



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Alexa Jeffress
Director, Economic and
Workforce Development
Department

SUBJECT: Cultural Conservation Easement to
Sogorea Te' Land Trust in Joaquin
Miller Park

DATE: October 12, 2022

City Administrator Approval

Date: Oct 20, 2022

RECOMMENDATION

Staff recommends that the City Council adopt an Ordinance:

- 1) **Granting A Cultural Conservation Easement Over An Approximately 5-Acre Portion Of Joaquin Miller Park Known As Sequoia Point To The Sogorea Te' Land Trust (Grantee), At No Cost, To Preserve And Enhance The Cultural, Historic, Educational, Natural Resource, Scenic, And Open Space Values Of The Easement Property In Perpetuity;**
- 2) **Authorizing The City Administrator To Negotiate And Enter Into A Memorandum Of Agreement For The Implementation Of The City of Oakland's Reserved Rights And The Grantee's Rights And Obligations Under The Conservation Easement, And To Amend Said Memorandum of Agreement Without Returning To Council;**
- 3) **Amending The Oakland Municipal Code To Add Section 12.64.420 To Authorize The Use Of Parks By Recipients Of Conservation Easements Without Obtaining Park Permits; And**
- 4) **Making California Environmental Quality Act Findings.**

EXECUTIVE SUMMARY

The recommended actions would convey a cultural conservation easement to the Sogorea Te' Land Trust (Land Trust), a local, Indigenous- and women-led nonprofit organization, over an approximately 5-acre portion of City-owned land in Joaquin Miller Park (Easement Property). The conveyance of this conservation easement from the City of Oakland (City) would return this land to Indigenous stewardship and the site would thereafter be known as Rinihmu Pulte'irekne, meaning "above the red ochre" in the Chochenyo language. The City would grant the cultural conservation easement to the Land Trust in perpetuity, allowing the Land Trust to implement natural resource restoration projects, practice cultural and ceremonial traditions, provide education programs to the public, manage public access, and plan for additional future uses.

City Council
November 1, 2022

The City would retain ownership of and some responsibility for the Easement Property, as described in more detail below. If approved by City Council, the transaction would close escrow in December 2022.

The City and the Land Trust would concurrently enter into a Memorandum of Agreement (MOA), which would set forth in greater detail how the City and the Land Trust would implement and exercise their rights on the Easement Property. The MOA could be revised administratively over time to adapt to changing conditions.

In addition, to create efficiency and allow for a programmatic approach to public health and safety considerations, the park permit regulations in the Oakland Municipal Code (OMC) would be amended to exempt qualified conservation easement holders from the requirement of obtaining a separate park permit for events that are otherwise permitted and governed by the conservation easement.

Mayor Schaaf initiated this project almost five years ago by inviting the Land Trust and members of the Confederated Villages of Lisjan - the Tribe whose ancestral lands include this part of the East Bay - to identify City-owned land that they wished to reclaim. Conveyance of the conservation easement would be a landmark event in the City's efforts to redress historic wrongs against Native people and advance racial equity.

BACKGROUND/ LEGISLATIVE HISTORY

The recommended actions would set the City among a vanguard of jurisdictions reckoning with their racist pasts by returning stolen or wrongfully condemned lands to Indigenous or other victimized groups. This is commonly known as the "land back movement." Prominent examples include the Tribal co-management of Bears Ears National Monument in Utah and an increasing number of regional examples such as the Amah Mutsen Tribal Band's cultural easement over public parklands at Mt. Umunhum in San Mateo County and the Kashia Band of Pomo Indians' acquisition of fee title and a cultural access easement over properties on the Sonoma County Coast. This proposed Easement would be among the first of its kind for an American City.

The Chochenyo-speaking Lisjan Ohlone people have lived on the land in Huchiun, or what is now known as the East Bay, for thousands of years and continue to live here today. The Lisjan are made up of the six nations that were directly enslaved at Mission San Jose in Fremont and Mission Dolores in San Francisco. The Sogorea Te' Land Trust, founded in 2015, is a local, Indigenous- and women-led nonprofit organization that facilitates the return of Indigenous land to Indigenous people and includes members of the Confederated Villages of Lisjan.

In 2017, the Mayor and members of the Sogorea Te' Land Trust and Confederated Villages of Lisjan began discussions about ideas for Indigenous restitution and returning land to Indigenous stewardship in Oakland. The Mayor invited the Land Trust to identify City-owned land that they wished to reclaim in partnership with the City.

The Land Trust selected Sequoia Point as the Easement Property for reclamation, an approximately 5-acre area of Joaquin Miller Park near the Big Trees trailhead on Skyline

Boulevard. A location map is attached as **Exhibit A**. Since that time, City staff have been working directly with the Land Trust to collaboratively design a transaction that would return land rights to Indigenous stewardship. Over the same period, the Land Trust has been developing a vision and plan for the site.

ANALYSIS AND POLICY ALTERNATIVES

Project Overview

Under the proposed action, the City would convey a perpetual cultural conservation easement over Sequoia Point to the Land Trust (the Easement) at no cost. A conservation easement is an agreement between a landowner and conservation entity (such as a land trust) that permanently limits the use of real property to protect its conservation values. A conservation easement generally cannot be terminated except by a court of law. Conservation easements are a common tool for protecting open space and sensitive habitats and have been used to protect over 33.5 million acres across the country. The proposed action would make innovative use of this conservation tool to return land rights to an Indigenous community and would break new ground by employing an uncommon form of conservation easement known as a reserved interest conservation easement to transfer most of the property rights to the Land Trust, as described in more detail below.

A map of the approximate Easement area is attached as **Exhibit B**. Survey work is underway to develop a legal description for the Easement area, with monuments to be placed in the ground.

The Land Trust's rights and responsibilities under the Easement and MOA would include, but are not limited to:

- Monitoring and maintaining the Easement Property
- Gathering on the property for cultural and ceremonial purposes
- Providing Indigenous cultural education to the public
- Allowing for and managing public access
- Maintaining vegetation in compliance with the Fire Code
- Restoring habitat and natural resources (subject to a management plan approved by the City)
- Using and improving the Easement Property in any other ways that are consistent with the City's rights, the conservation values, terms and conditions of the MOA, and applicable laws and regulations

The City would retain ownership of the Easement Property and a limited set of rights. The City's rights and obligations would include:

- Collaborating with the Land Trust on the development of a management plan
- Coordinating public access with the Land Trust
- Supplementing the Land Trust's maintenance and management of the Easement Property in coordination with the Land Trust
- Prohibiting access on red flag wildfire days
- Monitoring and enforcing compliance with the Easement terms

- Enforcing applicable laws and regulations

These rights and obligations would be defined in more detail in the MOA, which would help guide implementation of the Easement. The parties would be able to amend the MOA to adjust how these rights and responsibilities are implemented as needed over time.

The Easement and MOA are attached in substantially final form as **Exhibit C** and **Exhibit D**, respectively.

The transaction would close escrow by the end of 2022, allowing the Land Trust to immediately begin stewarding the Easement area in perpetuity. The area would thereafter be known as Rinihmu Pulte'irekne, meaning "above the red ochre" in the Chochenyo language.

Staff also recommend amending Section 12.64 of the OMC, which addresses park and recreation area regulations, to exempt qualified conservation easement holders from the requirement of obtaining a separate park permit for events that are otherwise permitted and governed by the conservation easement. This allows the conservation easement to programmatically address health and safety considerations that would otherwise be addressed by time-consuming, individual park permits. Accordingly, the proposed Easement includes provisions related to parking, sanitation and clean-up that would render park permits unnecessary.

