This ORIGINAL document is the property of County of Santa Clara.

Return to:
Clerk of the Board
70 W. Hedding St., Floor 10
San Jose CA 95110

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 [cshaltheis@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: _____________________________
   George Shirakawa, President
   Board of Supervisors

Date: _____________________________
   MAY 22, 2012

Attest:

Lydia 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: ______________________________

Date: ______________________________
ATTACHMENT A
LEGAL DESCRIPTION AND PLAT

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follows:

PARCEL ONE:
Beginning at post marked L. H. No. 1 and C. P. No. 6 at the Southeast corner of Rancho Canada de Pala; running thence Northwesterly along the dividing line between said Rancho and fractional Section 16, in Township 7 South, Range 3 East, M.D.B. & M., to the West line of said Section 16; thence North along said West line to the North line of the South 1/2 of said Section 16; thence East along said North line to the center line of Sulphur Creek; thence Northeasterly along said center line to the East line of said Section 16; thence Easterly and Northeasterly, following the center line of Sulphur Creek, to the North line of Section 15 in said Township, thence Northeasterly and continuing along the center line of Sulphur Creek to the West line of Section 11 in said Township; thence South along said West line and along the West line of fractional Section 14 in said Township, the Northwesterly line of the Rancho Los Huecos; thence Southwesterly and along the said Northwesterly line of the Rancho Los Huecos 9,679.00 feet to the point of beginning.

EXCEPTING THEREFROM, the following described tract of land:
Beginning at the most Easterly corner of the Rancho Canada de Pala designated as CP No. 6 and running thence along the Northeasterly line of the said ranch North 29° West 3060.08 feet to an iron pipe; thence leaving said Rancho line, South 56° 14' East 375.33 feet to a 2" x 3" stake, (cross Sulphur Creek on this course); South 14° 55' East 199.78 feet to a 2" x 3" stake on the Easterly bank of Smith Creek; thence continuing along the Northeasterly bank of Smith Creek all stations being marked with 2" x 3" stakes, South 24° 55' East 371.21 feet, South 80° 06' East 296.59 feet, South 43° 50' East 266.28 feet, South 88° 47' East 364.56 feet, South 63° 18' East 320.06 feet, South 30° 55' East 210.72 feet, South 35° 07' East 411.78 feet, South 54° 58' East 291.95 feet, South 13° 15' East 122.47 feet, South 25° 52' East 228.63 feet and South 59° 24' East 148.82 feet to a 4" x 4" post on the Easterly bank of Smith Creek and in the Northwesterly line of the Rancho Los Huecos; thence along the Northwesterly line of the Los Huecos Rancho South 65° 20' West 1104.33 feet to the point of beginning.

PARCEL TWO:
Beginning at a 2" x 3" stake set on the Northeasterly line of Rancho Canada de Pala, distant thereon North 29° 00' West 3189.38 feet from a 3/4 inch iron pipe set at the Eastern most corner of said Rancho Canada de Pala on the Northwesterly line of the Rancho Los Huecos and from which point of beginning an iron standing in the fork of Sulphur and Smith Creeks bears South 29° 00' East 355.86 feet and a 48 inch white oak tree standing in the said Northeasterly line of the Rancho Canada de Pala bears North 29° 00' West 350.05 feet; thence from said point of beginning South 80° 12' West 172.08 feet to a 2" x 3" stake, South 69° 03' West 159.22 feet to a 2" x 3" stake, South 74° 33' West 256.63 feet to a 2" x 3" stake set on the Northerly bank of Smith Creek; thence along the Northerly bank of Smith Creek as fenced, South 85° 35' West 86.06 feet to a 2" x 3" stake, South 77° 46' 30" West 475.50 feet to a 2" x 3" stake, South 78° 01' 30" West 155.41 feet to a 2" x 3" stake, North 69° 59' 30" West 383.29 feet to a 2" x 3" stake, North 71° 18' 30" West 514.78 feet to a 2" x 3" stake, North 81° 24' West 208.93 feet to a 2" x 3" stake; thence leaving the Northerly bank of Smith Creek and running along said fence line, North 41° 13' 30" West 365.76 feet to a 2" x 3" stake, North 50° 37' West 356.57 feet to a 2" x 3" stake, North 58° 21' 30" West 142.12 feet to a 2" x 3" stake,

