

RESOLUTION NO. 2008-205

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO SIGN AND TRANSFER A SWAINSON'S
HAWK FORAGING HABITAT CONSERVATION EASEMENT OVER THE CITY'S
HABITAT MITIGATION PROPERTY TO THE NATURE CONSERVANCY, TO SIGN
THE ENDOWMENT AGREEMENT FOR THE EASEMENT, AND TO TRANSFER AN
ENDOWMENT OF \$171,099 FROM THE SWAINSON'S HAWK HABITAT FUND TO
THE NATURE CONSERVANCY**

WHEREAS, the City of Elk Grove has acquired property that will be converted and managed as Swainson's Hawk foraging habitat – the Swainson's hawk habitat mitigation property; and

WHEREAS, it is the City Council's desire that the conservation values of the Swainson's hawk habitat mitigation property be protected in perpetuity; and

WHEREAS, executing a conservation easement over the Swainson's hawk habitat mitigation property and transferring said easement to an organization recognized for environmental protection will ensure that the habitat conservation values of the property are protected in perpetuity; and

WHEREAS, The Nature Conservancy is an organization that is nationally and internationally recognized for its efforts in preserving and protecting wildlife habitat lands; and

WHEREAS, the City and The Nature Conservancy have prepared a draft Conservation Easement, which describes how the property will be protected for the benefit of Swainson's hawks; and

WHEREAS, in order to accept and monitor the easement The Nature Conservancy is requesting an endowment in the amount of \$171,099; and

WHEREAS, the City has reviewed and concurs with the supporting documentation for the endowment presented by The Nature Conservancy; and

WHEREAS, the City and The Nature Conservancy have prepared a draft Endowment Agreement, which describes how the endowment will be used.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager or her designee to:

1. Finalize and sign a Swainson's hawk foraging habitat conservation easement over the City's habitat mitigation property on behalf of The Nature Conservancy, consistent with the draft described in Exhibit A;

2. Finalize and sign an Endowment Agreement with The Nature Conservancy for the Swainson's hawk foraging habitat conservation easement, consistent with the draft described in Exhibit B; and
3. Transfer \$171,099 from the Swainson's Hawk Habitat Fund to The Nature Conservancy.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 27th day of August, 2008.



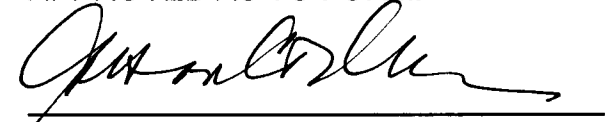
GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Recording requested, and when recorded, return to:

The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department

(space above this line reserved for recorder's use)

GRANT DEED OF AGRICULTURAL AND SWAINSON'S HAWK HABITAT
CONSERVATION EASEMENT

This Grant Deed of Agricultural and Swainson's Hawk Habitat Conservation Easement (this "Grant") is made as of _____, 2008 by and between the **City of Elk Grove**, a municipal corporation, as "Grantor" and **The Nature Conservancy**, a District of Columbia nonprofit corporation, as "Grantee."

Recitals

A. Grantor owns real property consisting of approximately 744 acres, in Sacramento County, California, as described in Exhibit A and shown more particularly on the map attached as Exhibit B, attached hereto and incorporated herein, which together with all appurtenances thereto, including without limitation all mineral and mineral rights, if any, and all water and water rights appurtenant to such land (collectively, the "Property").

B. The Property possess significant conservation values, including, without limitation, scenic, natural habitat, hydrologic, open space, ecological, agricultural and scientific values of great importance to Grantor, the people of the City of Elk Grove and the people of the State of California (collectively, the "Conservation Values").

C. The Property is comprised of open space land, appropriate to use for certain types of agriculture, which also provide essential foraging and/or nesting habitat for Swainson's hawks, and other significant relatively natural habitat and buffer for many species of wildlife including, but not limited to, raptors, migratory birds, and others.

D. Protection and preservation of the Property, including its wildlife habitat, shall assure that this area and its existing features shall continue to be available for certain types of agriculture, which provide foraging and or nesting habitat for Swainson's hawks and other natural habitat values and buffer for wildlife, a significant public benefit by preserving open space against development pressure, and scenic qualities unique to the Cosumnes River Watershed.

E. As fee owner, Grantor owns the affirmative rights to identify, preserve, and protect forever the existing features and values of the Property.

F. The State of California recognizes the public importance and validity of agricultural and habitat conservation easements by enactment of Section 815 *et seq.* of the California Civil Code, and Grantee is an entity qualified under such Civil Code provisions to hold conservation easements.

G. Grantee is a nonprofit corporation incorporated under the laws of the District of Columbia, and, as a tax-exempt public charity described in Section 815.3 of the California Civil Code and Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1968, as amended from time to time and together with any and all regulations promulgated thereunder (the "Code"), is organized to protect and conserve natural areas and ecologically significant land for scientific, charitable and educational purposes, and is a "qualified organization" within the provisions of Section 170(h) of the Code qualified to acquire and hold conservation easements, and is authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

H. To accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee, and Grantee intends to obtain from Grantor, an Agricultural and Swainson's Hawk Habitat Conservation Easement restricting the use which may be made of the Property, and grants rights to Grantor, to preserve and protect forever the agricultural, open-space, foraging and/or nesting habitat for Swainson's hawks and other wildlife habitat and scenic values of the Property.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California and in particular California Civil Code 815 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee, its successors and assigns, an Agricultural and Swainson's Hawk Habitat Conservation Easement in gross forever in, on, over, and across the Property (the "Conservation Easement"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Property, and the parties agree as follows:

1. **Purposes.** The multiple natural resource conservation purposes of this Grant and the Conservation Easement are to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values of the Property, including, without limitation, the following (collectively, "Conservation Purposes"): (a) the conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife including the processes which sustain that habitat; (b) the availability of the Property for agriculture by protecting the Property from development pressure; and (c) the open space character and scenic qualities of the Property which are important public benefits and are consistent with the availability of the Property for wildlife habitat and agriculture. It is intended that the Conservation Easement shall foster agricultural practices on the Property in harmony with the protection and preservation of conservation and habitat values of the Property as foraging and/or nesting habitat for Swainson's hawks and for other wildlife habitat and the processes that sustain that habitat, and in harmony with the open space qualities of the Property. It is intended that each such purpose shall be conducted in a manner consistent with all of such multiple natural resource conservation purposes. This Grant prohibits use of the Property for any purpose that would impair, degrade or interfere with any of the multiple natural resources conservation purposes stated above.