Project Purpose and Implementation

The purpose of conveying the Easement is to provide some redress for past injustices against Native people by returning a portion of public land in Oakland to Indigenous stewardship. It directly serves Oakland's Indigenous community, and through the Land Trust's stewardship and programming, will serve the broader public by enhancing and activating Joaquin Miller Park. The proposed Easement is located in an underutilized area of the park with no sanctioned trails and that is not closely managed by the City today. As described further below, the project has met with strong public support.

The proposed cultural conservation easement would ensure protection of the Easement Property's conservation values in perpetuity. It is referred to as a *cultural* conservation easement because it includes among its conservation values the cultural and historic value of the property to the Ohlone people. Its primary purpose is to return the land to Indigenous stewardship. The Easement's other conservation values include the property's natural resources (e.g., plants and wildlife), open space and scenic characteristics, and educational value. The Easement prohibits any use of the property that harms these values.

The proposed transaction would make innovative use of a less common form of conservation easement known as a reserved interest conservation easement. Conservation easements typically reserve most of the property rights to the landowner, with only certain enumerated rights granted to the easement holder. Here, while the City would retain ownership, most of the property rights would transfer to the Land Trust. The City would retain only a limited set of property rights specifically reserved to the City such as the right for the City to enter, regulate

and allow others (such as the public) to use the Easement Property in ways that don't harm the conservation values or violate the Land Trust's rights.

The proposed transaction is durable yet also flexible. The City and Land Trust would concurrently execute both the Easement and the MOA. The MOA would set forth in greater detail how the City and Land Trust would implement and exercise their rights on the Easement Property. Whereas the Easement is a perpetual agreement dividing the property rights in perpetuity, the MOA is intended to be a living document that can be amended by mutual agreement in response to changing circumstances. The proposed actions would allow the MOA to be amended administratively.

The Easement Property would remain subject to all government regulations, including the Easement Property's zoning designation of Open Space-Resource Conservation Area, which is the most restrictive open space category. The Land Trust could propose uses not allowed today and those uses could be allowed were regulations to change (such as by rezoning the site) but only in so far as the uses remain consistent with the terms of the Easement and MOA.

Given current regulations, the Land Trust will be able to immediately maintain the Easement Property, plan and implement restoration projects, educate the public, practice cultural and ceremonial traditions, and manage public access (including closing access during times of ceremony or natural resource restoration). The Land Trust is developing a long-term vision for the Easement Property, including a potential ceremonial structure, which would require future land use approvals and environmental review.

Approval of the recommended actions would advance the Citywide priority of **housing, economic, and cultural security** by returning land with deep cultural significance to Oakland's Indigenous community.

FISCAL IMPACT

In light of historic injustices, there would be no cash consideration paid to the City for conveying the easement. The City would pay approximately \$5,000 in closing costs and \$57,000 for property survey services from the General Purpose Fund (1010), Surplus Properties Project (1000235), Real Estate Organization (85231).

PUBLIC OUTREACH / INTEREST

City staff and the Land Trust have conducted substantial outreach. The Land Trust, both with and without City staff, met with the Friends of Joaquin Miller Park several times to receive input and feedback about the project, and the organization enthusiastically supports the project. District 4 Councilmember Sheng Thao hosted an online Town Hall about the project on September 13, 2022. More than one hundred people registered for the meeting and participants expressed strong support for the project and no opposition. The Land Trust and City staff have also presented the project multiple times to the Parks and Recreation Advisory Commission. The Commission recommended formal and enthusiastic approval at its meeting on September

14. Since the project was publicly announced on September 8, 2022, there has been a broad expression of support and enthusiasm from the public at large.

COORDINATION

The project is the result of extensive cross-departmental coordination over several years. The project was led by the Economic and Workforce Development Department with close participation from the Mayor's Office, Office of the City Attorney, Office of Parks, Recreation and Youth Development, the Public Works Department, Department of Transportation, and the Planning and Building Department.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed action would return a portion of Joaquin Miller Park to Indigenous stewardship, which would help improve and activate an underutilized portion of the park. This will further the park's role as a major quality-of-life resource in Oakland, which in turn attracts people, businesses and tourists to Oakland. Furthermore, it would provide a land base to support the cohesion, resilience and growth of the Indigenous community.

Environmental: The proposed action sets forth a perpetual, legally-enforceable framework for the protection and restoration of the natural, open space and scenic resources of the Easement area.

Race and Equity: The proposed action seeks to redress grievous historic injustices in which the Mission system and Western settlers stole land from, enslaved and terrorized Indigenous people in what became the City of Oakland.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The recommended actions are exempt from CEQA pursuant to California Public Resources Section 21080.28, which categorically exempts the transfer of interests in land for conservation purposes.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt an Ordinance:

- 1) Granting a cultural conservation easement over an approximately 5-acre portion of Joaquin Miller Park known as Sequoia Point to the Sogorea Te' Land Trust (Grantee), at no cost, to preserve and enhance the cultural, historic, educational, natural resource, scenic, and open space values of the easement property in perpetuity;
- 2) Authorizing the City Administrator to negotiate and enter into a Memorandum of Agreement for the implementation of the City of Oakland's reserved rights and the Grantee's rights and obligations under the conservation easement, and to amend said Memorandum of Agreement without returning to Council;
- 3) Amending the Oakland Municipal Code to add Section 12.64.420 to authorize the use of parks by recipients of conservation easements without obtaining park permits; and
- 4) Making California Environmental Quality Act Findings.

For questions regarding this report, please contact Brendan Moriarty, Real Property Asset Manager at (510) 238-6354.

Respectfully submitted,



ALEXA JEFFRESS
Director, Economic and Workforce
Development Department

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Prepared by:
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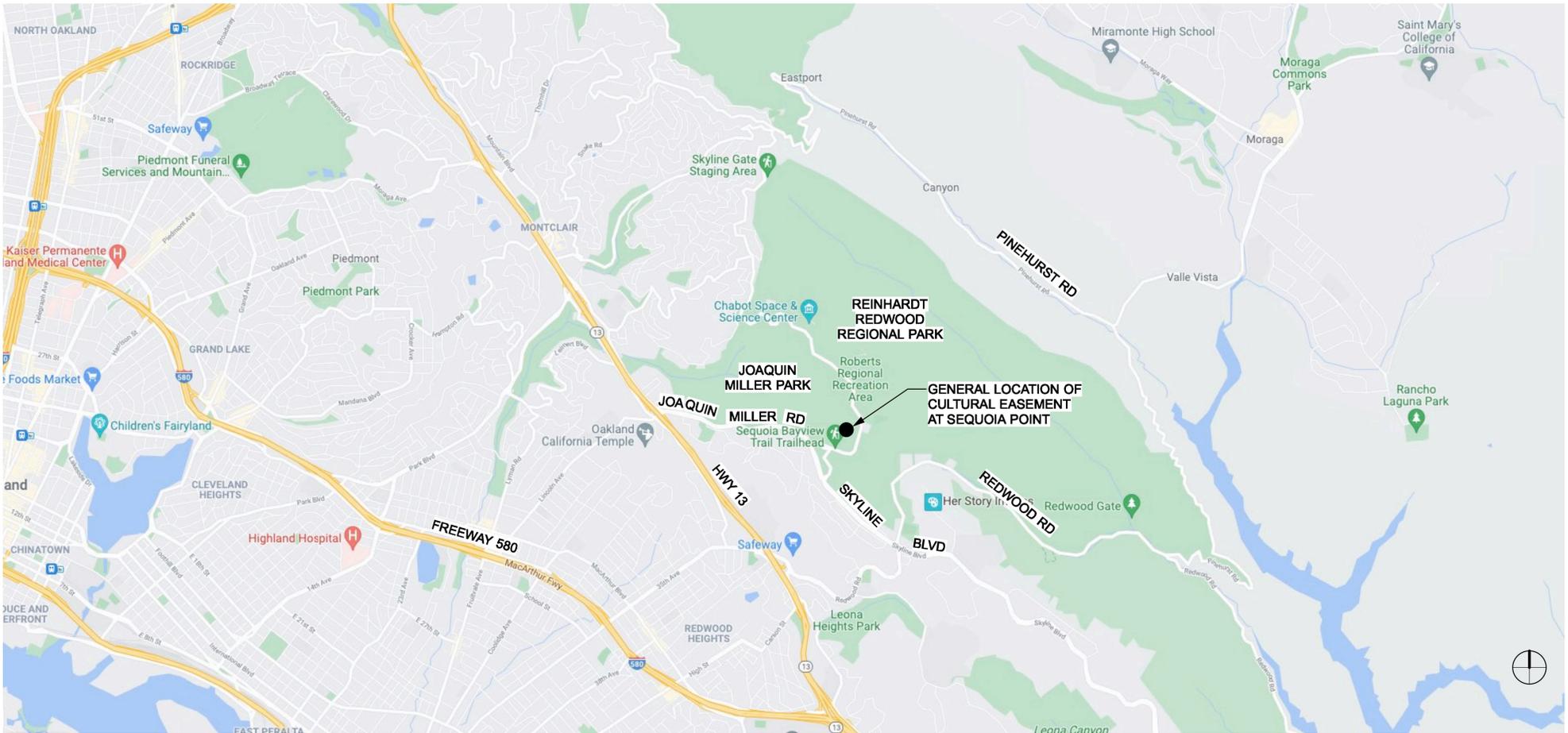
Attachments (4):

