering other management techniques that may discourage people or permitted domestic animals from entering or disturbing the area . The Easement Holder shall be responsible for further maintenance of any fence that Easement Holder constructs. Where reasonably appropriate, Property Owner may require that Easement Holder construct wildlife friendly fencing.

6. MAINTENANCE OF STOCK PONDS. To maintain and restore the existing stock pond on the Property, which is identified on the Baseline Resource Report.

7. SIGNS. To erect and maintain signs or other appropriate markers consistent with Property Owner's sign standards in prominent locations on the Property, visible from public roads or other adjoining property, bearing information indicating: (i) that the Property is protected by the Deed, and (ii) acknowledging the participation of the Easement Holder, the SFPUC, other acquisition funding sources, and the County, including such logos as these agencies may desire.

8. TOURS. Subject to Property Owner's then current management practices and policies for third parties to access Property Owner's property, including but not limited to, the issuance of a license or permit regulating site access (and the notice provisions for entry under Section 3 of the Deed), the Easement Holder shall have the right of access to and entry upon the Property in order to conduct supervised events, hikes, or nature walks for up to twenty-five (25) individuals, for the purposes of education, natural history, donor cultivation, and/or fund raising. No overnight camping shall be allowed unless otherwise permitted by Property Owner's then current management practices and policies. The Easement Holder shall ensure that the Property Owner and Owner's tenant, if any **are fully indemnified** before entry onto the Property under this provision.

THE COUNTY'S INITIALS: _____

EXHIBIT C

PROPERTY OWNER'S PERMITTED USES OF THE PROPERTY

(Sulphur Creek Ranch • Mount Hamilton • Santa Clara County)

The uses set forth in this Exhibit C detail specific activities that are permitted under this Deed and may be implemented and under the control of the Property Owner. Permitted uses also include any activity described in Exhibit B, the Easement Holder's Rights. The uses set forth in this Exhibit C are also intended to provide guidance in determining the consistency of other activities with the Easement Purposes. Property Owner will conduct all permitted uses in a manner consistent with applicable federal, state and local laws, and at Property Owner's sole cost and expense.

Property Owner will conduct all permitted uses in a manner that will avoid the adverse impacts to the Conservation Values. The Property includes the following habitats, with the understanding that particularly **Sensitive Communities are indicated in bold text below:**

Habitat known to support:

- **Perennial stream** supporting Foothill Yellow-legged Frog (*Rana boylii*), Coast Range Newt (*Taricha torosa torosa*), native trout (*Oncorhynchus mykiss*), and Pacific Pond Turtle (*Actinemys marmorata*)

- Corridors for wildlife movement between conservation lands.

Habitat with potential to support:

- **Ponds and waterways containing, among other species, California red-legged frog (*Rana aurora draytonii*- federal ESA Threatened), California Tiger Salamander (*Ambystoma caliofrniense*—federal ESA and California ESA Threatened),** Western spadefoot (*Spea hammondii*), Tule elk (*Cervus elaphus nannodes*)

Natural communities including:

- **Central Coast Riparian Forests**
- **Valley oak forest/woodland**
- Coast live oak forest/woodland

THE COUNTY'S INITIALS: _____

- **Black oak forest/woodland**
- **Blue oak woodland**
- **Blue oak-foothill pine woodland**
- Mixed montane chaparral
- Chamise chaparral
- Coastal sage scrub
- Annual grassland, with scattered native grasses and forbs
- **Rock outcrops and barrens, including serpentine outcrops, that may support rare or listed plant species**
- Montane hardwood/mixed evergreen forest
- California Bay forest

1. PUBLIC PARK DEVELOPMENT

The Property Owner and Easement Holder agree that the Property purchased and encumbered by this Deed will be planned to allow public access for enjoyment of the Property as a park resource within Joseph Grant Park. Property Owner will plan, design, construct, and conduct ongoing operations and management of the Property in a manner that avoids adverse impacts to the Conservation Values. At the time of the grant of the Easement pursuant to this Deed, Property Owner has not reviewed potential impacts of particular uses on the environment, or initiated any level of planning for uses that may be allowed at this Property and consistent with the Easement Purposes.