2. **Easement Documentation Report.** The parties acknowledge that an Easement Documentation Report (the "Report") of the Property has been prepared by a competent biologist familiar with the environs and approved by Grantor and Grantee in writing, a copy of which is on file with Grantor and Grantee at their respective address for notices, set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the Property at the time of this Grant, and of the historical uses of the Property, including historical water uses. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical, biological

condition of the Property or the permitted historical uses of the Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

3. **Grantee's Rights.** To accomplish the purpose of the Conservation Easement, the rights and interests which are conveyed to Grantee by this Grant include, but are not limited to, the following:

- A. **Preserve and Protect.** Grantee may identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values of the Property.
- B. **Entry and Access Rights:** Grantee and Grantee's employees and agents are hereby granted rights of access to enter upon the Property using appurtenant easements and rights-of-way, if any, and may enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Grant, to study and make scientific observations of the natural elements and ecosystems of the Property, to determine whether Grantor's activities are in compliance with the terms of this Grant and to take all actions deemed necessary by Grantee to identify, preserve, protect, enhance, monitor and restore in perpetuity the Conservation Values. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Conservation Easement, such entry shall be upon prior reasonable notice to Grantor and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- C. **Enforcement.** Grantee may prevent or enjoin any activity on, or use of, the Property that is inconsistent with the purposes of this Grant and the Conservation Easement, and may enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
- D. **Signs.** Grantee may erect a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the environmental and scenic resources of the Property are protected by Grantee. The wording of the information on the sign shall be jointly determined by Grantee and Grantor, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining its sign or marker.
- E. **Scientific Studies.** Subject to Grantor's approval, which approval shall not be unreasonably withheld or denied, Grantee shall have the right to conduct, at Grantee's sole cost and expense, fish, wildlife, plant, and habitat studies on the Property, as well as research and monitoring on the Property, provided that such studies, research, and monitoring shall be carried out in a manner that shall not interfere unreasonably with the permitted use(s) or enjoyment of the Property by Grantor, its successors in interest, or any legally recognized occupant(s) or user(s) of the Property. Any other parties interested in conducting scientific studies on the Property are subject to the prior written approval of Grantor, in consultation with Grantee, and such approval shall not be unreasonably withheld or denied.

4. **Permitted Uses of the Property.** Grantor and Grantee intend that the Conservation Easement shall confine the uses of the Property to the multiple natural resource conservation uses of agriculture, open space, scenic, conservation, and wildlife habitat, including the processes which sustain those certain agricultural uses and habitat, and to such other incidental uses as are expressly permitted herein, all in

accordance with the terms and conditions of this Conservation Easement. Except as prohibited or otherwise limited by the terms of this Grant, Grantor reserves the right to use and enjoy the Property in any manner which is consistent with the Conservation Purposes of the Conservation Easement. In that regard, the uses set forth in **Exhibit C** attached hereto, though not an exhaustive list of consistent permitted uses, are consistent with the Conservation Easement, and shall not be precluded, prevented or limited by this Grant, except : (a) to the extent otherwise prohibited under the terms of this Grant; (b) in those instances in which prior approval by Grantee is required under this Grant, until such approval is obtained; and (c) in those instances in which any action or practice is or becomes inconsistent with the Conservation Purposes or diminishes or impairs any of the specific Conservation Values, as determined by Grantee and the City of Elk Grove in the exercise of each party's reasonable discretion.

5. **Prohibited Uses of the Property.** Any activity on or use of the Property that is inconsistent with the Conservation Purposes (including, without limitation, any activity or use that materially diminishes or impairs the Conservation Values) is prohibited. Though not an exhaustive list of prohibited uses, none of the uses described in **Exhibit D** attached hereto and incorporated herein by reference shall be made of or on the Property. In making this Grant, Grantor has considered the possibility that uses prohibited by the terms of this Grant may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Grant or the Conservation Easement. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Grant, or the unprofitability of doing so, shall not impair the validity of this Grant or the Conservation Easement or be considered grounds for the termination, extinguishment, or modification of same.

6. **Remedies.**

A. **Notice of Violation: Corrective Action.** If Grantor or Grantee becomes aware that a violation of the terms of this Grant has occurred or is threatened to occur, Grantor or Grantee shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Values or the Conservation Purposes, to restore the portion of the Property so injured. If the noticed party fails to cure the violation within thirty (30) days after receipt of notice, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, the noticing party shall have all remedies available at law or in equity to enforce the terms of this Grant, including without limitation the right to seek a temporary or permanent injunction with respect to such activity, to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity, to pay monetary amounts which, if not paid, could result in the extinguishment, modification, non-enforcement or impairment of the Conservation Easement, and/or to recover any damages arising from the violation. Rights under this paragraph apply equally to actual or threatened violations of the terms of this Grant. Both parties agree that the remedies available at law for any violation of the terms of this Grant are inadequate and that either party shall be entitled to seek the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 *et seq.* are

incorporated herein by this reference, and this Grant shall include all of the rights and remedies set forth therein.

B. Cost of Enforcement. In any action, suit or other proceeding undertaken to enforce the provisions of this Grant, the prevailing party shall be entitled to recover from the non-prevailing all reasonable costs and expenses including, without limitation, attorneys' and experts' fees and costs, and if such prevailing party shall recover judgment in any action or proceeding, such costs and expenses shall be included as part of the judgment. In addition, any costs of restoration shall be borne by the party responsible for the violation of the terms of this Grant.

C. Emergency Enforcement. If either party, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values or to prevent breach or extinguishment of the Conservation Easement, Grantee may pursue its remedies under this paragraph without prior notice to the other or without waiting for the period to cure to expire.

D. Non-Waiver. Enforcement of the terms and provisions of this Grant shall be up to the discretion of the non-violating party, and the failure to discover a violation or to take action under this paragraph shall not be deemed or construed to be a waiver of any party's rights hereunder with respect to such violation in the event of any subsequent breach. In no event shall any delay or omission in exercising any right or remedy constitute an impairment of or a waiver or such right or remedy.

