



**FUND AGREEMENT
for the**

Ramona Grasslands Conservation Bank Habitat Maintenance Fund
(a Mitigation Endowment fund)

THIS AGREEMENT is made and entered into on <Date TBD>, by and between THE SAN DIEGO FOUNDATION (“TSDF”) and U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) (“Founders” or “Agencies”). Judd RR Investments, LLC and Kearny PCCP Otay 311, LLC, Project Proponents, and County of San Diego, Habitat Manager, are referenced in this Agreement as described below, but they are not intended as third party beneficiaries of this Agreement.

RECITALS

- A. Project Proponent executed a certain Open Space Maintenance Agreement with Founder dated <Date of Agreement TBD> (the “Agency Agreement”) regarding the appropriate management and maintenance of certain open space land and/or open space easements which total 210.26 acres (hereinafter referred to as the “Property”). Pursuant to the Agency Agreement, Project Proponent is responsible for the long-term stewardship costs of the Property in accordance with the requirements of that certain Resource Management Plan Ramona Grasslands Conservation Bank Long-Term Management Account <#TBD> dated <Date TBD> (the “RMP”).
- B. Pursuant to the Agency Agreement, the Project Proponent is obligated to create an endowment fund in the amount of \$TBD representing a principal amount that, when managed and invested, is reasonably anticipated to cover the funding needs of the long-term stewardship of the Property. This endowment has been established to be held, managed, invested and disbursed by TSDF solely for, and permanently restricted to, the long-term stewardship of the Property.
- C. Pursuant to the Agency Agreement, County of San Diego (the “Habitat Manager”) is obligated to monitor and manage the Property for conservation purposes. The Habitat Manager is a California nonprofit public benefit corporation, and it is an organization described in Section 170(c)(1) or (2) of the Internal Revenue Code.
- D. To facilitate the matters described in Recital B, Founder is entering into this Agreement.

DEFINITIONS

The following terms, as used in this Agreement, shall be defined as follows:

- (1) Agency: The lead governmental entity issuing a permit for the mitigation project and requiring the establishment of the mitigation endowment. In this Agreement, the Agency is the Founder and such terms may be used interchangeably.
- (2) Project Proponent: The entity proposing the mitigation project to Agency for approval and issuance of permit.
- (3) Habitat Manager: Nonprofit or governmental entity contracted to perform habitat management tasks.
- (4) Property: Fee title land or any partial interest in real property, including a conservation easement, conveyed pursuant to a mitigation requirement by the Agency or other agency.
- (5) Resource Management Plan (RMP): The plan describing the management activities to be performed on the Property.
- (6) Agency Agreement: The agreement between Agency, Project Proponent and Habitat Manager by which these entities agree to terms which include the RMP.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. NAME OF FUND

Project Proponent transfers assets irrevocably to TSDF to establish in TSDF the Ramona Grasslands Conservation Bank Habitat Maintenance Fund (the "Fund") as an endowment for the purpose described in paragraph 2 below. An endowment is a permanent fund. Endowment funds are pooled for maximum benefit and invested to achieve long-term capital growth. Contributions are irrevocable and become assets of The San Diego Foundation. As an endowment fund for the purpose described in Paragraph 2 below, the Fund shall be operated and administered in accordance with (i) Sections 65965, 65966, 65967 and 65968 of the California Government Code and (ii) the Uniform Prudent Management of Institutional Funds Act, California Probate Code Section 18501 et seq. ("UPMIFA"), except to the extent TSDF may adhere, from time to time, to more rigorous standards or requirements than those proscribed by UPMIFA. Expenditures from the Fund shall be made in the manner described for endowment funds under UPMIFA Section 18504. TSDF may receive additional irrevocable gifts of property acceptable to TSDF from time to

time from Project Proponent and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of paragraph 4 below, the primary purpose of the Fund shall be support the Habitat Manager in furtherance of the long-term stewardship of the Property in accordance with the Agency Agreement. In the event that in the future the Habitat Manager (i) no longer constitutes an organization described in Sections 170(c)(1) or (2) of the Internal Revenue Code, (ii) becomes subject to bankruptcy proceedings under state or federal law, (iii) liquidates and dissolves or otherwise ceases to exist, (iv) fails to submit to Agency and TSDF in a timely manner (or within such reasonable period as determined by Agency and TSDF) the annual income and expense report (the "Expense Report") along with reimbursement to the Fund of any unused funds from any previous distribution(s) and an annual certification, signed by the President or Chief Financial Officer of the Habitat Manager, certifying as to the accuracy and completeness, in all material respects, of the Expense Report and the Habitat Manager's compliance with the requirements imposed upon it under the Agency Agreement (the "Annual Certification"), or (v) proves unable to fulfill substantially all of the duties described in the Agency Agreement as determined by either the Agency or a court of law, then the assets of the Fund shall be applied as described in paragraph 5 below.

