

San Dieguito River Park  
Joint Powers Authority  
18372 Sycamore Creek Road  
Escondido, CA 92025  
(858) 674-2270 Fax (858) 674-2280  
www.sdrp.org

**JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

Chair Kristin Gaspar  
Supervisor, County of San Diego

Vice-Chair Barbara Bry  
San Diego City Council

Dwight Worden  
Del Mar City Council

Olga Diaz  
Escondido City Council

Dave Grosch  
Poway City Council

Mark Kersey  
San Diego City Council

Dianne Jacob  
Supervisor, County of San Diego

Judy Hegenauer  
Solana Beach City Council

Jeff Barnouw  
Citizens Advisory Committee

Dustin Fuller, Ex Officio  
22nd District Agricultural  
Association

Kevin McKernan  
Executive Director

**SAN DIEGUITO RIVER PARK  
JOINT POWERS AUTHORITY  
11:00 a.m.  
Friday, August 16, 2019  
County Administration Center  
1600 Pacific Highway, Room 302/303  
San Diego**

Speaker slips will be available. Please fill out a slip and give it to the Chair prior to the meeting if you wish to speak to an item on the agenda. The Board may act on any item listed on the Consent or Action Agenda.

Introductions and Announcements

Pledge of Allegiance

Approval of the Minutes of July 19, 2019 (Page 3)

Executive Director's Report

Public Comment

This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board and not appearing on today's agenda. Comments relating to items on today's agenda are to be taken at the time the item is heard. Pursuant to the Brown Act, no action shall be taken by the Board on public comment items.

DISCUSSION/ACTION

1. Reserve Policy Review and Recommendations (Page 6)
2. Approval to Grant Conservation Easement and Loan Payoff on Blum Property (Page 13)

## INFORMATION

### 3. Project Status Updates

- a. Ranger Maintenance Facility

### 4. Coordination Reports (oral)

- a. San Dieguito River Valley Conservancy
- b. Friends of the San Dieguito River Valley
- c. Volcan Mountain Preserve Foundation
- d. San Dieguito Lagoon Committee
- e. Friends of Sikes Adobe

### 5. Jurisdictional Status Reports

An opportunity for the Board members to report on actions taken within their jurisdictions to further the park planning process.

### 6. Communications

THE NEXT REGULAR JPA MEETING WILL BE September 20, 2019

If you have any questions, please call Kevin McKernan at (858) 674-2270 Ext. 15

\*\*\*\*Due to the high cost of printing and mailing the JPA and CAC agendas, the JPA has converted to an email distribution of both agendas. Please advise the office at 858 674-2270 if you do not have an e-mail address and want other arrangements to be made. The agenda and minutes are available at no cost on the San Dieguito River Park web site at [www.sdrp.org](http://www.sdrp.org)

**SAN DIEGUITO RIVER PARK  
JOINT POWERS AUTHORITY**

**Minutes of July 19, 2019**

**MEMBERS PRESENT**

Kristin Gaspar – Chair  
Barbara Bry- Vice-Chair  
Dwight Worden  
Olga Diaz  
Dave Grosch  
Dave Zito  
Jeff Barnouw

**MEMBERS ABSENT**

Mark Kersey  
Dianne Jacob  
Dustin Fuller

**VISITORS/STAFF PRESENT**

Kevin McKernan  
Wayne Brechtel  
Brenda Miller  
Shawna Anderson  
Bill Michalsky  
Steve Hadley  
Crystal Benham  
Melanie Woods  
John Barone  
Randee Warren  
Carol Kerridge  
Trish Boaz

**REPRESENTING**

County of San Diego  
City of San Diego  
City of Del Mar  
City of Escondido  
City of Poway  
City of Solana Beach  
Citizens Advisory Committee

**REPRESENTING**

City of San Diego  
County of San Diego  
22<sup>nd</sup> District Agricultural Association

San Dieguito River Park JPA  
JPA Counsel  
San Dieguito River Park JPA  
San Dieguito River Park JPA  
Sierra Club  
San Diego City Council District 1  
County of San Diego Parks Dept.  
County of San Diego District 3  
City of San Diego Public Utility Dept.  
Del Mar Lagoon Committee  
Del Mar Lagoon Committee  
San Dieguito River Valley Conservancy

**Introduction and Announcements**

Chair Gaspar convened the meeting at 11:00 AM in the County Administration building, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101

**Pledge of Allegiance**

Chair Gaspar invited all to stand and recite the Pledge of Allegiance.

**Approval of Minutes of May 17, 2019 and June 21, 2019**

Vice-Chair Bry made the motion to approve the minutes of May 17, 2019 and June 21, 2019.  
Boardmember Barnouw seconded the motion.

Yes votes: Gaspar, Bry, Worden, Barnouw, Grosch

Abstain: Zito

Absent: Diaz, Jacob, Kersey

**Executive Directors Report**- Director McKernan reported on the board meeting field trip to the Ranger Station in Del Mar June 21<sup>st</sup> and gave a report on the 30<sup>th</sup> Anniversary event on June 9<sup>th</sup>. He thanked the board members that participated and stopped by. The event began with the 15K, 5K, 1K, tot trot running races, then continued with an auction, community fair, scholarship awards, music by Boardmember Worden's band, Prairie Sky, farmer's market, and the volunteer appreciation party. It was a great event.

**Public Comment** – No public comment

## **ACTION AGENDA**

### **1 Approve Citizens Advisory Committee Membership Request**

Boardmember Barnouw made the motion to approve the request from the Lake Hodges Native Plant Club to join the Citizens Advisory Committee with Judy LaVine as the representative. Chair Gaspar seconded the motion.