E. Acts Beyond Grantor's Control. Nothing contained in this Grant shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement.

7. Transfer. Grantee may, in Grantee's sole and absolute discretion, transfer all or any of its interests in the Conservation Easement with the City of Elk Grove's prior written consent, which consent shall not be unreasonably withheld, provided that: (1) Grantee requires, as a condition of such transfer, that the Conservation Purposes of the Conservation Easement continue to be carried out following such transfer; (2) any assignment shall be made only to an organization satisfactory to the City of Elk Grove and qualified at the time of the transfer as an eligible donee under Internal Revenue Code Section 170(b)(3) or its successor, or any regulation issued thereunder, and such organization shall be an entity qualified pursuant to Civil Code Section 815 *et seq.* or any subsequent State law governing the creation, transfer and enforcement of conservation easements; and (3) Grantee shall provide Grantor with notice of the assignment, at the address last provided by Grantor to Grantee, within thirty (30) days prior to the effective date of the assignment.

8. Running with the Land. The Conservation Easement created by this Grant is perpetual and shall burden and run with the Property forever. Every provision of this Grant that applies to the Grantor or Grantee shall also apply forever to and shall burden or benefit, as applicable, their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interest may appear. Grantor agrees that transfer by Grantor of any interest in the Property shall be in compliance with all applicable provisions of this Grant .

9. Representation and Warranties.

A. Hazardous Materials. Grantor represents and warrants that Grantor shall comply with all Environmental Laws (as defined below in this Grant) in using the Property and that

Grantor shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials, as that term is defined below in this Grant.

- B. Authority to Grant Easement. Grantor has full right and authority to grant the Conservation Easement to Grantee.
- C. Compliance with Laws. Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.
- D. No Litigation. There is no action, suit or proceeding which is pending or, to the best of Grantor's knowledge, threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- E. Authority To Execute Conservation Easement. The person executing this Grant on behalf of Grantee represents that execution of this Grant has been duly authorized by Grantee. The person(s) executing this Grant on behalf of the Grantor represents that the execution of this Grant has been duly authorized by the Grantor.

10. Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property and agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property before delinquency and that Grantor shall keep Grantee's interest in the Property free of any liens, including those arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor shall be solely responsible for any costs related to the maintenance of general liability insurance covering acts on the Property. Grantee shall not be responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Grant, and any activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

11. Indemnifications.

- A. Indemnification by Grantor. Notwithstanding any other provision herein to the contrary, Grantor hereby agrees to indemnify, defend, and hold harmless Grantee, its directors, officers, employees, agents, and contractors and their heirs and assigns (the "Grantee Indemnified Parties") from and against any costs, liabilities, penalties, damages, claims or expenses (including, without limitation, reasonable attorneys' fees and costs) and litigation costs (collectively, "Damages") which the Grantee Indemnified Parties may suffer or incur, to the extent that they are a result of or arise out of any of the following: (a) the activities of Grantor on the Property; (b) the inaccuracy of any representation or warranty made by Grantor; (c) the breach by Grantor of any provision of this Grant; or (d) any injury to or the death of any person or physical damage to any property resulting from any act, omission, condition or other matter related to or occurring on or about the Property, caused by Grantor, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties. Without limiting the foregoing,

with a copy to: City of Elk Grove
8380 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Attorney

To Grantee: The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105
Attn: Legal Department

with a copy to: The Nature Conservancy
Cosumnes River Preserve
13501 Franklin Blvd
Galt, CA 95632
Attn: Project Director

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notice is deemed to be given upon receipt.

- D. Notice of Reserved Rights. Grantor shall notify Grantee, in writing, at least sixty (60) days before exercising any reserved right which may have a material adverse impact on any Conservation Values.
- E. Subsequent Activities. Permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.

13. Severability and Enforceability. The terms and purposes of this Grant and the Conservation Easement are intended to be perpetual. If any provision of this Grant or purpose of the Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Grant and the purposes of the Conservation Easement, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

14. Valuation; Extinguishment; Condemnation.

- A. Stipulated Fair Market Value. Grantor and Grantee agree that this Grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in Grantee, which, for purposes of this paragraph, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) 68%, which is the ratio of the value of the Conservation Easement at the time of this grant to the value of the Property, without the deduction for the value of the Conservation Easement. For Purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

If for any reason there is an extinguishment of any of the restrictions of this Grant on a subsequent sale, exchange, or taking of the Property, Grantee shall be entitled to a portion of the proceeds at least equal to the amount determined in accordance with this

paragraph. If such extinguishment occurs with respect to fewer than all acres of the Property, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment. If there is no extinguishment of any of the restrictions of this Grant on a subsequent sale, exchange, or taking of the Property, Grantee shall have no rights to any portion of the proceeds.

- B. Judicial Extinguishment. It is the intention of the parties that the Conservation Purposes of the Conservation Easement shall be carried out in perpetuity, and that liberal construction of this Grant is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind.
- C. Condemnation. If all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority other than the City of Elk Grove so as to abrogate the restrictions imposed by this Grant, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The remaining proceeds shall be divided consistent with the provisions of this paragraph using the ratio of the value of Grantee's and Grantor's interests that is set forth above, it being expressly agreed that for condemnation purposes the Conservation Easement constitutes a compensable property right. Pursuant to its rights under California Government Code Section 65864 *et seq.*, the City of Elk Grove, by its signature hereon as Grantor, agrees not to condemn the Property.

15. Interpretation.

- A. Liberally Construed. It is the intent of this Grant to preserve the condition of the Property and each of the Conservation Purposes protected herein, notwithstanding economic or other hardship or changes in surrounding conditions. The provisions of this Grant shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the Conservation Values and other Conservation Purposes described above, and allowing Grantor's use and enjoyment of the Property to the extent consistent with the Conservation Purposes. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. The Conservation Purposes described herein are the intended best and most productive use of the Property. No remedy or election given by any provision in this Grant shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed and revised this Grant, and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Grant. In the event of any conflict between the provisions of this Grant and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.
- B. Governing Law. This Grant shall be interpreted in accordance with the laws of the State of California, and shall be subject to the provisions of Civil Code Section 815 *et seq.* or any subsequent State law governing the creation, transfer and enforcement of conservation easements.

