Date: July 16, 2013
To: El Cerrito City Council
From: Melanie Mintz, Interim Community Development Director
Scott Hanin, City Manager
Subject: Agreement with The Trust for Public Land for Acquisition of Hillside Natural Area Property (APN 505-142-014, -012 and -013)

ACTION REQUESTED
Consider adopting a resolution authorizing the City Manager or his designee to enter into the following: 1) Purchase and Sale Agreement and 2) Professional Services Agreement with the Trust for Public Land for the acquisition of approximately 7.6 acres of open space property adjacent to the Hillside Natural Area for conservation and recreation purposes and for acquisition-related and fundraising assistance.

BACKGROUND
The Hillside Natural Area (HNA) is an approximate 85-acre City-owned open space identified as a Community-Serving Park and Recreation facility in the City’s General Plan (Table 6-2). The HNA has a number of trails that are used for recreation and emergency access and extensive native plants, oak woodland and riparian environments. The City’s Circulation Plan for Bicyclists and Pedestrians (2007) identifies two projects—Park Trail Connector and Hillside Pathways and Stairs—to improve access, connectivity and promote walking in hillside neighborhoods and across the City. The Park Trail Connector project identifies purchasing undeveloped properties bordering the HNA in order to enhance trail connection as an implementation strategy and recommends connecting Hillside Natural Area North and Hillside Natural Area South as a first phase. (Circulation Plan, p. 67)

Earlier this year, residents learned and brought to the City’s attention that a privately-owned, undeveloped approximately 7.6-acre property (Property) was going to be listed for sale. At the March 5, 2013 special City Council meeting, the City Council authorized staff to work with the Trust for Public Land (TPL), a national land conservation organization based in San Francisco, to explore negotiating a purchase option on behalf of the City. The Trust for Public Land commenced negotiations with the seller’s agent and learned that the listing price would be $600,000 and that the seller required the sale to close in 2013. TPL leveraged the time sensitivity to negotiate on price and after several offers and counteroffers landed on a selling price of $475,000 with a closing date of August 30, 2013. Due to the compressed timeline created by the seller’s required 2013 sale, a situation was created in which the City would not have
time or capacity to raise the necessary funds and complete the transaction prior to the required transaction close date. At a May 21, 2013 City Council Closed Session, the City Council authorized staff to negotiate with TPL to develop a process through which the property could be purchased within the required timeframe. TPL subsequently entered into a purchase and sale contract with the seller consistent with the negotiated terms which provided a 60-day period to conduct standard property due diligence (such as review and approval of a title report, environmental site assessment and appraisal) and to secure all necessary board approvals (including TPL’s board approval to buy and hold the property and the City Council’s approval to purchase the property from TPL, both described below). The transaction would not move forward as planned if the appraised market value of the property is less than the negotiated price.

The item before the City Council tonight for consideration includes two components resulting from those negotiations. The first component is to enter into a *Purchase and Sale Agreement* with TPL through which TPL would purchase the property from the current owner and hold the property until December 17, 2014 to allow time for public grant and private fundraising to take place on behalf of the City. The second component is to enter into a *Professional Services Agreement* with TPL to provide all property acquisition-related services, including but not limited to appraisals, title review, environmental assessment and testing and legal and staff time, and for fundraising services including leading the solicitation of public grant funds and supporting a private fundraising campaign to be led by the Trail Trekkers, a local non-governmental organization working to improve and expand the City’s trails and pathways. According to TPL, the opportunity to acquire this privately-owned, undeveloped property adjacent to the City’s two Hillside Natural areas is “an exciting opportunity to create a fully-integrated, mile-long urban park” and fulfills their mission of conserving land for people. Through the graduated fee structure outlined in the proposed *Professional Services Agreement* (and summarized below), TPL demonstrates its confidence in, and commitment to, the fundraising effort and recognizes the constraints on City funds available for the purchase of the property. Through the *Professional Services Agreement*, TPL commits to helping the City raise more than $250,000 in matching funds, or its $100,000 fee is reduced to $75,000. Less than $250,000, TPL proposes to split only the private matching funds. See Table 1 below for a summary of possible Professional Services Fee scenarios.

**Table 1: Costs to the City Relative to Outside Capital Funds Secured**

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Purchase Price</th>
<th>Private Fundraising</th>
<th>Grants</th>
<th>City Funds</th>
<th>TPL Fee</th>
<th>Total Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>$475,000</td>
<td>$-</td>
<td>$-</td>
<td>$475,000</td>
<td>$-</td>
<td>$475,000</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>$475,000</td>
<td>$15,000</td>
<td>$-</td>
<td>$467,500</td>
<td>$7,500</td>
<td>$482,500</td>
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<td>Scenario 3</td>
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<td>$20,000</td>
<td>$100,000</td>
<td>$365,000</td>
<td>$10,000</td>
<td>$485,000</td>
</tr>
<tr>
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<td>$200,000</td>
<td>$260,000</td>
<td>$15,000</td>
<td>$490,000</td>
</tr>
<tr>
<td>Scenario 5</td>
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<td>$250,000</td>
<td>$270,000</td>
<td>$75,000</td>
<td>$550,000</td>
</tr>
<tr>
<td>Scenario 6</td>
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<td>$270,000</td>
<td>$100,000</td>
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<tr>
<td>Scenario 7</td>
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<td>$300,000</td>
<td>$245,000</td>
<td>$100,000</td>
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<tr>
<td>Scenario 8</td>
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<td>$40,000</td>
<td>$300,000</td>
<td>$235,000</td>
<td>$100,000</td>
<td>$575,000</td>
</tr>
</tbody>
</table>
The property in question (APN 505-142-014, -012 and -013) has been referred to as the “Busby Property”. Between 1995 and 2002 a tentative subdivision map (Bay Vista Subdivision 7270) was under development. In 2002, the Planning Commission denied the requested extension of the tentative subdivision map. (PC Resolution 02-07) The extension would have been the project’s fifth extension.

