



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 8-3-10

Approved

Date

8/10/10

Council District: 6, 7
SNI Area: N/A

SUBJECT: FUNDING AGREEMENTS WITH SANTA CLARA COUNTY OPEN SPACE AUTHORITY FOR THE THREE CREEKS TRAIL PROJECT

RECOMMENDATION

Pursue the following actions related to the Santa Clara County Open Space Authority (OSA) relative to the Three Creeks Trail project (Lonus Street to Highway 87 Bikeway):

1. Approval of a Funding Agreement for contribution by OSA to the City in the amount of \$2,000,000 for acquisition of real property for possible future development of the project;
2. Adopt a resolution authorizing the City Manager to negotiate and execute an additional Funding Agreement for contribution by OSA to the City in the amount of \$1,000,000 for acquisition of real property for possible future development of the project; and
3. Approval of a Conservation Easement to be recorded against real property acquired by City using funding from OSA pursuant to the two funding agreements above for the project.

EXCECUTIVE SUMMARY

This Council action results in the execution of funding agreements in the total amount of \$3,000,000 to support acquisition of parcels for future development of the Three Creeks Trail alignment between Lonus Street and Highway 87 Bikeway. The proposed Conservation Easements will require the City to develop and maintain the future trail in perpetuity and meet other conditions described in this memorandum.

BACKGROUND

In September 2000, the City Council adopted the Greenprint, a strategic plan for parks, trails, community facilities and recreational programs. The document depicted a vision for the Three Creeks Trail (formerly the Willow Glen Spur Trail) alignment along the former railway alignment, linking the Los Gatos Creek Trail, future Guadalupe River Trail, Highway 87 Bikeway and future Coyote Creek Trail. A map of the proposed Three Creeks Trail is attached to this memorandum as Attachment 1.

On September 21, 2004 (Item 5.2), the City Council authorized the City Manager to negotiate and execute a funding agreement for \$1,000,000 with the OSA for the acquisition of properties associated with the Three Creeks Trail project. The parties entered into a funding agreement in 2004 and that agreement initially expired on June 30, 2007, and was later extended to June 30, 2010.

On June 26, 2007 (Item 2.27), the City Council authorized the City Manager to negotiate and execute an additional funding agreement with the Santa Clara County Open Space Authority for \$1,000,000 for the Three Creeks Trail project.

On February 4, 2008, staff conducted a community meeting to provide information about development of the trail system. The presentation also discussed the current status of real property acquisition negotiations for the western alignment and an overview of challenges with pursuing a trail project along the eastern alignment. Several community members strongly advocated for acquisition and development of the entire proposed Three Creeks Trail, including the eastern alignment.

The City Manager formed a Focus Group in 2008 to study the technical challenges and develop a set of recommendations for acquisition and development of the trail. The group was staffed by participants from various City Departments, stakeholder agencies, and neighborhood representatives. The group reviewed potential challenges identified with development of the eastern alignment. On July 2, 2009, an Informational Memorandum was provided to the Council regarding the Focus Group findings.

On February 9, 2010 (Item 5.2), the City Council authorized the City Manager to submit grant applications as part of State Proposition 84 including \$2,000,000 for expansion of Bellevue Park. This project if funded would acquire a railway parcel along the eastern alignment of the Three Creeks Trail for possible park and trail improvements.

On July 26, 2010, City staff attended the OSA's Acquisition Subcommittee meeting. At this meeting, City staff provided a Trail Program update including information regarding the Three Creeks Trail acquisition effort. As a result of this meeting, the OSA's Acquisition Subcommittee recommended that the full OSA Board discuss the allocation of an additional \$1,000,000, for a total of \$3,000,000 to purchase lands along the western alignment. This is to be agendaized at the

August 26, 2010 OSA board meeting. This additional \$1,000,000 would come from the "80%" OSA funds, which are not specifically earmarked for City of San José projects.

ANALYSIS

The proposed Three Creeks Trail is envisioned to offer a cross town connection between the Los Gatos Creek, Guadalupe River, Highway 87 Bikeway and Coyote Creek Trail. The alignment is defined by land formerly used by Union Pacific Railway for rail transport. The former railway alignment travels through residential and commercial/industrial areas of the City and future development is complicated by intersecting and active railway lines, crossings at major arterial roadways and adjacency to industrial land uses. The purpose of proposed funding agreements with OSA is to acquire real property between Lonus Street and Minnesota Avenue.