C. Captions. The captions of the various paragraphs and subparagraphs of this Grant and its exhibits have been inserted solely for convenience of reference and are not part of the Conservation Easement and shall have no effect upon construction or interpretation.

D. No Hazardous Materials Liability. Notwithstanding any other provision herein to the contrary, the parties do not intend this Grant to be construed such that it creates in or gives to Grantee:

(a) the obligations or liabilities of an “owner” or “operator” as those words are defined and used in Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 *et seq.* and hereinafter “CERCLA”);

(b) the obligations or liabilities of a person described in 42 USC §9607(a)(3);

(c) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(d) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or

(e) any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

E. Definitions.

(a) The terms “Grantor” and “Grantee,” wherever used in this Grant and any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor, its personal representatives, heirs, devisee, personal representatives, and assigns, and all other successors as their interest may appear and Grantee and its successors and assigns.

(b) The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 *et seq.*), the Hazardous Materials Transportation Act (49 USC §6901 *et seq.*), the Hazardous Waste Control Law (Cal. Health & Safety Code §25100 *et seq.*), the Hazardous Substance Account Act (Cal. Health & Safety Code §25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after this date.

(c) The term “Environmental Laws” includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

16. Subsequent Liens on Property. No provision of this Grant is intended to be, nor should it be, construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing, provided that any subsequent deed of trust, mortgage, lien, or encumbrance arising from such a borrowing must, at all times, be subordinated to the Conservation Easement and this Grant. Any successor interest of Grantor, by acceptance of a deed, lease or other document purporting to convey an interest in the

Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Grant.

17. **Access.** Nothing contained in this Grant shall give or grant to the public a right to enter upon or use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might materially diminish or impair the Conservation Values; provided, however, that Grantee acknowledges that Grantor may allow public access to the Property or a portion thereof, so long as such public access does not materially diminish or impair the Conservation Values.

18. **Subsequent Transfers; No Merger.** Grantor shall incorporate the terms of this Grant by reference in any deed or legal instrument by which Grantor divests any interest in the Property, including without limitation, any lease. Grantor shall give Grantee at least thirty (30) days written notice prior to the date of such transfer, which notice shall include the name, address and telephone number of the transferee. Grantor's failure to perform any act required by this Paragraph shall not impair the validity of the Conservation Easement or this Grant, or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Grant and the Conservation Easement.

19. **Entire Agreement.** This Grant, together with the attached exhibits and schedules, and any documents incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior agreement and understandings of the parties.

20. **Amendments.** This Grant may be amended only by way of a written instrument signed by Grantor and Grantee and recorded with the Sacramento County Recorder's office. Any such amendment shall be consistent with the Conservation Purposes, and shall comply with Section 815 *et seq.* of the California Civil Code.

21. **Counterparts.** This Grant may be signed in one or more counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Grant as of the date first above written.

City Of Elk Grove,
a municipal corporation

The Nature Conservancy,
a District of Columbia nonprofit corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBITS:

- Exhibit A – Legal Description of Property
- Exhibit B – Map of Property
- Exhibit C – Permitted Uses of the Property
- Exhibit D – Prohibited Uses of the Property
- Exhibit E – Prohibited Plants

Exhibit A

Legal Description of Property

[Legal Description Underlies this Exhibit A Cover Page]

DRAFT

Exhibit B

Map of Property

[Map Underlies this Exhibit B Cover Page]

DRAFT

Exhibit C

Permitted Uses of the Property

The uses set forth in this Exhibit C detail specific activities that are permitted under the Conservation Easement. The uses set forth in this Exhibit C are also intended to provide guidance in determining the consistency of other activities with the Conservation Purposes. Notwithstanding the uses set forth in this Exhibit C and, notwithstanding any provision of this Grant to the contrary, in no event shall any of the permitted uses of the Property (whether set forth in this Exhibit C or elsewhere in this Grant) be conducted in a manner or to an extent that diminishes or impairs the Conservation Values or that otherwise violates this Grant.

1. Historical Agricultural Practices. Except as prohibited or restricted under the terms of this Grant, Grantor may continue historical agricultural practices on the Property in the manner and location as set forth in the Report, to the extent that such practices are consistent with the Conservation Values and Conservation Purposes of the Conservation Easement. All farming operations on the Property shall be consistent with reasonable farming practices and shall be in full compliance with all applicable federal, state and local statutes, laws, rules, regulations and ordinances (collectively, the "Laws"). The term "historical agricultural practices" includes the continued historic use of fertilizers, pesticides, herbicides, and other biocides, provided that such use, including, without limitation, the amount, frequency, and manner of application, shall be in accordance with all applicable Laws, and such use does not diminish or impair the Conservation Values or the Conservation Purposes of the Conservation Easement and shall not diminish or impair the naturally occurring ecosystem on and around the Property (not including any impacts caused to such ecosystems that are the intended result of the application of such fertilizers, pesticides, herbicides and/or biocides as long as the application of such substances has been conducted in accordance with the instructions for application set forth for such substance and such application is consistent with those good farm management practices that are customary in the general geographic area in which the Property is located).

2. New Practices. Except as prohibited or restricted under the terms of this Grant, and subject to obtaining Grantee's prior approval in accordance with the notice and approval provisions contained herein, it shall be permissible to carry on agricultural practices, and other practices or activities, that differ from historical agricultural practices, so long as such practices do not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters, and such practices are consistent with and do not diminish or impair the Conservation Purposes of the Conservation Easement. The following new practices are hereby found to be consistent with the Conservation Purposes of the Conservation Easement and do not require compliance with the notice and approval procedures described above so long as such new practices shall not result in significant soil degradation, or significant pollution or degradation of any surface or subsurface waters and such new practices are consistent with and do not diminish or impair the Conservation Purposes of the Conservation Easement:

- (a) grazing of livestock;
- (b) cultivation and harvest of alfalfa, clover and other permanent pasture; and
- (c) substitution of new fertilizers, pesticides and herbicides for those Grantor presently uses, provided that such use, including, but not limited to, the amount, frequency, and manner of application shall be in accordance with all applicable Laws, and such use does not diminish or impair the naturally occurring ecosystems existing on the Property (not including any impacts caused to such ecosystems that are the intended result of the application of such fertilizers, pesticides, herbicides and/or biocides as long as the application of such substances has been conducted in accordance with the instructions for application set forth for such

substance and such application is consistent with those good farm management practices that are customary in the general geographic area in which the Property is located).