**ANALYSIS**

The proposed acquisition has generated interest from El Cerrito residents as communicated to both staff and the City Council and fulfills an implementation strategy for the *Park Trail Connector* project identified in the City’s Circulation Plan for Bicyclists and Pedestrians. It is consistent with the City’s General Plan goals, including:

*Goal R 1:* Protect natural resources (important habitat, ecological resources, key visual resources, ridges and ridgelines, creeks and streambanks, steeper slopes, vista points, and major features), and clean air and water

*Goal PR 2:* High quality open space protected for the benefit of present and future generations, reflecting a variety of important values: ecological, educational, aesthetic, economic and recreational. These values are interwoven throughout the community in numerous ways so that the preservation of open space is very important to the well being of the city.

Acquisition of the property would provide the opportunity to develop a trail through the site to establish a connection between the City’s southern and northern publicly-owned Hillside Natural areas. The site provides an opportunity to create a pedestrian-connection through the HNA to Madera Elementary School from numerous points, including the trailheads along Navallier Street and along Schmidt Lane. A creek on the property is one of the contributing headwaters to Baxter Creek. The property is bordered by Madera Elementary school, East Bay Municipal Utility District (EBMUD) property and a small property owned by the City of El Cerrito (Attachment 1). Existing public stairways connect to the property via Madera Circle and a trail through the property would provide a connection between Regency Court and Potrero Avenue via the existing public stairway that descends from Madera Circle to Julian Drive and Potrero Avenue directly across from a trail that leads to HNA North.

Most of the current maintenance of the mostly unimproved 85-acre HNA is provided by the City’s Fire Department to reduce fire risk. According to the Department of Public Works and Fire Department, the additional maintenance of this unimproved 7.6 acre property would be an incremental addition to the maintenance activities already being performed on the HNA. Public improvements, such as trails and signage, would need to be funded from future unidentified funding sources, such as grants and private fundraising, as well as through in-kind labor provided by volunteer organizations. In recent years, community groups (the Environmental Quality Committee’s “Green Teams” and the City co-sponsored Trail Trekkers, in partnership with others) have organized to provide volunteer maintenance hours and to pursue trail and native plant enhancements of the HNA.
In regards to timing, it appears that the landowner is committed to selling the property in 2013. The partnership with TPL, including their proposal to buy and hold the property and assist with fundraising, and the demonstrated interest and commitment of the Trail Trekkers provides the City an opportunity to purchase the property and fulfill City goals of preserving open space, protecting natural resources and improving connectivity. TPL is currently under contract with the seller to purchase the property with an August 30th closing date and the end of the due diligence period on August 16th. If the City elects to enter into the proposed *Purchase and Sale Agreement* it will have until August 15th to approve the property title, physical, structural and environmental condition of the property and until August 1st to request information in addition to what is outlined in the current *Purchase and Sale Agreement*. The City’s decision to enter into the proposed *Purchase and Sale Agreement* and *Professional Services Agreement* are necessary preconditions to TPL’s Board of Directors closing the deal with the seller.

**FINANCIAL CONSIDERATIONS**

The proposed *Purchase and Sale Agreement* with TPL entails TPL purchasing the property and providing all transaction related services with their own funds and in-kind services and holding the property with no funds provided by the City through December 17, 2014. Through entering into the *Purchase and Sale Agreement* and *Professional Services Agreement* with TPL, the City would commit to ownership of the 7.6-acre property and to buying the property from TPL for $475,000 plus paying up to $100,000 in professional service fees for acquisition related services, including grant-solicitation and private fundraising assistance. The potential funding sources for this transaction (inclusive of the land purchase, “closing costs,” relationship with Trust for Public Land and fundraising services) would likely include a combination of Measure WW funds, public grants and private fundraising. The amount of Measure WW funds would not be known until the culmination of fundraising, but would not amount to more than $475,000 of a balance of $587,469. Staff does not support the use of the General Fund for this purchase.

After extensive deliberation, the Parks and Recreation Commission, at its June 26, 2013 meeting, voted to support the City Council’s use of Measure WW funds for this acquisition. There was discussion at the meeting about whether the acquisition represented the highest and best-use of the limited Measure WW funds and about the many other needs the City may have for these funds. Concerns were also expressed that committing to expend Measure WW funds before the completion of the Urban Greening Plan (scheduled to be completed in Fall/Winter 2014) was premature. The item was also presented at the Environmental Quality Committee at its July 9, 2013 meeting and numerous committee member and public comments were received in support of the project.

The potential non-Measure WW funding sources for the proposed acquisition include at least three pre-identified competitive state grants which will release Requests for Proposals in early 2014 for Urban Stream Restoration, Environmental Enhancement and Mitigation and Recreational Trails. The City’s Measure WW funds would provide leverage for these competitive public grants. TPL and City staff would continue to
monitor other public grant opportunities. Additionally, TPL and City staff have met with the private fundraising campaign committee, led by the Trail Trekkers, to ascertain their commitment and ability to fundraise. A group of 11, representing a variety of organizations including the Trail Trekkers and Friends of Five Creeks, have met and indicated that they are committed to raising $50-60,000. With guidance from TPL, the committee has been in a “quiet phase” of fundraising, anticipating a City Council decision. According to the committee, $13,000 has been pledged thus far. If the City Council enters into the proposed Purchase and Sale and Professional Services Agreement, the campaign will become formalized and more active. Funds above the acquisition-related costs would continue to be needed for land and trail improvements and would begin to be solicited concurrently with the acquisition funds. Immediate costs would be minimal, as the property would be left in its current, “natural” condition until volunteer efforts or fundraising occurred to improve it.

Reviewed by:

Scott Hanin, City Manager

Attachments:
1. Aerial Photo of Property
2. Draft Purchase and Sale Agreement and Professional Services Agreement
3. Accompanying Resolution
PURCHASE AND SALE AGREEMENT
(El Cerrito Hillside Property)

This is a Purchase and Sale Agreement (this “Agreement”) dated ____________ ___,
2013, between THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit
corporation ("Seller" or “TPL”) and the CITY OF EL CERRITO, a California general law city
("Buyer"). Buyer and Seller may be collectively referred to herein as the "Parties."

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as
follows. Telephone numbers are included for information only.

