



**DATE:** September 26, 2018  
**TO:** Waste Management Authority Board  
**FROM:** Wendy Sommer, Executive Director  
**SUBJECT:** Conservation Easement and Related Documents

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### **SUMMARY**

In September 2015, the WMA entered into an agreement with Golden Hills Wind, LLC to grant a portion of our land as a conservation easement to mitigate environmental impacts of their wind farm operations. At the WMA Board meeting, staff will give an overview of our property, provide an update on the conservation easement process, and request the Board's authorization to execute documents related to the easement.

### **DISCUSSION**

The WMA owns 1,600+ acres of land in the Altamont Hills of the unincorporated county area. In 1993-94, several parcels were purchased by voluntary agreements with property owners, using funds from the San Francisco Mitigation Fee account for the purpose of reserve landfill capacity. Current uses of the property include cattle grazing (through leases and licenses with private parties), transmission and communications towers (also through leases and licenses with private parties), one residential rental of a historic farmhouse, and wind easements over a portion of the property for operation of a wind farm. Staff manages all of the land and activities according to sustainable stewardship practices and in accordance with our Range Management Plan.

Golden Hills Wind, LLC, the operator of the wind farm, replaced wind turbines on our property with more efficient wind generators to increase energy production and decrease avian mortality. Known as "repowering," this project involved construction activities that affected threatened/endangered/special concern species habitats (red-legged frog, tiger salamander, kit fox, and burrowing owl). In order to mitigate habitat loss, Golden Hills Wind, LLC offered to purchase a conservation easement on our property. In September 2015, the WMA Board authorized staff to enter into a purchase agreement with Golden Hills Wind, LLC. It has taken three years for the project to go through the various review and approval processes, but we are now at the final stages of approval by the California Department of Fish and Wildlife.

Following is a list of documents (attached) that need to be executed:

1. Conservation Easement Deed

This document is currently in draft form awaiting final CDFW approval.

2. Mitigation Agreement

The purpose of this document is to provide for the management of endowment funding to support the implementation of land management and biological monitoring responsibilities as outlined in detail in the [Management Plan](#) and [Property Analysis Record \(PAR\) for Interim and Long-term Management and Biological Monitoring](#). California Rangeland Trust, a nonprofit public benefit corporation is the designated entity that serves as the endowment holder, easement monitor, and preserve monitor.

3. Grant of Easement for Right of Entry for Biological Monitoring and Agreement Concerning Rights and Obligations

This easement and agreement is to allow California Rangeland Trust to enter the property to conduct biological monitoring as specified in the Management Plan.

4. Agreement for Conveyances of Easements

This agreement is between Golden Hills, ACWMA, and Rangeland Trust, to convey the conservation easement interests in order to satisfy the mitigation requirements. It includes the [Stewardship Budget](#).

5. Amendment to Agreement for Purchase of Conservation Easement

The original agreement stipulates a purchase price of \$9,500 per acre if the conservation easement is recorded on or before October 7, 2016; \$10,000 per acre if recorded after October 7, 2016 but before July 31, 2017; and \$10,000 if not recorded prior to August 1, 2017. Since the process has taken longer than anticipated, rather than accept the \$10,000 per acre now, staff was able to re-negotiate the terms to \$11,000 per acre if the easement is recorded on or before December 31, 2018; \$11,500 per acre if it's recorded after December 31, 2018, and prior to June 30, 2019; and \$11,500 if it's not recorded prior to June 30, 2019, even if the easement is never recorded.

6. Second Amendment to Amended and Restated Easement Agreement

Golden Hills Wind, LLC did not need all of the WMA property that has wind easements for its repowering project and so agreed to remove the property it didn't need from the WMA wind easement. The purpose of this agreement is for the wind operator to "release" all right, title and interest in the Non-Repowering property and ensure that WMA's activities in the Non-Repowering property will not interfere with the wind speed/direction and negatively impact the output and efficiency of the wind farm operations on the adjoining property. The amendment also changes the schedule of payment to coincide with our fiscal year.

Items 1, 2, 3, and 4 are in final draft form, and items 5 and 6 are final. At this point, we are not anticipating any major changes to the documents.

## **RECOMMENDATION**

Staff recommends that the WMA Board authorize the Executive Director to execute the Conservation Easement and related documents described above and to make minor modifications to the documents subject to approval as to form by the Agency Counsel.

Attachments: Items 1-6 listed above.