Except as expressly permitted in the immediately preceding sentence, the cultivation and harvest of any non-annual crops on the Property requires Grantee's prior approval in accordance with the notice and approval provisions contained above.

3. Fences. Grantor may maintain, repair, replace and rebuild the fences that exist on the Property as of the date of this Grant. Grantor, with Grantee's prior written approval, may construct and maintain new fences anywhere on the Property for purposes reasonable and customary management of agriculture, livestock, and wildlife.

4. Irrigation Systems. Grantor may maintain, repair, replace and rebuild any irrigation systems that exists on the Property as of the date of this Grant, and may construct and maintain new irrigation system improvement anywhere on the Property for purposes reasonable and customary management of agriculture, livestock, and wildlife. Grantor may use recycled water in connection with Grantor's permitted uses of the Property. Grantor may construct, maintain, repair, replace and rebuild one pond on up to a one-acre portion of the Property to store such recycled water and associated infrastructure and improvements for transporting recycled water onto the Property for such permitted uses; provided, however, that (a) such pond shall only store water that will be used on the Property in connection with Grantor's permitted uses hereunder, and (b) the location, size and dimensions of the pond shall be subject to the prior written consent of Grantee, which approval shall not be unreasonably withheld.

5. Roads. Grantor may maintain and repair existing roads at currently existing levels of improvement, and construct and maintain such new unpaved and otherwise unimproved roads as may be reasonably necessary for Grantor's agricultural activities on the Property and in a manner that shall not diminish or impair the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement, provided, however, that any new roads may not be constructed unless prior written consent has been obtained from Grantee, which approval shall not be unreasonably withheld.

6. Fishing and Hunting. Grantor may fish or hunt or trap wildlife on the Property, to the extent that fish or animals subject to such activities are not afforded protection under applicable Laws and provided such fishing, hunting or trapping is conducted in compliance with applicable Laws, and in a manner that does not significantly deplete the wildlife resources on the Property; and provided, further, that hunting on the Property shall be subject to regional hunting season restrictions applicable to individual hunters at local State Wildlife Areas, which shall in no event include any special regulation hunting seasons that would increase hunting activities on the Property in a manner that would be inconsistent with the Conservation Purposes or the Conservation Values of the Conservation Easement. Commercial hunting and fishing are permitted so long as conducted in accordance with the provisions of this Paragraph, provided, however, that commercial fish farms are prohibited. Control of predatory and problem animals shall use selective control techniques, which shall be limited in their effectiveness to specific animals which have caused damage to agriculture, livestock and other property.

7. Water Resources. Grantor may develop and maintain such groundwater resources on the Property as are necessary or convenient for agricultural, livestock, and wildlife habitat uses in a manner consistent with this Grant. Grantor may maintain such surface water resources on the Property as are noted in the Report as currently existing on the Property.

8. Passive Recreational Uses. Grantor may conduct passive recreational uses on the Property, including, but not limited to, bird watching, hiking, horseback riding, and picnicking, provided that these uses require no surface alteration or other development of the Property.

9. Signs. Grantor may erect a reasonable number of signs or other appropriate markers in prominent locations on the Property, visible from a public road, which identify agricultural or open space activities on the Property and/or state that no trespassing or no hunting is allowed on the Property.

10. Transfer of Property. Grantor may transfer the Property, provided that the transfer is not prohibited under the terms of this Grant, and that Grantor notifies Grantee before the transfer of the Property, and the document of conveyance shall expressly incorporate by reference this Grant. Leasing of the Property for a period of five (5) or more years must be approved in writing by Grantee, whose approval shall not unreasonably be withheld. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Grant or the Conservation Easement or limit the enforceability in any way.

11. Residual Rights; Prior Approval. Except as expressly limited herein, Grantor may exercise and enjoy all rights as fee owner of the Property, including the right to use the Property for any purpose which is consistent with and does not diminish or impair the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement. If any question exists regarding whether historic or new practices or activities are permitted or would impair or diminish the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement, Grantor shall notify Grantee in the manner provided in this Grant and obtain Grantee's written approval prior to engaging in such practices or activities.

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Exhibit D

Prohibited Uses of the Property

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the Property. The following are set forth both to list specific prohibited activities on the Property, and to provide guidance in determining whether other activities are not consistent with the Conservation Purposes of the Conservation Easement:

1. No Subdivision. The legal or de facto division, subdivision, or partitioning of the Property, any fee transfer of less than the entire Property.
2. No Non-Agricultural Commercial Uses. The establishment of any commercial or industrial uses on the Property, other than the agricultural uses and commercial practices expressly permitted by the terms of this Grant. Examples of prohibited commercial or industrial uses include, but are not limited to, (a) the establishment or maintenance of any commercial feedlots, which are defined as any open or enclosed area where domestic livestock are grouped together for intensive feeding purposes; (b) the planting and cultivation orchards or vineyards; (c) the establishment or maintenance of any commercial greenhouses or plant nurseries; the (d) establishment or maintenance of any gravel mines; and (e) the establishment of any multi-family dwellings.
3. No Use or Transfer of Development Rights. Except as expressly permitted by the terms of this Grant, the exercise of any development rights associated with the Property, including without limitation, the construction or placement of any residential or other buildings, golf courses, camping accommodations, boat ramps, bridges, mobile homes, house trailers, permanent tent facilities, Quonset huts or similar structures, underground tanks, billboards, signs, or other advertising, and/or other structures or improvements, street lights, utility structures or lines, sewer systems or lines.

Except as expressly permitted by terms of Exhibit C of this Grant, all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

4. Natural Resource Development. Except soils, sands and other material as appropriate for the conduct of the agricultural and other activities expressly permitted on the Property in this Grant, the exploration for or extraction of minerals, gas, hydrocarbons, soils, sands, gravel or rock or any other material on or below the surface of the Property.
5. Prohibited Agriculture. Any annual crop not historically planted on the Property or approved in writing by Grantor, in consultation with Grantee. Any non-annual crop not expressly permitted by the terms of this Grant or approved in writing by Grantor, in consultation with Grantee. The planting, cultivation and harvest of any orchards, vineyards, artichokes, asparagus, sod, rice, safflower, or cotton.
6. No Dumping. The dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic or Hazardous Materials or agrichemicals, except that fertilizers, pesticides, biocides, and herbicides expressly permitted under the terms of this Grant may be stored on the Property, provided that such storage is in full compliance with applicable Laws, best management practices, and does not diminish or impair the Conservation Values of the Property.