SELLER:
The Trust for Public Land
101 Montgomery, 9th Floor
San Francisco, CA 94104
Attn: Brendan Moriarty
Tel: (415) 800-5298
FAX: (415) 495-0541
brendan.moriarty@tpl.org

BUYER:
City of El Cerrito
10890 San Pablo Ave
El Cerrito, CA 94530-2323
Attn: Melanie Mintz
Tel: (510) 215-4339
FAX: ______________
MMintz@ci.el-cerrito.ca.us

Copies of any notice to Seller should also be
sent to:
The Trust for Public Land
101 Montgomery, 9th Floor
San Francisco, CA 94104
Attn: Gilman Miller
Tel: (415) 800-5295
FAX: (415) 495-0541
gilman.miller@tpl.org

Copies of any notice to Buyer should also
be sent to:
Meyers Nave
555 12th Street, Suite 1900
Oakland, CA 94607
Attn: Sky Woodruff
Email: swoodruff@meyersnave.com
Tel.: (510) 808-2000
Fax: (510) 444-1108

B. Seller has contracted with Security Owners Corporation (“Landowner”) to acquire
certain real property located in the County of El Cerrito, State of California described on Exhibit
A attached hereto and incorporated herein by this reference, which is approximately 7.6 acres.
Said real property, together with all structures, improvements, fixtures, minerals, timber, crops
and groundwater and riparian rights and all rights appurtenant to it, including but not limited to
timber rights, mineral rights, grazing rights, and access rights, will be referred to in this
Agreement as the “Property.”

C. Following acquisition of the Property from Landowner, Seller desires to sell the
Property to Buyer for permanent open space protection and other conservation purposes. Buyer
is willing to acquire the Property from Seller on the terms and conditions set forth in this
Agreement.

El Cerrito Hillsides PSA
D. Seller is a conservation organization having among its purposes the acquisition, for the benefit of the public, of open space, scenic and recreational lands. Seller is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is included in the "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code" published by the Internal Revenue Service. Seller is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

E. Buyer is a conservation organization having among its purposes the acquisition, for the benefit of the public, of open space, scenic and recreational lands. Buyer is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is included in the "Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code" published by the Internal Revenue Service. Buyer is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

F. Buyer is entering into this Agreement under the expectation that TPL and the local community, led by the El Cerrito Trail Trekkers community group ("Trail Trekkers"), will undertake best efforts to secure public and private funds (collectively "Matching Funds") for Buyer’s purchase of the Property from TPL, which funds will be needed to ensure that the Property can be made available for public access.

G. In exchange for professional services associated with acquisition of the Property, Buyer is also entering into a Professional Services Fee Agreement ("Fee Agreement") with TPL, attached as Exhibit D.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale Terms.**

   1.1 **Effective Date.** This Agreement shall be effective as of the date this Agreement is fully signed and delivered by both Parties (the "Effective Date").

   1.2 **Purchase Price.** Seller shall sell the Property to Buyer and Buyer shall buy the Property from Seller for Four Hundred and Seventy Five Thousand and No/100 Dollars ($475,000.00)(the “Purchase Price”) payable in cash at the Close of Escrow, as defined in Section 4.

2. **Conditions to Closing.** The Parties’ respective obligations to close the sale of the Property shall be conditioned upon all of the following:

   (a) Seller receives approval of the transaction, which is the subject of this Agreement, by the Project Review Committee of Seller’s Board of Directors, which approval shall also allow Seller to acquire the Property from the Landowner, and Landowner conveys Property to Seller;

   (b) Buyer’s approval of the title, physical, structural and environmental condition of the Property not later than August 15, 2013 ("Review Deadline"), provided, however, that if Buyer has any title or other objections which it wants Seller to raise with the Landowner than those need to be provided no later than August 1 in order to get
Seller's timely response to same prior to the end of the Review Deadline. Seller shall provide to Buyer the Seller’s Reports as soon as possible and in any event prior to the conclusion of the Review Deadline;

(c) Buyer’s Approval of Title. Buyer's obligation to purchase the Property is expressly conditioned on Buyer's approval of the condition of title of the Property by the Review Deadline set forth in Section 2(b) of this Agreement. The following exceptions shown on the Preliminary Report (the "Permitted Exceptions") are approved by Buyer: (i) exceptions for a lien for local real estate taxes and assessments not yet due or payable, (ii) the standard preprinted exceptions and exclusions of the Title Company; and (iii) any other exception shown on the Preliminary Report, other than exceptions for monetary liens, which Buyer does not object to by written notice to Seller prior to the Review Deadline. Buyer agrees to approve, question or reject all exceptions by August 1, 2013 deadline set forth in 2(b) of this Agreement.

(d) Buyer receives approval of the transaction which is the subject of this Agreement by the City Council of El Cerrito, California; and

(e) Satisfaction of all the obligations stated herein by both Buyer and Seller, within the time periods provided in this Agreement (if any).

If any condition precedent is not satisfied or waived by the party for whose primary benefit it exists, said benefited party may terminate this Agreement by written notice to the other party, in which event the Parties shall have no further obligation to each other under this Agreement.

3. Condition of the Property.

(a) Buyer and Seller agree that, prior to the Review Deadline described in Section 2(b):

(i) Buyer shall have had the opportunity to study all aspects or circumstances of the Property, which Buyer deems material or relevant;

(ii) Buyer shall have requested and received from Seller all documents and materials in Seller's possession, which Buyer deems material or relevant with respect to the Property, including without limitation any environmental reports prepared by Seller or in Seller's possession for the Property ("Seller's Reports"). The Seller’s Reports shall include, without limitation, the following: (1) copies of those items which the Landowner provided to Seller regarding the Property; (2) the Preliminary Title Report (the “Title Report”) from First American Title Insurance Company – Commitment No. NCS-614665-SF with a commitment date of June 10, 2013; (3) an appraisal commissioned by Seller from Smyers & Krauss Appraisal; and (4) a Phase One Environmental Site Assessment. Seller makes no representation or warranties as to the accuracy, completeness or conclusions of Seller's Reports;(iii) Buyer and Buyer's consultants, agents, engineers, inspectors, contractors, and employees shall have reasonable access to the Property during regular business
hours for the purpose of performing due diligence, provided, however, that such access shall be on the same terms as required by Landowner of Seller re notice, release, indemnification, and insurance; and

(iii) Buyer shall have had the opportunity to make all inspections and verifications which Buyer deems necessary for the completion of Buyer's due diligence review for the transaction covered by this Agreement.

