



Midpeninsula Regional  
Open Space District

R-13-45  
Meeting 13-13  
June 12, 2013

## AGENDA ITEM 5

### AGENDA ITEM

Adoption of a Resolution Accepting a State Coastal Conservancy Grant of \$1,000,000 to Implement Portions of the Mount Umunhum Environmental Restoration and Public Access Project at Sierra Azul Open Space Preserve

### GENERAL MANAGER'S RECOMMENDATIONS

1. Adopt the resolution (Attachment 1) accepting a State Coastal Conservancy Grant of \$1,000,000 from Proposition 84 Funds to Implement Portions of the Mount Umunhum Environmental Restoration and Public Access Project (Project) at Sierra Azul Open Space Preserve.
2. Adopt the Grantee List of Assurances (Attachment 2) assuring and certifying that the District will comply with Conservancy regulations, policies, and requirements as they relate to the acceptance and use of Conservancy funds for this Project.
3. Approve conceptual expenditure and timeline of future funds in the amount of \$381,000 from the District as matching funds for the Project, for a total District fiscal match of \$1,881,000, including funds already spent to date plus funds previously approved by the Board of Directors (Board) to support the Project (Attachment 3).
4. Approve designation of existing Barlow Road and new trail construction to the summit of Mount Umunhum together as a new spur of the Bay Area Ridge Trail (Attachment 4).

### SUMMARY

The State Coastal Conservancy (Conservancy) recently authorized a grant of \$1,000,000 from Proposition 84 funds to Midpeninsula Regional Open Space District (District) for the Project (Attachment 5). The grant would fund construction of the staging area at Bald Mountain, a connecting trail to the summit of Mount Umunhum, and summit area amenities to support public access (Attachment 3). The connecting trail, together with the existing Barlow Road, would become a spur of the Bay Area Ridge Trail. If approved, construction would commence in 2014 with all work completed by April 2017. This grant does not include funds to improve either Mt. Umunhum Road to support public vehicular access to the summit of Mount Umunhum or the radar tower, a well-known residual feature of the former Almaden Air Force Station (AFS) which once occupied the summit of Mount Umunhum.

## DISCUSSION

The Project is the result of nearly three years of public input, preliminary design, and environmental analysis to clean up and restore the former Almaden AFS. The Project is designed to protect sensitive habitat, is consistent with locally adopted plans. It will improve public access by constructing the following:

- A staging area and spur of the Bay Area Ridge Trail to the summit of Mount Umunhum;
- Visitor facilities at the summit including an ADA-accessible loop trail;
- Observation and reflection areas;
- Picnic tables, and interpretive signage describing the region’s historic, cultural, and natural history (Attachment 3).

### Project Support

The Bay Area Ridge Trail Council (Ridge Trail) continues to provide support for this Project, most notably the new trail construction that would become a spur of the Ridge Trail. Support was also provided through the District’s congressional legislators; Congressman Mike Honda, Congresswoman Anna Eschoo and Congresswoman Zoe Lofgren signed a letter stating their full support of the Project and its funding partners. The District has enjoyed strong support from these partners since the beginning of the Project in its mission to clean up and restore the former Almaden AFS for safe public use.

## PROJECT SCHEDULE

District and Conservancy staff developed a preliminary schedule of tasks and milestones for the Project with the goal of opening the summit to the public by spring 2017. Design work is already in the final stages for the staging area at Bald Mountain and trail to the summit. These tasks are not reimbursed by the Conservancy, but were included in Planning Department’s FY2013-14 Action Plan and would form a portion of the District’s match.

The estimated preliminary project schedule overview is shown below, which would allow initial public access to the summit in 2017:

Ongoing 2013	Design for staging area at Bald Mountain Design for trail to summit
Summer 2013	Permitting for first portion of trail to summit
Fall 2013	Permitting for staging area at Bald Mountain
Spring 2014	Construction of first portion of trail to summit (built by staff)
Summer 2014	Construction of staging area at Bald Mountain (built by contractors) Design and permitting for summit area amenities
Fall 2015/16	Construction of summit area amenities (built by contractors) Construction of last portion of trail to summit
Spring 2017	Initial public access to summit

## **FISCAL IMPACT**

District and Conservancy staff developed a preliminary budget for the Project, identifying division of tasks and associated cost contribution by each partner (Attachment 3). These costs do not reflect in-kind services provided by the District (e.g. staff and equipment costs). If the Board concurs with this budget, it would commit the District to further expenditures of \$381,000 to implement the tasks under this agreement, for a total District match of \$1,881,000 for the Project. Design work for the staging area and trail are already underway and funds for this work were included in Planning Department's FY2013-14 Action Plan. If the grant is accepted by the District, these costs would form a portion of the District's match.