3. INVESTMENT OF FUNDS

TSDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code.

4. DISTRIBUTEES

Subject to paragraph 5 below, earnings allocated by TSDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California, or to a government entity acceptable to Agency. Distributions from the Fund shall be within

the purposes and procedures of TSDF as contained in its Articles of Incorporation and its Bylaws.

5. DISTRIBUTION

Distributions from the Fund may be made from earnings and so much of the net gains (realized and unrealized) in the fair value of the assets of the Fund as is prudent under the standard established by Section 18504 of UPMIFA. Distributions shall be made to the Habitat Manager or such other permissible distributees and at such times and in such amounts as may be designated by the Founder, subject to the approval of the TSDF Board of Governors. Subject to the limitations of Section 18504 of UPMIFA, distributions shall be made each year to the extent needed to cover the management and maintenance expenses for such year in accordance with the requirements of the RMP; provided, however, TSDF is not, and shall not in the future under any circumstances be deemed to be, a party to either the RMP or the Agency Agreement. TSDF shall have no liability or responsibility whatsoever for the funding needed to cover such expenses to the extent such funding need is greater than the distributable amount of the Fund. There shall be no requirement that all earnings and net gains be distributed each year; earnings and net gains may be accumulated and added to principal. Earnings and net gains which are accumulated and added to the principal may, however, be distributed in the future as herein provided.

Distributions shall be made to such distributees of the type described in Section 4 above as may be designated by the Board of Governors of TSDF except as modified in accordance with Section 6 below.

In the event TSDF becomes aware that the Habitat Manager has misused or diverted any monies from the purposes required by the Agency Agreement or any of the events listed in Section 2 above have occurred, TSDF shall (i) immediately cease making any further distributions from the Fund to Habitat Manager, and (ii) provide Agency with written notice of such misuse or diversion so that TSDF and Agency can take appropriate action, and (iii) if Agency elects to undertake the management and maintenance responsibilities over the Property pursuant to the Agency Agreement, make distributions from the Fund to Agency or make distributions from the Fund to a distributee designated by Agency and approved the TSDF Board of Governors as described in Section 6 below.

Without limiting the foregoing, all parties hereto acknowledge and agree that distributions from the Fund are to be made only for the stewardship purposes described in Section 2 above, and that the Fund is not intended to provide distributions to address the effects of emergencies or natural disasters.

Unless the Agency Agreement provides that another person or entity shall prepare an annual fiscal report that complies with the requirements set forth in Section 65966(e) of the California Government Code, TSDF shall prepare such an annual fiscal report.

6. CONTINUITY OF THE FUND

If any of the events referred to in Section 2(i), (ii), (iii), (iv), (v) or Section 5 (iii) above occur, TSDF and Agency shall elect a new nonprofit habitat management organization approved by Agency and the TSDF Board of Governors.

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for any of the above reasons, TSDF shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of TSDF's Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, of the original purpose of the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of TSDF. All money and property in the Fund shall be assets of TSDF, and not a separate trust, and shall be subject only to the control of TSDF. Pursuant to Treasury Regulations, the Board of Governors of TSDF has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. §1.170A-9(e)(11)(v)(B) and (E).

8. COSTS OF THE FUND

Founder understands and agrees that the Fund shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by TSDF as the fee structure applicable to Funds of this type. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for the Fund shall also be paid from the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to TSDF.

10. CHARITABLE DEDUCTIONS

TSDF has provided no advice or assurance to Project Proponent as to the tax treatment of the amounts deposited in the Fund by Project Proponent. Project Proponent has been advised and given the opportunity to seek independent advice as to such tax treatment.

11. DISCLAIMERS

TSDF shall have no duty of any kind whatsoever to monitor or determine the Habitat Manager's compliance with the RMP (including, without limitation, the Agency Agreement) other than to accept receipt, annually, of the Expense Report and the Annual Certification. TSDF shall have no liability whatsoever with respect to the performance of any of the obligations of the Habitat Manager under the RMP (including, without limitation, the Agency Agreement). The responsibility for managing and maintaining the Property is limited solely to the Habitat Manager. TSDF shall have no obligation whatsoever to enforce the terms and provisions of the Agency Agreement.

12. ATTACHMENTS

If checked below, the attachment(s) so designated shall be incorporated by reference herein and hereby made a part of this Agreement as if fully set forth in this Agreement (provided that the applicable attachments are executed by Founder).