Yes votes: Gaspar, Bry, Worden, Barnow, Grosch, Zito

Absent: Diaz, Jacob, Kersey

### **2. Acknowledge and File FY 8/19 Year-End Budget Report**

Director McKernan explained the fiscal year end 2018-2019 report stating that the result was positive with approximately \$30,000 under budget.

Chair Gaspar made the motion to acknowledge and file the FY 18/19-year end report and Vice-Chair Bry seconded the motion.

Yes votes: Gaspar, Bry, Worden, Barnouw, Grosch, Zito

Absent: Diaz, Jacob, Kersey

## **INFORMATION**

### **3. Project Status Updates**

a. **Ranger Maintenance Facility** – Director McKernan reported that the building is on track, with all of the doors and windows in, and it is on budget. Director McKernan thanked all who were able to come to the tour June 21st and said he is happy to give anyone a tour at their request. Maintenance of the public restroom was discussed. The San Dieguito River Valley Conservancy made a donation to pay for the cost to add solar to the project. Director McKernan also reported that Jeff Barnouw and Carol Carr have made donations specific to the project and that the anticipated opening will be February 2020.

Boardmember Diaz arrived to the meeting at 11:11 a.m.

- b. **San Dieguito River Park 30<sup>th</sup> Anniversary** – this agenda item was discussed during the Executive Director’s report.

#### 4. **Coordination Reports**

a. San Dieguito River Valley Conservancy- Trish Boaz reported that the Conservancy is pleased to pledge \$130,000 to the JPA; \$114,000 for the River Parkways Grant Osuna project, \$15,000 for solar panels on the Ranger Maintenance Facility, and \$500 for the River Park’s 30<sup>th</sup> Anniversary celebration. Ms. Boaz extended an invitation to the 2019 River Valley Fest. It will be held Sunday Oct 13<sup>th</sup> at L’Auberge Del Mar. Ms. Boaz reported that the Conservancy has been awarded \$116,000 in grants the last year. The grants are for fuel reduction projects and are possible because of the partnership between the Conservancy and the River Park. The Coast to Crest Trail Challenge is featuring five new trails for a total of 26 miles. Chair Gaspar thanked Ms. Boaz and the Conservancy.

b. Friends of the San Dieguito River Valley- No Report

c. Volcan Mountain Preserve Foundation- No Report

d. San Dieguito Lagoon Committee-No Report

e. Friends of Sikes Adobe-No Report

5. **Jurisdictional Status Reports**- Jeff Barnouw reporting on one item from the Citizens Advisory Committee meeting. The CAC is concerned about the responsibility of Surf Cup to build the Coast to Crest Trail near the sports fields as required by the Site Development Permit. Vice-Chair Bry said she could not comment on the issue due to the pending lawsuits. Chair Gaspar asked that this item be added to the next agenda to catch the Board up to speed. Steve Hadley from Vice-Chair Bry’s office said he has been in touch with the Real Estate Assets Department regarding this issue and was assured that Surf Cup intends to begin work on the trail in September. Mr. Hadley also offered his help.

6. **Communications**- No communications

Chair Gaspar adjourned the meeting at 11:19 a.m.

These minutes approved by Board Action

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Director

**DATE:** August 16, 2019  
**TO:** JPA Board of Directors  
**FROM:** Staff  
**SUBJECT:** Reserve Policy Review and Recommendations

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**BACKGROUND:**

The JPA reserve policy was approved in 2010 (attachment 1). This policy addresses two situations for establishing and managing a separate reserve fund: 1) accrued staff vacation time and 2) vehicle/equipment replacement. However, the current policy lacks some broader purposes and management of a reserve fund, for example operating reserves in the case of revenue shortages or unexpected expense overages and emergency situations.

Currently, the JPA has three accounts that are, or can be, considered reserves. The fund titled “Reserve” in the main JPA accounts held at the County Treasury is the fund identified and established per the current reserve policy and has primarily been used for vehicle and equipment replacement. The JPA’s Operating fund has also accumulated funds since 2015 when budget years have experienced net revenues. These funds are also considered reserves but are not explicitly managed per the policy. The JPA also has a non-endowment reserve fund held at the Rancho Santa Fe Foundation. These funds were previously held in a private brokerage account until the Board, with staff recommendation, approved moving the funds into the Rancho Santa Fe Foundation in 2017.

The balances on these accounts have been regularly reported at Board meetings, during the budget process and at year end. However, staff believes that a revision to the existing policy is necessary to provide clarity and direction in how the reserves are established, managed and communicated to the Board. Also, a revision to the policy should address the purposes of the reserve fund(s) and address potential operating needs under different situations as described above.

Staff has been researching example reserve policies of other agencies including the JPA member agencies and has found that the City of Poway’s reserve policy (attachment 2) may be an appropriate model to work from. Staff is bringing this item before the Board for feedback and direction as they move forward in revising the existing reserve policy.

**RECOMMENDATION:**

- 1) Staff solicit input and direction from the Board of Directors in revising the 2010 reserve policy.
- 2) Board directs staff to develop revised draft reserve policy for review and adoption by the end of 2019

Respectfully submitted,

Kevin McKernan  
Executive Director

Attachments

1. San Dieguito River Park Joint Powers Authority Reserve Fund Policy P10-02
2. City of Poway General Fund Reserve Policy

POLICY NO. PI0-02  
ADOPTION DATE: May 21, 2010

SAN DIEGUITO RIVER PARK JOINT POWERS AUTHORITY  
RESERVE FUND POLICY

PURPOSE

The purpose of this policy is to establish and maintain a cash reserve so that the San Dieguito River Park Joint Powers Authority is able to pay unanticipated or unbudgeted liabilities.