Recognizing that planning and implementation of the Park Purposes is dependent upon Property Owner's resources, the permitted uses of the Property will generally be those uses consistent with the County General Plan, the Parks and Recreation Department's Strategic Plan, and any and all park and trail master plans that may be developed for the County system of parks and trails. The Property, as a part of Joseph Grant Park, is intended to provide visitors with a park experience that supports the Conservation Values while providing visitor access to a system of public parks through non-intensive recreational uses that may include, but are not limited to, visitor parking, trail staging, a circuit system of trails, shelter (yurts or cabins, as appropriate), administrative facilities, picnic sites, covered shelters, interpretive and directional kiosks and signage, and infrastructure needed to support low-impact recreational activities. Such activities will be planned in a manner that is compatible with the Conservation Values and the

THE COUNTY'S INITIALS: _____

California Environmental Quality Act. The Property Owner will confer with the Easement Holder and Third Party Beneficiary during the planning of the use of the Property and will seek their approval, as provided in Section 4 of the Deed.

In conducting the planning process, the Property Owner, subject to the Easement Holder's and Third Party Beneficiary's approval as set forth in Section 4 of the Deed, will seek to identify areas of the Property appropriate for development of recreational resources such as non-intensive recreational uses that may include, but are not limited to, visitor parking, trail staging, a circuit system of trails, shelter (yurts or cabins, as appropriate), administrative facilities, picnic sites, covered shelters, interpretive and directional kiosks and signage, and infrastructure needed to support low-impact recreational activities ("**Development Area**"), and areas with Sensitive Communities and water resources most susceptible to adverse impacts on Conservation Values which will require heightened consideration of protection of the Conservation Values and may prohibit uses otherwise permitted in other parts of the Property ("**Conservation Area**").

2. NATURAL RESOURCE MANAGEMENT

2.1. Grazing. The Property Owner may conduct grazing to control non-native vegetation. Consistent with principles of adaptive management, Property Owner may plan and develop infrastructure required to support grazing. The Property Owner will develop a grazing plan as described in Section 4 of the Deed and conduct grazing in accordance with Property Owner's grazing program, which is governed by a Grazing Policy, with the understanding that grazing shall be conducted in a manner that supports minimal Residual Dry Matter standards published by the University of California Extension from time to time, or such other standard that may replace this standard and become commonly accepted by the natural resource conservation community. The Property Owner's grazing program and policy may be amended from the time to time, but must be consistent with the Easement Purposes.

2.2. Prescribed Burning. The Property Owner may conduct prescribed burning as a natural resource management tool.

THE COUNTY'S INITIALS: _____

2.3. Fertilizers, Pesticides, Herbicides, and other Biocides. The Property Owner may undertake non-native plant removal, reintroduction of native plants (and non-reproductive non-native vegetation for erosion control and cover while native vegetation is established), site restoration, and similar activities. The Property Owner will conduct any chemical application on a limited basis and in a way that does not harm the Conservation Values and Sensitive Communities identified above.

3. MAINTENANCE, REPAIR AND REPLACEMENT. The Property Owner may maintain, repair and replace existing improvements, or improvements constructed in accordance with the plans approved or deemed approved as provided in Section 4 of the Deed. By way of elaboration:

3.1. Agricultural, Non-Residential Structures, Fences. The Property Owner may maintain, repair, and replace fences that exist on the Property as of the Agreement Date and may build new fences anywhere on the Property to promote the Easement Purposes. Property Owner will ensure that replacement or new fencing is wildlife friendly, as appropriate to the purpose of the fence.

3.2. Roads and Trails. The Property Owner may design and develop a trail system that is independent of currently existing ranch roads on site, that contemplates the removal or modification of roads that have the potential to cause resource damage, and that provides trails and trail connections, and allows Property Owner and Easement Holder to monitor and protect the Easement Purposes. To the extent reasonably necessary, Property Owner may apply a reasonable amount of gravel, road base or red rock material, or other permeable surface to provide an all-weather surface for roads and trails throughout the Property.

4. FISHING AND HUNTING. The Property Owner may allow fishing. Property Owner may stock the stocking pond with native fish. Property Owner may allow hunting to control feral animal populations.