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

California Rangeland Trust  
1225 H Street  
Sacramento, CA 95814-1910  
Attn: Transaction Director

**WITH COPY TO:**

State of California  
Department of Fish and Wildlife  
Habitat Conservation Planning Branch  
1416 9th Street, Room 1266  
Sacramento, CA 95814

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Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED  
Golden Hills Ecological Preserve – ACWMA Property Parcel 6**

(Including Third-Party Beneficiary)

THIS CONSERVATION EASEMENT DEED ("**Conservation Easement**") is made as of the \_\_\_ day of \_\_\_\_\_ 2018, by Alameda County Waste Management Authority, a California joint powers agency ("**Grantor**"), in favor of California Rangeland Trust, a California nonprofit, public benefit corporation ("**Grantee**"), with reference to the following facts:

**RECITALS**

A. Grantor is the sole owner in fee simple of certain real property containing approximately 162.77 acres located in the unincorporated area of the County of Alameda, State of California, and designated Assessor's Parcel Number 099A-1820-002, as legally described and depicted in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**"). The Conservation Easement encumbers an approximately 160.96-acre portion of the Property, as legally described and depicted in **Exhibit B** attached hereto and incorporated herein by reference (the "**Easement Area**").

B. The Easement Area possesses wildlife, plant and habitat values of great importance to Grantee, the California Department of Fish and Wildlife ("**CDFW**"), the people of

the State of California, and the people of the United States. The Easement Area provides high quality natural, restored and/or enhanced habitat for the San Joaquin kit fox (*Vulpes macrotis mutica*), California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), and western burrowing owl (*Athene cunicularia*), and contains breeding, non-breeding, foraging and dispersal habitats for these species. Individually and collectively, these wildlife and habitat values comprise the “**Conservation Values**” of the Easement Area.

C. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species pursuant to California Fish and Game Code section 1802. CDFW is authorized to hold conservation easements for these purposes pursuant to California Civil Code section 815.3, Fish and Game Code section 1348, and other provisions of California law. CDFW is a Third-Party Beneficiary of this Conservation Easement as described in section 15(m) below, with respect to matters under its jurisdiction.

D. The United States Fish and Wildlife Service (“USFWS”), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. section 742(f), *et seq.*, and other provisions of federal law. USFWS is a Third-Party Beneficiary of this Conservation Easement as described in section 15(m) below, with respect to matters under its jurisdiction.

E. CDFW and USFWS are together referred to in this Conservation Easement as the “**Wildlife Agencies.**”

F. Grantee is authorized to hold this conservation easement pursuant to California Civil Code section 815.3 and Government Code section 65967. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h)(3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

G. Grantee, with the cooperation of Grantor, has prepared a baseline conditions report describing the current agricultural, physical, and overall biological conditions of the Easement Area, as well as its current uses and state of improvement, consisting of maps, photographs, and other documents, and acknowledged by both Grantor and Grantee to be complete and accurate as of the date of this Conservation Easement (the “**Baseline Conditions Report**”). Grantor, Grantee, and the Wildlife Agencies have copies of this report, which is incorporated herein by reference. It will be used by Grantee to assist in its monitoring and enforcement of Grantor’s compliance with this Conservation Easement. The Baseline Conditions Report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that

condition.

H. This Conservation Easement is granted to satisfy the compensatory mitigation requirements for the Golden Hills Wind Energy Facility Repowering Project in Alameda County California as set forth, collectively, in the following-listed regulatory authorizations (collectively, the “**Project Authorizations**”): California Endangered Species Act Incidental Take Permit No. 2081-2014-034-03 approved by CDFW on April 3, 2015; the Biological Opinion, USFWS File No. FF08ESMF00-2015-F-0006, issued by the Sacramento Fish and Wildlife Office of the USFWS on March 5, 2015; and Resolution No. Z-14-40, adopted on November 12, 2014 by the East County Board of Zoning Adjustments, Alameda County Planning Department, approving Conditional Use Permit PLN20014-00032, with its associated conditions of approval.