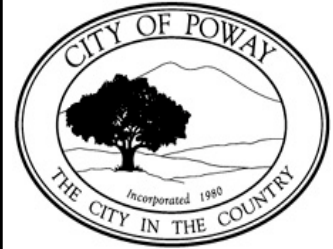
POLICY

It is the policy of the San Dieguito River Park Joint Powers Authority (JPA) that a reserve fund shall be established and maintained. The reserve fund will be used for the following purposes: to pay off accrued vacation leave when employees leave the JPA, to pay for new vehicles as current vehicles age, and for other liabilities that may arise. All unexpected, undesignated revenues will be put into the reserve fund until said reserve fund exceeds 1.5 times the value of the accrued vacation leave. In addition, each year, \$2,000 per JPA vehicle will be deposited into the reserve fund to be used to replace vehicles when it is determined they should be replaced.

**Adopted by the JPA Board on May 21, 2010**



# CITY OF POWAY GENERAL FUND RESERVE POLICY



## I. Purpose

The City of Poway (the City) is committed to prudent fiscal practices and maintaining adequate General Fund reserves to ensure consistent, uninterrupted municipal services and facilities in the wake of potential risk events, such as a major economic downturn or natural disaster (e.g., wildfires, winter storms or earthquakes). Additionally, the City is committed to maintaining an adequate reserve to protect its credit quality and reduce the City's cost of borrowing, as adequate reserves represent a significant factor in a rating agency's evaluation.

## II. General Fund Reserve

The City engaged the Government Finance Officers Association (GFOA) to evaluate the City's specific risk exposures and to help size an appropriate General Fund reserve. The GFOA findings (see Appendix A) guided the following policy provisions.

### A. Overall General Fund Reserve

- The City of Poway will maintain a General Fund reserve equivalent to **45%** of budgeted annual General Fund operating expenditures.

### B. Risk-Based Reserve Classifications

The 45% General Fund reserve will be sub-divided into the following three (3) risk exposure classifications. Each will be established as a percentage of budgeted annual General Fund operating expenditures.

- **10% Reserve for Revenue Volatility.** The City will maintain this amount as a hedge against swings in revenue from economic conditions, state actions and other adverse conditions, particularly changes in sales tax, property tax, and other fee-based revenue.
- **5% Reserve for Expenditure Volatility.** The City will maintain this amount as a hedge against unanticipated costs such as major litigation, a spike in pension contributions resulting from the market volatility, or unplanned capital expenditures.

- **30% Reserve for Extreme Events/Public Safety.** The City will maintain this amount as a hedge against natural disasters, other public safety emergencies and unexpected infrastructure repair and replacement.

### **C. Reserve Administration**

The following is provided for appropriate and timely administration of the City's General Fund reserve.

- The City's overall General Fund Reserve amount (i.e., 45%) will be reported and adjusted annually with budget adoption.
- Any funds in excess of the City's 45% General Fund reserve will be identified at the close of each fiscal year for programming at the City Council's discretion.
- If, based on the Administrative Services Department's forecasting and analysis, a 45% General Fund reserve is not being met or will likely not be met within a five-year time horizon, the Director of Administrative Services will work with the City Manager to develop a plan to achieve the 45% reserve balance. The plan will be presented to City Council for consideration and adoption as soon as practicable.

## **III. Conditions for Use of Reserves**

The following is provided to govern the appropriate use and replenishment of the City's General Fund reserve.

### **A. Use of Reserves**

- The three (3) *Risk-Based Reserve* classifications are identified separately as justification for the City's *Overall General Fund Reserve*, consistent with the GFOA findings and GASB Statement No. 54. The full 45% reserve is available to address unanticipated events in any area (e.g., Revenue Volatility, Expenditure Volatility, and Extreme Events/Public Safety) at the City Council's discretion.
- It is the intent of the City to limit use of General Fund reserves to address unanticipated, non-recurring needs. Reserves shall not normally be applied to recurring annual operating expenditures.
- With Council authorization, General Fund reserves may be used to allow time for the City to restructure its operations in a deliberate manner (e.g., to address a severe economic downturn), but such use will only occur in the context of an adopted long-term plan to achieve a sustainable structure.

## **B. Authority to Use Reserves**

- Upon City Council declaration of an emergency or other action to appropriate these funds, the use of reserves by the City Manager shall be consistent with the purposes and provisions contained within this policy and the City of Poway's general Financial Policy.
- Any use of General Funds that would cause the City's reserve to drop below 45% of budgeted annual General Fund operating expenditures shall be permitted only on a specific, case-by-case basis as authorized by the City Council.

## **C. Replenishment of Reserves**

- In the event City Council authorizes use of the General Fund reserve, the City Manager shall propose a plan for the replenishment of the reserves to the City Council. The proposed plan shall be provided to the City Council within 60 days or as soon as practicable.
- The City will strive to replenish the General Fund reserve within one year of use, but will fully replenish the reserve within five years of use.
- The City will seek reimbursement from the Federal Emergency Management Agency to replenish reserves used in connection with a catastrophic event. Application for reimbursement will be made as soon as practicable following a catastrophic event, consistent with all federal guidelines.

## **D. Risk Mitigation Strategy to Supplement General Fund Reserve**

- The City will procure appropriate insurance coverages to protect and preserve its General Fund reserve should an unanticipated risk event occur. The City's insurance program may include coverage for catastrophic events (e.g., wildfires, winter storms or earthquakes).
- When necessary and appropriate, the City should consider borrowing from other City funds (i.e., inter-fund loans) or through access to the debt markets rather than draw upon General Fund reserves. Any action to incur debt will be consistent with the City's Debt Management Policy provisions.