5. WATER RESOURCES. The Property Owner may develop and maintain wells, spring boxes, and existing developed springs on the Property as necessary to support the permitted uses on the Property. Property Owner may maintain and repair the existing stock pond. Property Owner may develop water resources to support the Easement Purposes (grazing cattle, park users with permitted domestic animals) in a manner consistent with the

THE COUNTY'S INITIALS: _____

Conservation Values. Property Owner will include development of water resources that are anticipated to require significant pumping or diversion of natural water courses in its planning efforts, which are subject to the Easement Holder's rights in Section 4 of the Deed.

7. EDUCATIONAL AND RECREATIONAL USES. The Property Owner may use and develop the Property to provide for educational and low-intensity, non-motorized recreational use of the Property by the general public. These uses are consistent with the Park Purposes described within this Deed, and will be planned and carried out consistent with the Conservation Purposes of this Deed.

8. RESIDUAL RIGHTS. Except as expressly limited by this Deed, the Property Owner may exercise all rights as owner of the Property, including the right to use the Property for any purpose that is consistent with this Deed and the Easement Purposes.

9. OTHER ACTIVITIES. If any question exists regarding whether current or proposed practices or activities are permitted or would be inconsistent with the Easement Purposes, or would diminish or impair the Conservation Values, the Property Owner will Meet and Confer with the Easement Holder as described in Section 3 of the Deed.

THE COUNTY'S INITIALS: _____

EXHIBIT D

PROHIBITED USES OF THE PROPERTY

(Sulphur Creek Ranch • Mount Hamilton • Santa Clara County)

Although this Exhibit D is not an exhaustive list of prohibited uses, none of the uses described in this Exhibit D will be made of the Property. The following are set forth both to list specific prohibited activities on the Property and to provide guidance in determining whether or not other activities are inconsistent with the Easement Purposes.

1. NO SUBDIVISION. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. Notwithstanding the fact that, as of the Agreement Date, the Property might be comprised of separate legal parcels, the terms and conditions of this Deed will apply to the Property as a whole, and the Property will not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Property Owner nor the Property Owner's successors, or assigns will sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. The existence of any separate legal parcels, if any, as of the Agreement Date will not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of this Deed as applied to the Property as a whole.

2. NO INDUSTRIAL OR NON-RECREATIONAL COMMERCIAL USES. The establishment of any industrial or non-recreational commercial or industrial uses on the Property, other than the continuation of the permitted grazing or natural resource management tools, and as otherwise explicitly permitted in Exhibit C, is prohibited. Examples of prohibited commercial or industrial uses include, but are not limited to: (i) the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock that are owned by a person or entity other than the Landowner are grouped together for intensive feeding purposes; (ii) the planting and cultivation of commercial orchards; (iii) the establishment or maintenance of any commercial greenhouses or plant nurseries; (iv) the establishment or maintenance of any dairies; (v) the establishment or maintenance of any commercial bee hives; (vi) the establishment or

THE COUNTY'S INITIALS: _____

maintenance of any gravel mines and (vii) community or cooperative gardens.

3. NO NATURAL RESOURCE DEVELOPMENT. The exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel, or rock, or any other material on or below the surface of the Property is prohibited. The development of water resources for use outside of Grant Park is prohibited.

4. NO HAZARDOUS MATERIALS. The use, dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge, or unsightly or toxic or Hazardous Materials or agri-chemicals is prohibited, except as expressly permitted under Exhibit C.

5. NO ALTERATION OF NATURAL WATER COURSES; NO DEGRADATION OF WATER QUALITY. Except as expressly permitted under **Exhibit C**, the Property Owner may not dam, impound, manipulate or alter any natural water course, wetland, stream bank, shoreline, vernal pool or body of water. Activities or uses detrimental to water quality, including, but not limited to, degradation or pollution of any surface or subsurface waters, are prohibited.

6. NO IMPAIRMENT OF WATER RIGHTS. Severance, conveyance, or encumbrance of water or water rights appurtenant to the Property, separately from the underlying title to the Property, or other action that diminishes or extinguishes such water rights is prohibited.