I. The Wildlife Agencies have approved a long-term management plan for the Easement Area entitled “Management Plan - Golden Hills Ecological Preserve at ACWMA (Parcel 6), dated \_\_\_\_\_, 2018 (the “**Management Plan**”). A final, approved copy of the Management Plan, and any amendments thereto approved by the Wildlife Agencies, shall be kept on file at the respective offices of the Wildlife Agencies. If Grantor, or any successor or assign, requires an official copy of the Management Plan, it should request a copy from the Wildlife Agencies at the addresses for notices listed in section 13 of this Conservation Easement

J. As required by the Project Authorizations, that certain separate agreement of even date herewith among Golden Hills Wind, LLC, a Delaware limited liability company (“**Golden Hills**”), Grantor and Grantee (the “**Mitigation Agreement**”) and the Management Plan, Golden Hills is concurrently herewith funding an endowment fund (the “**Endowment Fund**”) to support the performance of perpetual management, maintenance, biological monitoring and reporting obligations under the Management Plan. Grantee will be the initial holder of the Endowment Fund pursuant to the Mitigation Agreement. The Mitigation Agreement and the Management Plan address the rights of Grantor and Grantee to receive and use disbursements from the Endowment Fund for those purposes and uses set forth in the Management Plan. Neither Grantor nor Grantee shall have any obligation to contribute any funding to the Endowment Fund.

K. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

## COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Easement Area will be retained forever in its natural, restored, or enhanced condition as contemplated by the

Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Easement Area;

(b) To enter the Easement Area at reasonable times, to monitor compliance with and otherwise enforce the terms of this Conservation Easement, including the Management Plan, and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's, or its lessees' or licensees', authorized uses and quiet enjoyment of the Easement Area;

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement;

(d) To require that all mineral, air and water rights as Grantee or a Third Party Beneficiary deems necessary to preserve, protect, and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement; and

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Easement Area; and such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area, the Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, any agents of Grantor, and third parties are expressly prohibited:

(a) Excessive watering; use of fertilizers, pesticides, biocides, herbicides, rodenticides, or other agricultural chemicals; weed abatement activities and fire protection activities incompatible with the purposes of the Conservation Easement; and any and all other activities and uses which may adversely affect the Conservation Values of the Easement Area or impair or interfere with the purposes of this Conservation Easement; *provided*, that vegetation management and weed abatement and the prevention of catastrophic wildfire may be undertaken as specifically provided in the Management Plan;

- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways or as needed for land management activities or emergency uses as specified within the Management Plan;
- (c) Agricultural activity of any kind except ranching, grazing, or other agricultural activities as specifically provided for in the Management Plan;
- (d) Recreational activities and facilities, except for those rights reserved to Grantor in section 6 below (Reserved Rights);
- (e) Commercial, industrial, residential, or institutional uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Easement Area; *provided*, however, that nothing herein shall be deemed, interpreted or construed to restrict Grantor from creating by any legal means a legal parcel consisting of the Easement Area;
- (g) Construction, reconstruction, expansion, location, relocation, installation, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, including infrastructure for water, except as specifically provided in the Management Plan;
- (h) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials except as specifically provided in the Management Plan;
- (i) Except as specifically provided in the Management Plan, planting, introduction or active dispersal of non-native or exotic plant or exotic animal species;
- (j) 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, except for dredging and excavation that is required for pond management as specified in the Management Plan;
- (k) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering any portion of the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Permits or Management Plan;
- (l) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except for (i) fire breaks, (ii) maintenance of existing foot trails or roads, (iii) prevention or treatment of disease, or (iv) vegetation management and weed abatement as required by law or in conformance with the Management Plan;
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters

except for pond maintenance or restoration activities in existing pond features or created pond features as specifically provided in the Management Plan. Notwithstanding the foregoing, Grantor shall retain access to and use of such water and water infrastructure consistent with Grantor' historical ranch practices as described in the Baseline Conditions Report;

(n) Without the prior written consent of Grantee and the Wildlife Agencies, which Grantee and the Wildlife Agencies may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area; and

(o) Any activity or use that may violate, or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to any Grantor, the Easement Area, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Area; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Wildlife Agencies and Grantor on an annual basis.

(b) In the event that the Grantee's interest in this Conservation Easement is held by, reverts to, or is transferred to the State of California, section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under section 2 of this Conservation Easement to the extent required under the provisions in section 10(c), below.

6. Reserved Rights.

Grantor reserves to their selves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Easement Area, including the right to

engage in or permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by this Conservation Easement, including the provisions of the Management Plan, and are consistent with the purposes of this Conservation Easement. Without limitation of the foregoing, it is specifically agreed that Grantor retains the following rights:

(a) The right to use, or to lease areas of the Easement Area to third parties, for commercial grazing use. Grazing practices, including grazing intensification, and other land uses of or on the Easement Area must be consistent with the covenants, terms, conditions and restrictions of this Conservation Easement and the Management Plan.