Exhibit A: Location Map

Exhibit B: Map of Approximate Easement Area

Exhibit C: Cultural Conservation Easement

Exhibit D: Memorandum of Agreement



**LOCATION MAP,
CULTURAL EASEMENT
BOUNDARY for
SOGOREA TE' LAND TRUST**

**SEQUOIA POINT
OAKLAND CA 94611**

Scale: N.T.S 1-20-2022



andrews + chang
5427 Telegraph Ave #k
Oakland CA 94609

Exhibit B - Map of Approximate Easement Area: PRAC Item 6A 9/14/2022

SEQUOIA POINT LOCATION IS APPROXIMATE

Exhibit B



SEQUOIA POINT LOCATION IS APPROXIMATE
TRAIL LOCATIONS BASED ON JOAQUIN MILLER PARK TRAIL MAP BY THE FRIENDS OF
SAUSAL CREEK. LOCATIONS ARE APPROXIMATE.

Exhibit B - Map of Approximate Easement Area; PRAC Item 6A 9/14/2022



**SOGOREA TE' LAND TRUST CULTURAL CONSERVATION EASEMENT
RINIHMU PULTE'IREKNE
FORMERLY KNOWN AS SEQUOIA POINT, JOAQUIN MILLER PARK**

THIS CULTURAL CONSERVATION EASEMENT (the “*Easement*”) is made by the City of Oakland, a municipal corporation (“*Grantor*” or “*City*”) in favor of the Sogorea Te' Land Trust, a California nonprofit corporation (“*Grantee*”).

WHEREAS, the City is the owner of certain real property currently known as Joaquin Miller Park in the County of Alameda, State of California, consisting of approximately 500 acres and including County Assessor's Parcel Numbers 48D-7208-5-1, 029-1201-1-1, 029-1200-6-3, 029-1200-7-3, 029-1201-1-2 and 085-001-004-00, as depicted in the map attached hereto as **Exhibit A**, incorporated by this reference (hereafter “*Property*”); and

WHEREAS, SOGOREA TE' LAND TRUST (“*STLT*”) is a tax-exempt nonprofit organization qualified under Section 501(c) (3) of the Internal Revenue Code and qualified to do business in this state, which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use, and is qualified to hold conservation easements under California Civil Code Section 815.3; and

WHEREAS, the City recognizes that the Property is located within the unceded territory of the Chochenyo-speaking Ohlone people who have occupied and continue to occupy this region since time immemorial and City desires to return a portion of the Property to indigenous stewardship; and

WHEREAS, STLT is an urban Indigenous women-led land trust based in the San Francisco Bay Area that facilitates the return of Indigenous land to Indigenous people; and

WHEREAS, the City desires to grant to STLT, and STLT desires to accept, a Cultural Conservation Easement over an approximately 5-acre portion of the Property commonly known as Sequoia Point, as more particularly described in **Exhibit B** and depicted in the map attached hereto as **Exhibit C**, incorporated by this reference (hereafter the “*Easement Property*”); and

WHEREAS, the Easement Property will now be known as Rinihmu Pulte'irekne (meaning “above the red ochre” in the Chochenyo language); and

WHEREAS, the City and STLT share a strong interest in working collaboratively on the Easement Property to identify, conserve, and restore open space and natural resources; reestablish Native American traditions, cultural practices, and resource stewardship; and to educate and share these values and resources through public education partnerships; and

WHEREAS, STLT brings a unique and valuable perspective to, and knowledge of, the Easement Property, and it is in the City's and the public's interest to establish a long-term partnership with STLT; and

WHEREAS, the easement purpose, conservation values, and STLT’s rights, interests and obligations under the Easement are consistent with and enhance the natural resource value and public enjoyment of Joaquin Miller Park; and

WHEREAS, Grantee’s use of the Easement Property would be considered a “public use” that enhances the City’s connection to, and celebration of, local Native American culture and traditions; and

WHEREAS, the parties will enter into a Memorandum of Agreement (“**MOA**”) to further define the processes and requirements for implementing this Easement; and

WHEREAS, on _____, 2022, the City Council approved this Easement and the MOA in Ordinance No. _____ C.M.S.;

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and in particular, *inter alia*, Sections 815 through 816 of the California Civil Code, Grantor hereby grants to Grantee a Cultural Conservation Easement (“**Easement**”) in perpetuity over the Easement Property subject to the following terms and conditions and all valid rights of record, if any, and reserving to Grantor only those rights, title, and interest in the lands comprising the Easement Property expressly enumerated herein. It is the intention of Grantor to convey and relinquish any and all property rights not so reserved. This Easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind Grantor, their heirs, successors, assigns, lessees, and any other person claiming under them.

1. Conservation Values. The Easement Property possesses significant cultural, historic, educational, natural resource, scenic and open space values (collectively, the “**Conservation Values**”) of great importance to the City, STLT, the people of Alameda County, and the people of the State of California.
 - a. Cultural and Historic Values. The Easement Property is located at Sequoia Point. Because of its importance to the STLT and the Ohlone people as an ancestral and linguistic homeland, the Easement Property is considered a significant historic, cultural, spiritual, and ceremonial land.
 - b. Educational Values. The Easement Property provides opportunities to educate community partners and the broader public about planting and cultivating native plants and gardens, indigenous environmental management techniques, language restoration, traditional Native food and medicine resources, tribal history, and cultural traditions.
 - c. Natural Resource Values. The Easement Property supports diverse plant and animal life, the health of which depends on the restoration and preservation of soil, habitats, and native species, including plants commonly known as Yampah, Yarrow, Coyote Bush, Black Sage, and California Sagebrush. The Easement Property is located at the top of the Palo Seco Creek watershed whose headwaters

are largely protected from development, and which support upland plant and animal communities. Grantee and Grantor intend to collaborate on a management plan (“**Management Plan**”) to preserve, protect, and improve the natural resource values of the Easement Property, as governed by the MOA.

