

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING**

DATE: February 07, 2018
TO: Board of Directors
FROM: Rafael Payan, General Manager
SUBJECT: Consider Approval of Grant Agreement Between MPRPD and State Coastal Conservancy and Resolution #2018-02, Approving the Grant of Funds from the State Coastal Conservancy

RECOMMENDED ACTION:

Staff recommends the Board consider approval of Resolution #2018-02 (**ATTACHMENT 1**), and the grant agreement between MPRPD and the State Coastal Conservancy (**ATTACHMENT 2**), thereby approving acceptance, and authorizing expenditure, of the grant funds awarded by the State Coastal Conservancy to MPRPD for the acquisition of real property known as the Hatton and Iceberg properties. These parcels formerly comprised significant portions of the former Rancho Canada Golf Course. Staff also requests the Board provide direction to Staff and Legal Counsel.

FISCAL IMPACT:

\$2,000,000 grant award to MPRPD.

FUNDING SOURCE:

State Coastal Conservancy.

FUNDING BALANCE:

\$2,000,000.

DISCUSSION:

The State Coastal Conservancy is awarding a sum not to exceed \$2,000,000 to MPRPD. These grant funds shall be used to acquire the Hatton and Iceberg properties. This real property shall be used for wildlife habitat, environmental restoration, floodplain and open space protection, dedication of water rights to instream flows, public access, and general park purposes. Two adjustments to the real property are authorized:

- A. The western boundary may be adjusted, resulting in no more than a 3.6-acre loss without receiving prior written approval from the state. This parcel may be used for storm-water drainage and retention and other infrastructural improvements.
- B. The 5.5-acre portion of the northeast corner of the real property, previously referred to as Lot 130 or the Mushroom Farm, may be established as a separate lot and transferred to the Santa Lucia Conservancy.

MPRPD is required to complete acquisition of the real property no later than March 01, 2018. The Trust for Public Land has informed MPRPD that conveyance of this property will take place in February.

ATTACHMENTS:

Attachment 1: Resolution #2018-02

Attachment 2: Grant Agreement between MPRPD and State Coastal Conservancy

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
RESOLUTION #2018-02
February 7, 2018**

**A RESOLUTION APPROVING THE GRANT OF FUNDS FROM THE STATE
COASTAL CONSERVANCY FOR THE ACQUISITION OF ALL OR A PORTION OF
ASSESSOR'S PARCEL NUMBERS 157-181-004, 015-162-033, 015-162-041, 015-
162-042, 015-162-043, 015-162-044, 015-162-045, 015-162-046 AND 015-162-047
TOTALING APPROXIMATELY 185 ACRES IN MONTEREY COUNTY**

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.

WHEREAS, at its December 1, 2016 meeting, the Conservancy adopted a resolution authorizing a grant to Monterey Peninsula Regional Park District ("grantee") for the Rancho Cañada Golf Properties acquisition ("the project"). The resolution was adopted by the Conservancy pursuant to and is included in the Conservancy December 1, 2016 staff recommendation, a copy of which is on file with the grantee and with the Conservancy.

WHEREAS, the Conservancy requires that governing body of the grantee certify through a resolution that it approves the award of Conservancy grant funding and authorizes the execution by a representative of the grantee of a grant agreement on terms and conditions required by the Conservancy grant agreement no. 17-010.

NOW, THEREFORE, BE IT RESOLVED that the grantee hereby:

1. Approves the award of grant funding from the Conservancy for the project.
2. Acknowledges that it has or will have sufficient funds to complete the project and, if any property is acquired as part of the project to operate and maintain the property, and, if any facilities are constructed as a part of the project, to operate and maintain the facilities for a reasonable period, not less than the useful life of the facilities.
3. Agrees to be bound by all terms and conditions of the grant agreement and any other agreement or instrument as may be required by the Conservancy and as may be necessary to fulfill the terms of the grant agreement and to complete the project.
4. Authorizes the Monterey Peninsula Regional Park District General Manager to act as a representative of the grantee, to negotiate and execute on behalf of the grantee

all agreements and instruments necessary to complete the project and to comply with the Conservancy's grant requirements, including, without limitation, the grant agreement.