(b) Low-intensity recreational activities that facilitate enjoyment of wildlife and other resources provided by the Easement Area, including but not limited to horseback riding and hunting, so long as such activities are conducted in a manner consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

7. Grantee's Remedies.

(a) Notice of Violation.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation with a demand to cure such violation (collectively, a "Notice of Violation") which shall set forth in reasonable detail the basis of such claimed violation and the area or areas of the Easement Area affected by such claimed violation (the "Affected Area"). Notice will be provided in accordance with section 13 of this Conservation Easement.

(b) Opportunity to Cure.

If Grantor fails to cure the described violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Affected Area to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

(c) Emergency Action.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Easement Area, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this

section apply equally to actual or threatened violations of the terms of this Conservation Easement.

(d) Injunctive Relief.

Grantor agree that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(e) Standing of Third-Party Beneficiaries and California Attorney General.

If at any time in the future any Grantor or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Easement Area for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code section 815.7, each Third-Party Beneficiary and the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(f) Costs of Enforcement.

Grantor shall bear all costs incurred by Grantee or a Third-Party Beneficiary, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration of the Affected Area necessitated by Grantor's negligence or breach of this Conservation Easement, to the extent such costs are attributable to the enforcement of violations for which Grantee or Third-Party Beneficiary is the prevailing part as determined by a court of law, mediator, or arbitrator.

(g) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee or a Third-Party Beneficiary shall be at the discretion of the enforcing party, and any forbearance by Grantee or a Third-Party Beneficiary to exercise its rights under this Conservation Easement in the event of any breach by Grantor of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach by Grantor of the same or any other term of this Conservation Easement or of any rights of Grantee (or any rights of a Third-Party Beneficiary) under this Conservation Easement. No delay or omission by Grantee or a Third-Party Beneficiary in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(h) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against a Grantor for any injury to or change in the Easement Area resulting from any (i) natural cause beyond the Grantor's control, including, without

limitation, fire not caused by the Grantor, flood, storm, drought, long-term change in regional climate conditions, earth movement and disease outbreaks, or any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes; (ii) acts by Grantee, a Third-Party Beneficiary, or any other governmental regulatory agency, or any of their employees or agents; (iii) acts by trespassers or any third party not under a Grantor's direction or control that were not reasonably preventable by a Grantor's diligent, good faith efforts to comply with the terms and conditions of this Conservation Easement; (iv) actions of a Grantor taken pursuant to court or governmental agency decrees, orders, directives or relevant federal, state, or local laws, regulations, ordinances or policies; or (v) failure to perform Grantor's obligations hereunder and pursuant to the Management Plan and for which funding is required to be provided from the Endowment Fund for the performance of the task pursuant to the Mitigation Agreement, to the extent such failure was due to the unavailability of funds from the Endowment Fund to perform such obligations of Grantor hereunder pursuant to the Management Plan (unless such unavailability is due to the active negligent mismanagement or misapplication of funds by any Grantor, or the particular activity to be performed is one for which Grantors' own funds are required instead of funds from the Endowment Fund and assuming Grantor has complied with the task prioritization process as provided in the Management Plan).

(i) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, the Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to Grantee and Third-Party Beneficiaries. In order to be valid, a Notice of Conflict shall be given within sixty (60) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) a revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in section 7(b) of this Conservation Easement. The failure of a Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of that Grantor's ability to claim a conflict.

(j) Reversion.

Notwithstanding section 15(e) below, if CDFW reasonably determines that this Conservation Easement is not being held, monitored, or stewarded for conservation purposes in accordance with the requirements of Government Code section 65967(e), then pursuant to Government Code section 65967(e) the Conservation Easement shall revert to CDFW or another public agency, governmental entity, special district, or nonprofit organization approved in advance in writing by CDFW.

8. Fence Maintenance.

Grantor shall maintain fencing within the Easement Area, as specifically provided in the

Management Plan, to protect the Conservation Values of the Easement Area.

9. No Public Access or Standing.

This Conservation Easement does not convey a right of access (general or otherwise) to the public or any standing to the general public to enforce this Conservation Easement.