- d. Scenic and Open Space Values. The Easement Property overlooks the beauty of the coast and the land now known as the Bay Area and is visible to the public from Skyline Boulevard, Joaquin Miller Park and Roberts Regional Recreation Area. The view from and of the Easement Property are honored and cherished by the public and by the Native people who have occupied and continue to occupy this region since time immemorial.
2. Easement Purpose. The primary purpose of this Easement is to return the Easement Property to Indigenous stewardship. This Easement will preserve and protect in perpetuity the Conservation Values, and prevent any use of the Easement Property that would significantly impair or interfere with its Conservation Values, or conflict with any applicable law, statute, regulation, code or rule of any lawful authority including but not limited to City regulations as they exist or may be amended in the future (“**Governmental Regulations**”). This Easement conveys affirmative rights and interests over the Easement Property to Grantee and restricts the use of the Easement Property by the Grantor to the rights and activities further outlined below. Nothing in this Easement shall be construed to restrict or alter the rights of other government agencies or other parties that have jurisdiction over or property rights to the Easement Property.
 3. Grantee’s Affirmative Rights and Interests Received. To accomplish the purposes of this Easement, the Grantor conveys to Grantee all rights to enter into and conduct activities, and improve upon the Easement Property, except that Grantee shall not have any right to use or allow the use of the Easement Property in any way that would impair, interfere with, or conflict with:
 - a. The rights and interests expressly reserved to Grantor herein;
 - b. The Conservation Values or this Easement;
 - c. The terms and conditions of the MOA, as may be amended from time to time by mutual agreement of the parties;
 - d. Any Governmental Regulations, including but not limited to all necessary land use and building permits.
 4. Affirmative Obligations of Grantee. To support the purposes of this Easement, and as partial consideration for the granting of this Easement, and in furtherance of the ongoing partnership described in the preamble to this Easement, Grantee agrees to, during the term of this Easement:
 - a. Identify, preserve, and protect in perpetuity the Conservation Values of the Easement Property, which shall include regular maintenance and restoration of the Easement Property as described in the MOA;
 - b. Comply with the terms of this Easement, the MOA, all Governmental Regulations, permits, and the Management Plan;

- c. Prevent any activity or use of the Easement Property that is inconsistent with the purpose of this Easement or the Conservation Values or that are expressly prohibited herein or in the MOA;
 - d. Require or cause the restoration of such areas or features of the Easement Property that may be damaged by any act, failure to act, or any activity or use by Grantee, its employees, officers, contractors, agents, volunteers, invitees, or representatives (“*Grantee Parties*”) that is inconsistent with the purposes of this Easement;
 - e. Provide Indigenous cultural education to the City for public benefit, as further described in the MOA;
 - f. Allow public access through all or portions of the Easement Property, as further described in, and as may be limited by, the MOA;
 - g. Other obligations agreed upon by the parties as memorialized in the MOA.
5. Baseline Data. In order to establish the present condition of the Conservation Values, Grantee has examined the Easement Property and “Baseline Documentation Report” prepared by the City, which contains an inventory of the Easement Property’s relevant features and conditions, its improvements and its natural resources (the “*Baseline Data*”) reflecting the current conditions of the Easement Property. A copy of the Baseline Documentation Report has been provided to Grantee, and another shall be placed and remain on file with City. The Baseline Documentation Report has been signed by both parties, and thus acknowledged accurately to represent the condition of the Easement Property at the date of the conveyance of this Easement. The parties intend that the Baseline Documentation Report shall be used by both parties to monitor the future uses of the Easement Property, condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Easement Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.
6. Grantee’s Prohibited Uses. Any activity on, or use of, or building, demolition, grading, or tree removal on the Easement Property by the Grantee that is inconsistent with the purpose of the Easement, the Conservation Values, Governmental Regulations and all appropriate permits, is prohibited. Grantee is further prohibited from conducting those activities on the Easement Property that are prohibited in the MOA.
7. Grantor’s Reserved Rights and Permitted Uses. Unless otherwise set forth herein by reference to Grantee’s rights to the Easement Property, Grantor reserves the following rights in the Easement Property exclusively unto Grantor, but such rights do not create any affirmative obligations of Grantor:
- a. To enter the Easement Property at reasonable times, and upon reasonable notice to Grantee, in order to monitor compliance with and otherwise enforce the terms of this Easement, the MOA, and the Management Plan, provided that Grantor’s entry shall not unreasonably interfere with Grantee’s use of the Easement Property;
 - b. To take any action necessary or deemed prudent by City or other government agency to enforce or comply with any Governmental Regulations, including but

- not limited to any Governmental Regulations or permits pertaining to the uses and development on the Easement Property;
- c. Without limiting Grantee's rights to use and invite others on the Easement Property, to engage in or permit or invite others to engage in all uses of the Easement Property that are not prohibited or limited by, and are consistent with the purposes of, this Easement, as may be further limited by the MOA;
 - d. To manage and grant easements, permits, or temporary access agreements to adjacent property owners, members of the public, public agencies, STLT, or other non-profit organizations to enter and conduct activities on the Easement Property, as long as such activities are consistent with the Conservation Values and this Easement;
 - e. To subdivide the Property or any portion of the Easement Property;
 - f. To hold title to the Easement Property and to convey, acquire, or alienate any property interests, including leases, easements, or fee interest in the Easement Property, subject to the terms and conditions of this Easement;
 - g. Without limiting Grantee's rights and obligations related to improvements, to construct, install, maintain, repair, and/or use improvements, signage, and facilities to support public access, property management, safety, and enforcement activities;
 - h. Without limiting Grantee's rights and obligations related to maintenance, to maintain existing facilities, trails, landscaping, etc., and remove waste if necessary;
 - i. Without limiting Grantee's rights and obligations related to vegetation management, to conduct vegetation management activities consistent with applicable Governmental Regulations, this Easement, the MOA, and any Management Plan;
 - j. To hold, make use of, and/or transfer water, air, subsurface, and mineral rights, if any;
 - k. To handle Hazardous Materials (as defined in Section 12) as may be necessary to investigate, remove, remediate, or prevent any release of Hazardous Materials;
 - l. To close the Property, including the Easement Property, to all except City employees performing duties and to prevent any activities by Grantee on the Easement Property during periods of threat to public health and safety, including but not limited to Red Flag Wildfire Warnings;
 - m. Any further rights, consistent with the Conservation Values, agreed upon by the parties as memorialized in the MOA.
8. Compliance with the California Environmental Quality Act. Any activities by either Grantor or Grantee under this Easement or the MOA that may have a significant effect on the environment, as defined by California Environmental Quality Act ("**CEQA**"), shall be analyzed under CEQA and may not commence until compliance with CEQA is determined. Any CEQA analysis concerning activities by either party potentially affecting the Conservation Values shall be done in consultation between the parties. Costs for such CEQA analysis shall be addressed in the MOA.
9. Governmental Approvals: Grantee must obtain all required governmental approvals for its activities and improvements on the Easement Property, including but not limited to land use approvals and building permits. Costs for such approvals shall be addressed in the MOA.