## **APPENDIX A**

### **Risk-Based Analysis of General Fund Reserve Requirements**

**DATE:** August 16, 2019  
**TO:** JPA Board of Directors  
**FROM:** Staff  
**SUBJECT:** Approval to Grant Conservation Easement and Loan Payoff on Blum Property

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**BACKGROUND:**

In October, 2017, the Board approved the acquisition of the Blum property, a 6.4 acre parcel, located in the Sycamore Creek Preserve owned by the JPA near its office in Poway. The purchase included a down payment using a private donation and JPA discretionary funds in conjunction with a promissory note held by the Blums for the balance.

Since that time, JPA staff has been working with Camp Pendleton's (Navy) REPI program with the goal of selling a conservation easement and establishing a habitat management plan and endowment for perpetual management. The Navy has now offered the JPA an amount of \$84,000 for the easement and another \$100,000 for a habitat management endowment.

The JPA has also received additional private donations toward the property in the amount of \$22,000, \$5,000 of which was used to offset the FY18/19 annual payment. The remaining \$17,000 in private donations are being held by the JPA until the time of the loan payoff as directed by the donors.

In order to pay off the promissory note in full at this time, in conjunction with the Navy's funds for the sale of the conservation easement, staff is requesting Board approval for the use of an additional \$47,127 of JPA funds to be used from its operating reserve. There is no pre-payment penalty on the loan which has a ten year term. The JPA will save approximately \$17,000 in interest payments by paying off the loan now.

As reported at the July, 2019 meeting, the JPA closed its fiscal year 18/19 with a budget surplus of \$41,229 and an account balance in its Operating Fund at the County Treasury of \$306,655 and \$267,151 in operating reserve held at the Rancho Santa Fe Foundation for a total operational reserve of \$573,806. After withdrawal of the proposed \$47,127 for the loan payoff, total reserves would equal \$526,679, or roughly 38% of the JPA annual operating budget.

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**RECOMMENDATION:**

- 1) Staff recommends the Board approve the attached resolution which authorizes the sale of a conservation easement to the Navy in the amount of \$84,000; and
- 2) Staff recommends the Board approve the use of the following JPA funds to pay off the remaining balance of the promissory note in order to satisfy the Navy conditions:

Original Note Amount			180000
FY18/19 payment		15701	
Remaining Balance (8/2019)			164299
FY19/20 payment (budgeted/scheduled)		16172	
			148127
Navy easement (scheduled)		84000	
			64127
Khoury/Corey Donation		15000	
			49127
Anonymous donation		2000	
Remaining JPA share (from operating reserve)			47127
		Balance	0

Respectfully submitted,

Kevin McKernan  
Executive Director

Attachments:

1. Total Acquisition Revenue/Expense
2. Resolution No. R19-02 Authorizing the Sale of a 6.5-Acre Conservation Easement to The Department of Navy
3. Grant Deed of Conservation/Restrictive Use Easement

Attachment 1  
Total Acquisition Revenue/Expense

Total Acquisition Revenue/Expense				
Purchase Price				210000
Revenues				
Private Donations				
Reid		20000		
Barnouw		5000		
Khoury & Corey		15000		
Anonymous		2000		
	sub total		42000	
Other gov't funds				
Restoration rights		10000		
Navy Easement		84000		
	sub total		94000	
Non-JPA funds			136000	
JPA payments		31873		
JPA reserve		47127		
JPA funds sub total			79000	
Total		215000	*	
* purchase price + interest paid				

**RESOLUTION NO. R19-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN  
DIEGUI TO RIVER VALLEY REGIONAL OPEN SPACE PARK JOINT  
POWERS AUTHORITY AUTHORIZING THE SALE OF A 6.5 -ACRE  
CONSERVATION EASEMENT TO THE DEPARTMENT OF NAVY**

WHEREAS, The San Dieguito River Valley Regional Open Space Park Joint Powers Authority (“JPA”) is empowered by its Joint Powers Agreement and by the State Joint Powers Law (Government Code Section 6500 et seq.) to acquire and manage property for open space, mitigation and natural wildlife preservation purposes; and

WHEREAS, the JPA obtained title to approximately 6.44-acres of real property located at 18390 Sycamore Creek Road, Escondido, CA 92025, also known as the Blum Property, (“Property”) on October 19, 2017;

WHEREAS, the Property was obtained by the JPA to ensure its long-term preservation through the sale of mitigation credits and appropriate management of the wildlife and habitat resources it contains;

WHEREAS, the Department of Navy (“Navy”) desires to purchase a conservation easement over the Property to offset the environmental impacts, including impacts to species and habitat, associated with military operations at the Camp Pendleton Marine Corps Base;

WHEREAS, the terms of the conservation easement that would be purchased by the Navy are set forth in the draft Grant Deed of Conservation/Restrictive Use Easement attached hereto as Exhibit 1 (“Navy Conservation Easement”);

WHEREAS, the JPA has prepared a Long-Term Habitat Management Plan for the Property, dated July 2018, that is designed to retain and enhance its wildlife and habitat values and also requires payment of an endowment sufficient to fund management of the Property, currently estimated to be \$99,776.00.00 (“Management Plan”) that is currently under review by the U.S. Fish and Wildlife Service (“Service”); and

WHEREAS, the Board of Directors of the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (“Board”) finds and determines that sale of the Navy Conservation Easement is appropriate and in the public interest,

NOW, THEREFORE, be it hereby resolved as follows:

1. The foregoing recitals are true and correct.
2. The Board hereby approves the sale of the Navy Conservation Easement, subject to the following terms and conditions:
  - A. Purchase Price of \$84,000.00 to be paid at the close of escrow;



B. The terms of the Navy Conservation Easement attached as Exhibit 1 are approved and shall not be modified without Board approval, excepting minor, non-substantive changes approved by General Counsel;