### **District Cost Match**

The cost match of \$1,881,000 of District funds for this grant would include improvements previously discussed and approved or approved-in-concept by the Board during the series of public meetings for the Project in 2011 and 2012 (Attachment 3), including:

- a) Work previously accomplished since 2010, including planning and environmental review, which the District already funded in previous fiscal years;
- b) Current ongoing work (e.g. design and permitting for the staging area at Bald Mountain and trail to the summit of Mount Umunhum);
- c) Commitments previously made by the Board to support the Project (e.g. interim radar tower repairs); and
- d) Future work needed for minimal public access improvements at the summit.

The expenditure of future funds in the amount of \$381,000 from the District for the Project would be for the summit area amenities (see Attachment 3, green highlights):

- Temporary parking area with parking stops for limited permit-only vehicle access;
- Interpretive displays (40% of total cost);
- Double vault toilet;
- Professional services (consultants: landscape architect, engineer, engineering geologist);
- Contingency for design and construction

## **BOARD COMMITTEE REVIEW**

This agenda item was reviewed and approved for forwarding to the full Board by the Planning and Natural Resources Committee at their meeting on May 21, 2013.

## **PUBLIC NOTICE**

Public notice of this Agenda Item was provided per the Brown Act. No additional notice is required.

## **CEQA COMPLIANCE**

Staff completed an Environmental Impact Report for the project, which the District's Board of Directors adopted on October 17, 2012. A Notice of Determination was filed with the State Clearinghouse and Santa Clara County Clerk Recorder on October 23, 2012.

## **NEXT STEPS**

If the Board signs the resolution accepting funds, staff will continue to work with Conservancy staff to implement all Project phases. Planning and Public Affairs staff will discuss a groundbreaking and/or grand opening ceremony for one or more elements of the project.

### Attachment(s)

1. Resolution accepting funds
2. Grantee list of assurances
3. Preliminary budget
4. Map of Conservancy-funded portion of project and Ridge Trail spur
5. Agreement between Conservancy and District

### Responsible Department Head:

Meredith Manning, Co-Acting Planning Manager

### Prepared by:

Meredith Manning, Co-Acting Planning Manager

### Contact Person:

Same

### Graphics prepared by:

Alex Roa, Planner I

**ATTACHMENT A**

**RESOLUTION NO. 13-XX**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING THE GRANT OF FUNDS FROM THE STATE COASTAL CONSERVANCY FOR MOUNT UMUNHUM ENVIRONMENTAL RESTORATION AND PUBLIC ACCESS**

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WHEREAS, the Legislature of the State of California has established the State Coastal Conservancy (“Conservancy”) under Division 21 of the California Public Resources Code, and has authorized the Conservancy to award grants to public agencies and nonprofit organizations to implement the provisions of Division 21; and

WHEREAS, the Conservancy awards grants for projects that it determines are consistent with Division 21 of the Public Resources Code and with the Conservancy’s Strategic Plan and that best achieve the Conservancy’s statutory objectives, in light of limited funding; and

WHEREAS, Midpeninsula Regional Open Space District (“applicant”) has applied for Conservancy grant funding for Mount Umunhum Environmental Restoration and Public Access (“the project”); and

WHEREAS, the Conservancy encourages applicants for grant funding to certify through a resolution the applicant’s approval of the application and of certain listed assurances at the time of submission of an application to the Conservancy for an award of grant funds.

NOW, THEREFORE, be it resolved that the applicant hereby:

1. Approves the filing of an application for funding by the Conservancy.
2. Agrees to the List of Assurances, attached as Exhibit 1.
3. Has or will have sufficient funds to complete and, following completion, to operate and maintain any property acquired under the project or to operate and maintain any facilities funded as part of the project for a reasonable period, not less than the useful life of the facilities.
4. Agrees to provide any funds beyond the Conservancy grant funds necessary to complete the project.
5. Authorizes any of the following named officers or employees of the applicant [or: any person holding any of the following positions with the applicant] to act as a representative of the applicant and to negotiate and execute on behalf of the grantee all agreements and instruments necessary to comply with the Conservancy's grant requirements, including, without limitation, the grant agreement: Stephen E. Abbors, General Manager.