The entire trail alignment is approximately 2.8 miles in length; and defined as the western alignment, from Lonus Street to Highway 87 Bikeway and the eastern alignment, from Highway 87 Bikeway to Coyote Creek), as depicted in the attachment.

Acquisition of parcels along the western and eastern alignments presents unique challenges. The 2008 Focus Group's final report found that the eastern alignment had a number of significant barriers that will make it extremely difficult for immediate development.

The western alignment is mostly along low density residential development with multiple access points. At grade crossings occur at low volume neighborhood streets, a signalized intersection at Willow Street/Bird Avenue and an unsignalized mid-block location along 4-lane arterial Minnesota Avenue. Staff believes that a viable trail alignment can be developed with a level of investment consistent with other recent trail projects and improvements within the public right of way that can be supported by the Department of Transportation.

The eastern alignment follows industrial and commercial uses, and includes a number of significant alignment challenges:

- Four active railway alignments along the eastern side of Highway 87;
- Undefined and possible future high speed rail improvements along the eastern edge of Highway 87;
- Monterey Highway's divided roadway that prevents legal mid-block crossings; and
- No anticipated significant changes to the predominantly industrial and commercial land uses as defined by the General Plan and current draft of the 2040 General Plan.

Staff is pursuing acquisition of the western alignment with funds including these OSA grants, and continues to investigate opportunities for the resources to support and develop the eastern alignment. As part of the adopted 2009 Greenprint, the City identified the continued development of the eastern alignment along the abandoned rail corridor as priority as resources are available.

Proposed Agreements with OSA

Both funding agreements support acquisition of parcels along the western alignment (between Los Gatos Creek and Highway 87 Bikeway).

- The \$2,000,000 agreement permits renewal of a prior \$1,000,000 agreement (September 21, 2004, Council Item 5.2) and access to an additional \$1,000,000 (June 26, 2007, Council Item 2.27). The funds are sourced from OSA monies allocated to the City of San José (20% funds).
- The \$1,000,000 agreement, if approved by the OSA Board on August 26, 2010, represents a new funding opportunity. The funds are also sourced from the OSA, but are from the OSA's 80% funds that are not allocated to a specific agency.

Both funding agreements require the following commitment and assurances from the City:

- City must operate and maintain the trail, once constructed, that is acquired with OSA funding in perpetuity.
- City must expend funding by an agreed to deadline (the \$2 million agreement expires on July 31, 2011, the \$1,000,000 agreement's expiration deadline will be negotiated by the City Manager). If City does not expend the funds by the required deadline, City may need to refund the funds to OSA.
- City must install a permanent sign once the trail is developed recognizing OSA contribution to the project.
- City must record a Conservation Easement against any property acquired with OSA funding as discussed in detail below. Both funding agreements would have a companion Conservation Easement, which states identical terms and conditions.

Staff will seek to acquire select available parcels along the western alignment with funding available through this Council action combined with other existing funding sources:

Assessor's Parcel Number (APN)	Square Footage	Starting Point	Ending Point
264-11-101 & northern portion of 264-11-100	30,858	Lonus St	Los Gatos Crk
264-11-100 southern portion	60,004	Los Gatos Crk	Coe Av
264-54-067	49,778	Coe Avenue	Broadway Av
264-56-108	63,522	Broadway Ave	Willow St.
429-01-051	17,000	Willow St.	Bird Av
434-01-059	123,705	Bird Ave	400' n/o Minnesota Av
Minnesota Avenue to Guadalupe River	Already developed as single family housing. Trail improvements have been installed. A recreational easement exists for future linkage of the cul-de-sac to the nearby railway bridge spanning the river.		
Guadalupe River to Highway 87 Bikeway	Properties purchased but undeveloped. Trail improvements may be constructed with future residential developments.		