_____ Addendum To Fund Agreement for Ramona Grasslands Conservation Bank Habitat Maintenance Fund

_____ Endowment Distribution Election for Ramona Grasslands Conservation Bank Habitat Maintenance Fund

13. CERTIFICATION

Pursuant to California Government Code section 65968(e), TSDF certifies to the Founder and the Project Proponent that it meets all of the following requirements:

- a. TSDF has the capacity to effectively manage the Fund;
- b. TSDF has the capacity to achieve reasonable rates of return on the investment of the Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with UPMIFA;
- c. TSDF uses generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity;
- d. TSDF will be able to ensure that the Fund is accounted for, and tied to, the Property; and

e. TSDF has an investment policy that is consistent with UPMIFA.

IN WITNESS WHEREOF, we execute this agreement on _____.

Founder: _____
<Name, TitleTBD>
U.S. Fish and Wildlife Service

Founder: _____
<Name, TitleTBD>
California Department of Fish and Wildlife

Approved by the President & CEO of The San Diego Foundation on _____.

By: _____
Bob Kelly
President & CEO

Enc.: Program Policies



ADDENDUM TO FUND AGREEMENT

for

Ramona Grasslands Conservation Bank Habitat Maintenance Fund

THIS ADDENDUM TO FUND AGREEMENT is dated as of the same date as the Fund Agreement by and between THE SAN DIEGO FOUNDATION (“TSDF”) and U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) (“Founders”) and amends and supplements the Fund Agreement as follows:

14. DISPUTE RESOLUTION

A. Mediation. Founder and TSDF agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorneys fees, even if they are otherwise available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph **15C** below.

B. Arbitration of Disputes. Founder and TSDF agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be submitted for neutral, non-binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 20 years of experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with the Code of Civil Procedure Section 1283.85. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Exclusions from this arbitration provision are specified in paragraph **15C** below.

C. Exclusions. Any matter that is within the jurisdiction of any bankruptcy court shall be excluded from mediation and arbitration.

IN WITNESS WHEREOF, we execute this agreement on _____.

Founder: _____

<Name, TitleTBD>
U.S. Fish and Wildlife Service

Founder: _____

<Name, TitleTBD>
California Department of Fish and Wildlife

Approved by the President & CEO of The San Diego Foundation on _____.

By: _____

Bob Kelly
President & CEO



ENDOWMENT DISTRIBUTION ELECTION
for

Ramona Grasslands Conservation Bank Habitat Maintenance Fund

Allocation of earnings are made semi-annually to each Fund in March and September. Earnings are available for distribution semi-annually, annually, or on request after an allocation period. Distributable earnings will remain distributable unless it is requested that the earnings be reinvested. Earnings reinvested become a part of principal and cannot be accessed in the future for distribution.

Please check one of the following: (If no selection is made earnings will be held until distribution is requested by founder(s) or advisor(s)).

- Please distribute the earnings semi-annually. (March and September)
- Please distribute the earnings annually.
Circle one: March or September
- Please hold the earnings until distribution is requested.
Please note distributable balance earnings are not credited to the fund.
- Please reinvest the earnings.

(This selection can be changed at any time, but becomes effective on July 1 and January 1.)

<Name, TitleTBD> Date
U.S. Fish and Wildlife Service

<Name, TitleTBD> Date
California Department of Fish and Wildlife



PROGRAM POLICIES

1. The San Diego Foundation. The San Diego Foundation (“TSDF”) is a California nonprofit public benefit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“IRC”). TSDF is recognized as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi) and operates as a “community trust” under U.S. Treasury Regulations Section 1.170A-9T(f)(11). All contributions to and assets of TSDF are subject to its Articles of Incorporation, Bylaws and Program Policies. TSDF reserves the right to modify the terms and conditions of its Articles of Incorporation, Bylaws and Program Policies at any time.

2. Donor Advised Funds. As a community foundation, TSDF may establish for its donors a “donor advised fund,” which is separately identified by reference to the donor or donors. The fund is owned and controlled by TSDF and the donor or persons appointed by the donor have the privilege of providing advice with respect to the fund’s investments or distributions. TSDF has final authority over the distribution of all grants from its donor advised funds, and reserves the right to decline or modify a grant recommendation that is not consistent with these policies or TSDF’s charitable purposes. Gifts to a donor advised fund are irrevocable.

3. Other Funds. In addition to donor advised funds, TSDF also establishes scholarship funds (discussed below), agency funds (for the benefit of a specified charity), field of interest funds (for a specified charitable purpose) and habitat funds (to administer funds set aside to maintain ecological preserves). Gifts to these funds are irrevocable.

4. Fund Minimums. Generally, a minimum of \$50,000 is required to establish an agency fund and \$25,000 for all other funds.