APPROVED AND ADOPTED the 7th day of February 2018. I, the undersigned, hereby certify that the above Resolution Number 2018-02 was duly adopted by the Monterey Peninsula Regional Park District by the following vote:

AYES:

NOES:

ABSENT:

Kelly Sorenson, President
Board of Directors

Shane Anderson, Secretary/Treasurer
Board of Directors

STANDARD AGREEMENT

Std. 2 (Grant - Rev 08/08)

AGREEMENT NUMBER	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO.	

THIS AGREEMENT, made and entered into this _____ day of _____, 2017, 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 Executive Officer GRANTEE'S NAME	AGENCY State Coastal Conservancy	, hereafter called the Conservancy, and
		, 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

(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.

STATE OF CALIFORNIA	GRANTEE
AGENCY State Coastal Conservancy	GRANTEE (If other than an individual, state whether a corporation, partnership, etc.)
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Samuel Schuchat, Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS & PHONE NUMBER 1515 Clay Street, 10th Floor Oakland, CA 94612 Phone: (510) 286-1015	ADDRESS

AMOUNT ENCUMBERED BY THIS DOCUMENT \$	PROGRAM/CATEGORY (CODE AND TITLE) (OPTIONAL USE)	FUND TITLE		
	PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$	ITEM 0890 bottom (grant number/transmittal required) 0262 (Prop 1E) if required	CHAPTER	STATUTE
TOTAL AMOUNT ENCUMBERED TO DATE \$	OBJECT OF EXPENDITURE (CODE AND TITLE)			
<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
Procurement and Contracts
Manager

GRANTEE ACCOUNTING PROJECT MANAGER CONTROLLER STATE AGENCY

SCOPE OF AGREEMENT

Pursuant to Chapter 5.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy (“the Conservancy”) hereby grants to the Monterey Peninsula Regional Park District (“the grantee”) a sum not to exceed \$2,000,000 (two million dollars), subject to this agreement. The grantee shall use these funds to acquire real property (“the real property”) known as Hatton and Iceberg properties of the Rancho Cañada Golf Properties, located in the County of Monterey, State of California, comprising County Assessor’s Parcel Nos. 015-162-033, 015-162-041, 015-162-042, 015-162-043, 015-162-044, 015-162-045, 015-162-047, 157-181-004, and of 015-162-046, and depicted in Exhibit A, which is incorporated by reference and attached.

The acquisition purposes for which the real property is being acquired are: wildlife habitat, environmental restoration, floodplain protection, open space protection, public access, dedication of water rights to instream flows, and general park purposes and general park operation purposes, provided that: a) “general park purposes” means those park uses that provide safe, accessible open space for recreation enjoyment and protection of natural resources, and native habitat and wildlife; and b) “general park operation purposes” means use of the structures existing as of the date of this agreement for park headquarters, park concessions, and similar operations-related uses”

The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the acquisition of the real property.

The Conservancy authorizes the following with respect to the real property:

1. The western boundary of the real property may be adjusted as shown on Exhibit A-1, provided that the western boundary adjustment shall not result in a net loss of more than 3.6 acres of the real property without prior written approval of the Executive Officer.
2. An approximately 5.5-acre portion of the northeastern corner of the real property as shown on Exhibit A-1 may be established as a separate lot and transferred to the Santa Lucia Conservancy.
3. Title to the real property may be encumbered by an educational easement over 30 acres of the real property in favor of the Santa Lucia Conservancy provided that the terms of the easement are consistent with the terms of this agreement and are approved in writing by the Conservancy prior to grantee’s acquisition of the real property.
4. The real property may be encumbered by the agreement titled *Voluntary Agreement for the Forbearance of Diversion of Water* entered into by The Trust for Public Land and California-American Water Company (“CalAm”) as of April 25, 2016 (“Forbearance Agreement”), which runs with the land and provides for the owner of the real property to forbear from

SCOPE OF AGREEMENT (Continued)

diverting water through December 31, 2019 in exchange for payments from CalAm, provided that: a) the grantee shall use the payments from CalAm solely for management, operation, maintenance, restoration, and enhancement of the real property; and b) the grantee shall submit an annual report by March 31 of each year that describes how the CalAm payments were spent in the prior calendar year.