(b) Except as otherwise expressly set forth in this Agreement, Buyer acknowledges and agrees that Seller makes no representations or warranties as to the physical condition of the Property or in connection with any matter relating to its condition, value, fitness, use or zoning on which Buyer has relied directly or indirectly. Buyer further acknowledges and agrees that, except as expressly set forth in this Agreement, Seller's cooperation with Buyer in connection with Buyer's due diligence review of the Property, whether by providing the Seller's Reports or any other documents, or permitting inspection of the Property, shall not be construed as any warranty or representation, express, implied or statutory, of any kind with respect to the condition of the Property.

(c) Except as otherwise expressly provided for below, Buyer hereby acknowledges and agrees that the sale of the Property is and will be made on an "as is, where is" basis and that neither Seller, nor any representative, agent or employee of Seller has made, or will make, any representations, warranties or guaranties of any kind or character whatsoever with respect to the Property.

BUYER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW BUYER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

________________________________________
Buyer’s Initials

The waivers and releases by Buyer herein contained shall not apply to any breach of Seller’s representations or warranties under Section 9 of this Agreement or a default by Seller and shall survive the Close of Escrow.

4. Escrow. Seller has opened an escrow with First American Title Company, located at 100 Spear Street, Suite 1600, San Francisco, CA 94105, attn.: Kimberleigh Toci, Telephone (415-837-2251), e-mail (ktoci@firstam.com), Reference: El Cerrito Hillside Property
(the "Escrow Holder") for the purpose of closing the sale of the Property. Escrow shall close as soon as possible but no later than December 17, 2014 ("Close of Escrow").

5. **Documents.**

   (a) **Seller’s Documents.** At least one (1) business day prior to the Close of Escrow, Seller shall deposit with Escrow Holder:

   (i) one (1) original duly executed, acknowledged and dated grant deed in a form suitable for recordation, conveying to Buyer or Buyer’s nominee marketable, record, fee simple title to the Property ("Grant Deed") in substantially the form of Exhibit B attached hereto (or in such other form as required by the Funder or Steward or Buyer’s nominee) which Grant Deed shall be recorded in the Official Records of Contra Costa County, California at the Close of Escrow;

   (ii) one (1) original duly executed and dated affidavit from Seller which satisfies the requirements of Section 1445 of the Internal Revenue Code, as amended, substantially in the form attached hereto as Exhibit C attached hereto. Seller acknowledges that if Seller is unable to certify that Seller is not a "foreign person", and is not otherwise exempt from such section’s withholding requirements, Buyer or Escrow Holder may be required to withhold a portion of the Purchase Price at the Close of Escrow according to applicable law;

   (iii) one (1) original duly executed and dated California Form 593-C. Seller acknowledges that if Seller is a non-California resident pursuant to Revenue and Taxation Code Section 18662 and 18668, as amended, and is not otherwise exempted from such sections’ withholding requirements, Buyer or Escrow Holder may be required to withhold a portion of the Purchase Price at the Close of Escrow according to applicable law;

   (iv) one (1) original duly executed and dated joint escrow instructions which shall instruct Escrow Holder in its closing of this transaction pursuant to the terms herein, the provisions of which shall not conflict the provisions of this Agreement ("Joint Escrow Instructions"); and

   (b) **Buyer’s Documents.** At least one (1) business day prior to the Close of Escrow, Buyer shall deposit with Escrow Holder:

   (i) one (1) original duly executed and dated counterpart of the Joint Escrow Instructions;

   (ii) one (1) Preliminary Change of Ownership Report form duly executed by Buyer; and

   (iii) such other instruments and documents as may be reasonably required by Escrow Holder to transfer the Property to Buyer.
6. **Funds.** At least one (1) business day prior to the Close of Escrow, and provided that Escrow Holder has notified Buyer that Seller has delivered all of the documents described in Section 5(a) above and is prepared to proceed to close the transaction in accordance with the terms of this Agreement, Buyer shall deposit or shall cause to be deposited with the Escrow Holder the Purchase Price (plus or minus additional sums as may be credited/debited to Buyer hereunder), which funds shall be transferred to Seller by Escrow Holder only after all of Seller’s obligations in this Section 6 have been met and the Grant Deed has been recorded.

(a) **Prorations.** All real and personal property taxes based on the most recent property tax bills available, rents, issues, expenses, and profits from the Property shall be prorated as of the Close of Escrow. Any tax bills received by Buyer after the Close of Escrow relating to a period prior to the Close of Escrow shall be prorated between the Parties as if said tax bills had been available as of the Close of Escrow. The provisions of this Section 6(a) shall survive the Close of Escrow.

(b) **Closing Costs.**

(i) Seller shall pay the following closing costs: (A) one-half (1/2) the escrow fee; (B) all documentary tax, sales tax, or real property transfer tax; and (C) the premium for the Title Policy allocable to Seller pursuant to Section 8 below.

(ii) Buyer shall pay the following closing costs: (A) one-half (1/2) the escrow fee; (B) recording fees for the Grant Deed; and (C) the premium for the Title Policy allocable to Buyer pursuant to Section 8 below.

Other fees and charges will be allocated according to custom of the county in which the Property is located. Each party shall pay its own attorneys’ fees and other expenses incurred by it in connection herewith.

7. **Title.** Seller shall convey to Buyer by Grant Deed a fee simple interest in the Property, free and clear of all monetary liens and encumbrances, except those matters approved by Buyer.

8. **Title Insurance.** Seller will provide, at Seller’s expense, a CLTA, standard coverage, owner’s policy of title insurance in the amount of the Purchase Price paid for the Property, insuring that title to the Property is vested in Buyer upon Close of Escrow subject only to the exceptions approved by Buyer or deemed to be approved by Buyer if no objections were made prior to the Review Deadline.