7. NO VEHICLES. The use of any motorized vehicles off designated roadways, except as required to support the Easement Purposes or to develop facilities needed for same is prohibited. The use of motorized vehicles for recreational purposes is prohibited.

8. NO HIGH INTENSITY RECREATION. For this Property, the Property Owner will not allow high intensity uses including, by way of example only, soccer fields, baseball complexes, steam trains, merry go rounds, developed (paved with utilities) multiple site campgrounds, nor similar uses.

9. NO INTRODUCTION OF NON-NATIVE GRASSES, PLANT, ANIMAL SPECIES OR EXOTICS. No seeding, planting, or introduction of non-native grasses, clovers, or any other plant species is permitted. Property Owner will not introduce onto the Property any of the plants identified in Exhibit F or additional species listed by CalIPC as High or Moderate invasives or future

THE COUNTY'S INITIALS: _____

equivalent lists. Commercial fish farms are prohibited; likewise, Property Owner may not stock the stocking pond on the Property with non-native fish.

10. NO INCONSISTENT OR ADVERSE ACTIONS. There shall be no change, disturbance, alteration or impairment of the Conservation Values of the Property, except as may occur pursuant to (and then only to the extent permitted as a part of) the uses of the Property which are explicitly permitted under this Deed to effectuate Park Purposes.

11. NO TIMBER HARVESTING. The taking or harvesting of timber, standing or downed, on the Property, except for disease or insect control or to prevent property damage or personal injury, is prohibited. In no event may timber be collected for or used for commercial purposes.

12. NO USE OR TRANSFER OF DEVELOPMENT RIGHTS. Except as expressly permitted by the terms of Exhibit C and by the planning process described in Section 4 of the Deed, the exercise of any development rights associated with the Property is prohibited. The Property may not be used by the Property Owner, Easement Holder or Third Party Beneficiary (i) as mitigation for any project they might have, or (ii) transfer any right that could otherwise be exercised consistent with applicable laws but for this Deed (by way of example, sale of carbon rights to off-set production of green-house gases elsewhere on the planet, or development for commercial or predominantly residential use) without the express, prior written consent of each party, which may be exercised in each party's sole and absolute discretion. In the event the Property Owner, Easement Holder and Third Party Beneficiary agree to such sale or transfer, any compensation received must be equally shared on a one-third pro rata basis.

13. NO PLOWING, DISKING, ALTERATION OF TOPOGRAPHY. Except as may be expressly permitted under Exhibit C in order to effectuate the Easement Purposes, the plowing, disking, cultivation, ripping, planting, sowing, irrigation, or any other conversion or disturbance of the Property is prohibited. Any change in the topography of the Property through the placement on the Property of soils, land fill, dredging spoils, or other materials is prohibited, except as incidental and necessary to the activities permitted under this Deed. Notwithstanding any provision of this Section 13 or the remainder of this Deed to the contrary, in no event will any permitted plowing, disking, cultivation, ripping, planting, sowing, irrigation, or any

THE COUNTY'S INITIALS: _____

other conversion or disturbance of the Property diminish or impair the Conservation Values.

14. NO AGRICULTURAL USE OF PROPERTY. Except as otherwise permitted in Exhibit C, the use of the Property for or conversion to crops, orchards, vineyards, or any other agricultural purpose is prohibited.

15. NO INCONSISTENT OR ADVERSE ACTIONS. There shall be no change, disturbance, alteration or impairment of the Conservation Values of the Property, except as may occur pursuant to (and then only to the extent permitted as a part of) the uses of the Property which are explicitly permitted under this Deed.

16. NO JUNK YARDS. The storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose is prohibited.

17. NO DESTRUCTION OF NATIVE VEGETATION. Except as otherwise specifically permitted in Exhibit C, the removal, cutting or destruction of native vegetation is prohibited.