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## ATTACHMENT 2

### List of Assurances

The applicant has applied for a grant of funds from the California State Coastal Conservancy with respect to a proposed project. The applicant hereby assures and certifies that it will comply with Conservancy regulations, policies, and requirements as they relate to the acceptance and use of Conservancy funds for this project. The applicant further gives assurance and certifies with respect to the proposed grant that:

1. It possesses legal authority to apply for the grant, and to finance or acquire property or to finance and construct any proposed facilities, as proposed; that, where appropriate, a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of an application, and authorizing one or more persons as the official representative(s) of the applicant to act in connection with the application and to provide additional information that may be required.
2. It will have sufficient funds available to meet its own share of the cost for the project that has been proposed for grant funding. Sufficient funds will also be available when the project is completed to assure the effective operation and maintenance of any real property acquired or facilities constructed under the proposed grant for the purposes for which the funding was provided.
3. It holds or will hold sufficient title, interest, or rights in the property on which any project work will occur to enable it to undertake lawful development and construction of the project. (Documentation may be requested by the Executive Officer of the Conservancy.)
4. It will not dispose of or encumber its title, interest, or other rights in the property acquired or in the site and facilities constructed under the proposed grant, except as permitted by the Conservancy.
5. It will give the Conservancy, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the Conservancy's grant.
6. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the Conservancy that funds have been approved, and the project will be carried to completion with reasonable diligence.
7. It will, where appropriate, comply with the requirements of the State Government Code 7260 et seq., which provides for equitable treatment and relocation assistance for persons displaced by eminent domain.
8. It will, where appropriate, comply with the requirements of the California Environmental Quality Act.
9. It will comply with all requirements imposed by the Conservancy concerning special provisions of law, and program requirements.

Attachment 3. Conceptual costs associated with Coastal Conservancy Grant for Mount Umununhum Project