The changes to the real property described in numbers 1 and 2 above may be made before or after grantee's acquisition of the real property. The Conservancy agrees that if these changes will be made after grantee's acquisition of the real property, the Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants ("OTD") required by this agreement may be: i) recorded against title the real property as described without the portion to be transferred to the Santa Lucia Conservancy even if such transfer has not occurred at the time of recordation of the OTD, and ii) may be subsequently amended to revise the description of the real property to accommodate the adjustments to the western boundary.

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT

The grantee shall not acquire the real property and the Conservancy shall not be obligated to disburse any funds under this agreement 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 reviewed and approved in writing:
 - a. All title and acquisition documents pertaining to acquisition of the real property, including, without limitation, an appraisal (the specifications for which are incorporated and attached as Exhibit B), a preliminary title report, agreement for purchase and sale, escrow instructions, environmental documentation or hazardous materials assessment, baseline conditions report, monitoring program, and intended instruments of conveyance.
 - b. A plan for the installation of signs on the real property and acknowledgment of Conservancy support as provided in the "SIGNS AND ACKNOWLEDGMENT" section, below.
 - c. A signed and acknowledged Irrevocable Offer to Dedicate Title in Fee and Declaration of Restrictive Covenants, approved by the Executive Officer, that serves to permanently

CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT Continued)

dedicate the real property for the acquisition purposes. This instrument shall be recorded concurrently with the instrument conveying title to the real property to the grantee.

- d. A baseline report adequately documenting the physical and environmental condition of the real property as of the date of acquisition.
 - e. A monitoring and reporting program, that, at a minimum, details a monitoring protocol, and requires the grantee to inspect and document, in a monitoring report, the condition and circumstances of the real property every five years in order to demonstrate ongoing compliance with the acquisition purposes. The program shall require the grantee to submit these monitoring reports to the Conservancy.
3. The purchase price of any interest in land purchased under this agreement may not exceed fair market value as established by the approved appraisal.

ADDITIONAL GRANT CONDITIONS

The grantee shall also meet the following condition:

1. No later than January 18, 2021, the grantee shall file a petition with the State Water Resources Control Board (“Water Board”), in accordance with Water Code Section 1707, to permanently dedicate to instream flows no less than 170-acre feet of water rights associated with the real property. No later than January 18, 2023, the grantee shall submit evidence that:
 - a) it has made a good faith effort to obtain the Water Board’s approval of such petition, and
 - b) the grantee has made a good faith effort to cause the permanent dedication to instream flows, in accordance with Water Code Section 1707, of 164 acre-feet of the water right assigned to the adjacent property that was formerly part of the Rancho Cañada Golf Club. The January 18, 2023 deadline may be extended with the written approval of the Executive Officer. The grantee shall provide updates to the Executive Officer regarding the status of the petition every six months from the effective date of this agreement until the Water Board makes a final decision on the petition.

COSTS AND DISBURSEMENTS

When the Conservancy determines that all “CONDITIONS PRECEDENT TO ACQUISITION AND DISBURSEMENT” have been fully met, the Conservancy shall disburse funds, not to exceed the amount of this grant, as follows:

COSTS AND DISBURSEMENTS (Continued)

The purchase price, plus closing costs consisting of escrow, recording and title insurance fees, to the extent not included in the purchase price, shall be disbursed directly into an escrow account established for the acquisition.

