

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION AUTHORIZING THE PARKS DIRECTOR, OR HER DESIGNEE, TO ACCEPT THE COVENANTS AND CONDITIONS SET FORTH BY THE DAVID AND LUCILE PACKARD FOUNDATION TO GRANT \$500,000 TO THE PENINSULA OPEN SPACE TRUST TO SUPPORT THE COUNTY'S ACQUISITION OF THE 174-ACRE OFFICE OF EDUCATION LOMA MAR PROPERTY

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the San Mateo County Board of Education intends to sell real property located at Assessor Parcel Numbers (APNs) 084-101-010; 084-110-020; 085-102-010; 084-102-020; 084-102-030; and 084-102-040, collectively referred to as the "Loma Mar property" and located adjacent to Memorial County Park; and

WHEREAS, on December 10, 2013, your Board adopted Resolution No. 072918 authorizing a funding agreement with POST for the acquisition of the Loma Mar property for the purchase price of \$3.9 million; and

WHEREAS, POST and the David and Lucile Packard Foundation (Foundation) are entering into a grant agreement in which the Foundation has agreed to provide POST a grant of \$500,000 toward the purchase of the Loma Mar property; and

WHEREAS, the Foundation's provision of the grant funds in support of the County's acquisition is conditioned upon the County's acceptance of all terms, conditions, and covenants of the grant, attached hereto as Exhibit A and made a part

thereof; and

WHEREAS, the grant agreement that POST and the Foundation will execute is attached to the Acceptance of Grant Covenants as Attachment 1.

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board of Supervisors hereby authorizes the Parks Director, or her designee, to execute the Acceptance of Grant Covenants and Conditions as shown in Exhibit A.

* * * * *

Exhibit A

ACCEPTANCE OF GRANT COVENANTS AND CONDITIONS

This Acceptance of Grant Conditions (the "**Acceptance**"), dated _____, 2014, for reference purposes only, is made by the County of San Mateo, a public entity in the state of California ("**County**"), for the benefit of The David and Lucile Packard Foundation, a California nonprofit public benefit corporation ("**Foundation**").

RECITALS

A. Peninsula Open Space Trust ("POST") and Foundation have entered into that certain Grant Agreement for Grant #2014-39867, dated _____, 2014 (the "**Grant Agreement**"), pursuant to which Foundation has agreed to provide to POST a grant of Five Hundred Thousand Dollars (\$500,000) (the "**Grant Funds**") to support the County's acquisition of the 174-acre Office of Education Loma Mar property in San Mateo County, more particularly described in the Grant Agreement (the "**Property**"). A copy of the Grant Agreement is attached hereto as **Attachment 1** and incorporated herein by reference.

B. The Foundation's willingness to provide the Grant Funds in support of the County's acquisition of the Property is conditioned upon County's acceptance of all terms, conditions, and covenants applicable to POST as Grantee, under the Grant Agreement, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, County agrees to accept all of the terms, conditions, and covenants set forth in the Grant Agreement as binding against POST, as "Grantee," such that such terms, conditions, and covenants shall also be binding against County, as follows:

1. **Effective Date.** This Acceptance shall be effective upon the date that County has executed this Acceptance (the "**Effective Date**").
2. **Acceptance.** County hereby accepts and agrees to be bound by all terms, conditions, and covenants of the Grant Agreement applicable to "Grantee" under the Grant Agreement.
3. **Further Assurances.** County shall take such additional actions and execute such additional documents as may be reasonable and necessary to carry out the provisions of this Acceptance.
4. **Governing Law.** This Acceptance shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS of the foregoing provisions, County has executed this Acceptance as set forth below:

COUNTY OF SAN MATEO:

Dated: _____, 2014

By: _____

Name: _____

Title: _____

ATTACHMENT 1

COPY OF THE GRANT AGREEMENT

Organization:	Peninsula Open Space Trust	Program:	Western Land Conservation Fund
Project Name:	Office of Education	Grant Number:	2014-39867
Grant Amount:	\$500,000	Award Date:	

Attachment 1

This attachment describes the disbursement process, funding conditions, and reporting requirements for the above-referenced Grant.

1. **Disbursal of Grant Funds.** Subject to the satisfaction of all of the funding conditions set forth in Section 2 below, Foundation shall disburse the Grant funds to Grantee through the commercial escrow (Escrow) which has been opened for the purpose of closing the acquisition by the County of San Mateo (County) of the real property (Property) described in Grantee's proposal dated January 31, 2014 (Proposal).
2. **Funding Conditions.** Foundation shall not be required to disburse Grant funds in accordance with Section 1 above unless and until all of following funding conditions have been satisfied, as determined by Foundation in Foundation's sole and absolute discretion:
 - a. As soon as such documents are available, but in any event at least 20 business days in advance of the Property acquisition escrow closing date, Grantee shall provide Foundation with copies of the following due diligence documents relating to the acquisition of the Property, and Foundation shall have reviewed and approved such documents:
 - i. A full and complete copy of an independent appraisal recently completed for the Property, which appraisal shall confirm that the purchase price for the Property does not exceed the fair market value conclusion contained in such appraisal;
 - ii. A copy of the written agreement providing the County with the legal right to purchase the Property, executed by all parties thereto, including all amendments and modifications thereto (as amended, Purchase Agreement);
 - iii. A copy of the following: (A) the funding and transfer agreement dated as of December 10, 2013 between Grantee and County, including all amendments and modifications thereto (as amended, the Funding and Transfer Agreement); and (B) all other written agreements entered into by POST and/or County setting forth the terms and conditions of any other funding provided for the County's acquisition of the Property, including all amendments and modifications thereto;
 - iv. A copy of a current preliminary title report for the Property, together with, upon the Foundation's request, a copy of all title exception documents referenced in such report and a copy of all other unrecorded title documents affecting the Property;
 - v. A copy of a current phase one environmental site assessment covering the Property, together with any other reports commissioned or prepared to confirm the environmental or physical condition of the Property; and