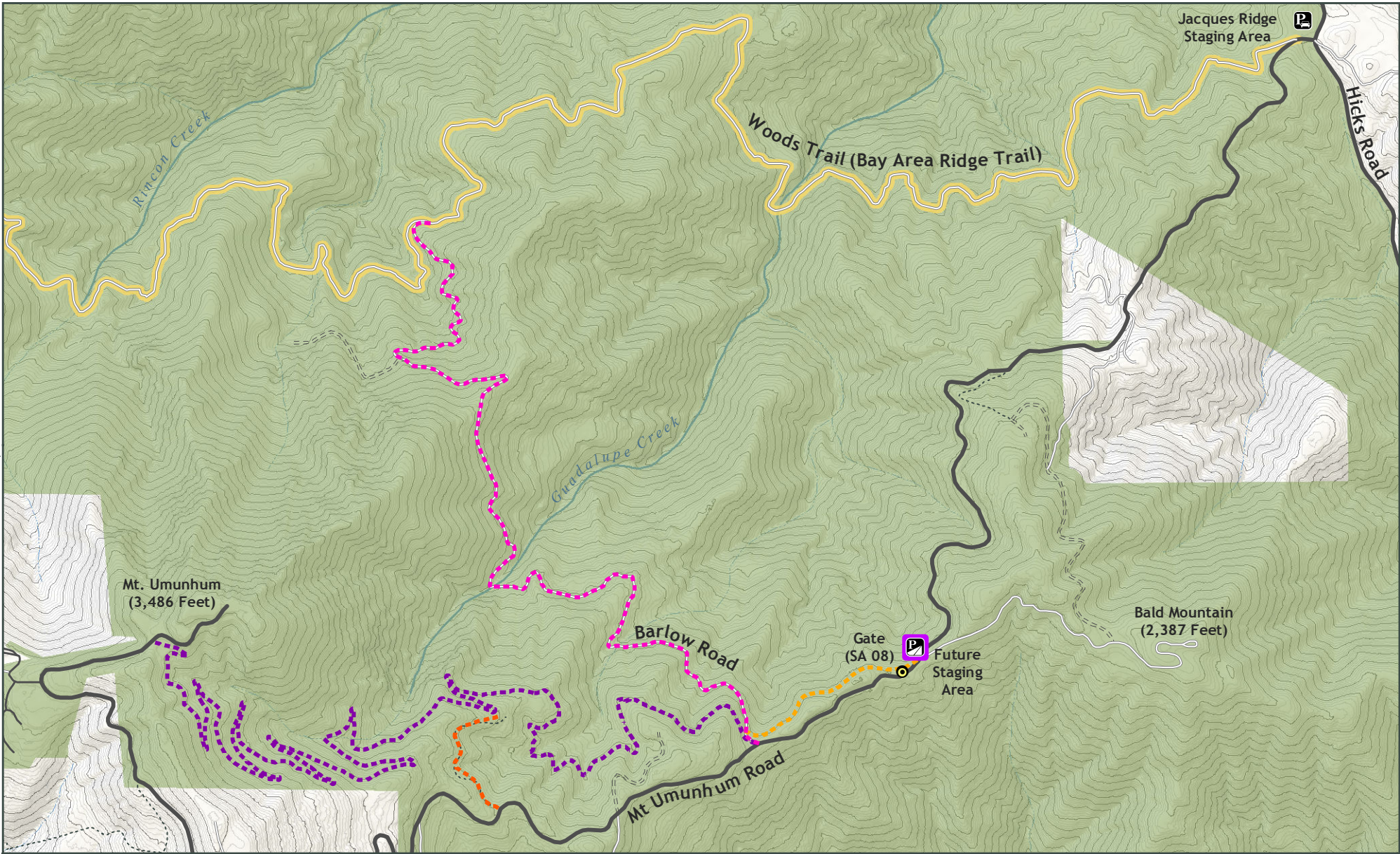
Action / Item	MROSD (\$)	Coastal Conservancy (\$)	Combined (\$)
<b>Project Planning and Site Preparation</b>			
Conceptual design, planning, CEQA	650,000	-	650,000
Rough grade summit area (post demolition)	242,000	-	242,000
Short-term structural/life safety repairs to radar tower	415,000	-	415,000
<b>Sub total</b>	<b>1,307,000</b>		<b>1,307,000</b>
<b>Bald Mtn Staging Area and Trail</b>			
Biotic/cultural/geologic assessment	13,000	-	13,000
Design / Engineering, Staging area & Trail	150,000	-	150,000
Permitting, Staging area and Trail	30,000	-	30,000
Construction, Staging area and Trail	-	370,000	370,000
Amenities (toilet, signage) Staging area/Trail	-	100,000	100,000
<b>Sub total</b>	<b>193,000</b>	<b>470,000</b>	<b>663,000</b>
<b>Summit Facilities</b>			
Temporary staging area (parking stops)	1,200	-	1,200
Summit court and ADA Trail		66,000	66,000
Elevational summit trail and viewpoint		20,000	20,000
Ceremonial circle		31,500	31,500
Benches and picnic tables		35,000	35,000
Interpretive displays	25,000	62,500	87,500
Park and trail signs		10,000	10,000
Vault toilet (1 double)	80,000	-	80,000
Shade structure		30,000	30,000
Restoration plantings, irrigation, maintenance		250,000	250,000
<b>Sub total</b>	<b>106,200</b>	<b>505,000</b>	<b>611,200</b>
<b>Soft Costs for Summit Facilities</b>			
Professional services (20%)	122,000		122,000
Design and construction contingency (25%)	152,800		152,800
Permitting, summit area amenities		25,000	25,000
<b>Sub total</b>	<b>274,800</b>	<b>25,000</b>	<b>299,800</b>
<b>Grand Total</b>	<b>\$ 1,881,000</b>	<b>\$ 1,000,000</b>	<b>\$ 2,881,000</b>

Funds spent in previous fiscal years (\$650,000)

Funds included in FY 2013-14 budget or previous commitment by Board












Funds requested to be committed for future Project match (\$381,000)

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### Attachment 4: State Coastal Conservancy Grant Funded Projects

*A Portion of the Mount Umunhum Environmental Restoration and Public Access Project*

- |  |   |
|--|---|
|  MROSD Preserve   |  Trail                   |
|  Current Bay Area Ridge Trail (BART)                                     |  Minor Unpaved Road      |
|  Trail to be Constructed 2013/14, Proposed as Part of BART (3.35 miles) |  Unmaintained Road Width |
|  Barlow Road, Existing and Proposed as Part of BART (1.94 mi)           |  Minor Paved Road        |
|  Access to trail, for Maintenance and Patrol (0.25 miles)               |  Important Road          |
|  Trail to be Constructed 2014/15 (0.34 miles)                           |   |

Midpeninsula Regional  
Open Space District  
(MROSD)  
May, 2013



Feet  
0 1,550 3,100

Geographic Coordinate System: CS\_North\_American\_1983  
Datum: D\_North\_American\_1983

MtUmSummitTrail\_SCC\_Grant\_Acceptance.mxd

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



**STANDARD AGREEMENT**

Std. 2 (Grant - Rev 08/08)

AGREEMENT NUMBER <b>12-080</b>	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO. <b>94-2231873</b>	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE <b>Executive Officer</b>	AGENCY <b>State Coastal Conservancy</b>	, hereafter called the Conservancy, and
GRANTEE'S NAME <b>Midpeninsula Regional Open Space District</b>		, hereafter called the Grantee.