7. No New Roads. The construction, reconstruction or replacement of any roadways, except as expressly permitted under the terms of this Grant, without the consent of Grantee.

8. No Destruction of Native Trees or Shrubs. The removal, cutting or destruction of native trees or shrubs on the Property, except for disease or insect control or to prevent property damage or personal injury and except for the removal of native trees that are four inches or less in diameter when measured at chest height from those areas of the Property that are used by Grantor for agricultural purposes permitted under this Grant.

9. No Biocides. The use of fertilizers, pesticides, biocides, and herbicides or other agricultural chemicals on the Property, except as expressly permitted under the terms of this Grant.

10. No Long-Term Leases. Leasing the Property for a period of five (5) or more years without the prior written approval of Grantee.

11. No Alteration of Natural Water Courses; Degradation of Water Quality. Except with the prior consent of Grantee, the manipulation or alteration of natural water courses, wetland, streambank, shoreline, or body of water. Activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or subsurface waters, provided, however, that Grantor shall be allowed to conduct any of the uses specifically permitted in this Grant even if such uses result in some adverse impact on water quality so long as such permitted uses are conducted in full compliance with all applicable Laws and consistent with those good farming practices that are customary in the general geographic area in which the Property is located.

12. No Impairment of Water Rights. Severance, conveyance, or encumbrance of water or water rights appurtenant to the Property, separately from the underlying title to the Property, or other action which diminishes or extinguishes such water rights.

Nothing in this provision shall restrict the right of the Grantor to sell rights to use water, or to use water on the Property, or on lands other than the Property on a temporary basis (maximum one-year increments), provided that such sale or use does not permanently impair the riparian or other water rights appurtenant to the Property nor reduce water rights below what is necessary for present or future agricultural production on the Property. This Agricultural Easement shall not sever or impair any riparian water rights appurtenant to the Property.

13. Inconsistent or Adverse Actions. Any action or practice which is or becomes not consistent with, or which diminishes or impairs the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement.

14. Vehicles. The use of any motorized vehicles off designated roadways, except for agricultural purposes.

15. Introduction of Non-native Species. The intentional or reckless introduction of non-native plant or animal species which may in Grantee's determination threaten the Conservation Values of the Property or the Conservation Purposes of the Conservation Easement, which species include, but are not limited to, the plants, trees and weeds described in Exhibit E which is attached to this Grant and incorporated herein by reference. Grantor shall not be considered reckless for failure to prevent, investigate or research any potential manner that such items may be introduced to the Property if such prevention, investigation or research is not within Grantor's normal business practices, or such potential manner has not been brought to Grantor's attention.

16. Subsequent Transfers. Conveyance by Grantor of any interest in the Property in a manner that would directly or indirectly violate the prohibitions of this Exhibit D, or in any other manner that does not comply with the requirements of this Grant.

17. No Hazing. The hazing or other disturbance of Swainson's hawks or other migratory birds on, approaching, or leaving the Property for the purpose of, without limitation, discouraging the presence of or habitat use by Swainson's hawks and other migratory birds on the Property.

18. Junkyards. The storage or disassembly of inoperable automobiles, machinery, equipment, trucks, and similar items for purposes of storage, sale, or rental of space for any such purpose.

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Exhibit E

Prohibited Plants

For purposes of the Conservation Easement, an “Invasive Species” is defined as a plant species that is (i) non-native to the ecosystem under consideration and (ii) whose introduction causes or is likely to cause economic or environmental harm. Grantor and Grantee agree that the planting of any Invasive Species which is at the time of planting listed with a rating of “High” in the California Invasive Plant Inventory (the “CIPI”), published by the California Invasive Plant Council (Cal-IPC) shall be prohibited by this Grant. If Cal-IPC ceases to exist or if its CIPI ceases to be updated regularly, then a similar listing prepared by an organization of the same caliber and endorsed by the same supporters of Cal-IPC shall be substituted for the CIPI for the purposes of this exhibit, as mutually agreed by Grantor and Grantee, each acting in good faith. The following Invasive Species are listed in the CIPI with a rating of “High” as of the date of this Grant:

<u>Common Name</u>	<u>Scientific Name</u>
barb goatgrass	<i>Aegilops triuncialis</i>
alligatorweed	<i>Alternanthera philoxeroides</i>
European beachgrass	<i>Ammophila arenaria</i>
giant reed	<i>Arundo donax</i>
Saharan mustard, African mustard	<i>Brassica tournefortii</i>
red brome	<i>Bromus madritensis</i> ssp. <i>Rubens</i> (= <i>B. rubens</i>)
downy brome, cheatgrass	<i>Bromus tectorum</i>
Hottentot-fig, iceplant	<i>Carpobrotus edulis</i>
spotted knapweed	<i>Centaurea maculosa</i> (= <i>C. biebersteinii</i>)
yellow starthistle	<i>Centaurea solstitialis</i>
jubatagrass	<i>Cortaderia jubata</i>
pampasgrass	<i>Cortaderia selloana</i>
Scotch broom	<i>Cytisus scoparius</i>
Cape-ivy, German-ivy	<i>Delairea odorata</i>
Brazilian egeria	<i>Egeria densa</i>
purple yeldtgrass	<i>Ehrharta calycina</i>
water hyacinth	<i>Eichhornia crassipes</i>
leafy spurge	<i>Euphorbia esula</i>
fennel	<i>Foeniculum vulgare</i>
French broom	<i>Genista monspessulana</i>
English ivy, Algerian ivy	<i>Hedera helix</i> , <i>H. canariensis</i>
hydrilla	<i>Hydrilla verticillata</i>
perennial pepperwood, tall whitetop	<i>Lepidium latifolium</i>
Uruguay water-primrose	<i>Ludwigia hexapetala</i> (= <i>L. uruguayensis</i>)
creeping water-primrose	<i>Ludwigia peploides</i> ssp. <i>montevidensis</i>
purple loosestrife	<i>Lythrum salicaria</i>
parrotfeather	<i>Myriophyllum aquaticum</i>