Conservation Easement

Recently, the OSA Board directed its General Manager to include conservation easements in all funding agreements. A conservation easement is a legally enforceable land preservation agreement recorded against real property for the purposes of retaining land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. OSA is requiring the City to record a Conservation Easement against any property that is acquired with this funding source. A copy of the Conservation Easement that is required to be recorded is attached to this memorandum as Exhibit 2. The table below sets forth a summary of the provisions in the Conservation Easement and capacity for City to comply:

Provision	Compliance
Land must be used in perpetuity as open space.	Per the Council adopted Greenprint, it is the City's vision to develop the land as a trail and City would be required under the Funding Agreement and Conservation Easement to continue its use as a trail in perpetuity after development.
No structures may be erected without prior written authorization of the OSA General Manager.	Future trail development does not contemplate structures. Trail development would be consistent with other City trails and include a paved trail surface, with associated striping, signage and landscaping. City will need to get OSA permission to construct any structures.
No mitigation may occur on the land without prior written authorization of the OSA General Manager.	The majority of the site does not appear to be suitable for mitigation. In its current state, there appears to be no habitat present that would require mitigation.
Property may not be used as security for debt.	City will need to comply with this provision.
Property may not be transferred without prior written authorization of the OSA General Manager.	An assessment has been performed as part of the due diligence for the possible purchase of certain real property and much of the land has no development potential. In the event City would like to transfer or sale the property in the future, City will need to get authorization from OSA.
Interest and title in the property will vest in OSA if City violates and terms and conditions of the Conservation Easement.	City intends to develop the trail and comply with all terms and conditions of the Conservation Easement. In the event that City does not comply with the terms and conditions of the easement, interest and title will vest with OSA.

Staff had several discussions with OSA about removing the Conservation Easement requirement. OSA has indicated that it will not provide funding unless the City agrees to terms and conditions in the grant agreement and to record the Conservation Easement against any property City acquires with funding from OSA. Therefore, staff has outlined the risks associated with the requirements of the Conservation Easement in this memorandum and believes the City can

comply with the strict requirements of the proposed agreement and easement and recommends approval of both.

EVALUATION AND FOLLOW-UP

Staff will provide an additional memorandum to the Council for approval of acquiring the properties to form the western alignment of the Three Creeks (Willow Glen Spur) Trail.

POLICY ALTERNATIVES

Alternative #1: Do Nothing

Pros: Approach does not require an investment of staff time for administration of funds.

Cons: Sufficient City financial resources are not available for acquisition of land necessary for the Three Creeks Trail's development. Consolidation of funding agreements and extension of terms must occur in order to have access to \$2,000,000 in OSA funds.

Reason for not recommending:

Approach is inconsistent with current City Council policy to promote development of the trails network.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

On July 26, 2010, City staff attended the OSA's Acquisition Subcommittee meeting. At this meeting, City staff provided a Trail Program update including information regarding the Three Creek Trail acquisition effort. As a result of this meeting, the OSA's Acquisition Subcommittee recommended that the full OSA Board discuss the allocation of an additional \$1,000,000, for a total of \$3,000,000 to purchase lands along the western alignment.

COORDINATION

This project has been coordinated with City Attorney's Office, City Manager's Budget Office, and General Services Department.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section. Should in the future the Council appropriate funds for construction, the project will spur construction spending in our local economy.

Securing funds for acquisition of land for future trail development is consistent with the Greenprint-defined goal of creating a 100-mile trail network and the Green Vision objective of completing the network by 2022.

COST IMPLICATIONS

Currently, funding has only been identified for the purchase of land for the Three Creeks Trail project. Upon successful acquisition of the necessary properties, staff will investigate and recommend funding sources to the City Council for the design and construction of a trail. The intent is to secure parcels for a trail that is up to 1.1 miles in length.