THE COUNTY'S INITIALS: _____

EXHIBIT E

SELECTED PORTIONS OF THE REPORT

(_____ • _____ • _____ County)

Form Grazing Agreement 11.10.2010

THE COUNTY'S INITIALS: _____

EXHIBIT F

PROHIBITED PLANTS LIST

(_____ •_____ • _____ County)

Arundo or Giant Reed	*Arundo donax*
Tree of Heaven or Ailanthus	*Ailanthus altissima*
Ice Plant	*Carpobrotis edulis*
Pampas grass or jubata grass	*Cortaderia jubata* or *C. selloana*
Edible fig	*Ficus carica*
Himalayan Blackberry	*Rubus discolor*
Elm	*Ulmus* sp.
Mulberry (female plants)	*Morus alba*
Chinese pistachio	*Pistacia altantica* or *P. chinensis*
English ivy or Algerian ivy	*Hedera helix* or *H. caneriensis*
Yellow star-thistle	*Centurea solstitialis*
Medusahead	*Taeniatherum caput-medusae*
Klamathweed	*Hypericum perforatum*
English walnut	*Juglans regia*
Black walnut	*Juglans californica*
Periwinkle	*Vinca major*
Privet	*Ligustrum obtusifolium*
Pepperweed	*Lepidium latifolium*
Bermuda Grass	*Cynodon dactylon*
Johnson Grass	*Sorghum halepense*
Barbed Goatgrass	*Aegilops triuncialis*
Jointed Goatgrass	*Aegilops cylindrica*
Licorice plant	*Helichrysum petiolare*
Bridal broom	*Retama monosperma*
French broom	*Genista monspessulana*
Spanish broom	*Cytisus striatus*
Portugese broom	*Spartium junceum*
Scotch broom	*Cytisus scoparius*
Scarlet wisteria	*Sesbania punicea*
Cotoneaster	*Cotoneaster lacteus or C. pannosus*
Russian olive	*Eleagnus angustifolia*

THE COUNTY'S INITIALS: _____

Saltcedar, tamarisk	*Tamarix* sp.
Blue gum eucalyptus	*Eucalyptus globulus*
Perennial pepperweed	*Lepidium latifolium*
Tamarisk	*Tamarix* sp.
China Berry	*Melia azedarach*
Black Locust	*Robinia pseudoacacia*

THE COUNTY'S INITIALS: _____

CERTIFICATION OF DETERMINATION OF EXEMPTION/EXCLUSION FROM ENVIRONMENTAL REVIEW

Project Title: San Francisco Public Utilities Commission (SFPUC) Santa Clara County Parks and Recreation Department (SCCP&R) and The Nature Conservancy (Conservancy) Owen Nolan Ranch and Conservation Easement Acquisition

Location: At the intersection of Mt. Hamilton Road and Kincaid Road

APNs: 627-06-002, 627-07-13 and 627-07-14

City and County: Santa Clara County, adjacent to the southeast corner of Joseph D. Grant County Park

Description of Nature and Purpose of Project: The Natural Resources and Lands Management Division of the SFPUC Water Enterprise proposes funding a grant for the purchase of the Owen Nolan Ranch in Santa Clara County in partnership with the Santa Clara County Parks and Recreation Department (SCCP&R) and The Nature Conservancy (Conservancy) under the Watershed and Environmental Improvement Program (WEIP) for permanent conservation and habitat preservation to protect water quality, watershed lands, and wildlife. The proposed project would include purchase of the 1,165 acre Ranch and a conservation easement to be held and managed by The Nature Conservancy. Contribution by the SFPUC represents approximately one-third of the total land and conservation easement price, the remainder of which would be funded by the SCCP&R. The proposed funding would also create a permanent endowment for the Conservancy to monitor the conservation easement. Purchase of the Ranch and conservation easement would not include funding for any development or public access for park use which would only be implemented upon future park planning efforts by the SCCP&R.