Seller shall pay the premium on the ALTA standard (a/k/a CLTA) owner’s title policy with regional exceptions. If Buyer elects to obtain an ALTA extended owner’s policy then Buyer shall pay for such incremental cost, together with the cost of any survey which may be required in order for Title Company to issue an ALTA extended policy of title insurance to Buyer, if Buyer elects to obtain such a policy.

9. **Seller’s Representations.** Seller makes the following representations:

(a) Subject to Seller’s acquisition of the Property, at the Close of Escrow, Seller will own and will have the power to convey the Property to Buyer.
(b) To Seller's actual knowledge, there is no action, suit, litigation, arbitration or other proceeding pending or threatened, which in any manner affects the Property.

(c) Seller has full power and authority to execute and deliver this Agreement, and to consummate the transactions provided herein. The persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement.

(d) Seller has no actual knowledge of any violations of any law, order, ordinance, or regulation affecting the Property.

(e) Seller has not received notice and has no knowledge of, any pending or threatened condemnation of all or part of the Property.

(f) This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, subject to the conditions precedent set forth in Section 2. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Seller is a party or by which it is bound.

(g) Seller has no actual knowledge of any unrecorded agreements affecting the Property.

(h) Seller represents and warrants that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. Seller's United States Taxpayer Identification Number is 23-7222333.

(i) except as disclosed to Buyer, Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Materials on the Property or the potential violation of any Environmental Law as defined in Exhibit E.

Seller agrees to disclose to Buyer all material findings in respect to the condition of the Property that Seller may discover which findings are not contained in the Title Report or Seller Reports delivered to Buyer. "Seller's knowledge" or "known to Seller" or "Seller may discover" as used in this Agreement means or pertains to the actual knowledge of Brendan Moriarty, Gilman Miller and Dave Sutton and shall not include knowledge imputed to Seller or those individuals herein named from a third party source or constructive knowledge imparted to Seller by any fact, circumstance or document.

10. **Buyer's Representation.** Buyer represents and warrants the following:

(a) Buyer has the power and authority to enter into this Agreement and the persons signing this Agreement for Buyer have full power and authority to sign for Buyer and to bind it to this Agreement and Buyer has the power and authority to consummate
the transaction contemplated herein, and subject to actual closing, has complied with all laws and regulations governing Buyer's real property transactions.

(b) For purposes of California Health and Safety Code Section 25359.7, the delivery from Seller to Buyer of the Seller's Reports constitute written notice to Buyer under such code section.

(c) Buyer shall exercise good faith efforts in conducting Buyer's due diligence in connection with the transaction contemplated by this Agreement.

(d) Buyer agrees to inform Seller of all material findings in respect to the condition of the Property that Buyer may discover in the conduct of Buyer's due diligence.

11. Hazardous Materials. To Seller's knowledge, the Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to the environmental conditions on, under, or about the Property, including but not limited to soil and groundwater conditions. To Seller's knowledge, there are no environmental, health, or safety hazards on, under, or about the Property, including but not limited to soil and groundwater conditions. Neither Seller nor, to Seller's knowledge, any third party (including but not limited to Seller's predecessors in title to the Property) has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or other Hazardous Materials as defined in Exhibit E. As used in this Agreement, the term “Seller's knowledge” shall mean the actual knowledge of Brendan Moriarty, Dave Sutton, and Gilman Miller, without any duty of inquiry or investigation.

12. Risk of Loss. All risk of loss shall remain with Seller until Close of Escrow. In the event the Property or any Phase thereof is destroyed or damaged after the Effective Date of this Agreement and prior to Close of Escrow therefore, Buyer or Seller may, at their option, elect to terminate this Agreement as to the impacted Phase(s).

13. Notices. All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, first class postage prepaid, addressed to the party to be notified; (b) if delivered by hand, courier service or Express Mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Attorneys' Fees. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

15. Remedies Upon Default. In the event Buyer defaults in the performance of any of Buyer's obligations under this Agreement, Seller shall, in addition to any and all other remedies provided in this Agreement or by law or equity have the right of specific performance against Buyer. In the event that Seller defaults in the performance of any of Seller's obligations
under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity have the right of specific performance against Seller.

16. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose conduct the claim is asserted will hold the other party harmless from said claim.

17. **Time of the Essence; Dates.** Time is of the essence of this Agreement. In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date shall be deemed to be the succeeding day on which the public agencies and major banks are open for business.

18. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

19. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

20. **Assignment.** Buyer may not assign its interests under this Agreement without the written consent of Seller.

21. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. Executed counterparts delivered by facsimile or scanned and emailed shall be treated the same as originals.

23. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. **Model Signage Language.** The parties agree that signage on the Property shall provide for the recognition of the role of both Buyer, any funders who require recognition in signage, and The Trust for Public Land, as Seller, in conserving the Property. If Buyer provides
the sign, such sign shall refer to the role of Buyer and Seller and any funders who require recognition in signage in conserving the Property on one sign which shall be located at a prominent location on the Property affording good public visibility. If Buyer declines to install a sign, Seller shall have the right to install the sign at Seller’s expense; such sign shall refer to the role of Seller, any funders who require recognition in signage, and, if Buyer so elects, to the role of Buyer in conserving the Property, and shall be located at a prominent location on the Property affording good public visibility. In all cases, the design and location of signs shall be subject to the approval of both parties, which approval shall not be unreasonably withheld. Buyer shall be responsible for any maintenance or repair of the sign. This section shall survive closing and delivery of the deed. The right to install the sign described above shall not be deemed to be an interest in real property held by Seller, but rather a contractual obligation between Buyer and Seller which shall not run with the land.