The grantee shall request disbursement for the acquisition by sending a letter to the Conservancy. The grantee shall include in the letter the name and address of the grantee, the number of this agreement, the date, the amount to be disbursed, and a description of the items for which disbursement is requested. Additionally, the letter shall include the name, address, email, and telephone number of the title company or escrow holder, the escrow account number to which the funds will be disbursed, and the anticipated date of closing. The letter shall be signed by an authorized representative of the grantee. Failure to send the required letter will relieve the Conservancy of its obligation to disburse funds.

TERM OF AGREEMENT

This agreement shall take effect when signed by both parties and received in the offices of the Conservancy together with the resolution described in “CONDITIONS PRECEDENT TO ACQUISITION 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.

The term of this agreement shall run from its effective date through March 1, 2038 (“the termination date”).

COMPLETION DATE

The grantee shall complete acquisition of the real property no later than March 1, 2018 (“the completion date”).

Prior to the completion date, either party may terminate this agreement for any reason by providing the other party with seven-days notice in writing.

If the Conservancy terminates prior to the completion date, the grantee shall 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, but only up to the unpaid balance of funding authorized in this agreement.

AUTHORIZATION

The signature of the Executive Officer on the first page of this agreement certifies that at its December 1, 2016 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit C. This agreement is executed under that authorization.

Standard Provisions

**ESSENTIAL PROVISIONS OF OFFER TO DEDICATE TITLE IN FEE AND
DECLARATION OF RESTRICTIVE COVENANTS**

The Irrevocable Offer to Dedicate Title in Fee by which the grantee permanently dedicates the property for public or conservation purposes shall include the following essential provisions:

1. The real property was acquired by the grantee with a grant of funds from the State Coastal Conservancy, an agency of the State of California, for the purposes of wildlife habitat, environmental restoration, open space protection, public access, dedication of water rights to instream flows, and general park and park operation purposes, including park concessions and park headquarters, and no use of the real property inconsistent with these purposes is permitted.

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

2. The real property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Officer of the Conservancy, or its successor.
3. The real property (including any portion of it or any interest in it) may not be transferred without the approval of the State of California, through the Executive Officer of the Conservancy, or its successor.
4. The grantee is obligated to use, monitor, manage, operate and maintain the real property as described in the "USE, MONITORING, MANAGEMENT, OPERATION AND MAINTENANCE" section of California State Coastal Conservancy Grant Agreement No. 17-010, as it may be amended from time to time.
5. The Conservancy shall have reasonable access to the real property to monitor compliance with the essential provisions stated above.

**ESSENTIAL PROVISIONS OF OFFER TO DEDICATE TITLE IN FEE AND
DECLARATION OF RESTRICTIVE COVENANTS** (Continued)

6. If the existence of the grantee ceases for any reason or if any of the essential provisions stated above are violated, all of the grantee's right, title and interest in the real property shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon acceptance of the real property and approval of the State Public Works Board. However, the State, through the Executive Officer of the Conservancy, or its successor, may designate another public agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State.
7. If the real property is under threat of condemnation or has been condemned, the offeror shall promptly notify the Conservancy in writing, and shall use its best efforts to obtain the maximum compensation possible. Upon receiving condemnation proceeds, the offeror shall promptly pay to the Conservancy a percentage of the condemnation proceeds equivalent to the percentage of the total acquisition cost originally contributed by the Conservancy.

If the Conservancy or its designee (an "accepting party") accepts the offer due to threat of condemnation and receives proceeds following condemnation, the accepting party shall distribute a proportionate share to the offeror. If an accepting party accepts the OTD due to threat of condemnation, and condemnation does not occur, then the accepting party shall either reconvey the real property to the offeror or pay to the offeror the amount of the offeror's contribution to the original acquisition, unless the accepting party and the offeror agree otherwise.