April 19, 2012 FINAL
North 56° 49’ West 260.66 feet to a 2” x 3” stake and North 36° 07’ West 259.72 feet to a 1/2 inch iron pipe in fence corner; thence leaving said fence line, South 44° 16’ West 63.25 feet to a 2” x 2” stake set flush at an angle point in the center line of Mt. Hamilton Road, as paved and traveled; thence along said center line of Mt. Hamilton Road for the following courses and distances with all angle points being marked with railroad spikes or iron pipes set flush in the pavement: North 28° 49’ West 452.27 feet, North 27° 50’ West 356.46 feet, North 35° 42’ West 614.18 feet, North 21° 48’ East 77.92 feet, North 79° 35’ East 96.84 feet, South 56° 58’ 30” East 165.13 feet, South 67° 38’ 30” East 175.10 feet, South 38° 21’ 30” East 207.76 feet, South 17° 03’ 30” East 207.75 feet, South 85° 32’ 30” East 347.52 feet, North 01° 27’ 30” West 339.92 feet, North 57° 55’ East 153.96 feet, South 80° 47’ East 262.73 feet, North 46° 04’ East 117.86 feet, North 83° 18’ 30” East 100.80 feet, North 06° 04’ West 332.39 feet, North 56° 12’ West 149.66 feet, North 36° 58’ 30” East 131.86 feet, North 87° 12’ 30” East 150.12 feet, North 54° 52’ 30” East 158.34 feet, North 81° 20’ East 114.52 feet, North 14° 29’ East 78.23 feet, North 42° 12’ West 178.45 feet, North 03° 56’ East 130.63 feet, North 31° 15’ West 128.63 feet, North 08° 27’ West 169.46 feet, South 83° 02’ West 82.31 feet, South 39° 33’ West 187.74 feet, South 73° 08’ West 82.20 feet, North 71° 40’ West 93.00 feet, North 27° 44’ West 218.42 feet, North 07° 10’ East 438.04 feet, North 34° 17’ East 129.43 feet, North 25° 39’ West 129.12 feet, South 51° 18’ West 130.64 feet, South 88° 31’ West 86.80 feet, North 50° 50’ West 184.76 feet, North 06° 18’ West 85.27 feet, North 44° 48’ East 184.61 feet, North 18° 01’ East 261.54 feet, North 08° 32’ East 132.20 feet, North 29° 05’ East 117.68 feet; thence continuing along said center line of Mt. Hamilton Road and its Northeasterly prolongation, North 39° 36’ East 184.43 feet to a 1 inch iron pipe set at the point of intersection of said prolongation with the said Northeasterly line of Rancho Canada de Pala; thence South 29° 00’ East along said last named line, 5,761.16 feet to the point of beginning.

PARCEL THREE:
Beginning at a 2” x 3” stake set on the Northeasterly line of Rancho Canada de Pala, distant thereon North 29° 00’ West 3,189.38 feet from a 3/4 inch iron pipe set at the Eastern most corner of said Rancho Canada de Pala on the Northwesterly line of the Rancho Los Huecos and from which point of beginning an iron bar standing in the fork of Sulphur and Smith Creeks bears South 29° 00’ East 355.86 feet and 48 inch white oak tree standing in the said Northeasterly line of the Rancho Canada de Pala bears North 29° 00’ West 350.05 feet, South 80° 12’ West 172.08 feet to a 2” x 3” stake, South 69° 03’ West 195.22 feet to a 2” x 3” stake, South 74° 33’ West 256.63 feet to a 2” x 3” stake set on the Northerly bank of Smith Creek; thence along the Northerly bank of Smith Creek as fenced, South 85° 35’ West 86.06 feet to a 2” x 3” stake, South 77° 46’ 30” West 475.50 feet to a 2” x 3” stake, North 78° 01’ 30” West 155.41 feet to a 2” x 3” stake, North 69° 59’ 30” West 383.29 feet to a 2” x 3” stake, North 71° 18’ 30” West 514.78 feet to a 2” x 3” stake, North 81° 24’ West 208.93 feet to a 2” x 3” stake and the true point of beginning of the tract of land to be described; thence from said true point of beginning South 81° 24’ East 208.93 feet to a 2” x 3” stake; thence at right angles South 09° 36’ West to a point in the center line of Smith Creek; thence Westerly along said center line of Smith Creek to a point which bears South 08° 36’ West from the true point of beginning; thence North 08° 36’ East to the true point of beginning.