The Grantee, for and in consideration of the covenants, conditions, agreements, and stipulations of the Conservancy hereinafter expressed, does hereby agree as follows:



**SCOPE OF AGREEMENT**


Pursuant to Chapter 4.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy (“the Conservancy”) hereby grants to the Midpeninsula Regional Open Space District (MROSD) (“the grantee”) a sum not to exceed \$1,000,000 (one million dollars), subject to the terms and conditions of this agreement. The grantee shall use these funds to complete the following project (“the project”) at Mount Umunhum in Santa Clara County, as shown on Exhibit 1, which is incorporated by reference and attached.

The grantee shall construct public access improvements and environmental restoration at Mount Umunhum including:

*(Continued on following pages)*

The provisions on the following pages constitute a part of this agreement.  
IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

<b>STATE OF CALIFORNIA</b>		<b>GRANTEE</b>	
AGENCY <b>State Coastal Conservancy</b>	GRANTEE (If other than an individual, state whether a corporation, partnership, etc.) <b>Midpeninsula Regional Open Space District</b>		
BY (Authorized Signature) 	BY (Authorized Signature) 		
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Samuel Schuchat, Executive Officer</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>Steve Abbors, General Manager</b>		
ADDRESS & PHONE NUMBER <b>1330 Broadway, 13<sup>th</sup> Floor Oakland, CA 94612 Phone: (510) 286-1015</b>	ADDRESS <b>330 Distel Circle Los Altos, CA 94022 Phone: (650) 691-1200</b>		

AMOUNT ENCUMBERED BY THIS DOCUMENT  <b>\$1,000,000.00</b>	PROGRAM/CATEGORY (CODE AND TITLE) <b>Capital Outlay</b>	FUND TITLE <b>Safe Drinking Water, Water Quality and Supply, Flood...</b>		
	(OPTIONAL USE) <b>Mount Umunhum Environmental Restoration and Public Access</b>			
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT <b>\$-0-</b>	ITEM <b>3760-301-6051(1)(F)</b>	CHAPTER <b>21</b>	STATUTE <b>2012</b>	FISCAL YEAR <b>12/13</b>
TOTAL AMOUNT ENCUMBERED TO DATE <b>\$1,000,000.00</b>	OBJECT OF EXPENDITURE (CODE AND TITLE) <b>San Francisco Bay</b>			
<i>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.</i>				
SIGNATURE OF ACCOUNTING OFFICER 		DATE		

I certify that this agreement is exempt from Department of General Services' approval.

Erlinda Corpuz  
Contracts Manager

**SCOPE OF AGREEMENT** (Continued)

- a new staging area at Bald Mountain and new spur of the Bay Area Ridge Trail to the summit of Mount Umunhum;
- facilities at the summit of Mt. Umunhum including an Americans with Disabilities Act (ADA)-compliant interpretive loop trail, observation and reflection areas, and picnic tables;
- native plant restoration to recreate natural habitat at the summit of Mt. Umunhum and complementary the recreation facilities, as detailed in the Mt. Umunhum Environmental Restoration and Public Access Plan (October 2012).

The grantee shall carry out the project in accordance with this agreement and a work program, as provided in the “WORK PROGRAM” section, below. Portions of the trail that will form a spur of the Bay Area Ridge Trail will follow the Guidelines for Planning and Implementing the Bay Area Ridge Trail System, attached as Exhibit 2. The grantee shall provide \$1,881,000 and any additional funds beyond those granted under this agreement that are needed to complete the project.

**CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT**

The grantee shall not begin construction of the project and the Conservancy shall not be obligated to disburse any funds unless and until the following conditions precedent have been met:

1. The Board of Directors of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Conservancy (“the Executive Officer”) has approved in writing:
  - a. A work program for the project, as provided in the “WORK PROGRAM” section, below.
  - b. A plan for installation of signs and placards, as provided in the “SIGNS” section, below.
  - c. All contractors that the grantee intends to retain in connection with the project. The grantee must provide written evidence to the Conservancy that each contractor has complied with the bonding requirements described in the “BONDING” section, below.
3. The grantee has provided written evidence to the Conservancy that:
  - a. All permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained.

**CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT** (Continued)

- b. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.
4. The grantee and the Conservancy have entered into, and the grantee has recorded, an agreement to protect the public interest in the improvements or facilities constructed under this agreement.
5. The MROSD shall implement or cause to be implemented the applicable mitigation, monitoring and reporting measures contained in the Mitigation Monitoring Plan, adopted by the MROSD on October 17, 2012 for this project.

**TERM OF AGREEMENT**

This agreement shall be deemed executed and effective when signed by both parties and received in the offices of the Conservancy together with the resolution described in the “CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT” section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

This agreement shall run from its effective date through January 31, 2033 (“the termination date”) unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by March 31, 2017 (“the completion date”). The final Request for Disbursement must be received by the Conservancy no later than April 25, 2017.

**AUTHORIZATION**

The signature of the Executive Officer of the Conservancy on this agreement certifies that at its February 14, 2013 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit 3. This agreement is executed under that authorization.

Standard Provisions

**WORK PROGRAM**

Before beginning construction, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with the purposes of this grant agreement. The work program shall include:

1. Construction plans and specifications which have been certified by a licensed architect or registered engineer, or approved by the grantee's Public Works Director.
2. A schedule of completion for the project specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project, including the grantee's labor and materials costs and costs to be incurred under a contract with any third party retained by the grantee for work under this agreement. For each project component, the project budget shall list all intended funding sources, including the Conservancy's grant, the grantee's required contribution and all other sources of monies, materials, or labor. The grantee shall review the plans on-site with Conservancy staff.
4. A list of best management practices that will be implemented to reduce the project's greenhouse gas emissions.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, then, prior to initiating any request for contractor bids, the grantee shall submit the bid package, including any applicable construction plans and specifications that have been certified or approved as described above, to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the bidding process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to construction.

The grantee shall construct the project in accordance with the approved work program. The work program shall have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

## **SIGNS**

The grantee shall install and maintain a sign or signs visible from the nearest public roadway identifying the project, acknowledging Conservancy assistance and displaying the Conservancy's logo, directing the public to the project, and identifying the trail to the summit of Mount Umunhum as part of the San Francisco Bay Area Ridge Trail system consistent with the *Guidelines For Planning and Implementing the Bay Area Ridge Trail System*, Exhibit 2. The Conservancy shall provide to the grantee with additional specifications for the signs utilizing the Conservancy logo. The grantee shall submit plans describing the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method. The Conservancy will withhold final disbursement until the signs are installed as approved by the Conservancy.

## **BONDING**

If the grantee intends to use any contractors on any portion of the project to be funded under this agreement, construction shall not begin until each contractor has furnished a performance bond in favor of the grantee in the following amounts: for faithful performance, one hundred percent of the contract value; and for labor and materials, one hundred percent of the contract value. This requirement shall not apply to any contract for less than \$20,000.

Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.

## **COSTS AND DISBURSEMENTS**

When the Conservancy determines that all "CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT" have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

The Conservancy shall disburse funds for costs incurred to date upon the grantee's satisfactory progress under the approved work program, and upon the grantee's submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy will withhold the final ten percent of the total amount of funds disbursed under this agreement, and will disburse the ten percent withheld upon the grantee's satisfactory completion of the project and compliance with the "PROJECT COMPLETION" section, below, and the Conservancy's acceptance of the project.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3,

**COSTS AND DISBURSEMENTS** (Continued)

Subchapter 1, Article 2 of the California Code of Regulations (“CCR”), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees (currently \$0.565/mile) as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee shall request disbursements by filing with the Conservancy a fully executed “Request for Disbursement” form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred of all work done for which disbursement is requested. Hourly rates billed to the Conservancy, and specified in the approved Work Program budget, shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the forms. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A supporting progress report summarizing the current status of the project and comparing it to the status required by the work program (budget, timeline, tasks, etc.) including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee’s failure to fully execute and submit a Request for Disbursement form or failure to attach supporting documents will relieve the Conservancy of its obligation to disburse funds to the grantee until the grantee corrects all deficiencies.