IN WITNESS of the foregoing provisions the parties have signed this Purchase and Sale Agreement below:

**SELLER:**

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: __________________________

Gilman Miller, Senior Counsel

Date: _________________, 2013

**BUYER:**

CITY OF EL CERRITO, a California general law city

By: __________________________

Name: __________________________

Title: __________________________

Date: _________________, 2013
EXHIBIT A

Legal Description

All that certain real property located in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

PORTION OF LOT 3, AS SHOWN ON THE MAP OF SAN PABLO RANCHO, FILED MARCH 1, 1894 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED FROM JOS. C. EYRING, ET AL., TO TRANSAMERICA TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION, RECORDERED DECEMBER 16, 1964, IN BOOK 4764 OF OFFICIAL RECORDS, PAGE 348, AT THE EASTERN CORNER OF LOT 36, AS SAID LOT IS SHOWN ON THE MAP OF TRACT 2822, FILED DECEMBER 16, 1964, MAP BOOK 101, PAGE 49, CONTRA COSTA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINE OF SAID TRANSAMERICA TITLE INSURANCE COMPANY PARCEL ONE (4764 OR 348) AS FOLLOWS: SOUTH 38° 42' 40" EAST, 363.56 FEET; SOUTH 51° 17' 20" WEST, 381.23 FEET; NORTH 38° 42' 40" WEST, 270.00 FEET; SOUTH 70° 33' 48" WEST, 385.98 FEET; NORTH 23° 49' 25" WEST, 168.78 FEET; NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 40 FEET, THE CENTER OF WHICH BEARS NORTH 23° 49' 25. WEST, AN ARC DISTANCE OF 77.98 FEET TO A POINT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 87° 52' 09" EAST, THENCE CONTINUING ALONG SAID EXTERIOR LINE NORTH 14° 33' 55" EAST, 56.71 FEET; NORTH 0° 40' 09" WEST, 162.27 FEET; NORTH 22° 29' 52" EAST, 25.00 FEET; NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 165 FEET, THE CENTER OF WHICH BEARS SOUTH 22° 29' 52" WEST, AN ARC DISTANCE OF 30.81 FEET TO A POINT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 11° 43' 40" WEST; THENCE CONTINUING ALONG SAID EXTERIOR LINE NORTH 11° 43' 40" EAST, 25.00 FEET TO THE EXTERIOR LINE OF SAID TRACT 2322 (101 M 49); THENCE ALONG SAID EXTERIOR LINE AS FOLLOWS: SOUTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 190 FEET THROUGH A CENTRAL ANGLE OF 07° 56' AN ARC DISTANCE OF 26.31 FEET; NORTH 15° 30' WEST, 93.00 FEET; NORTH 73° 30' EAST, 118.00 FEET; SOUTH 49° EAST, 258.00 FEET; SOUTH 81° 30' EAST 301.51 FEET; NORTH 05° 30' EAST, 12.139 FEET AND NORTH 63° EAST 137.119 FEET TO THE POINT OF BEGINNING.

APN: 505-142-014-8 and 505-142-012-2 and 505-142-013-0
EXHIBIT B

Form of Grant Deed

RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO:

The Trust for Public Land
101 Montgomery Street, Suite 900
San Francisco, CA 94104
Attn: Legal Department

MAIL TAX STATEMENTS TO SAME ADDRESS AS ABOVE

____________________________________________________________________________

Space above this line for Recorder’s Use Only

APN(s): 505-142-014, 505-142-012 and 505-142-013

THE UNDERSIGNED GRANTOR DECLARES THAT THE CITY OF EL CERRITO IS ACQUIRING TITLE AND IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO R & T 11922

GRANT DEED

For good and valuable consideration, the receipt of which is hereby acknowledged, THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation (“Grantor”), does hereby grant and convey to the CITY OF EL CERRITO, a California general law city (“Grantee”), all the real property situated in the County of Contra Costa, State of California, described at Exhibit A attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD, the above granted and described premises, together with all tenements, hereditaments, and appurtenances, including improvements, fixtures, timber, water, crops, oil, gas and minerals located in, under, and on it, and all rights appurtenant to it, including but not limited to timber rights, water rights, grazing rights, access rights and oil, gas and mineral rights, development rights, air rights, and all other rights, privileges, licenses, and permits owned by Grantor and in any way related to or accruing to the use and benefit of that real property, unto Grantee, and its assigns, but only to the extent such exist and are capable of transfer.

This conveyance is made, delivered and accepted subject to all covenants, conditions, restrictions, rights, rights-of-way, dedications, offers of dedication and easements of record or apparent.

IN WITNESS WHEREOF, Grantor has executed this instrument this ______ day of December, 2014.
THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: _____________________________
    Gilman Miller, Senior Counsel

Date: ____________________________

Acknowledgment

State of California

County of __________

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

WITNESS my hand and official seal.

Signature ________________________ (Seal)
EXHIBIT A

LEGAL DESCRIPTION

All that certain real property located in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

PORTION OF LOT 3, AS SHOWN ON THE MAP OF SAN PABLO RANCHO, FILED MARCH 1, 1894 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED AS PARCEL ONE IN THE DEED FROM JOS. C. EYRING, ET AL., TO TRANSAMERICA TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 16, 1964, IN BOOK 4764 OF OFFICIAL RECORDS, PAGE 348, AT THE EASTERN CORNER OF LOT 36, AS SAID LOT IS SHOWN ON THE MAP OF TRACT 2822, FILED DECEMBER 16, 1964, MAP BOOK 101, PAGE 49, CONTRA COSTA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINE OF SAID TRANSAMERICA TITLE INSURANCE COMPANY PARCEL ONE (4764 OR 348) AS FOLLOWS: SOUTH 38° 42' 40" EAST, 363.56 FEET; SOUTH 51° 17' 20" WEST, 381.23 FEET, NORTH 38° 42' 40" WEST, 270.00 FEET; SOUTH 70° 33' 48" WEST, 385.98 FEET; NORTH 23° 49' 25" WEST, 168.78 FEET; NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 40 FEET, THE CENTER OF WHICH BEARS NORTH 23° 49' 25. WEST, AN ARC DISTANCE OF 77.98 FEET TO A POINT FROM WHICH THE CENTER OF SAID CURVE BEARS NORTH 87° 52' 09" EAST, THENCE CONTINUING ALONG SAID EXTERIOR LINE NORTH 14° 33' 55" EAST, 56.71 FEET; NORTH 0° 40' 09" WEST, 162.27 FEET; NORTH 22° 29' 52" WEST, 25.00 FEET; NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 165 FEET, THE CENTER OF WHICH BEARS SOUTH 22° 29' 52" WEST, AN ARC DISTANCE OF 30.81 FEET TO A POINT FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH 43° 40' WEST; THENCE CONTINUING ALONG SAID EXTERIOR LINE SOUTH 43° 40' EAST, 25.00 FEET TO THE EXTERIOR LINE OF SAID TRACT 2322 (101 M 49); THENCE ALONG SAID EXTERIOR LINE AS FOLLOWS: SOUTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 190 FEET THROUGH A CENTRAL ANGLE OF 07° 56' AN ARC DISTANCE OF 26.31 FEET; NORTH 15° 30' WEST, 93.00 FEET; NORTH 73° 30' EAST, 118.00 FEET; SOUTH 49° EAST, 258.00 FEET; SOUTH 81° 30' EAST 301.51 FEET; NORTH 05° 30' EAST, 12.139 FEET AND NORTH 63° EAST 137.119 FEET TO THE POINT OF BEGINNING.