Name of Project Applicant: Water Enterprise, Public Utilities Commission, City & County of San Francisco

EXEMPT STATUS:

- X Categorical Exemption (State Guidelines, Section 15300-15329; Public Resources Code, Section 21084). State Class Number: **15325. (Transfer of Ownership of Interest in Land to Preserve Existing Natural Conditions)**
- ____ Declared Emergency Exclusion (State Guidelines, Section 15269(a); Public Resources Code Section 21172).
- ____ Emergency Project Exclusion (State Guidelines, Section 15269(b) and (c); Public Resources Code, Section 21080 (b) (2) and (4).
- ____ Feasibility or Planning Study (State Guidelines, Section 15262; Public Resources Code, Section 21102).
- ____ General Rule Exclusion (State Guidelines, Section 15061 (b) (3)).
- ____ Ministerial Exclusion (State Guidelines, Section 15268; Public Resources Code, Section 21080 (b) (1)).
- ____ Non-Physical Exclusion (State Guidelines, Section 15061 (b) (1) and 15378; Public Resources Code, § 21060.5).
- ____ Ongoing Project, approved prior to November 23, 1970 (State Guidelines, Section 15261).
- ____ Rates, Tolls, Fares and Charges (State Guidelines, Section 15273; Public Resources Code, Section 21080 (b)(8)).
- ____ Specified Mass Transit Projects (State Guidelines, Section 15275; Public Resources Code, § 21080 (b)(11-14)).
- ____ Other Exclusion (Specify): _____

REMARKS:

San Francisco Public Utilities Commission Natural Resources and Lands Management Division proposes funding a grant for the Santa Clara County Parks & Recreation Department to acquire the Owen Nolan Ranch near Mount Hamilton and Mount Isabel in east central Santa Clara County (Attachment 1). The Ranch is located in the Arroyo Hondo hydrologic watershed in the Alameda Creek Watershed, approximately 12.5 miles due east of San Jose City Hall. The Property contains approximately two miles of Smith Creek and two miles of Sulphur Creek, both tributaries of the Arroyo Hondo which drains into Calaveras Reservoir, one of the SFPUC's water supply system storage reservoirs. The Ranch is currently used for agriculture and hunting.

The Watershed and Environmental Improvement Program (WEIP) was adopted by the SFPUC to more proactively manage, protect and restore environmental resources that affect or are affected by SFPUC operations. The SFPUC is

looking for opportunities to restore and protect critical lands in the Alameda Creek Watershed. The purchase of this property is one component of an overall strategy under the WEIP to protect natural areas and open space and prevent development and/or other activities that otherwise may degrade water quality.

Acquisition of the 1,165 acre (Assessor's Parcel Number (APN): 627-06-002: 167 acres, APN: 627-07-013: 412 acres, APN: 627-07-014: 586 acres) Ranch and conservation easement in partnership with the SCCP&R and the Conservancy would result in permanent land conservation and habitat preservation.

Funding by the SFPUC for acquisition of the land and the conservation easement represents approximately one third of the total purchase price. Additional funding for the land acquisition is being provided by the SCCP&R and the Conservancy and other private donors.

The Draft County of Santa Clara Parkland Acquisition 2011 Update (Dated March 1, 2011, for Board of Supervisors Review) identifies a number of Areas of Possible Land Acquisition for Regional Parks and Trails on Figure 5-1 including the Nolan Ranch which is identified as "High Suitability" for Regional Park and Trail Acquisition. Appendix J of the 2011 Update, Summary of Related Agency Policies and/or Practices, the Santa Clara County Open Space Authority identified a number of potential acquisition areas including the "Arroyo Aguague". The discussion of the Arroyo Aguague states: "The southern portion of the Penitencia Creek watershed adjoining Joseph D. Grant County Park to the south and The Nature Conservancy's protected lands to the east. Because of its close proximity to the City of San Jose, land acquired in this area would provide easily accessible trails that connect to Alum Rock Park and Grant County Park while also protecting rideline views and habitat." Santa Clara County, on behalf of the SCCP&R, will be preparing a CEQA exemption for purchase of the Ranch. Once the Ranch is acquired, it would be placed in a permanent conservation easement which would be managed by The Conservancy.

The permanent endowment being created and funded by the SFPUC would ensure compliance monitoring of the conservation easement by The Conservancy.

The Ranch is currently under California Land Conservation (Williamson) Act Contract for a ten year period to preserve the agricultural use. A Notice of Non-Renewal has not been filed for the current contract. However, upon taking ownership of the Ranch, the SCCP&R would initiate a Notice of Non-Renewal of the Contract which would expire in nine years.