As used in this section, "condemnation" means a permanent taking through the exercise of any government power (by legal proceedings or otherwise) by any party having the right of eminent domain ("condemnor"); or through a voluntary sale or transfer by the offeror to any condemnor, either under threat of exercise of eminent domain by a condemnor or while legal proceedings for eminent domain are pending.

8. Notwithstanding any other provision of the offer, the Conservancy may use any remedy available in law or equity to enforce the covenants and restrictions contained in the offer.
9. The offer is irrevocable.

SIGNS AND ACKNOWLEDGMENT

Prior to acquiring the real property, the grantee shall submit a plan to the Executive Officer for the installation of signs on the real property and acknowledgment of Conservancy support.

SIGNS AND ACKNOWLEDGMENT (Continued)

Except as the Executive Officer agrees otherwise, the plan shall commit the grantee to mention the Conservancy's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

The grantee shall install and maintain one or more signs visible from the nearest public roadway identifying the real property, acknowledging Conservancy assistance and displaying the Conservancy's logo. The Conservancy shall provide to the grantee specifications for the signs. The signs shall also acknowledge funding from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) by using the official logo prepared by the California Natural Resources Agency, which the Conservancy has available in various file formats. The grantee may incorporate the required information into other signs as approved by the Executive Officer. In special circumstances, where the placement of signs or the general specifications are inappropriate, the Executive Officer may approve alternative, more appropriate methods for acknowledging the sources of funding. The grantee shall submit a plan describing the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method.

USE, MONITORING, MANAGEMENT, OPERATION AND MAINTENANCE

The grantee shall use, monitor, manage, operate and maintain the real property in a manner consistent with the acquisition purposes and the monitoring and reporting program. The grantee assumes all monitoring, management, operation and maintenance costs associated with the real property, including the cost of ordinary repairs and replacements of a recurring nature, and costs of enforcement of regulations. The Conservancy shall not be liable for any costs of monitoring, management, operation or maintenance. The grantee shall refrain from developing or otherwise using any other property it owns or controls near the real property in a manner that interferes with or inconveniences the use, monitoring, management, operation or maintenance of the real property or detracts from the acquisition purposes. The grantee may be excused from its obligations for monitoring, management, operation and maintenance only upon the written approval of the Executive Officer of the Conservancy or its successor.

Mitigation. Without the written permission of the Executive Officer, the grantee shall not use or allow the use of any portion of the real property, including the water rights, for mitigation (in other words, to compensate for adverse changes to the environment elsewhere). 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 property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation. The Conservancy acknowledges that the written permission required by this paragraph has been provided in the SCOPE OF AGREEMENT

USE, MONITORING, MANAGEMENT, OPERATION AND MAINTENANCE

(Continued)

section of this agreement for use of the real property's water rights as specified in the Forbearance Agreement.

INSPECTION

Throughout the term of this agreement, the Conservancy shall have the right to inspect the real property 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, growing out of, or in any way connected with or incident to this agreement, except for 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 provided in Civil Code Section 2778. This agreement supersedes any right the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

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.

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 acquisition, use, management, operation and maintenance of the real property, including funds received from CalAm pursuant to the Forbearance Agreement. The grantee shall maintain adequate supporting records in a manner that permits tracing of transactions 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

AUDITS/ACCOUNTING/RECORDS (Continued)

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 records related to the acquisition for three years following the date of final disbursement for the acquisition by the Conservancy. All other records shall be retained by the grantee for three years following the later of final payment and the final year to which the 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.

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 contract, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

NONDISCRIMINATION CLAUSE

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, genetic information, gender, gender identity, gender expression, marital status, age, sexual orientation, or military and veteran status (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.

NONDISCRIMINATION CLAUSE (Continued)

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, genetic information 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.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of the 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

No change 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.

SURVIVAL

The obligations in the "USE, MONITORING, MANAGEMENT, OPERATION, AND MAINTENANCE" and "INDEMNIFICATION AND HOLD HARMLESS" sections, above, shall survive the termination of this agreement.