C. The Management Plan for the Property is approved, including additional terms required by the Service, so long as any changes are approved by the Executive Director as consistent with the intent of preserving and enhancing the wildlife and habitat resources of the Property and so long as any additional costs are reflected in the final Management Plan endowment;

D. The JPA's obligation to maintain the Property in accordance with the final, approved Management Plan shall be subject to receipt of an endowment fund in the amount of \$99,977.00 or an alternative amount approved by the JPA and Navy;

E. Additional contingencies or assurances as the Executive Director in consultation with General Counsel, may deem reasonably necessary and appropriate in the interests of the JPA prior to the sale of the Navy Conservation Easement;

3. The Board authorizes its Executive Director, Kevin McKernan, as its agent to take any and all such further actions required to complete the sale of the Navy Conservation Easement. It is the express intent of this Board in adopting this Resolution that no further action of this Board is required and that the JPA's Executive Director is fully authorized to implement the sale authorized by this Resolution.

Passed and Adopted this \_\_\_\_\_ Day of August 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
,Chair

ATTEST:

1.

EXHIBIT A  
DRAFT GRANT DEED OF CONSERVATION/ RESTRICTIVE USE EASEMENT

*Recording requested by and when recorded mail to:*

United States of America  
Commanding Officer  
Naval Facilities Engineering Command SW  
1220 Pacific Highway, Real Estate Division  
San Diego, CA 92132-5190

Exempt from Recording Fee  
(Government Code § 6103)  
Exempt from Documentary  
Transfer Tax (Rev. & Taxation Code § 11922)

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## **GRANT DEED OF CONSERVATION/RESTRICTIVE USE EASEMENT**

**THIS GRANT DEED OF CONSERVATION/RESTRICTIVE USE EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the fee simple owner, San Dieguito River Valley Regional Open Space Joint Powers Authority, herein after referred to as (“Grantor”) and the United States of America, acting by and through the Department of the Navy, hereinafter referred to as (“Grantee”), in accordance with the terms and conditions set forth herein. The nature or purpose of the Conservation/Restrictive Use Easement (“Easement”) and the extent of the restrictions on the Property (as defined below) are as described in the following provisions:

### **WITNESSETH:**

**WHEREAS**, Grantor is the sole owner in fee simple interest of a total of approximately six and forty-four hundredths (6.44) acres of real property, specifically Assessor Parcel Number 272-150-28-00, located in the City of Poway, San Diego County, California, (“Property”). The Property is described in Exhibit “A”, attached hereto and incorporated by this reference; and

**WHEREAS**, Grantee has requested an Easement in order to limit development or use of the Property in the vicinity of Marine Corps Base Camp Pendleton (“the Installation”) that would otherwise be incompatible with its mission; and

**WHEREAS**, the Property possesses significant habitat that is essential to maintaining various natural communities of sensitive, rare, and/or endangered plant and animal species, that enhances connectivity between other nearby protected areas, parks, and/or watershed areas for wildlife, and that provides significant public benefit of preserving open space from development, improving and maintaining water quality and water supply, and providing protection for scenic qualities unique to the area; and

**WHEREAS**, Grantor, as owner of the Property, has the right to manage the Property and intends that the habitat of the Property be preserved, conserved, protected, and maintained in perpetuity, subject to the terms and conditions of this Easement; and

**WHEREAS**, Grantor agrees to allow Grantee to share environmental management responsibilities and to have the ability to acquire and retain certain natural resource credits that may be available as a result of this Easement and the Management Plan for the Property; and

**WHEREAS**, Grantee is obtaining an Easement for purposes of preserving and conserving habitat on the Property to offset the environmental impacts, including impacts to species and habitat, and providing regulatory relief associated with military operations on the Installation; and

**WHEREAS**, to accomplish the purposes of this Easement, Grantor desires to convey and Grantee desires to obtain from Grantor a perpetual Easement that restricts certain uses of the Property and grants certain rights to Grantee for the purposes of 1) permanently preserving, conserving, protecting, maintaining, restoring and enhancing the habitat on the Property; 2) extinguishing development rights on the Property; 3) restricting uses of activities on the Property that could inhibit military training, testing or operations on the Installation; and 4) restricting activities on the Property that may negatively affect the conservation values of the property necessary for the Grantee to receive natural resource credits used for regulatory relief of activities on the Installation; and

**WHEREAS**, Grantee desires to use the preservation and conservation of California Gnatcatcher (CAGN) and Coastal Sage Scrub on the Property, as they currently exist or may be enhanced over time, to potentially offset the environmental impacts, including impacts to species and their habitats, of military operations on the Installation, subject to provision of substantiating documentation in a Management Plan, approved in writing by the United States Fish and Wildlife Service (USFWS), specifying the nature and quantity of environmental, species and/or habitat impacts to be offset; and

**WHEREAS**, Grantor and Grantee entered into an agreement pursuant to Title 10 U.S.C. 2684a to acquire an interest in the Property to pursue mutually compatible goals of restricting development and facilitating habitat preservation and restoration; and

**WHEREAS**, Grantor and the Grantee entered into an Encroachment Partnering Agreement, dated September 14, 2010, and subsequently modified (collectively, the “Agreement”), to prevent encroachment and stop incompatible development in the vicinity of the Installation, and, further, to promote the conservation of ecologically significant lands; and

**WHEREAS**, pursuant to the terms of the Agreement, the Grantor acquired the Property in fee using its own funds for the purposes of preventing development incompatible to the Installation and promoting conservation of natural areas and ecologically significant land for scientific, charitable, and educational purposes, and environmental offsetting and crediting; and

**WHEREAS**, pursuant to the terms of the Agreement and 10 U.S.C. §2684a, and to effectuate the intentions of the parties, the Grantor is granting to Grantee a perpetual and irrevocable Easement over the Property, which, in addition to the other rights conveyed, will extinguish irrevocably and perpetually the right of Grantor and Grantor’s heirs, successors, and assigns to develop the Property except as expressly permitted in this Easement;

**NOW THEREFORE**, for and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants, warrants and conveys to Grantee an Easement, of the nature and character and to the extent set forth herein, in perpetuity on and over the Property, which is shown in Exhibit “A,” attached hereto and by this reference made a part hereof.