PARCEL FOUR:
A portion of Section 16, Township 7 South, Range 3 East, M.D.B. & M. and a portion of the Rancho Canada de Pala described as follows:
Beginning at an iron pipe in the Northeasterly line of the Rancho Canada de Pala, distant thereon North 29° West 3060.08 feet from the most Easterly corner thereof designated as CP No. 6 in the patent, and running thence South 56° 14’ East 375.33 to a 2” x 3” stake (cross

April 19, 2012 FINAL
Sulphur Creek on this course); thence South 14° 53’ East 199.78 feet to a 2” x 3” stake on the Easterly side of Smith Creek; thence South 61° West to the center of Smith Creek; thence Northwesterly along the center of Smith Creek to the intersection thereof with the Northeasterly line of the Rancho Canada de Pala; thence continuing Northwesterly along the center line of Smith Creek to a point which said point bears North 29° West 129.30 feet; South 80° 12’ West 172.08 feet; South 69° 03’ West 159.22 feet and South 60 feet from the point of beginning; thence North 60 feet to a 2” x 3” stake; North 69° 03’ East 159.22 feet to a 2” x 3” stake; North 80° 12’ East 172.08 feet to a 2” x 3” stake; North 69° 03’ East 159.22 feet to a 2” x 3” stake; North 80° 12’ East 172.08 feet to a 2” x 3” stake and South 29° East 129.30 feet to the point of beginning.

PARCEL FIVE:
A right of way for the benefit of the above described parcels of land for all purposes of ingress and egress over the existing ranch road on land of grantor and beginning at the Mt. Hamilton Road at a point Westerly of Smith Creek and running Southerly along Smith Creek to the junction of Smith Creek and Sulphur Creek, and reserving to the grantor the right of ingress and egress over that portion of the above mentioned ranch road that extends into the hereinabove described Parcel Four for the purpose of vehicle turnaround and for servicing fences.

APN: 627-06-002
APN: 627-07-013
APN: 627-07-014
ATTACHMENT B
FORM OF CONSERVATION EASEMENT

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 unimpared 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

April 19, 2012 FINAL
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).

April 19, 2012 FINAL
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

April 19, 2012 FINAL
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.

April 19, 2012 FINAL
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

April 19, 2012 FINAL
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.

April 19, 2012 FINAL
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: ____________

A-1
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: _____________

A-1
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.

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

THE COUNTY’S INITIALS: ________________
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: ____________________

B-2
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 californiense*- 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
• **Black oak forest/woodland**
• Blue oak woodland
• **Blue oak-foothill pine woodland**
• Mixed montane chaparral
• Chamise chaparral
• Coastal sage scrub

THE COUNTY'S INITIALS: ________________

C-1
• 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 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.

**THE COUNTY’S INITIALS: _____________**

C-2
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.

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

THE COUNTY’S INITIALS: ________________

C-3
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 (graazing cattle, park users with permitted domestic animals) in a manner consistent with the 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 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.