APN: 505-142-014-8 and 505-142-012-2 and 505-142-013-0
EXHIBIT C

Form of Nonforeign Affidavit

NON-FOREIGN AFFIDAVIT
(entity)

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person or entity. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Transferor"), the undersigned hereby certifies the following, on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). Transferor is not a non-resident alien for purposes of U.S. income taxation.

2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(iii).

3. Transferor’s U.S. employer identification number is 23-7222333.

4. Transferor’s office address is: The Trust for Public Land
   101 Montgomery, 9th Floor
   San Francisco, CA 94104

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief, it is true, correct and complete.

TRANSFEROR:

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: _____________________________
   Gilman Miller, Senior Counsel

Date: _________________________
EXHIBIT D
PROFESSIONAL SERVICES FEE AGREEMENT

This Professional Services Fee Agreement ("Fee Agreement") is dated as of ________, 2013 between the CITY OF EL CERRITO, a California general law city ("City"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("TPL"), with reference to the following facts:

RECITALS

A. City wishes to acquire certain real property consisting of approximately 7.61 acres located between Madera Circle, Potrero Avenue and Regency Court in the City of El Cerrito, California ("Property").

B. TPL has expertise in acquiring real property for public use, including without limitation, review of title, contracting for and analysis of environmental studies, negotiating and documenting the transaction, contracting for and analysis of an appraisal, and securing public and private financing for public agencies to use in acquiring such real property.

C. TPL used its expertise to enter into a Purchase and Sale Agreement with the current owner of the Property which, if consummated, will allow TPL to acquire and hold the Property from August 30, 2013 through December 17, 2014 ("Buy-and-Hold Period"). If TPL does not acquire the Property then the Fee Agreement shall terminate and no Professional Services Fee (defined below) shall be owed to TPL.

D. In exchange for TPL’s expertise and expenditures in acquiring the Property, including without limitation, the costs to TPL for appraisals, title review, environmental assessment and testing, staff time, the grants application process, and any costs associated with ownership of the Property during the Buy-and-Hold Period and ultimately conveying the Property to the City, City agrees to compensate TPL for its professional services in accordance with the terms and conditions of this Fee Agreement. The parties acknowledge that the professional services fee payable to TPL described in this Fee Agreement constitutes payment for providing professional services and are not a payment for brokerage, lobbying or legal services.

E. During the Buy-and-Hold Period TPL will solicit public grant funds and partner with the local community to solicit private funds (collectively "Matching Funds") for City’s purchase of the Property pursuant to terms of that Purchase and Sale Agreement between the City of El Cerrito and The Trust for Public Land to which this Fee Agreement is an exhibit. TPL makes no representation that its efforts to secure Matching Funds will succeed. However, as a demonstration of its confidence in and commitment to securing Matching Funds, TPL will forfeit its right to compensation from City if certain amounts of Matching Funds are not secured, as specified in this Fee Agreement.

F. City acknowledges that TPL is entering into this Fee Agreement in its own right and that TPL is not an agent of the current owner or any governmental agency or entity.
NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Scope of Services.**
   a. TPL shall perform the tasks set forth on Exhibit A to this Fee Agreement, which Exhibit is incorporated into and made part of this Fee Agreement (the “Services”).
   b. TPL shall perform the Services hereunder in strict compliance with applicable federal, state and local laws and regulations.
   c. TPL shall determine the method, details, and means of performing the Services. City understands and hereby warrants that it retains no right to control the method and means by which the Services are to be performed by TPL.
   d. TPL shall have no authority to act on behalf of or to bind City, including, without limitation, with respect to any third party contracts for goods or services.

2. **Exercise of Judgment and Skill.** TPL represents and warrants to City that TPL has specialized knowledge, training, and experience in real property acquisition, due diligence, and funding. TPL shall use TPL’s specialized knowledge, training, and experience in the provision of Services to City pursuant to this Fee Agreement.

3. **Professional Services Fee.** City shall pay to TPL a fee (“Professional Services Fee”) as compensation for TPL’s performance of the Services, as further described in Exhibit A to this Fee Agreement, payable in one lump sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) due at close of escrow when title to the Property is conveyed to the City. So as to provide additional fundraising incentive, TPL agrees to forfeit all of the Professional Services Fee if less than TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) in Matching Funds is secured, provided, however, that in this event TPL shall share equally with the City in the private philanthropy amounts raised. In addition, the Professional Services Fee shall be reduced to SEVENTY FIVE THOUSAND DOLLARS ($75,000.00) if precisely TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) in Matching Funds is secured.

4. **Remedies.** If City breaches this Fee Agreement, TPL may pursue all rights and remedies available to it, at law or equity, with respect of this Fee Agreement, independent of any recovery to which it may be entitled under the Purchase and Sale Agreement between TPL and the City. If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys’ fees and court costs in such amounts as shall be allowed by the court.

5. ** Entire Agreement; Waiver.** This Fee Agreement constitutes the entire agreement between TPL and City pertaining to the Professional Services Fee and supersedes all prior and contemporaneous agreements, representations, and understandings between TPL and City. No
supplement, modification or amendment of this Fee Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Fee Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

6. **Severability.** Each term of this Fee Agreement is severable from any and all other terms of this Fee Agreement. Should any term of this Fee Agreement be for any reason unenforceable, the balance shall still be of full force and effect.

7. **Governing Law.** This Fee Agreement will be governed by and interpreted in accordance with the laws of the State of California.