10. Costs and Liabilities.

(a) Landowner Responsibilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, and maintenance of the Property; *provided*, that with respect to such costs and liabilities for which funding is to be provided from the Endowment Fund pursuant to the Mitigation Agreement for Grantor's obligations under the Management Plan, Grantor shall be responsible as set forth in the Mitigation Agreement. With respect to the immediately preceding sentence and for the avoidance of doubt, it is expressly agreed that: (i) in no event will any funding limitations affect or limit the prohibited uses set forth in section 3 above and that Grantor will at all times remain subject to the limitations set forth in section 3 above; and (ii) as provided in the Mitigation Agreement, if insufficient funds from the Endowment Fund are available to Grantor, then Grantors, Grantee and the Wildlife Agencies will discuss priorities and funding availability to determine which responsibilities will be implemented, with final priorities being determined in consultation with such parties and authorized in writing. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including those required from a Third-Party Beneficiary acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(b) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Easement Area free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in section 15(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Easement Area.

(c) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal

representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence or willful misconduct of Grantee or any other of Grantee's Indemnified Parties; (ii) the obligations specified in sections 5, 10(a) and 10(b) of this Conservation Easement; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of 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 the Grantee Indemnified Party. If any action or proceeding is brought against any of the Grantee Indemnified Parties by reason of any such Claim to which the indemnification in this section 10(c)(1) applies, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to such Grantee Indemnified Party. In the event that Grantee's interest in this Conservation Easement is held by, reverts to, or is transferred to the State of California, the indemnification in this section 10(c)(1) shall be inapplicable to the State of California with respect to any Claim due solely to the negligence or willful misconduct of the State of California.

(2) Grantor shall hold harmless, protect and indemnify the Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, the "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim to the extent due to the negligence or willful misconduct of a Third-Party Beneficiary Indemnified Party; (ii) the obligations specified in sections 5, 10(a) and 10(b) of this Conservation Easement; or (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any Third-Party Beneficiary Indemnified Party by reason of any Claim to which the indemnification in this section 10(c)(2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(d) Extinguishment.

If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantee shall use any proceeds received under the circumstances described in this

paragraph in a manner consistent with the purposes of this Conservation Easement to protect, to the extent reasonably feasible, such natural resource characteristics as the original mitigation was intended to protect.

(e) Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Easement Area, if at all, *only* as provided in Code of Civil Procedure section 1240.055. The Third-Party Beneficiaries are public entities that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Easement Area for public use, Grantee shall provide notice to the Third-Party Beneficiaries and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j).

(f) Insurance or Self-Insurance Maintained by Grantor. Grantor, at its sole cost and expense, shall carry insurance—or self-insure—its activities in connection with this Conservation Easement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. Grantor shall provide Grantee thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage applicable to this Agreement. At any time that Grantor is not a self-insured California state or local agency, Grantor shall maintain the following insurance: (1) a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than one million dollars (\$1,000,000); (2) workers' compensation insurance as required by law and employer's liability coverage, with limits of \$1,000,000 per occurrence; and (3) automobile liability insurance (bodily injury and property damage) extending to owned, non-owned, rented and hired vehicles and including contractual liability covering all liability assumed under the Conservation Easement in an amount not less than \$1,000,000 per occurrence. All insurance amounts shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI. Grantee shall be named as an additional insured on each required policy. The insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantee. Grantor waives all rights of subrogation against each Grantee Indemnified Party for recovery of damages to the extent the damages are covered by insurance maintained by Grantor pursuant to this Conservation Easement. Each of the above policies must contain a provision that the policy shall not be canceled or materially changed without thirty (30) days' prior written notice to Grantee. Grantor shall furnish Grantee with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Any failure of Grantee to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of Grantee to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantor's obligation to maintain such

insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

(g) Insurance Maintained by Grantee. Grantee shall maintain the following insurance: (1) a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than one million dollars (\$1,000,000); (2) workers' compensation insurance as required by law and employer's liability coverage, with limits of \$1,000,000 per occurrence; and (3) automobile liability insurance (bodily injury and property damage) extending to owned, non owned, rented and hired vehicles and including contractual liability covering all rights and liabilities assumed under the Conservation Easement in an amount not less than \$1,000,000 per occurrence. All insurance amounts shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI. Grantor shall be named as an additional insured on each required policy. The insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantor. Grantee waives all rights of subrogation against Grantor, its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them for recovery of damages to the extent the damages are covered by insurance maintained by Grantee pursuant to this Conservation Easement. Each of the above policies must contain a provision that the policy shall not be canceled or materially changed without thirty (30) days' prior written notice to Grantor. Grantee shall furnish Grantors with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Any failure of Grantors to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantors to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantee's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement. In the event that the Grantee's interest in this Conservation Easement is held by, reverts to, or is transferred to the State of California, this section 10(g) shall not apply.