5. Providing Grant Advice to Donor Advised Funds. Once a donor advised fund has been established and funded, and as long as it maintains a fund balance of at least \$10,000, the advisor(s) named in the agreement may recommend distributions to qualified charitable organizations. (TSDF staff will perform due diligence to verify that the organization is a current, qualified charity.) The following rules govern grant recommendations:

a. Minimums. Each recommended grant should be for at least \$250.00.

b. Procedure. Unless otherwise restricted as an endowment, grants may be recommended out of the original principal, as well as accumulated investment earnings, if any. Grant recommendations can be made at any time during the year, except for designated endowment funds, which make distributions in March and/or September. Recommendations can be submitted by mail, facsimile or electronic mail. Forms and instructions for making grant recommendations will be provided upon creation of a fund, as part of an advisor orientation process.

c. Grant Restrictions. The following restrictions apply to grants:

i. No Indirect Benefit. Grants from donor advised funds may not be used to secure any benefit from the grantee for the donor, the advisor or any persons related to them.

ii. Enforceable Pledges. Grants from donor advised funds may not be used to discharge or satisfy a charitable pledge or obligation that is legally enforceable against the donor or any other person.

iii. Event Tickets. Grants from donor advised funds may not be used to pay for goods or services of value received by the donor, advisor or their family members. For example, grants may not be used to support any charitable event, including fundraising dinners, concerts, auctions, or other benefit functions when the donor would receive a return benefit, such as the benefit of being able to attend a fundraising dinner or event. Further, no grants may be used to pay for any portion of a split or bifurcated disbursement to a charity. A split or bifurcated payment refers to the

splitting of a payment to a charity, such as for tickets to an event, into two parts: the deductible portion and the non-deductible portion.

iv. Giving to Individuals. Donors may not choose a specific individual to receive a benefit from a grant from a donor advised fund.

v. Prohibited Loans & Compensation. Donors, advisors or any related parties may not receive grants, loans, compensation or similar payments (including expense reimbursements) from donor advised funds.

d. Restricted Organizations and Purposes. TSDF will not approve grant recommendations that are for non-functionally integrated Type III supporting organizations; supporting organizations that provide support to organizations controlled by the donor, advisor or related persons; supporting organizations that are controlled by the donor, advisor, or related persons; private non-operating foundations; lobbying, political campaigns or other political activities; or any purpose that is not entirely charitable.

e. Remedial Action. TSDF will take remedial action if it discovers that grants have been made for improper purposes. Remedial actions may include, but are not limited to, a requirement that the recipient charity return the grant and/or termination of the donor's advisory privileges.

f. Anti-Terrorism Provisions. As part of the grant review process, TSDF checks all recommended grant recipients against the Treasury Department's List of Specially-Designated Nationals, other U.S. and foreign government watch lists, and the IRS list of organizations whose tax exemption has been suspended under IRC Section 501(p). TSDF will not approve grant recommendations to organizations that appear on such lists.

6. Scholarship Funds. Scholarship funds may have a scholarship advisory committee. All scholarship advisory committee members must be approved by the TSDF's Board of Governors prior to making the first scholarship awards and thereafter annually. The founder may participate on the scholarship advisory committee, provided that neither the founder nor the founder's designees (related parties) may chair the scholarship advisory committee or in any way control the selection process or constitute a majority of the scholarship advisory committee members. In the event the scholarship advisory committee shall cease to be in existence, the Board of Governors of TSDF shall serve as the advisor of the scholarship fund. All scholarships shall be awarded on an objective and nondiscriminatory basis using procedures that have been approved in advance by the Board of Governors of TSDF and that have been designed to ensure that all such grants meet the requirements of paragraphs (1), (2), or (3) of Section 4945(g) of the Internal Revenue Code of 1986.

7. Income and Estate Tax Deductions. TSDF does not provide any advice or assurance to its donors as to the income tax treatment of amounts deposited in a fund. Donors are advised to seek independent advice as to such income tax treatment.

8. Investments. The fund advisors for endowment funds and for non-endowment funds with assets in excess of \$25,000 may recommend that the assets of the fund be invested on one of three investment pools (subject to liquidity requirements); information regarding the composition of each investment pool will be provided to the donor at the time the fund is established. Such recommendations are advisory, and TSDF has final authority over the investment of assets in its funds.

9. Fees and Costs. Each fund established at TSDF shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against each fund shall be determined in accordance with the then current fee policy of TSDF as the fee structure applicable to funds of its type. In addition, upon receipt of assets upon the death of a donor, a onetime estate fee will be assessed in accordance with the then current fee policy of TSDF. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for a fund shall also be paid from such fund.

10. Provision for Governing Law. These Program Policies, all fund agreements, and any program-related agreement executed by a Donor shall be governed by California law. All gift agreements are deemed to be entered into in the State of California, and all contributions to the TSDF are intended to be administered and managed in the State of California.