8. **Counterparts.** This Fee Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

9. **Notices.** All notices, requests, demands, approvals, consents or other communications required or permitted by this Fee Agreement shall be addressed as follows and shall be in writing and shall be sent by (a) nationally recognized overnight courier, or (b) email, facsimile, or telecopy and shall be deemed received (i) if delivered by overnight courier, when received as evidenced by a receipt, or (ii) if transmitted by email or facsimile, upon transmission, provided that the sender does not receive any indication that the fax or email has not been successfully transmitted. Any notice, request, demand, direction or other communication sent by facsimile or telecopy must also be sent within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

To City:  
City of El Cerrito  
10890 San Pablo Ave  
El Cerrito, CA 94530-2323  
Attn: Melanie Mintz  
Email: MMintz@ci.el-cerrito.ca.us  
Tel.: (510) 215-4339  
Fax: __________

With a copy to:  
Meyers Nave  
555 12th Street, Suite 1900  
Oakland, CA 94607  
Attn: Sky Woodruff  
Email: swoodruff@meyersnave.com  
Tel.: (510) 808-2000  
Fax: (510) 444-1108

To TPL:  
The Trust for Public Land  
101 Montgomery Street  
Suite 900
Notice of change of address shall be given by written notice and in the manner detailed in this Section 9(i). Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or other communication sent.

IN WITNESS of the foregoing provisions, the parties have dated and signed this Professional Services Fee Agreement below.

CITY

CITY OF EL CERRITO, a California general law city
By: _____________________________
Name: ____________________________
Title: _____________________________
Date: _____________________________

TPL

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation
By: _______________________________
Gilman Miller, Senior Counsel
Date: _____________________________
The Services to be rendered by TPL to City include the following, without limitation:

1. TPL has expertise in acquiring real property for public use and shall provide the City with the following Services:
   a. Managing the relationship with the original owner and negotiating all aspects of the acquisition transaction;
   b. Contracting for title work and reviewing condition of title;
   c. Contracting for and analysis of environmental studies reports;
   d. Contracting and reviewing a full narrative appraisal to substantiate value;
   e. Preparing all required Agreements;
   f. Properly documenting the transaction;
   g. Comprehensive project management;
   h. Buying and holding the property from August 30, 2013 to December 17, 2014.

2. TPL has expertise in public funding for conservation and maintains partnerships with public funding agencies, and TPL shall provide the City with the following Services:
   a. Researching public funding opportunities for real property acquisition;
   b. Collaborating closely with funding partners;
   c. Developing grant applications, including writing, research and editing;
   d. Advocating for the grant applications with the granting agencies;
   e. Providing guidance and material support to the local private-capital campaign.
EXHIBIT E

DEFINITION OF ENVIRONMENTAL LAWS AND HAZARDOUS MATERIALS

As used herein, the term “Environmental Laws” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning:

(a) Pollution or protection of the environment, including natural resources;

(b) Exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances;

(c) Protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities;

(d) The manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or


As used herein, the term “Hazardous Materials” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation:
(a) Petroleum or oil or gas or any direct or indirect product or by-product thereof;

(b) asbestos and any material containing asbestos;


(d) Any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or

(e) Any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A PURCHASE AND SALE AND PROFESSIONAL SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND TO ACQUIRE APN 505-142-014, -012 AND -013 ADJACENT TO THE CITY-OWNED HILLSIDE NATURAL AREA

WHEREAS, the City’s General Plan identifies protecting natural resources and preserving open space as very important to the well being of the City (Goals R1 and PR2); and

WHEREAS, the City’s Circulation Plan for Bicyclists and Pedestrians identifies the Park Trail Connector and Hillside Pathways and Stairs projects and articulates connecting the Hillside Natural Area North and South as a first implementation strategy; and

WHEREAS, the Trust for Public Land is a national conservation organization that has submitted a proposal to “buy and hold” an approximate 7.6-acre privately held property (APN 505-142-014, -012 AND -013) adjacent to the Hillside Natural Area to convey to the City for conservation and recreation purposes; and

WHEREAS, at its March 5 and May 21, 2013 meetings, the City Council directed staff to negotiate with Trust for Public for the potential purchase of the Property; and

WHEREAS, a Purchase and Sale Agreement with Trust for Public Land has been developed that specifies that the Trust for Public Land will acquire the Property from the current landowner and that the City will then acquire the Property from the Trust for Public Land; and

WHEREAS, the terms and conditions of the Purchase and Sale Agreement specify that the City will purchase the property from the Trust for Public Land and will pay the Trust for Public Land $475,000 in cash at the close of escrow no later than December 17, 2014; and

WHEREAS, a combination of Measure WW, public grants and the proceeds from private fundraising efforts would be utilized for the December 17, 2014 payment; and

WHEREAS, the Parks and Recreation Commission at its June 26, 2013 meeting voted to recommend the use of Measure WW funds for this acquisition and also expressed its concern and hope that a limited amount of Measure WW funds would be used for the acquisition given other and additional community priorities; and

WHEREAS, Exhibit D to the Purchase and Sale Agreement is a Professional Services Agreement describing the services that will be provided by Trust for Public Land to acquire and convey the property to the City and to partner with the City to solicit public grant funds and with the local community group led by the Trail Trekkers to solicit private funds for the acquisition of the property; and

WHEREAS, the Professional Services Agreement outlines a graduated fee structure contingent upon the success of fundraising efforts; and
NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that the City of El Cerrito that it hereby authorizes the City Manager, or his designee, on behalf of the City, to enter into a Purchase and Sale Agreement and Professional Services Agreement with the Trust for Public Land to acquire APN 505-142-014, -012 and -013 adjacent to the City-owned Hillside Natural Area and to make all approvals and take all actions, with the advice of the City Attorney, necessary or appropriate to carry out and implement the terms of the Purchase and Sale Agreement and Professional Services Agreement, including the recordation of necessary documents.

I CERTIFY that at a regular meeting on July 16, 2013, the City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July X, 2013

______________________________
Cheryl Morse, City Clerk

APPROVED:

______________________________
Janet Abelson, Mayor Pro Tem