### **EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget may vary by as much as ten percent without prior approval by the Executive Officer, provided the grantee submits a revised budget prior to requesting disbursement based on the revised budget. Any deviation greater than ten percent must be identified in a revised budget and approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

### **PROJECT COMPLETION**

Within ninety days of completion of construction of the project, the grantee shall supply the Conservancy with evidence of completion by submitting a final report which includes:

1. An inspection report by a licensed architect or registered engineer or the grantee's Public Works Director certifying completion of the project according to the approved work program.
2. Documentation that signs are installed as required by the "SIGNS" section of this agreement.
3. A fully executed final "Request for Disbursement."
4. "As built" drawings of the completed project/or photographs documenting project completion.

Within thirty days of grantee's submission of the above, the Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

### **EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM**

Before the project is complete, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing and the Conservancy may suspend the agreement upon written notice. In either case, the grantee shall immediately stop work under

**EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM** (Continued)

the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not limit any other remedies that the Conservancy may have for breach of this agreement.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

**OPERATION AND MAINTENANCE**

The grantee shall use, manage, maintain and operate the project throughout the term of this agreement consistent with the purposes for which the Conservancy's grant was made. The grantee assumes all operation and maintenance costs of these facilities and structures; the Conservancy shall not be liable for any cost of maintenance, management, or operation. The grantee may be excused from its obligations for operation and maintenance during the term of this agreement only upon the written approval of the Executive Officer.

For purposes of this agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.



### **MITIGATION**

Without the written permission of the Executive Officer, the grantee shall not use or allow the use for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) of any portion of real property on which the Conservancy has funded construction. In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy. As used in this section, mitigation includes, but is not limited to, any use of the Real Property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

### **INSPECTION**

Throughout the term of this agreement, the Conservancy shall have the right to inspect the project area to ascertain compliance with this agreement.

### **INDEMNIFICATION AND HOLD HARMLESS**

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs, including, without limitation, litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors, and employees, or in any way connected with or incident to this agreement, except for the active negligence of the Conservancy, its officers, agents, or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as set forth in Civil Code section 2778. This agreement supersedes the grantee's right as a public entity to indemnify (see Gov. Code section 895.2) and contribution (see Gov. Code section 895.6) as provided in Gov. Code section 895.4.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents, or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third party beneficiary under this agreement.

### **INSURANCE**

The grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons and damage to property that may arise from or in connection with any

**INSURANCE** (Continued)

activities of the grantee or its agents, representatives, employees, volunteers, or contractors associated with the project undertaken pursuant to this agreement. As an alternative the grantee may satisfy the coverage requirement in whole or in part through: (a) its contractors' procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's participation in a "risk management" plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section. The grantee shall maintain property insurance, if required below, throughout the term of this agreement. Any required errors and omissions liability insurance shall be maintained from the effective date through two calendar years after the completion date. The grantee shall maintain all other required insurance from the effective date through the completion date.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
  - a. Insurance Services Office ("ISO") Commercial General Liability coverage (occurrence Form CG 0001) or ISO Comprehensive General Liability form (1973) or comparable with Broad Form Comprehensive General Liability endorsement.
  - b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto).
  - c. Workers' Compensation insurance as required by the Labor Code of the State of California.
  - d. Course-of-construction (also known as "Builder's Risk") insurance covering all risks of loss. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild or repair the damaged portions of the facilities and structures constructed under this agreement.)
  - e. Property insurance covering the loss, damage, or destruction of the facilities or structures constructed under this agreement against fire and extended coverage perils. (Any proceeds of loss payable under this coverage shall be used to replace, rebuild and/or repair the damaged portions of the facilities and structures constructed under this agreement.)
  
2. Minimum Limits of Insurance. The grantee shall maintain coverage limits no less than:
  - a. General Liability: *(Including operations, products and completed operations, as applicable)* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this agreement, or the general aggregate limit shall be twice the required occurrence limit.

**INSURANCE** (Continued)

- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
  - c. Course of Construction: Completed value of the project with no coinsurance penalty provisions.
  - d. Property Insurance 90 percent of full replacement cost of the facilities or structures.
3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
4. Required Provisions. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by certified mail, return receipt requested, has been given to the Conservancy. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- a. The State of California, its officers, agents, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with the work or operations.
  - b. For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance as respects the State of California, its officers, agents and employees.
5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates, in the form attached as Exhibit 4 to this agreement, and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy may require, at any time, complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

**INSURANCE** (Continued)

7. **Contractors.** The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain Errors and Omissions Liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project with a minimum limit of liability of \$1,000,000.
8. **Premiums and Assessments.** The Conservancy is not responsible for premiums and assessments on any insurance policy.