Upon development of trail improvements, the trail will be added to the City's Trail Inventory and on-going operating and maintenance funding will be needed. Annual funding for maintenance costs is anticipated to be \$108,455 for the 1.1-mile alignment (from Lonus Street to Highway 87 Bikeway) based on current maintenance estimates. This figure is higher than typical trail projects because several sections may include park-like landscaping and other features. Annual Park Ranger funding is anticipated to be \$2,420/year. At this early date, it is difficult to project completion dates and when this funding will be required. The 2011-2015 General Fund Forecast (released on February 28, 2010) included funding for 3.3 miles of new trail each year.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the agreement recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Contract	2010-2011 Proposed Budget Page*	Last Budget Action (Date, Ord. No.)
Current Funding Available						
375	6054	TRAIL: Three Creeks Land Acquisition	\$621,000		V-487	6/29/10, Ord. No. 28765
384	5950	TRAIL: Three Creeks Land Acquisition	\$1,310,000**		V-371	6/29/10, Ord. No. 28765
391	5283	TRAIL: Three Creeks Land Acquisition	\$1,165,000***		V-444	6/29/10, Ord. No. 28765
Total Current Funding Available			\$3,096,000			
Future Additional Funding						
TBD	TBD	TRAIL: Three Creeks Land Acquisition	\$1,000,000****			
TOTAL PROJECT FUNDING			\$4,096,000			

* The 2010-2011 Capital Budget and the implementing appropriation ordinance were approved by the City Council on June 29, 2010.

** Includes \$800,000 in Prop 40 – 2002 Parks Bond Act, Roberti Z-Berg-Harris (RZH) Block Grant funds

*** Includes \$1.0 million in OSA grant funds.

**** Additional OSA funding upon execution of a single funding agreement for an additional \$1.0 million contribution.

CEQA

CEQA: Exempt, PP02-12-370.



ALBERT BALAGSO
 Director of Parks, Recreation
 and Neighborhood Services

HONORABLE MAYOR AND CITY COUNCIL

08-03-10

Subject: **OSA Agreements for the Three Creeks Trail Project**

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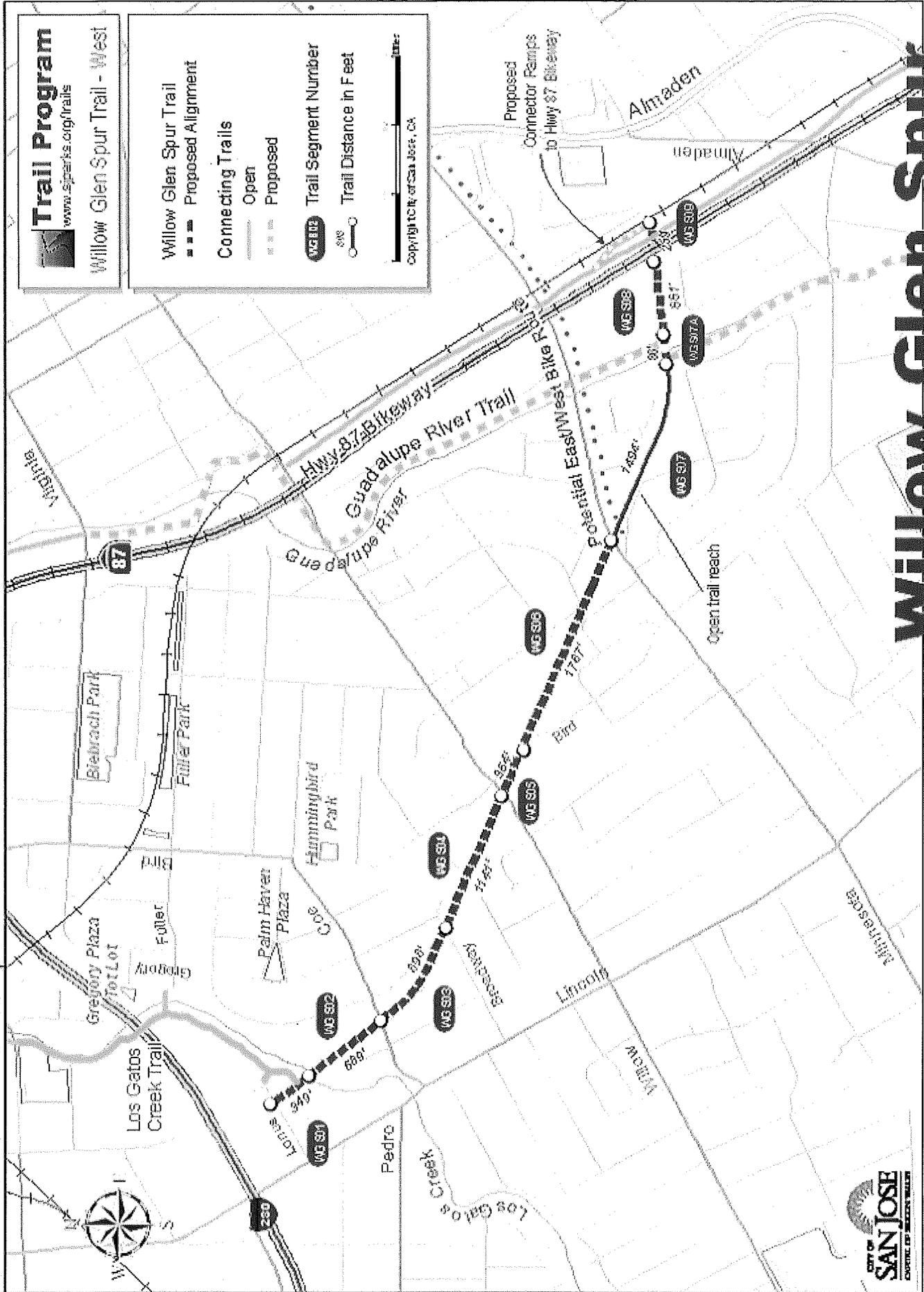
Attachments:

1: Map of Three Creeks Trail

2: Proposed Conservation Easement

For questions please contact Matt Cano, Acting Deputy Director, at (408) 535-3580

Attachment A



Willow Glen Spur

June 2010



[Exhibit B is the Santa Clara County Open- Space Authority's (Authority) Model Conservation Easement for Deed Restrictions for the 20% Program Funds for use in participating jurisdictions' acquisition of open space. The deed conveying the real property to the locality must reference and incorporate Exhibit A (or equivalent name). Any variation from the Model Conservation Easement for Deed Restrictions should only be made with prior approval from Authority's general counsel. Exhibit B shall be attached to the deed when recorded.]

EXHIBIT B CONSERVATION EASEMENT

In reference to the property or properties conveyed by the Grant Deed between [*property owner*] ("Grantor"), and the [*participating jurisdiction*], its successors and assigns dated [*INSERT*]:

A. RECITALS

WHEREAS, the Santa Clara County Open-Space ("Authority") and the [*Participating Jurisdiction*] ("Grantee") entered into a Funding Agreement ("Agreement") dated [*INSERT*], to assist funding Grantee's acquisition of the real property, as described in the Grant Deed attached hereto and hereby incorporated by reference ("Property"); and

WHEREAS, the Authority has assisted with Grantee's acquisition of the Property for the purposes of preserving, protecting and managing, for the use and enjoyment of all people, a well-balanced system of urban and non-urban areas of outstanding scenic, recreational and agricultural importance;

WHEREAS, California Civil Code Section 815.1 defines "conservation easement" as any limitation in a deed, will or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition; [*Note here about recent activities – for instance some parcels will not be Ag.*]

WHEREAS, it is Grantee's intention that the limitations set forth below, shall run with the land and be binding on Grantee, its successors and assigns in perpetuity;

NOW, THEREFORE, the grant is made subject to the following limitations:

B. LIMITATIONS

1. Restrictions. Pursuant to Civil Code Section 815 et seq., Authority policy and the Agreement, the following restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by Grantee:

a. *Permissible Uses.* The Property shall be dedicated and maintained for open space and recreation, and be open to the public, in perpetuity.

b. *Structures.* No new structures or improvements shall be erected on the Property without written approval of the Authority, as provided through the General Manager, in which case the facility shall only be a public facility related to a designated open space or recreational use, or appurtenant thereto.

c. *Mitigation.* The Grantee shall not use or allow the use of any portion of the Property for mitigation without the written permission of the Authority's General Manager. Absent such permission, the Property shall not be available to count toward satisfying any open space or preserved land requirements as stipulated under applicable municipal land use laws, ordinances, or codes. Furthermore, Grantee may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under applicable law. The terms of this restriction shall be perpetual and it shall be a covenant running with the land. In providing permission under this subsection, the General Manager may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Authority until the Authority has been fully compensated for all of its past, present and future costs with respect to the Property, including, but not limited to, staff monitoring costs and acquisition costs at fair market value as of the time the mitigation is to begin.

d. *Mortgage only with approval.* The Property (including any portion of it or interest in it) may not be used as security for any debt without written approval of the Authority, through its General Manager.

e. *Transfer only with approval.* The Property (including any portion of it or interest in it) may not be transferred without written approval of the Authority, through its General Manager.