1. Purpose. The purpose of this Easement is to prohibit residential, commercial, and industrial development and/or uses of the Property that would otherwise be incompatible with the current or future mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing or operations within the Installation, as defined above. Grantor and Grantee intend that the Property be managed by Grantor, and its successors, assigns and authorized representatives, to preserve, protect, maintain, restore and/or enhance habitat on the Property to eliminate restrictions on military operations on the Installation and eliminating development (“Easement Purposes”), subject to the terms of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee and its assigns by this Easement:

a. *Enforcement of Prohibitions*. To prohibit residential and/or industrial and/or commercial development or use of the Property that would otherwise be incompatible with the current or future mission of the Installation, as defined above and any use of the Property that is inconsistent with the preservation, conservation, protection, maintenance, restoration and enhancement of habitat;

b. *Right of Entry*. To enter upon the Property at reasonable times and with reasonable notice in order to monitor compliance with and to enforce the terms of this Easement; provided that such entry shall be upon reasonable notice to the owner (reasonable notice shall consist of written notice 72 hours prior to the desired inspection date), except when a threat of imminent harm of personal injury or property damage exists, and the Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property;

c. *Prevention of Activities and Restoration of Property*. To prevent any activity on or use of the Property that is not permitted by the Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity or use that is not permitted.

d. *Property Management*. To fund the management of natural resources on the Property for purposes of acquiring conservation recovery credits or otherwise eliminating restrictions on military training and other activities on the Installation.

e. *USFWS Recovery Credits*. To accrue and use all conservation credits or other similar credits as determined and regulated by the USFWS as part of a recovery credit system (“RCS”), or other standard or program that the USFWS may establish, as well as the following additional terms:

i. Grantee may accrue and use such additional credits as a result of Grantee participating in the preservation, conservation, protection, maintenance, restoration and enhancement of the Conservation Values and management of the Property; provided, however, that any such participation is at the sole expense of the Grantee and is subject to the prior notice and approval of Grantor, which shall not be unreasonably withheld when consistent with the terms of this Easement; and

ii. Upon request of the Grantor, Grantee shall provide Grantor with a copy of the following documents if applicable, including any amendments that may be made to these documents from time to time, related to the RCS: the USFWS approved recovery plan, the comprehensive biological opinion issued to Grantee that describes in detail the credit debiting process or any other similar end product documenting the programmatic consultation, and any project specific documentation provided to the USFWS pursuant to the comprehensive biological opinion.

3. Baseline Report. Grantor and Grantee shall retain copies of the Baseline Report (Exhibit “B”). The Baseline Report may be used to establish that a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement. The Baseline Report, which consists of reports, maps, photographs, and other documentation, provides an accurate representation of the Property as of the date of this Easement. The purpose of the Baseline Report is to serve as a baseline for monitoring compliance with the terms of this Easement. Grantor and Grantee acknowledge that it is accurate as of the date of this Easement.

4. Reservation by Owner. Notwithstanding any provision in this Easement to the contrary, Grantor and Grantee acknowledge that the Grantor, as owner of the Property, hereby reserves the right/ability to remove the existing residential foundation and non-native trees/plants, maintain and/or remove an existing electrical pole, and remove a concrete slurry driveway leading down to Sycamore Creek. Grantor will ensure that these activities are conducted in accordance with the USFWS-approved Management Plan and any subsequent amendments.

5. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Easement is prohibited. All uses and activities allowed on the Property shall be consistent with applicable laws and shall be exercised in a manner that prevents or minimizes damage to habitats and natural resources on the Property. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. *Subdivision*. The division, subdivision, *de facto* subdivision or partition of the Property, is prohibited. The Property is currently comprised of one (1) legal parcel, identified by assessor parcel number 272-150-28-00, with fee title held by Grantor. Any development rights held by Grantor, as owner of the Property, whether existing or arising out of future zone changes, are hereby surrendered by Grantor except as provided in this Easement. Grantor will not apply for, or otherwise seek recognition of additional legal parcels, lots or structures within the Property.

b. *Human Habitation*. The Property may not be used for human habitation, including but not limited to temporary accommodations such as cabins, trailers, RVs, tents, etc. Constructing or placing any other temporary or permanent structure, facility or improvement for the purpose of human habitation that detracts from the wild character of the land, that may encourage human use that is more than transient, that may encourage people to leave trash behind, or that may require maintenance or invite nuisance animals or insects, including but not limited to picnic tables, trash cans, tent platforms is prohibited.

c. *Lighting.* All lighting equipment, including but not limited to floodlights and searchlights, and all protective lighting, such as street lights, shall have positive optical control that shines downward so that no direct light is emitted above the horizontal plane.

d. *Construction.* Construction of any structure, including but not limited to residential, commercial, agricultural, and industrial structures is prohibited. New construction of any structure or edifice, including but not limited to buildings, antennas, towers, power or telephone wires and any other additions to, or alterations of the Property are prohibited, except for those improvements or alterations reasonably related to the allowed uses, or already existing on the Property.

e. *Uses.* Any and all commercial uses, any and all residential uses and any and all industrial uses are prohibited.