- vi. A copy of the written approval of this Agreement by County.
- b. Grantee shall provide Foundation, at least 10 business days in advance of the Property acquisition closing date, the following closing and Escrow information and documents:
- i. A written request to release the Grant funds, which shall identify the anticipated closing date for the Property acquisition, the escrow company (with contact information), and Escrow account information;
 - ii. A copy of the final signed grant deed effecting the transfer of title to the Property to County;
 - iii. A copy of the final signed deed restriction made by County to Grantee (Deed Restriction);
 - iv. A copy of the estimated closing statement for the acquisition prepared by the escrow company;
 - v. A copy of the escrow instructions delivered into the Escrow by County and any other project funder submitting such instructions;
 - vi. A copy of any other closing and escrow documents and instruments, as well as any other relevant closing information and documents, not expressly referenced above.

Grantee shall deliver all of the documents referenced in Sections 2.b. and 2.c. above to Foundation, by forwarding such documents to Foundation's representative, Resources Law Group, 555 Capitol Mall, Suite 1090, Sacramento, California 95814, attention: Julie Turrini. Grantee shall be solely responsible for positively confirming receipt and approval of all documentation referenced above in accordance with the preceding sentence. If Foundation has not received, reviewed, and approved all of the documents referenced above, in Foundation's sole and absolute discretion, by June 30, 2014, Foundation shall have the right to terminate this Grant Agreement by providing written termination notice to Grantee, upon which the Foundation will have no further obligations to fund the Grant.

3. **Grant Agreement.** Foundation understands that while this Grant is being made by Foundation to Grantee, the Property will be acquired and managed by County, as described in the Proposal and in accordance with the terms and conditions of the Funding and Transfer Agreement. Before the Foundation shall be required to disburse the Grant funds into the Escrow to fund County's purchase of the Property, County shall enter into a written agreement confirming its agreement to comply with all of the terms of this Grant Agreement, which agreement shall be in form and substance acceptable to Foundation in Foundation's sole and absolute discretion.
4. **Post-Acquisition Obligations:** Following the closing of County's acquisition of the Property, Grantee shall take the following actions:
- a. Grantee shall ensure the Property is (a) promptly included by the County within the boundaries of Memorial Park, and (b) managed and stewarded by the County in a manner that will permanently preserve and protect the natural resource and

recreational values and ecological integrity of the Property. Such management at a minimum must not permit subdivision, residential or commercial development, mineral development, or any construction of improvements that are not essential for the conservation management, restoration, or recreational uses of the Property.

- b. If for any reason County decides to transfer or sell any interest in the Property to any entity or organization, County shall first take the following actions:
 - i. County shall promptly notify Foundation in writing of County's intention to transfer such property interest, including the name and contact information for the proposed transferee, and shall secure Foundation's approval of such transferee and sale or transfer, which approval shall be granted, withheld or conditioned in Foundation's sole and absolute discretion, and any transferee shall commit in writing to manage and steward such property interest in accordance with the management and stewardship requirements set forth in **Section 4.a.** above and the Proposal and the Deed Restriction;
 - ii. In any sale, transfer, or exchange of such property interest to a private individual or entity, County shall receive consideration for such sale, transfer, or exchange having a value that equals or exceeds the fair market value of County's property interest sold, transferred, or exchanged, as set forth in a then-current independent appraisal obtained by County of such property interests involved. County shall provide a copy of such appraisal(s) to Foundation for Foundation's reasonable review and prior approval.
 - iii. County shall provide Foundation with a copy of all agreements, deeds, and other documents relating to such sale, transfer, or exchange for the Foundation's reasonable review and approval.
 - iv. County shall confirm and document that the proposed transferee possesses the financial resources and stewardship experience and capacity to manage such property interest for conservation purposes in accordance with the requirements set forth in this Grant Agreement.
- c. County shall ensure that the Grant funds remain fully invested at all times solely in property interests that support the Grant purpose and the permanent protection of the Property's natural resource values. If and to the extent, following any transaction completed in accordance with Section 4.b above, all of the Grant funds are not fully invested in a property interest supporting the Grant purpose (i.e. any portion of the Grant funds have been returned to County in the form of net sale proceeds), then County shall be entitled and required to invest the portion of such Grant funds returned to County to acquire other high priority conservation property interests in the focus region the Property is located; provided that County provides the Foundation with an accounting of such Grant funds as well as documentation and descriptions identifying how such Grant funds continue to be invested in priority conservation acquisitions. The provisions contained in Sections 4.a, b, and c. shall survive expiration of the Grant term.

5. Reporting Obligations.

- a. Promptly upon closing of the Property acquisition funded with Grant funds, Grantee shall notify the Foundation that the acquisition has closed escrow.
- b. Within 90 days of the close of Escrow, Grantee shall provide to Foundation a Grant Report detailing specifically expenditure of all Grant funds, which shall comply in format and substance with the guidelines set forth in the Grant Agreement and shall include a true, correct, and complete copy of each of the following closing and escrow documents and instruments relating to County's purchase of the Property:
 - i. The recorded Grant Deed and Deed Restriction;
 - ii. Certified final closing or settlement statements;
 - iii. Owner's policy of title insurance issued to County; and
 - iv. Any other documents recorded in the Official Records of San Mateo County in connection with the acquisition of the Property or otherwise delivered in connection with such closing.