Potential future use of the Ranch for recreational activities such as hiking is not the subject of this exemption determination. Future park planning efforts, including subsequent CEQA compliance would be necessary prior to implementation of improvements to the site to permit public access and recreational activities.

California Environmental Quality Act Section 15325, Class 25, provides for transfers of ownership of interests in land in order to preserve open space, habitat or historical resources. Specifically, 15325(a) provides for acquisition, sale or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats. Section 15325(c) provides for acquisition, sale or other transfer of areas to allow restoration of natural conditions, including plant or animal habitats. Finally, Section 15325(f) provide for acquisition, sale or other transfer of areas to preserve open space or lands for park purposes.

Contact Person: **Carla Schultheis, Watershed and Environmental Improvement Program Coordinator**
Telephone: **415-554-1558**

Date of Determination:

April 4, 2012

Date

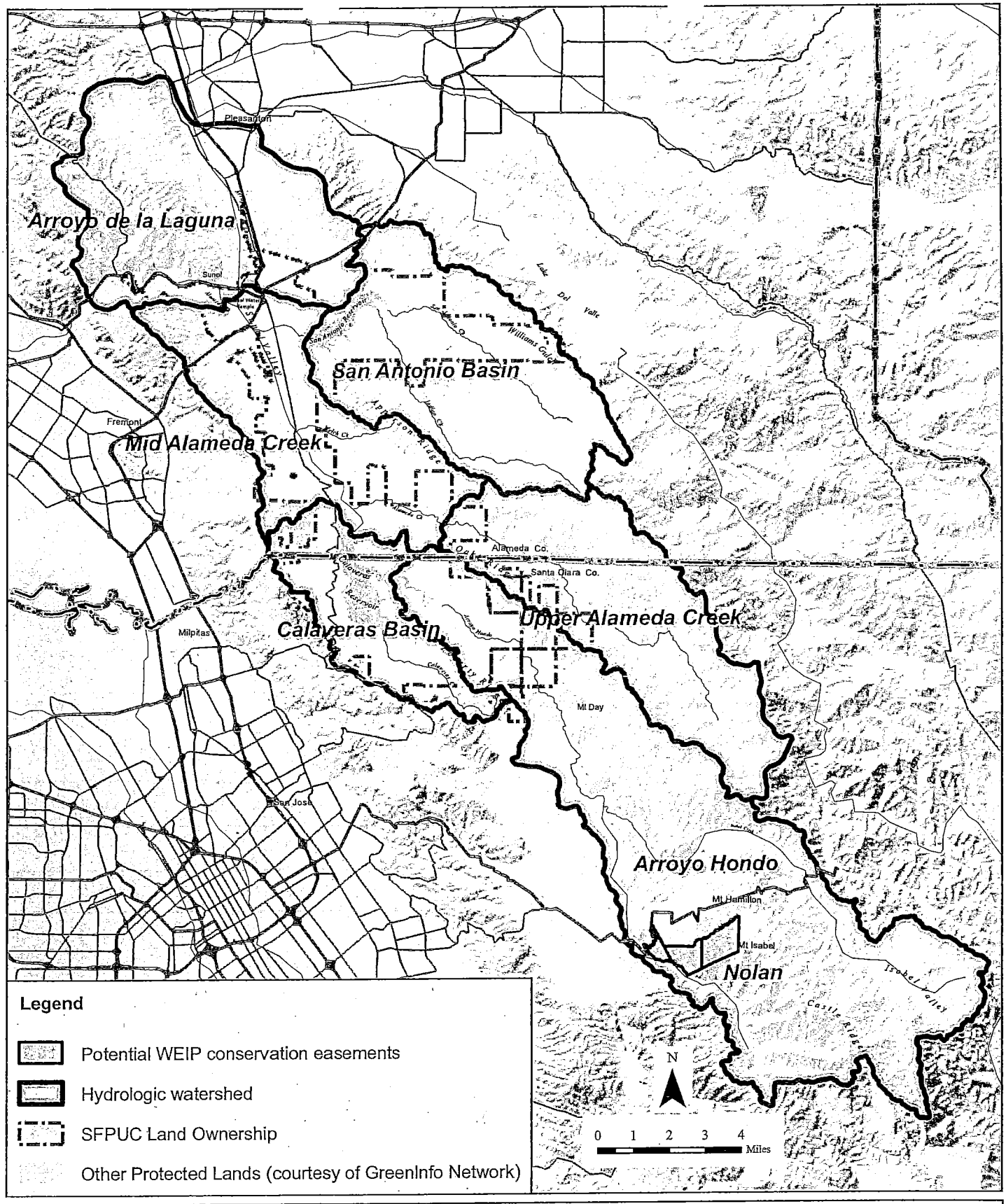
I do hereby certify that the above determination has been made pursuant to State and local requirements.