2. Covenants and Conditions. Pursuant to Civil Code Section 815 et seq., Authority policy and the Agreement, the following covenants and conditions shall apply in perpetuity to the Property described in the attached deed and acquired by Grantee:

a. *Run with the Land.* The restrictions, covenants and conditions set forth herein shall run with the land and bind the Property in perpetuity.

b. *Binding on Successors.* The restrictions, covenants and conditions set forth herein shall, pursuant to its terms, inure to the benefit of the Authority, and bind the Property, Grantee and its successors and assigns.

c. *Recordation.* This instrument shall forthwith be recorded in the Office of the Recorder of County of Santa Clara, California.

d. *Access/Right to Inspect.* The Authority, its representatives and assigns shall have reasonable access to the Property to monitor compliance with the restrictions, covenants and conditions set forth herein.

e. *Dissolution of Grantee.* If the existence of the Grantee ceases for any reason or if any of the restrictions, covenants or conditions stated herein are violated, all of the Grantee's rights, title and interest in the Property shall automatically vest in the Authority for the benefit of the Authority, or its successors, upon acceptance by the Authority.

f. *Eminent Domain.* The Grantee shall promptly notice the Authority of any eminent domain proceeding affecting the Property, or any portion of it, and shall continuously provide the Authority with copies of all relevant documents. If the Grantee receives any compensation for the Property taking, whether by agreement, settlement or court order, then the Grantee shall promptly pay to the Authority a share of the proceeds proportionate to the Authority's contribution toward the purchase price of the Property.

C. ENFORCEMENT

1. General. The Authority shall have the right and power to enforce the restrictions, covenants and conditions set forth herein, by any proceedings at law or in equity, against the Grantee or any person or persons violating or attempting to violate any restriction, covenants and/or condition set forth herein; to restrain violations; to require specific performance and/or to recover damages.

2. Procedure. If the Authority determines that Grantee is in violation of the restrictions, covenants and conditions set forth herein or that a violation is threatened, the Authority shall give written notice to Grantee of such violation and demand corrective actions sufficient to cure the violation, and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the permitted uses of the restrictions, covenants and conditions set forth herein, to restore that portion of the Property so injured. If Grantee fails to cure the violation within thirty (30) days after receipt of notice thereof from the Authority, or under circumstances where the violation cannot reasonably be cured

within a thirty day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Authority may bring an action at law or equity in a Court of competent jurisdiction to enforce the limitations, restrictions, covenants and conditions set forth herein, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction to recover any damages to which it may be entitled for violation of the restrictions, covenants and conditions set forth herein, or injury to any public interest protected by the restrictions, covenants and conditions set forth herein, and to require the restoration of the Property to the condition that existed prior to such injury.

3. Relief. Grantee agrees that the Authority's remedies at law for any violation of the restrictions, covenants and/or conditions set forth herein are inadequate, and that the Authority shall be entitled to the injunctive relief described in the immediately preceding paragraph 2, above, both prohibitive and mandatory, in addition to such other relief to which the Authority may be entitled, including specific performance of the restrictions, covenants and conditions set forth herein, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Authority's remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

4. Cost(s) of enforcement. Any costs incurred by the Authority in enforcing the restrictions, covenants and conditions set forth herein against Grantee, its successors and/or assigns including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantee's violation of the restrictions, covenants and conditions set forth herein shall be borne, joint and severally, by Grantee, its successors and/or assigns.

5. No Waiver. The failure by the Authority to enforce any restriction, covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter.

[GRANTEE]
a Municipal Corporation

[City Manager]

Date: _____

APPROVED AS TO FORM:

Deputy City Attorney