10. Disputes and Remedies. If either party determines that the other party, its successor in interest, or any occupant of the Easement Property is conducting or allowing a use, activity, or condition on the Easement Property prohibited by the terms of this Easement, or that a violation is threatened, the party shall promptly give written notice of such violation and request corrective action sufficient to cure the violation, and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Easement Property so injured.
- a. Consultation, Duty to Investigate Required. When any disagreement, conflict, need for interpretation, request for information, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue through a good faith consultation process without resorting to legal action. Either party may request consultation in writing to address any conflict or issue arising between the parties at any time. The parties agree to make a good faith effort to promptly investigate the issue or conflict and engage in the consultation process.
- b. Notice of Violation; Corrective Action. If a party determines that a violation of the terms of this Easement has occurred or is threatened, that party shall give prompt written notice to the other party of such violation and request corrective action sufficient to cure the violation. Where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purpose of this Easement, that non-breaching party may in its discretion request restoration of the portion of the Easement Property so injured by the other party to its prior condition. Prior written notice is not required in the event of any actual or imminent physical harm to the Easement Property, and the parties shall each have the right to immediately enter the Easement Property where it is determined that urgent action is necessary to prevent, terminate, or mitigate a significant impairment of the Conservation Values; provided that the other party be notified in writing of such harm and the remedy as soon as practicable.
- c. Mediation of Disputes. If the attempts at informal resolution of any dispute set out above are unsuccessful, the parties agree to enter into non-binding mediation with the assistance of a mutually agreeable third-party, which may include the use of any available mediation resources in the Northern California Intertribal Court System (“*NCICS*”) or other Tribal Court System, Indian Dispute Resolution Services, Inc. (“*IDRS*”), or the Judicial Arbitration and Mediation Services (“*JAMS*”). Such use of the Intertribal or Tribal Court System, IDRS or JAMS shall not be construed as an agreement by any party to be subject to the jurisdiction of such court or dispute resolution entity for any legally binding outcome, ruling or order. The parties agree to promptly select a mutually agreeable entity to perform such mediation in good faith.
- d. Injunctive Relief; Remedies at Law Inadequate. If a party fails to cure the violation within thirty (30) days after receipt of notice in accordance with this section, 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, and the attempts at informal resolution and mediation are unsuccessful, that party may bring an action at law or in equity in a court of competent jurisdiction which seeks to enforce the terms of this Easement, to enjoin the violation by injunction, and seek to require the restoration of the Property and/or Easement Property to the condition that existed prior to any such injury. The parties shall not be authorized to bring such an action unless the good faith effort to resolve the dispute by engaging in consultation and mediation have concluded unsuccessfully, or because of an imminent threat of, or actual physical harm, to the Property and/or Easement Property. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-breaching party shall be entitled to the injunctive relief described in this Section, in addition to such other relief to which it may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, provided the other legal requirements for injunctive relief are met.

- e. Damages. In addition to injunctive relief, the parties are empowered to recover damages for violation of the terms of this Easement or injury to this Easement or the interests protected by this Easement, as provided by Civil Code Section 815.7, as well as any other remedies provided for under that statute; provided that the pre-claim informal consultation, notice and mediation efforts are pursued in good faith, and the results of those efforts are inadequate to address the alleged violation(s).
- f. Forbearance. Enforcement of the terms of this Easement shall be at the discretion of the non-breaching party, and any forbearance by the non-breaching party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the breaching party shall not be deemed or construed to be a waiver of such term, subsequent breach, any other term of this Easement, or of any of non-breaching party's rights under this Easement. No delay or omission by the non-breaching party in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.
- g. Acts Beyond a Party's Control. Nothing contained in this Easement shall be construed to entitle the parties to bring an action for any injury to or change in the Easement Property resulting from causes not involving any affirmative acts by a party; involving causes beyond a party's control, including without limitation, state, federal or local legal mandate, trespassers, fire, flood, storm, and earth movement; or arising from any prudent action taken by a party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes. The parties intend to collaborate on a plan to restore the Conservation Values in the event of any destruction caused by third parties or causes beyond a party's control.

11. Insurance Requirements. Grantee must carry property, liability, and other insurance reasonably required by the City for the duration of the Easement term as outlined in the MOA.

12. Hazardous Materials. The parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed to create in or give to Grantee any of the following for any preexisting condition on the Easement Property:
 - a. The obligations or liability of an “owner” or “operator,” as those terms 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 U.S.C. section 9601, et seq.; hereinafter, “CERCLA”); or
 - b. The obligations or liabilities of a person described in 42 U.S.C. section 9607(a)(3) or (4); or
 - c. The obligations of a responsible person under any applicable Environmental Laws (as defined below); or
 - d. The right or duty to investigate and remediate any Hazardous Materials associated with the Easement Property, except any release of Hazardous Materials intentionally or accidentally caused or permitted by Grantee or any Grantee Party; or
 - e. Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Property.

The term “Hazardous Materials” includes, without limitation, with the exception of reasonable amounts of commercially available cleaning supplies and fuel types and loads approved by the Oakland Fire Department, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901, et seq.; hereinafter “RCRA”); the Hazardous Materials Transportation Act (49 U.S.C. section 6901, et seq.; hereinafter “HTA”); the Hazardous Waste Control Law (Health & Safety Code section 25100, et seq.; hereinafter “HWCL”); the Carpenter-Presley Tanner Hazardous Substance Account Act (Health & Safety Code section 25300, et seq.; hereinafter “HSAA”), and in the regulations adopted pursuant to them, or any other applicable Environmental Laws that define Hazardous Materials now in effect or enacted after the recordation of this Easement.

The term “Environmental Laws” includes, without limitation, CERCLA, RCRA, HTA, HWCL, HSAA, and any other federal, state, or local statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that all activities on and use of the Easement Property by Grantor, its agents, employees, invitees and contractors will comply with all applicable Environmental Laws.

Should Grantee or any Grantee Party encounter any hazardous materials or other environmental hazard within the Easement Property, or any other area in which Grantee

conducts activities, Grantee shall provide notification of the encounter to Grantor immediately, but in no event later than 48 hours after the discovery.

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13. Hold Harmless/Indemnification.

- a. Grantor Indemnity. Grantor shall be responsible for, indemnify, and hold harmless Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, successors and assigns of each of them (each a “**Grantee Indemnified Party**” and collectively, “**Grantee Indemnified Parties**”) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys’ fees), causes of action, claims, demands, orders, liens or judgments (each a “**Claim**” and, collectively, “**Claims**”) (i) arising from or caused by Grantor’s grossly negligent acts or omissions directly causing injury to, or death of, any person, or physical damage to the Easement Property, except to the extent due to the gross negligence or intentional misconduct of Grantee or any Grantee Indemnified Party; or (ii) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any Grantee Party. If any action or proceeding is brought against any of the Grantee’s Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to Grantee.

- b. Grantee Indemnity. Grantee shall be responsible for, indemnify, and hold harmless Grantor and its councilmembers, commissioners, directors, officers, employees, attorneys, agents, contractors, and representatives and the heirs, successors and assigns of each of them (each a “**Grantor Indemnified Party**” and collectively, “**Grantor Indemnified Parties**”) from and against all Claims arising from or caused by (i) Grantee’s or any Grantee Party’s use of the Easement Property or any grossly negligent act or omission directly causing injury to, or death of, any person, or physical damage to the Easement Property, except to the extent due to the gross negligence or intentional misconduct of Grantor or any Grantor Indemnified Party; (ii) any Hazardous Materials released in, from, or about the Easement Property that are placed, disposed, or released by Grantee or any Grantee Party; or (iii) the existence or administration of this Easement. If any action or proceeding is brought against any of the Grantor’s Indemnified Parties by reason of any such Claim, Grantee shall, at the election of and upon written notice from Grantor, defend such action or proceeding by counsel reasonably acceptable to Grantor.