(list continues on next page)

Common Name	Scientific Name
Eurasian watermilfoil	<i>Myriophyllum spicatum</i>
Scotch thistle	<i>Onopordum acanthium</i>
Himalaya blackberry, Armenian blackberry	<i>Rubus armeniacus</i>
giant salvinia	<i>Salvinia molesta</i>
red sesbania, scarlet wisteria	<i>Sesbania punicea</i>
smooth cordgrass, Atlantic cordgrass	<i>Spartina alterniflora</i>
dense-flowered cordgrass	<i>Spartina densiflora</i>
Spanish broom	<i>Spartium junceum</i>
medusahead	<i>Taeniatherum caput-medusae</i>
smallflower tamarisk	<i>Tamarix parviflora</i>
salt cedar, tamarisk	<i>Tamarix ramosissima</i>
gorse	<i>Ulex europaeus</i>

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EXHIBIT B

FUNDING AGREEMENT

This FUNDING AGREEMENT (“**Agreement**”), dated as of _____, 2008, is entered into by and between **The Nature Conservancy**, a District of Columbia non-profit corporation (“**TNC**”), and the **City of Elk Grove**, a municipal corporation (“**City**”), with respect to the following matters:

RECITALS

A. City is the fee owner in and to that certain real property comprising approximately 744-acres, located in Sacramento County, California and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “**Property**”).

B. Concurrent with this Agreement, TNC and City have entered into that certain Grant Deed of Agricultural and Swainson’s Hawk Habitat Conservation Easement, pursuant to which City is granting to TNC a conservation easement over the Property (the “**Easement**”).

C. As a condition to accepting the Easement, TNC has required City to pay, and City has agreed to pay, TNC an endowment in an amount sufficient to reimburse TNC for costs incurred in connection with TNC’s acquisition of the Easement and those additional amounts projected to pay TNC’s costs to conduct perpetual monitoring and stewardship activities relating to TNC’s holding of the Easement.

AGREEMENT

Now, therefore, in consideration of the above recitals, and the mutual covenants and conditions contained herein, TNC and City hereby agree as follows:

1. **Delivery and Purpose of Funding Amount.** At or before the date the Easement is recorded in the Official Records of Sacramento County, California, City shall forward to TNC immediately available funds in the amount equal to \$156,182 (“**Funding Amount**”) to be used as follows:

(a) first, the amount of \$93,479 to cover initial and capital tasks and costs associated with TNC’s acquisition of the Easement (“**Initial and Capital Funds**”), including the following: (i) costs incurred by TNC to acquire the Easement; and (ii) costs to hold and manage the Easement for the first three years;

(b) second, the amount of \$15,000 to establish a legal defense fund for the Easement (“**Legal Defense Fund**”); and

(c) then, the amount of \$62,620 to establish a permanent, non-wasting endowment (“**Stewardship Endowment**”), the earnings from which will be used to pay costs incurred to monitor and steward the Easement in perpetuity following the first three years of TNC ownership of the Easement.

2. **Funding Amount.** Based on the diligent inquiry, experience and expertise of TNC in acquiring and holding conservation easements in the general region where the Property is located and elsewhere throughout California, TNC has calculated the Funding Amount as its good faith reasonable estimate of the amount necessary to pay those costs associated with its acquisition of the Easement and the perpetual monitoring and stewardship of the Easement, as detailed more specifically in the Property Analysis Record attached hereto as **Exhibit B** and incorporated by reference herein (“PAR”). The Funding Amount shall be the only amount payable by City to TNC for TNC’s acquisition and perpetual monitoring and stewardship of the Easement.

3. **Management of Legal Defense Fund.** TNC shall deposit, maintain, manage, administer and apply the Legal Defense Fund only for the purposes set forth in Paragraph 1 above and consistent with this Agreement and TNC’s internal accounting practices. TNC shall at all times maintain complete separate records of the balance of the Legal Defense Fund and any and all withdrawals made from the Legal Defense Fund and the purpose of each such withdrawal. TNC may use all or a portion of Legal Defense Fund to pay for actual costs incurred by TNC in connection with TNC’s legal defense and/or enforcement of the Easement.

4. **Management of Stewardship Endowment.** TNC shall deposit, maintain, manage, administer and apply the Stewardship Endowment funds only for the purposes set forth in Paragraph 1 above and consistent with this Agreement and TNC’s internal endowment rules, the current version of which is attached hereto as **Exhibit C** (the “TNC Endowments – Accounting Rules”), as they may be revised from time to time. Procedures specific to these funds include the following:

(a) **Pooled Funds.** The Stewardship Endowment funds shall be invested with TNC’s centrally pooled funds and accounted for using a separate fund center. TNC shall at all times maintain complete separate records of the balance of the Stewardship Endowment, income and/or interest generated by the Stewardship Endowment and any and all withdrawals made from the Stewardship Endowment and the purpose of each such withdrawal. All income and/or interest earned or generated on the Stewardship Endowment funds shall become a part of the Stewardship Endowment. TNC shall not use or otherwise invade the principal of the Stewardship Endowment. TNC may use all or a portion of the interest and/or income generated on the Stewardship Endowment to pay for actual costs incurred by TNC in connection with TNC’s ownership, monitoring, stewardship and enforcement of the Easement.

(b) **Permissible Expenditures.** All Stewardship Endowment funds shall be used solely to pay for (i) the direct costs and allowable indirect and administrative costs of the purposes of the Stewardship Endowment set forth in Paragraph 1 above, in compliance with the terms of this Agreement, or (ii) at the request of TNC, such other projects approved in advance in writing by City, in City’s sole and absolute discretion. No portion of the Stewardship Endowment shall be used to pay any costs associated with any property or project other than the Property or the Easement unless approved in advance in writing by City, in City’s sole and absolute discretion.

(c) **TNC Investment Policy.** TNC shall deposit and maintain the Stewardship Endowment funds in an interest-bearing account in the name of TNC, which account shall be prudently managed in accordance with the Investment Policy adopted by TNC's Board of Directors ("**TNC Board**"), the current version of which is attached hereto as **Exhibit D** ("**TNC's Investment Policy**"), as it may be revised from time to time.