f. *Agriculture and Farming.* ‘Agriculture and farming’ means all methods designed to produce and manage crops, and the farming activities of feeding and housing of farm animals, such as cattle, goats, and horses, including the construction of new structures for the housing of farm animals or storage of farm equipment is prohibited. The use of grazing animals solely to remove vegetation for fire control and management of endangered species habitat is not considered agriculture and is not prohibited.

g. *Plant Uses.* Planting, introducing, or dispersing of non-native or exotic plant or animal species is prohibited.

h. *Recreational Activities.* All recreational activities, except as set forth in Section 6(a) are prohibited.

i. *Altering Topography.* Altering the surface or general topography of the Property, including building new roads or trails, paving, or otherwise covering the Property with concrete, asphalt, or any other impermeable material and/or activities on the Property, except as set forth in Sections 4 and 6, resulting in appreciable soil degradation or appreciable pollution or degradation of any surface or subsurface waters is prohibited.

j. *Other Hazards.* No activities or operations of any type shall be permitted that produce smoke, glare and/or other visual hazards or encourage concentrations of birds that may be dangerous for aircraft operating from the Installation and/or its areas.

k. *Management Plan.* All activities not permitted in a Management Plan, or any subsequent amendments, approved by USFWS, are prohibited.

l. *Mineral, Air or Water Rights.* It is prohibited to transfer, encumber, sell, lease, or otherwise separate the mineral, air, or water rights associated with the Property; change the place or purpose of use of the water rights; abandon or allow the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water

district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

m. *Waste Removal.* No trash, refuse, vehicle bodies, rubbish, debris, junk, waste, garbage, sewage, hazardous or toxic substances, household garbage, or other unsightly material shall be placed on the Property except as reasonably related to the uses allowed under Sections 4 and 6 of this Easement. This provision does not prohibit composting of excess brush or other plant material resulting from activities permitted herein. Disposal of any waste materials generated by activities permitted under this Easement shall be in accordance with any Federal, State, and local laws and regulations.

6. Permitted Uses. The following uses of the Property are expressly permitted:

a. *Passive Recreation.* Non-commercial, non-motorized passive recreation and nature viewing including, but not limited to, bicycling, hiking, horseback riding, and bird watching, provided that such passive recreation requires minimal or no improvements or habitat disturbance on the Property, and is conducted in accordance with the USFWS-approved Management Plan and any subsequent amendments.

b. *Fire Prevention.* Thinning flammable vegetation on the Property is authorized as necessary to maintain defensible space and protect all structures and facilities to maintain the Property's safe environment and operating conditions.

c. *Permitted Activities.* Grantor, as owner of the Property, may remove the existing residential foundation and non-native trees/plants, maintain and/or remove an existing electrical pole, and remove a concrete slurry driveway leading down to Sycamore Creek as defined in Section 4 of this Easement.

d. *Signs.* Erection and maintenance of signs or other appropriate marker, not to exceed 4ft by 4ft in size, at locations on the Property indicating ownership, identification of partners and acquisition funders, or similar information.

e. *Right to Transfer.* Subject to Section 11, transfer of the Property to the State, a political subdivision of the State, or a private entity that has as its stated principal organizational purpose or goal the conservation, restoration, conservation, or preservation of land and natural resources, or a similar purpose or goal.

f. *Conservation Activities.* Uses of the Property for wildlife habitat conservation and preservation, restoration, management, education, control of predatory and problem animals by the use of selective control techniques, and research that is consistent with the military training mission and primary functions of the Installation in accomplishing its mission. The natural condition on the Property as of the date of this Easement is deemed consistent with the military training mission and primary functions of the Installation in accomplishing its mission.

g. All uses consistent with the rights reserved in Section 4 of this agreement.



7. Notification Provisions.

a. *Notice of Intent to Undertake New Uses and/or Construction.* Grantor shall notify Grantee in writing not less than ninety (90) calendar days prior to the date that Grantor intends to undertake any actions that may have an adverse impact on the purpose of or rights granted to Grantee under this Easement and applicable law. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purpose of the Easement. Any such new uses must be in accordance with the USFWS-approved Management Plan and any subsequent amendments.

b. *Grantee's Response.* Within ninety (90) calendar days of receipt of the request, Grantee will grant or withhold approval in writing. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the action proposed would have an adverse impact on the purposes of or rights granted to Grantee under this Easement and applicable laws and regulations or would otherwise be inconsistent with this Easement.

8. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee. No failure on the part of the Grantee to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

9. Enforcement and Remedies. Grantee is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Easement. The current Grantor and subsequent owner(s) of the Property must provide and execute any instruments appropriate or necessary for enforcing this Easement. Grantee has the right to enforce the provisions of this Easement by proceedings at law or in equity and to prevent or remedy violations through appropriate judicial action brought against Grantor or other responsible parties in a court of competent jurisdiction.

a. *Violations: Notice and Injunctive Relief.*

(1) Except as permitted in sub-Section 9.a.(2) below, if Grantee determines that there is a violation of the terms, conditions, or obligations created by this Easement or that a violation is threatened, Grantee shall give written notice to Grantor. The notice shall identify the violation or threatened violation. Where known to Grantee, the notice shall identify corrective action necessary to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with this Easement, the notice may demand restoration of the portion of the Property so injured. The Grantor shall be afforded ninety (90) days from the receipt of Grantee's notice of non-compliance to cure the subject breach, except where irreparable harm may result from any delay in curing a breach. If Grantor fails to cure the violation within the ninety (90) day period after Grantee gives notice, or under circumstances where the violation cannot reasonably be cured within the ninety (90) day period as determined by Grantee, if Grantor fails to begin curing the violation during that period, or if Grantor does not continue diligently to cure the violation until finally cured, or as otherwise provided in this Easement, Grantee may first

attempt mediation or arbitration with Grantor and/or Grantee may bring an action at law or in equity to enforce the terms of this Easement.