14. Subsequent Conveyance of the Cultural Conservation Easement Property; Transfer.

Grantor shall incorporate by reference hereto the terms of this Easement into any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Easement Property, including, without limitation, a leasehold interest. Any such

conveyance must be consistent with this Easement. Grantor shall give written notice to Grantee of the transfer of any interest in the Easement Property at least 30 days prior to the date of such transfer. Grantor shall provide a complete copy of this Easement to its transferee prior to any such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

15. Assignment by Grantee.

- a. Voluntary Assignment. This Conservation Easement may only be transferred by Grantee upon written approval of Grantor, which approval shall not be unreasonably withheld or delayed. Grantee shall give the City at least ninety (90) days prior written notice of the proposed transfer. Grantee may transfer its rights under this Conservation Easement only to an entity or organization: (i) qualified at the time of transfer to acquire and hold conservation easements under California Civil Code Sections 815-816 (or any successor provision(s) then applicable); (ii) subject to the jurisdiction of the Superior Court of the State of California; (iii) reasonably determined by Grantor to be experienced in holding and monitoring conservation easements on properties similar to the Property; and willing and financially able to assume all of the responsibilities imposed on Grantee under this Easement; (iv) that agrees to enforce in perpetuity this Easement; and (v) otherwise reasonably acceptable to the City ("Qualified Assignee"). The parties shall cause any assignment or transfer to be recorded in Alameda County.
- b. Termination of Grantee. If Grantee decides to cease operations or terminate its existence, Grantee shall provide Grantor with no less than six (6) months' notice of such termination and the parties shall proceed to assign Grantee's rights and obligations under this Easement to a Qualified Assignee in accordance with the provisions of Section 15(a) above, with such assignment to take place no later than Grantee's termination date.

16. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible or impracticable to accomplish, or if Grantee involuntarily ceases to exist under state law and no Qualified Assignee is able to assume the rights and obligations under the Easement, then this Easement may be terminated or extinguished by judicial proceedings in a court of competent jurisdiction.

17. Eminent Domain and Condemnation. Pursuant to Sections 1240.670 and 1240.680 of the California Code of Civil Procedure, notwithstanding any other provision of law, the Easement Property is presumed to have been appropriated for the best and most necessary public use, and this Easement is "property appropriated for public use" within the meaning of the California Code of Civil Procedure section 1240.055. If Grantor or Grantee is notified that the Easement Property may be acquired for public use by eminent domain, the party receiving such notice shall notify the other party of the potential acquisition no later than fifteen (15) days after first receiving such notice. Prior to the inspection of the Easement Property by the appraiser pursuant to Section 7267.1 of the Government Code or any other provision of law, Grantor shall notify Grantee that it or its designated

representative may accompany the appraiser during his or her inspection. Within seven (7) days of receiving any notice of the hearing on the resolution of necessity pursuant to Section 1245.235 of the Code of Civil Procedure, Grantor shall provide Grantee a copy of the notice of the hearing. As provided in Sections 1250.220 and 1250.230 of the Code of Civil Procedure, in any eminent domain proceeding to acquire all or a portion of the Easement Property, Grantee is required to be named as a defendant and may appear in the proceedings. Grantor and Grantee shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights that are taken or condemned and for which such damages are awarded or paid. Any expense incurred by Grantor or Grantee in any such action shall be first reimbursed out of the recovered proceeds. The remainder of such proceeds shall be divided between Grantor or Grantee in proportion to their interests in the Easement Property, or portion thereof.

18. Miscellaneous Provisions.

- a. Choice of Law. The internal laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Easement, the construction of its terms and the interpretation of the rights and duties of the parties.
- b. Amendment. No subsequent change, amendment, or addition to this Easement shall be binding unless in writing and signed by both parties. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the parties may jointly amend this Easement, provided that any amendment shall be consistent with the purpose of this Easement. Any such amendment shall be in writing, shall refer to this Easement by reference to its recordation information, and shall be recorded in the Official Records of Alameda County, California.
- c. Rights Cumulative. Each and all of the various rights, powers and remedies of the parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the parties may have at law or in equity in the event of the breach of any of the terms of this Easement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.
- d. Notice. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Easement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service, facsimile transmission or other similar electronic medium and addressed as indicated in the MOA.

If sent by facsimile or email, a confirmed copy of such facsimile or emailed notice shall promptly be sent by mail (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time.

Nothing contained in this Easement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

- e. Severability. If any of the provisions of this Easement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the parties, the parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Easement. The parties further agree to replace such void or unenforceable provisions, which will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provisions.
- f. Waiver. No waiver of any term, provision, or condition of this Easement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Easement.
- g. Entire Agreement. This Easement is intended by the parties to be the final expression of their agreement; it embodies the entire agreement and understanding between the parties hereto; it constitutes a complete and exclusive statement of the terms and conditions thereof, and it supersedes any and all prior correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter; provided, however, that the parties may further agree to matters not inconsistent with this Easement in the MOA.
- h. Time of the Essence. Time is of the essence of each provision of this Easement in which time is an element.
- i. Further Documents and Acts. Each of the parties agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Easement.
- j. Captions. Captions are provided herein for convenience only and they form no part of this Easement and are not to serve as a basis for interpretation or construction of this Easement, nor as evidence of the intention of the parties hereto.
- k. Pronouns and Gender. In this Easement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

- m. Authority. Grantor and Grantee both represent and warrant that each has the full right, power and authority to enter into this Easement and to perform the transactions contemplated hereunder.
- n. Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- o. No Third-Party Rights. This instrument is made and entered into for the sole benefit and protection of the parties and their respective heirs, successors, and assigns. No person or entity other than the parties hereto and their respective heirs, successors, and assigns shall have any right of action under this Easement or any right to enforce the terms and provisions hereof.
- p. No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title to the Easement Property subject to the terms and conditions of the Easement.
- q. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Easement Property.
- r. Counterparts. The parties may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- s. Recordation. This instrument shall be recorded by the parties in the Official Records of the County of Alameda, California. The parties may re-record this Easement whenever re-recording is required to preserve the rights of any party to this Easement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Easement as of the date last signed below.

GRANTEE:

SOGOREA TE' LAND TRUST,
A California nonprofit corporation:

By: _____

Its: _____

Date: _____

GRANTOR:

CITY OF OAKLAND,
A municipal corporation:

By: _____
City Administrator

Date: _____

Approved as to form and legality:

By: _____
Deputy City Attorney

Date: _____

EXHIBIT A

Property Map

EXHIBIT B

Easement Property Legal Description

[attached]

EXHIBIT C

Easement Property Map

**SOGOREA TE' LAND TRUST CULTURAL CONSERVATION EASEMENT
MEMORANDUM OF AGREEMENT
RINIHMU PULTE'IREKNE
FORMERLY KNOWN AS SEQUOIA POINT, JOAQUIN MILLER PARK**

THIS MEMORANDUM OF AGREEMENT (the “*Agreement*” or “*MOA*”) is made by and between the City of Oakland, a municipal corporation (“*City*”) and the Sogorea Te' Land Trust, a California nonprofit corporation (“*STLT*”).