(d) **Calculation of Spending Allowance.** Each year, the TNC Board sets a rate at which endowment earnings can be spent (the "**Approved Rate**"). The Approved Rate is set in a manner designed to provide adequate cash flows to meet TNC's programmatic requirements while preserving principal and maximizing the returns of TNC's pooled investments. The amount that will be available from the Stewardship Endowment for expenditure pursuant to this Agreement for a given fiscal year (the "**Spending Allowance**") will, under currently applicable TNC policies, be calculated by applying the Approved Rate to the Stewardship Endowment's average fair market value for the preceding three calendar years, and then deducting from the result a portion (determined by the BOG) allocated to the cost of managing the centrally pooled investments (the "**Administrative Costs**"). The current Approved Rate is 5.5%, of which one-half percentage point (0.5%) is currently allocated to Administrative Costs.

5. **Written Reports.** TNC shall deliver a written report to City on an annual basis as to the year's activity and the balance remaining in the Legal Defense Fund and Stewardship Endowment, with such reports due in each case by the November 1st immediately following the applicable fiscal year, it being agreed that each "fiscal year" for purposes of this Agreement shall begin on July 1st of a given calendar year and end on June 30th of the subsequent calendar year. The written report shall also include any revisions to TNC's internal endowment rules and the TNC Investment Policy and their potential impact on the Legal Defense Fund or Stewardship Endowment. One copy of each report shall be delivered to City as specified in Paragraph 10 below.

6. **Transfer of Easement.** In the event TNC ever transfers or sells the Easement in accordance with the terms and conditions of the Easement to any third-party transferee approved by City in accordance with the Easement, TNC shall deliver to the transferee through the escrow of such transfer or sale, the cash amount equal to the balance of the Legal Defense Fund, if any, and the Stewardship Endowment, which shall include all principal and any unspent interest accrued thereon. Prior to such funds being released to Transferee, Transferee shall enter into a binding written funding agreement with City that memorializes transferee's obligations respecting use of such funds defend, enforce, monitor and steward the Easement, which agreement shall be in form and substance substantially similar to this Agreement.

7. **Representations, Warranties, and Responsibilities.** Except as otherwise explicitly stated in this Agreement, TNC makes no representations or warranties, express or implied, whether in this Agreement or elsewhere, regarding the investment of or future income from the Stewardship Endowment, and shall have no liability to City or any other person or entity in the event that there is any decrease in the Stewardship Endowment, or any failure of expected income from the Stewardship Endowment actually to be earned.

8. **Attorneys' Fees.** The prevailing party in any suit, action, counterclaim, or arbitration arising out of this Agreement (including, without limitation, enforcement of any award or judgment obtained with respect to this Agreement) shall be entitled to recover a reasonable allowance for attorneys' fees, litigation expenses, and the cost of arbitration in addition to court costs. The parties shall bear their own court costs, litigation expenses, and attorneys' fees in any other matter.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California disregarding principles of conflict of laws.

10. **Notices.** Any notice or other communication required or permitted to be given to any party hereunder shall be in writing and delivered personally or sent by reputable overnight commercial courier or by regular mail, return receipt requested, as follows:

If to City:

City of Elk Grove
Attn: City Attorney
8480 Laguna Palms Way
Elk Grove, California 95758
Phone (for courier services): _____
Fax: (916) 691-4007

And to

City of Elk Grove
Attn: Environmental Planning Manager
Development Services – Planning
8401 Laguna Palms Way
Elk Grove, California 95758
Phone (for courier services): _____
Fax: (916) 691 3175

If to TNC:

The Nature Conservancy
201 Mission Street, 4th Floor
Attn: Legal Department
San Francisco, California 94105
Phone (for courier services): (415) 777-0487
Fax: (415) 777-0244

And to:

The Nature Conservancy
Attn: Cosumnes River Project Director
13501 Franklin Blvd
Galt, CA 95632
Phone (for courier services): (916) 684-2816
Fax: (916) 683-1702

Notice shall be deemed to have been given (i) upon delivery, if delivered personally, (ii) on the business day following deposit with a reputable overnight courier, if delivered by such courier, (iii) three (3) business days following deposit in the United States Mail, first class postage prepaid, in each case properly addressed as set forth above. The addresses for the purposes of this paragraph may be changed by giving written notice of such change in the manner provided herein for giving notice. As an additional alternative form of delivering a notice pursuant to this Agreement, any party may give a notice to another party by telecopier or facsimile transmission (by "fax"); provided, however, that any notice given by fax must also be given in one of the other methods set forth above, and each notice delivered by fax shall be deemed given on the date of successful transmission, unless the transmission is completed on a non-business day, or after 5:00 p.m. on a business day, in the recipient's time zone, in either of which cases it shall be effective on the next following business day.

11. **Time of Essence.** Time is of the essence of this Agreement and each provision herein contained.

12. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall constitute an original and taken together shall constitute one and the same Agreement.

13. **Assignment.** Neither party may assign its rights or obligations hereunder without the prior written consent of the other party. Subject to the foregoing restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted heirs, successors and assigns.

14. **Waiver.** Any waiver by either party to this Agreement of any provision of this Agreement must be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any future event or circumstance.

15. **Headings.** The headings used in this Agreement are for convenience only and shall not determine the interpretation, construction or meaning of this Agreement.

16. **Certification of Signatories.** Each of the undersigned signatories represents and certifies that he/she is authorized to sign on behalf of the party for which he/she is signing, and that no additional signatures are required for such party to carry out the activities contemplated herein.

17. **Recitals and Exhibits.** Any and all recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those recitals. Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as fully as if set out in their entirety herein.

In witness whereof, TNC and City have signed this Agreement by the respective authorized officers as set forth herein to be effective on the date executed by the County.

City of Elk Grove

**The Nature Conservancy,
a District of Columbia non-profit corporation**

By: _____
(signature)

By: _____
(signature)

Name: _____

Name: _____

Title: _____

Title: _____

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Exhibit A

Legal Description of the Property

[Legal Description of the Property underlies this Exhibit A cover page]

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Exhibit B

Property Analysis Record

[Property Analysis Record underlies this **Exhibit B** cover page]

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Exhibit C

TNC Endowments – Accounting Rules

[TNC Endowments – Accounting Rules underlies this Exhibit C cover page]

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Exhibit D

TNC Investment Policy

[TNC Investment Policy underlies this Exhibit D cover page]

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