**AUDITS/ACCOUNTING/RECORDS**

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the construction of the project, and the use, management, operation and maintenance of the real property. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following the later of final disbursement by the Conservancy, and the final year to which the particular records pertain. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

**AUDITS/ACCOUNTING/RECORDS** (Continued)

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

**COMPUTER SOFTWARE**

The grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this agreement, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**NONDISCRIMINATION**

During the performance of this agreement, the grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40) or sexual orientation (Government Code section 12940). The grantee and its contractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). The grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Consistent with Government Code section 11135, the grantee shall ensure that no one, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, is unlawfully denied full and equal access to the benefits of, or is unlawfully subjected to discrimination under, the work funded by the Conservancy under this agreement.

Pursuant to Government Code section 12990, the grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations (California Code of Regulations Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this agreement by this reference.

The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this agreement.

### **PREVAILING WAGE AND LABOR COMPLIANCE PROGRAM**

Work done under this grant agreement may be subject to the prevailing wage and other provisions of the California Labor Code requirements (see Labor Code sections 1720 et seq.). The grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations, if required by law to do so.

This agreement is funded in whole or in part with funds from the “Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006” (“Proposition 84”). Section 75075 of the Public Resources Code imposes on a body awarding any contract for a public works project financed in any part with Proposition 84 funds responsibility for adoption and enforcement of a “labor compliance program” under Labor Code section 1771.5(b). The grantee shall review these statutory provisions and related provisions and regulations to determine its responsibilities.

### **INDEPENDENT CAPACITY**

The grantee, and the agents and employees of grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

### **ASSIGNMENT**

Without the written consent of the Executive Officer, the grantee may not assign this agreement in whole or in part.

### **TIMELINESS**

Time is of the essence in this agreement.

### **EXECUTIVE OFFICER’S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

**AMENDMENT**

Except as expressly provided in this agreement, no changes in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

**LOCUS**

This agreement is deemed to be entered into in the County of Alameda.

# CERTIFICATE OF INSURANCE

State Coastal Conservancy, State of California

ISSUE DATE ( \_ / \_ / \_ )

Project Agreement #: 0 - SCC Project Mgr: JTM

**PRODUCER (Agent or Broker)**

THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

COMPANIES		BEST'S RATING
COMPANY LETTER A	_____	_____
COMPANY LETTER B	_____	_____
COMPANY LETTER C	_____	_____
COMPANY LETTER D	_____	_____

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS ARE SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY or <input type="checkbox"/> COMPREHENSIVE GENERAL LIABILITY <input type="checkbox"/> ISO form (1973) or comparable with Broad Form Comprehensive General Liability endorsement . <input type="checkbox"/> Other: _____  <input type="checkbox"/> OCCURENCE <input type="checkbox"/> OTHER _____  <input type="checkbox"/> General Aggregate applies per project				EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MEDICAL EXPENSE (any one person)	\$
					PERSONAL & ADVERTISING INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS-COMP/OPS AGGREGATE	\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO (ISO Form Number CA 0001, Code or equivalent.)  <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NONOWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT (each accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	<input type="checkbox"/> WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY	\$
					EACH ACCIDENT	\$
					DISEASE-POLICY LIMIT	\$
					DISEASE-EACH EMPLOYEE	\$
	<b>PROPERTY INSURANCE</b> <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE	\$
					PERCENT REPLACEMENT VALUE	

DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/RESTRICTION/DEDUCTIBLES/SELF INSURED RETENTIONS/SPECIAL ITEMS

## THE FOLLOWING PROVISIONS APPLY:

- None of the above-described policies will be canceled until after 30 days' written notice has been given to the State Coastal Conservancy at 1330 Broadway, 13<sup>th</sup> Floor, Oakland, CA 94612.
- The State of California (State), its officials, officers, employees and volunteers are added as insureds on all liability insurance policies listed ABOVE.
- It is agreed that any insurance or self-insurance maintained by the State will apply in excess of and not contribute with, the insurance described above.
- All rights of subrogation under the property insurance policy listed above have been waived against the State.
- The workers' compensation insurer named above, if any, agrees to waive all rights of subrogation against the State for injuries to employees of the insured resulting from work for the State or use of the State's premises or facilities.

**CERTIFICATE HOLDER/ADDITIONAL INSURED**

**AUTHORIZED REPRESENTATIVE**



State of California	SIGNATURE _____ TITLE _____ PHONE NO. _____
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**EXHIBIT 4**  
461104.1