Irina P. Torrey, AICP, Manager
Bureau of Environmental Management
San Francisco Public Utilities Commission

cc: Bill Wycko, SF Planning Department, EP, ERO
Santa Clara County Clerk
Barry Pearl, SFPUC Bureau of Environmental Management
Tim Heffington, Santa Clara County Parks and Recreation Department
Mike Conner, Senior Project Director, The Nature Conservancy
Sue Hestor, Esq.
Exemption/Exclusion File

Attachments:

1) Location Map



Hetch Hetchy
Regional Water System
Services of the San Francisco Public Utilities Commission

Alameda Watershed

Nolan Property

J.Lukins 3-30-12

San Francisco
Water Power Sewer
Services of the San Francisco Public Utilities Commission

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2012 JUN -4 AM 10: 40

TO: **Angela Calvillo, Clerk of the Board of Supervisors** Ak

FROM: **Nathan Purkiss, 554-3404**

DATE: **6/4/12**

SUBJECT: **Resolution authorizing agreement to fund acquisition of Nolan Ranch Conservation Easement Endowment Agreement to fund compliance monitoring of the conservation easement.**

Please find the original and 4 copies of a Board of Supervisors resolution authorizing an agreement to fund acquisition of Nolan Ranch Conservation Easement Endowment Agreement to fund compliance monitoring of the conservation easement.

1. Board of Supervisor's Resolution.
2. Signed copy of SFPUC Commission Resolution 12-0088, and the SFPUC Agenda Item related to this resolution.
3. Funding and Acquisition Agreement
4. Endowment Agreement
5. Grant Deed of Conservation Easement
6. Certification of Categorical Exemption from Environmental Review

Please contact us if you need any additional information on these items.

Departmental representative to receive a copy of the adopted resolution:

Name: Nathan Purkiss
Phone: 554-3404

Interoffice Mail Address: 1145 Market Street, 7th Floor

Edwin M. Lee
Mayor

Anson Moran
President

Art Torres
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Vince Courtney
Commissioner

Ed Harrington
General Manager

File No. 120611

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*

Name of contractor:
TURNER CONSTRUCTION COMPANY

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.***

1) **Members of Board of Directors:** Peter Davoren, John DiCiurcio, Lou Salvatore, Martin Rohr, Frank Stieler
2) **CEO:** Peter Davoren, **CFO:** Karen O. Gould, **COO:** John DiCiurcio
3) None
4) None
5) None

Contractor address:
343 Sansome Street, Suite 500, San Francisco, CA 94104

Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contract: To be determined under the procedures set forth in the Resolution.

Describe the nature of the contract that was approved: Resolution 1) declaring an emergency under Administrative Code Section 6.60(A) relating to the June 20, 2012 fire at Pier 29; 2) approving emergency contracts entered into by the Port of San Francisco in accordance with Administrative Code Section 6.60; and 3) directing the Port of San Francisco to take all necessary and appropriate measures to perform repair work to Pier 29 in the most expeditious manner. Pursuant to the June 21, 2012 authorization, (i) the initial emergency work to mitigate the unsafe condition and repair utility facilities located in Pier 29 is being performed by Turner Construction Company, the Construction Manager/General Contractor (CM/GC) for the Cruise Terminal project being constructed at the adjacent Pier 27, on a time and materials basis at an estimated cost of approximately $1,300,000 as of June 29, 2012.

Comments:

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer) — Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) — Date Signed