WHEREAS, the City is the owner of certain real property currently known as Joaquin Miller Park in the County of Alameda, State of California, consisting of approximately 500 acres and including County Assessor's Parcel Numbers 48D-7208-5-1, 029-1201-1-1, 029-1200-6-3, 029-1200-7-3, 029-1201-1-2 and 085-001-004-00, as depicted in the map attached hereto as **Exhibit A**, incorporated by this reference (hereafter “*Property*”); and

WHEREAS, SOGOREA TE' LAND TRUST is a tax-exempt nonprofit organization qualified under Section 501(c) (3) of the Internal Revenue Code and qualified to do business in this state, which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use, and is qualified to hold conservation easements under California Civil Code Section 815.3; and

WHEREAS, concurrently with or prior to the execution of this Agreement, City has entered into a Cultural Conservation Easement (“*Easement*”) pursuant to the laws of California and in particular, *inter alia*, Sections 815 through 816 of the California Civil Code, in perpetuity over an approximately 5-acre portion of the Property commonly known as Sequoia Point, as more particularly described in **Exhibit B** and depicted in the map attached hereto as **Exhibit C**, incorporated by this reference (hereafter the “*Easement Property*”); and

WHEREAS, the Easement Property will now be known as Rinihmu Pulte'irekne (meaning “above the red ochre” in the Chochenyo language); and

WHEREAS, the City and STLT share a strong interest in working collaboratively on the Easement Property to identify, conserve, and restore open space and natural resources; reestablish Native American traditions, cultural practices, and resource stewardship; and to educate and share these values and resources through public education partnerships; and

WHEREAS, STLT brings a unique and valuable perspective to, and knowledge of, the Easement Property, and it is in the City's and the public's interest to establish a long-term partnership with STLT; and

WHEREAS, the easement purpose, conservation values, and STLT's rights, interests and obligations under the Easement are consistent with and enhance the natural resource value and public enjoyment of Joaquin Miller Park; and

WHEREAS, the City and STLT intend that the MOA set forth in greater detail than in the Easement how the Easement shall be managed, how activities on the Easement Property shall be implemented and the relationship between the parties with respect to the Easement Property, and

that the MOA should be a living document that the parties can amend from time to time by mutual agreement as circumstances warrant; and

WHEREAS, some provisions of the MOA are limited by the current zoning designation of the property and the MOA may need to be amended in the event of changes to the zoning designation or other applicable land use regulations; and

WHEREAS, on [REDACTED], 2022, the City Council approved the Easement and this Agreement in Ordinance No. [REDACTED] C.M.S.; and

WHEREAS, the parties hereby enter into this Agreement to further define the processes and requirements for implementing the Easement.

NOW THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions, and restrictions contained herein, City and STLT hereby agree as follows:

1. Incorporation of Easement; Capitalized Terms. The Easement is attached hereto and incorporated herein by this reference as **Exhibit D** and is recorded in the Official Record of the County of Alameda, California. All capitalized terms used herein and not expressly defined herein shall be as defined in the Easement.
2. Implementation of City's Reserved Rights. City has reserved certain exclusive enumerated rights as set forth in Section 7 of the Easement. The City's rights and access to the Easement Property shall be implemented as follows:
 - a. The City may enter the property for purposes consistent with the Easement and Conservation Values, provided that notice is given to STLT at least two business days in advance of such entry. The City may enter the property immediately and without notice to STLT in the event of an emergency, in which case the City will seek to inform STLT at the earliest opportunity.
 - b. The City may coordinate with STLT to plan for, facilitate and manage public access to the Property for education and recreation purposes consistent with the Conservation Values, as this term is defined in the Easement. This includes organizing a permitted events calendar for Joaquin Miller Park and restricting public access for certain ceremonial uses subject to local ordinances and permit requirements.
 - c. The City may collaborate with STLT on a Management Plan for the Property and to maintain the Property by performing tree removal, site evaluations, trash and debris removal, and other maintenance all subject to coordination in advance with STLT. The City may conduct maintenance activities immediately and without notice to STLT in the event of an emergency, in which case the City will seek to inform STLT as the earliest opportunity. The City will clear illegal dumping in areas of the Easement Property that are along and easily accessible from the public right of way.
 - d. The City may prohibit all access to and use of the Easement Area for the duration of any Red Flag Wildfire Warning. The City will provide notice of Red Flag Wildfire Warnings via public communications.

- e. The City may elect to grant temporary water, air, subsurface and/or mineral rights to STLT if necessary for the beneficial use of the Easement and consistent with the Conservation Values.
 - f. The City may grant access to third parties to the Property, provided that the City gives notice to STLT and consults with STLT at least two weeks in advance of such actions.
3. Implementation of Affirmative Obligations of STLT. To support the purposes of the Easement, and as partial consideration for the granting of this Easement, STLT has agreed to certain affirmative obligations as set forth in Section 4 of the Easement. STLT's obligations shall be implemented as follows:
- a. STLT will provide educational services to the public through community partnerships with the City, schools, parks, and nonprofits as outlined in Section 5(d).
 - b. STLT will facilitate and maintain public access to the Easement Property for uses consistent with the Easement and Conservation Values, as described in Section 6 herein.
 - c. STLT will maintain the vegetation on the Easement Property for wildfire prevention purposes to ensure compliance with the Oakland Fire Code (OMC Chapter 15.12), however the Parties agree that the Property is not currently managed in a manner that is compliant with the Oakland Fire Code.
 - d. STLT will monitor Oakland Fire Department and National Weather Service public communications for Red Flag Wildfire Warnings or other such advisories.
 - e. STLT will endeavor to restore soil quality, habitats, and native plant species subject to a Management Plan outlined in Section 7 herein. This may include partnering with local government and state programs for the safe management of forestry consistent with the Conservation Values.
 - f. STLT will maintain and monitor the Easement Property, in partnership with the City, to prevent or respond to any uses on the Easement Property that are inconsistent with the Easement, Conservation Values, or applicable local and state laws. STLT will clear trash and other illegal dumping in the interior areas of the Easement Property.
 - g. STLT will provide for cleanup of litter and debris on the Easement Property after events and also on a regular basis.
4. Prohibited Uses. In addition to the prohibitions defined in the Easement, Grantee is further prohibited from conducting the following activities on the Easement Property:
- a. Site alterations, including but not limited to, building, demolition, grading, paving, or tree removal without all appropriate permits from the City and/or other applicable government agencies;
 - b. Any use, activity, or vegetation management activities not consistent with the Conservation Values, the Management Plan, all Governmental Regulations, and all permit conditions;

- c. Permanent (lasting more than 30 days) commercial, industrial or other uses inconsistent with the Conservation Values;
- d. Subdivision of the Easement Property or the grant of any property interests in the Easement Property;
- e. Excavation, removal, destruction or sale of any archeological artifacts or remains found on the Easement Property;
- f. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Easement Area, or granting or authorizing surface entry for any of these purposes;
- g. Handling or storing of Hazardous Materials except to the extent necessary to investigate, remove, remediate, or prevent any release of Hazardous Materials caused or permitted by Grantee or Grantee Parties;
- h. Controlled burns of vegetation for fire management;
- i. Any access or use of the Easement Area during the period covered by a Red Flag Wildfire Warning;
- j. Business or advertising signs of any kind;
- k. Other activities reasonably prohibited by the City through generally applicable Governmental Regulations, permits, and/or this Agreement.

5. Implementation of Authorized Activities.

- a. Authorized Activities. STLT shall have the right to use the Easement Property consistent with the zoning designation of the Easement Property. These currently include and are limited to: recreational and educational uses with no corresponding structures or development; nature appreciation; habitat restoration; and performing site surveys with no ground disturbance. STLT may conduct ceremonial gatherings as set forth in Section 5(c) below. Other activities will require additional land use permits or approvals. Any land use permits or change to the zoning designation of the Easement Property would change the authorized activities accordingly, but implementation of such activities may require further amendments to this Agreement, in which case the parties shall work in good faith to prepare and execute such amendments.
- b. Natural Resource and Vegetation Management. STLT will promote cultural land stewardship through the application and sharing of traditional resource management practices subject to a Management Plan, including, for example: protecting endangered plant species, restoring soil quality and habitats, preventing wildfire, removing and preventing invasive species, and planting and cultivating native plants. All such activities shall be subject to the Oakland Protected Trees Ordinance (OMC Chapter 12.36) and may require permitting.
- c. Ceremonial Gatherings. STLT may gather on the Easement Property as needed for cultural ceremonies, including but not limited to spiritual gatherings, cultural performances, and communal dining. Ceremonial gatherings of 25 or more people

are limited to no more than four occurrences within a calendar year; five or more ceremonial gatherings of 25 or more people within a calendar year will be classified as a Community Assembly Civic Activity which is currently not allowed under the zoning regulations.