THE COUNTY’S INITIALS: __________________

D-1
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 agrichemicals 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 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

**THE COUNTY’S INITIALS:** ______________

**D-2**
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, diskling, 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, diskling, cultivation, ripping, planting, sowing, irrigation, or any 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: ________________

E-1
EXHIBIT F

PROHIBITED PLANTS LIST

(__________________________  ____________________  ____________________ County)

<table>
<thead>
<tr>
<th>Plant Name</th>
<th>Scientific Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arundo or Giant Reed</td>
<td>Arundo donax</td>
</tr>
<tr>
<td>Tree of Heaven or Ailanthus</td>
<td>Ailanthus altissima</td>
</tr>
<tr>
<td>Ice Plant</td>
<td>Carpobrotis edulis</td>
</tr>
<tr>
<td>Pampas grass or jubata grass</td>
<td>Cortaderia jubata or C. selloana</td>
</tr>
<tr>
<td>Edible fig</td>
<td>Ficus carica</td>
</tr>
<tr>
<td>Himalayan Blackberry</td>
<td>Rubus discolor</td>
</tr>
<tr>
<td>Elm</td>
<td>Ulmus sp.</td>
</tr>
<tr>
<td>Mulberry (female plants)</td>
<td>Morus alba</td>
</tr>
<tr>
<td>Chinese pistachio</td>
<td>Pistacia atlantica or P. chinensis</td>
</tr>
<tr>
<td>English ivy or Algerian Ivy</td>
<td>Hedera helix or H. canariensis</td>
</tr>
<tr>
<td>Yellow star-thistle</td>
<td>Centurea solstitialis</td>
</tr>
<tr>
<td>Medusahead</td>
<td>Taeniatherum caput-medusae</td>
</tr>
<tr>
<td>Klamathweed</td>
<td>Hypericum perforatum</td>
</tr>
<tr>
<td>English walnut</td>
<td>Juglans regia</td>
</tr>
<tr>
<td>Black walnut</td>
<td>Juglans californica</td>
</tr>
<tr>
<td>Periwinkle</td>
<td>Vinca major</td>
</tr>
<tr>
<td>Privet</td>
<td>Ligustrum obtusifolium</td>
</tr>
<tr>
<td>Pepperweed</td>
<td>Lepidium latifolium</td>
</tr>
<tr>
<td>Bermuda Grass</td>
<td>Cynodon dactylon</td>
</tr>
<tr>
<td>Johnson Grass</td>
<td>Sorghum halepense</td>
</tr>
<tr>
<td>Barbed Goatgrass</td>
<td>Aegilops triuncialis</td>
</tr>
<tr>
<td>Jointed Goatgrass</td>
<td>Aegilops cylindrica</td>
</tr>
<tr>
<td>Licorice plant</td>
<td>Helichrysum petiolare</td>
</tr>
<tr>
<td>Bridal broom</td>
<td>Retama monosperma</td>
</tr>
<tr>
<td>French broom</td>
<td>Genista monspessulana</td>
</tr>
<tr>
<td>Spanish broom</td>
<td>Cytisus striatus</td>
</tr>
<tr>
<td>Portuguese broom</td>
<td>Spartium junceum</td>
</tr>
<tr>
<td>Scotch broom</td>
<td>Cytisus scoparius</td>
</tr>
<tr>
<td>Scarlet wisteria</td>
<td>Sesbania punicea</td>
</tr>
<tr>
<td>Cotoneaster</td>
<td>Cotoneaster lacteus or C. pannosus</td>
</tr>
<tr>
<td>Russian olive</td>
<td>Eleagnus angustifolia</td>
</tr>
<tr>
<td>Saltcedar, tamarisk</td>
<td>Tamarix sp.</td>
</tr>
<tr>
<td>Blue gum eucalyptus</td>
<td>Eucalyptus globulus</td>
</tr>
<tr>
<td>Perennial pepperweed</td>
<td>Lepidium latifolium</td>
</tr>
<tr>
<td>Tamarisk</td>
<td>Tamarix sp.</td>
</tr>
<tr>
<td>China Berry</td>
<td>Melia azedarach</td>
</tr>
<tr>
<td>Black Locust</td>
<td>Robinia pseudoacacia</td>
</tr>
</tbody>
</table>

Form Grazing Agreement 11.10.2010

THE COUNTY’S INITIALS: _________________________

E-2