(2) If Grantee, in its sole discretion, determines that an ongoing or imminent violation could irreversibly diminish or impair the open space character of the Property, Grantee may pursue its remedies under this Paragraph, including but not limited to ex parte judicial relief, without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee shall have the right to seek injunctive relief pursuant to this Paragraph if, in Grantee's reasonable discretion, an injunction is required to prevent the irreversible and material impairment of the purposes of or rights granted to Grantee under this Easement and applicable law or otherwise to enforce this Easement.

b. *Damages.* Grantee is entitled to recover damages from Grantor for violation of the terms of this Easement.

c. *Equitable Remedies.* Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor and Grantee expressly agree that the Property is unique and that a violation of this Easement, and the ensuing harm or alteration of the Property, may result in damages that are irreparable and not subject to quantification. Grantor agrees that Grantee's remedies at law for a violation of the terms of this Easement may be inadequate and that Grantee is entitled to seek the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including damages and specific performance of the terms of this Easement. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity. Equitable relief may include restoration of the Property to the condition that existed prior to the injury.

d. *Acts Beyond Grantor's Control.* Grantee may not bring any action against Grantor for any change to the Property resulting from causes beyond Grantor's control, such as changes caused by fire not set by Grantor, flood, storm, earth movement, or natural deterioration, or resulting from prudent action taken in good faith under emergency conditions to prevent or mitigate damage from such causes.

e. *Right to Report.* In addition to other remedies, Grantee has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

f. *Breach.* Upon any breach of a term of this Easement, Grantee may exercise any or all of the following remedies, including:

- (1) Requiring that the Property be restored promptly to the condition required by this Easement; and/or
- (2) Requiring Grantor to provide Grantee a report, within 60 days, as to how the property will be restored after a breach; and/or

- (3) Take necessary actions to correct the non-compliance and upon request by Grantee, Grantor shall reimburse Grantee for its reasonable costs incurred to correct the non-compliance; and/or
- (4) Instituting suits to enjoin any breach or enforce any term by injunction; and/or
- (5) Enforcing abatement procedures to return the Property into compliance as productive land.

The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. If Grantor is found by a court of competent jurisdiction to have breached any of the obligations under this Easement, Grantor shall reimburse the Grantee for any costs or expenses incurred by the Grantee to cure or abate such breach, including court costs and attorney fees.

10. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership and maintenance of the Property, except as such costs or liabilities shall have resulted from the acts of Grantee or Grantee's agents or contractors.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which Grantor divests any interest, including but not limited to, a fee title or leasehold interest in the Property. Grantor further agrees to incorporate a requirement in any deed or legal instrument to give written notice to Grantee of the transfer of any interest at least sixty (60) days prior to the date of such transfer.

12. Notices. Any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor:                San Dieguito River Valley Regional Open Space Joint Powers  
   Authority  
   Attn: Executive Director  
   18372 Sycamore Creek Road  
   Escondido, CA 92025

To Grantee:                Commanding Officer  
   Naval Facilities Engineering Command Southwest  
   Real Estate Division  
   1220 Pacific Highway  
   San Diego, CA 92132-5190

To Installation:            Commanding General  
   Strategic Planning Section, Bldg 22165  
   MCIWEST-MCB Camp Pendleton  
   Box 555008  
   Marine Corps Base Camp Pendleton, CA 92055-5008

13. Recordation. Grantor shall record this Easement in a timely manner in the official records for the county in which the Property is located. Grantee may re-record this Easement or any other documents necessary to protect its rights under this Easement or to assure the perpetual enforceability of this Easement.

14. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15. Conservation/Restrictive Use Easement Runs with the Land. The covenants, terms, conditions, and restrictions of this grant of Easement shall run with the land in perpetuity and shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running with the Property; without limiting the generality of the foregoing, subsequent owner(s) shall take title to the Property subject to the terms of this Easement.

16. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the conveyance of an easement on the Property, and supersedes all prior discussions, negotiations, understandings or agreements relating to this Easement, all of which are merged herein.

17. Controlling Law. The interpretation and performance of this Easement shall be governed by applicable laws of the United States of America.

18. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of 10 U.S.C. 2684a, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

19. Amendment. Upon receipt of an approved and signed Management Plan from USFWS for use of the habitats of the Property, in whole or in part, to offset impacts to species or habitats on the Installation resulting from military operations on the Installation, Grantor and Grantee may amend this Easement to include said Management Plan as Exhibit “C”. Any such amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Official Records of San Diego County, California, and a copy of the recorded amendment shall be provided to Grantee and USFWS.

20. Exhibits.

Exhibit “A” – Legal Description and Property Map

Exhibit “B” – Baseline Report

August 16, 2019

Naval Facilities Engineering Command Southwest  
Contract Number – N62473-19-RP-00081

**IN WITNESS WHEREOF**, Grantor hereby grants this Grant Deed of Conservation/Restrictive Use Easement.

Dated: \_\_\_\_\_, 2019

Grantor:

SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE JOINT POWERS  
AUTHORITY

\_\_\_\_\_  
Kevin McKernan, Executive Director

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_(Seal)

**IN WITNESS WHEREOF**, Grantee hereby accepts this Grant Deed of Conservation/Restrictive Use Easement.

Dated: \_\_\_\_\_, 2019

Grantee:

UNITED STATES OF AMERICA, Department of the Navy

By: \_\_\_\_\_  
D. B. BIXLER  
Real Estate Contracting Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_(Seal)