- d. Education and Interpretation. STLT will collaborate with the City and/or community partners at least annually to discuss and schedule educational events and activities for the public that share traditional cultural and land management practices, including but not limited to: language, oral histories, spiritual beliefs, revival of tribal knowledge; and ethnobiological resources, cooking, medicines, ceremonies, and crafts. There is no limit on the size or frequency of such events and activities provided they do not harm the Conservation Values and comply with all applicable Governmental Regulations, including but not limited to the special event permit requirements set forth in Section 5(f) below.
- e. Parking. STLT will seek to carpool to the Easement Property and promote carpooling with its guests. STLT and its guests will observe all parking and traffic signs. STLT and the City will continue to collaborate in planning for safe parking and vehicular circulation around the Easement Property.
- f. Events. STLT shall provide an on-site temporary, portable toilet for events lasting more than four hours and including 25 people or more. Such toilet shall be removed from the Easement Property within twenty-four (24) hours after the event. For any events that include cooking with oil, STLT shall have Class K fire extinguishers on-site. Events involving 50 people or more shall require a special event permit from the City. STLT will not require fees from participants at events, however, voluntary or suggested donations are authorized. STLT will provide a report of events held on the Easement Property if reasonably requested by the City.
- g. Authorized Improvements. STLT shall have no right to construct, build, or place any physical improvements, including signage, on the Easement Property without the necessary approvals granted by the City and any other jurisdiction with regulatory authority, including but not limited to the County of Alameda, California Department of Fish and Wildlife, and/or United States Fish and Wildlife Service.
- h. Request for New Activities and Improvements. STLT may propose new activities and/or facilities on the Easement Property, which the City shall review for consistency with all Governmental Regulations, the Conservation Values, the Easement, and pursuant to the California Environmental Quality Act (“*CEQA*”). Such activities and/or facilities may require additional public meetings and discretionary decisions by the Oakland Parks and Recreation Advisory Commission, the Oakland Planning Commission, and/or the Oakland City Council, in addition to approvals from other jurisdictions with regulatory authority. If future uses are proposed and approved, STLT and the City will work in good faith to amend this Agreement to further implement those uses.

6. Public Access. STLT acknowledges and agrees that public access to the Easement Property is mutually beneficial and in furtherance of the purposes of the Conservation Easement. In this regard, STLT and City will work together to increase the extent of public outreach and education, including displays of interpretive materials. Access will be consistent with the requirements of the Americans with Disabilities Act (“*ADA*”). STLT may temporarily close portions of the property to public access to the extent necessary to protect natural resource restoration projects or accommodate ceremonial activities, provided however that STLT may not impede public access along the Big Trees Trail. STLT will give advanced notice to the City of any such closures and will seek opportunities to inform and educate the public about such closures.
7. Management Plan. STLT will prepare a Management Plan for the Easement Property to establish a vision and framework to guide natural resource restoration, stewardship and site management activities for the Easement Property. The Management Plan will consider the larger environment and existing plans for the area within which the Easement Property is located. The Management Plan will also identify needs and opportunities for partnership with the City and community. STLT will update the Management Plan at least once every ten (10) years. At the City’s reasonable request, STLT will update the Management Plan prior to completion of such ten-year term to address unforeseen issues or significant changes. The Management Plan and any updates shall be subject to City review and approval, which will not be unreasonably withheld.
8. Hazardous Materials. STLT acknowledges that there may be Hazardous Materials present on the site or buried underground. If any Hazardous Materials are discovered or uncovered, STLT will cease their activity and notify the City immediately, in no event later than 48 hours after discovery. The City reserves the right, responsibility and authority to enter all areas to investigate, remove, remediate or otherwise clean up any hazardous materials if required.
9. Emergency Response. For emergency or law enforcement incidents contact:

GRANTEE/STLT:

Sogorea Te’ Land Trust
2501 Harrison St.
Oakland, CA 94612
Attn: Directors
Tel: (510) 575-1098
Email: corrinagould@gmail.com
info@rematriatetheland.org

GRANTOR/City:

Fire emergencies: Oakland Fire Dept emergency line, (510) 444-1616
Law enforcement emergencies: Oakland Police Dept emergency line, (510) 777-3211

10. Insurance. STLT must carry property, liability, and other insurance required by the City for the duration of the Easement and this Agreement, as set forth on Exhibit E hereto.
11. Cost Recovery. No fees shall be charged to STLT to use the Easement Property consistent with the Easement and this MOA, unless additional permits are required,

including but not limited conditional use permits, building permits, special event permits, tree removal permits or park permits, in which case STLT shall be responsible for all permitting costs identified in the Oakland Master Fee Schedule, however the parties will jointly seek funding when feasible.

12. Master Activities Calendar. City will keep a master calendar of all permitted events on the Property and the Easement Property. City will share the calendar with STLT and shall consult with STLT prior to publishing such calendar if any events or activities may affect the Easement Property.
13. Good Faith Consultation. City and STLT will consult in good faith regarding any conflicts that arise between City's Reserved Rights and STLT's Authorized Activities.
14. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The venue for any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be in Alameda County, or such other venue as is mutually agreed to by the parties in writing.
15. Dispute Resolution. In the event of a dispute under this Agreement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to legal action. Either party may request consultation in writing to address any conflict or dispute arising out of this Agreement between the parties at any time. The parties agree to make a good faith effort to engage in the consultation process promptly. Should any dispute not be resolved by informal consultation between the parties, it shall be submitted to alternate dispute resolution, with each party bearing its own, costs and legal fees, in accordance with Section 10 of the Easement ("Disputes and Remedies"). Should litigation result, the court shall determine who bears legal fees and costs.
16. Notification. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service, facsimile transmission or other similar electronic medium and addressed as follows:

GRANTOR/CITY:

City of Oakland
Real Property Asset Management Division
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
Attn: Real Property Asset Manager
Tel: (510) 238-3541
Email: bmoriarty@oaklandca.gov

With copies to:
City of Oakland City Attorney's Office
1 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising Attorney for Real Estate

City of Oakland
Joaquin Miller Park Supervisor
3540 Sanborn Drive
Oakland, CA 94602
Tel: (510) 299-2979
Email: JSalas@oaklandca.gov

GRANTEE/STLT:
Sogorea Te' Land Trust
2501 Harrison St.
Oakland, CA 94612
Attn: Directors
Tel: (510) 575-1098
Email: corrinagould@gmail.com
info@rematriatetheland.org

If sent by facsimile or email, a confirmed copy of such facsimile or emailed notice shall promptly be sent by mail (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered.

Nothing contained in this MOA shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

The primary City contact for routine coordination and partnership matters will be the Park Supervisor for Joaquin Miller Park, whose contact information is noted above.

17. Authority. Each party covenants that the individual executing this Agreement on behalf of the party is a person duly authorized and empowered to execute this Agreement for such party.
18. Modification. This Agreement may only be amended by the mutual written agreement of the parties. Pursuant to Ordinance No. [REDACTED] CMS, the City Administrator or designee may amend this Agreement from time to time, to the extent such amendments are consistent with the Easement, the Conservation Values defined therein, and all Governmental Regulations and/or permits in effect at the time of amendment.

19. Counterparts. This Agreement may be executed by the parties in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last signed below.

SOGOREA TE' LAND TRUST,
A California nonprofit corporation:

By: _____

Its: _____

Date: _____

CITY OF OAKLAND,
A municipal corporation:

By: _____
City Administrator

Date: _____

Approved as to form and legality:

By: _____
Deputy City Attorney

Date: _____