11. Transfer of Conservation Easement or Easement Area.

(a) Conservation Easement.

Grantor may assign and transfer its interest in this Conservation Easement upon written approval of Grantor and each Third-Party Beneficiary, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and each Third-Party Beneficiary at least sixty (60) days prior written notice of the proposed assignment and transfer. Grantee may assign or transfer its rights under this Conservation Easement only to CDFW or another entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code section 815.3 and Government Code section 65967 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) approved by Grantor and each Third-Party Beneficiary. Evidence of the assignment of Grantee's rights under this Conservation Easement shall be the execution by Grantee and the assignee of an assignment and assumption agreement approved by Grantor and the Third-Party Beneficiaries (such approval not to be unreasonably withheld or delayed) pursuant to which the assignee agrees to assume all obligations of the Grantee hereunder (the "Assignment and

Assumption Agreement”). Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of section 12.

(b) Easement Area.

Grantor agrees that this Conservation Easement shall run with the Easement Area and be binding upon successors in interest. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which any Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Management Plan and any amendment(s) thereto. Grantor further agrees to give written notice to Grantee and each Third-Party Beneficiary of Grantor’s intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee and each Third-Party Beneficiary shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). Notwithstanding the foregoing, Grantor need not provide such notice for grazing licenses or leases that are consistent with the Management Plan. The failure of Grantor, Grantee, or Third-Party Beneficiary to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of section 12.

12. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and each Third-Party Beneficiary otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

13. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee or a Third Party Beneficiary desires or is required to give to the other shall be in writing and shall be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class registered United States mail, postage fully prepaid, addressed as follows:

To Grantor: Alameda County Waste Management Authority  
1537 Webster Street  
Oakland, CA 94612  
Attn: Executive Director

To Grantee: California Rangeland Trust  
1225 H Street  
Sacramento, CA. 95814  
Attn: Transaction Manager

To CDFW: Department of Fish and Wildlife  
Bay Delta Region, Region 3  
7329 Silverado Trail  
Napa, CA. 94558  
Attn: Regional Manager

With a copy to: Department of Fish and Wildlife  
Office of General Counsel  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814-2090  
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service  
Sacramento Field Office  
2800 Cottage Way  
Room W-2605  
Sacramento, CA. 95825  
Attn: Field Supervisor

or to such other address as may be designated in accordance with the provisions of this section by Grantor, Grantee or a Third-Party Beneficiary. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by registered first class mail, five (5) days after deposit into the United States mail.

14. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval by the Third-Party Beneficiaries. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to Grantor and the Third-Party Beneficiaries.

15. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall

be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) 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.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the Management Plan, the Mitigation Agreement and, to the extent applicable to the parties, the Project Authorizations, all of which are incorporated by reference in this document) sets forth the entire agreement of the parties and the Wildlife Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with section 14.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Easement Area.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer, and shall not become the liability of the transferee.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Except as expressly set forth in that certain Phase I Environmental Site Assessment for the Easement Area prepared by Goodfellow Environmental & Geological Services, LLC, and dated \_\_\_\_\_, a copy of which has previously been delivered to Grantee and the Third Party Beneficiaries, Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor under section 10(c)(1), Grantor hereby releases and agrees to indemnify, protect and hold harmless Grantee's Indemnified Parties (as defined in section 10(c)(1)) from and against any and all Claims (as defined in section 10(c)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by a Grantee Indemnified Party. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any Grantee Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Without limiting the obligations of Grantor under section 10(c)(2), Grantor hereby release and agree to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (as defined in section 10(c)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by a Third-Party Beneficiary Indemnified Party. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against a Third-Party Beneficiary Indemnified Party by reason of any such Claim, Grantor shall, at the election or and upon written notice from the Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiary any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Property; or

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

(5) The term "Hazardous Materials" includes, without limitation, (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. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency 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 and Third-Party Beneficiaries that activities upon and use of the Easement Area by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by Grantee and Third-Party Beneficiaries in the "Approved Encumbrances" set forth in **Exhibit C** attached hereto and incorporated herein by this reference, there is no outstanding mortgage, lien,

encumbrance or other interest in the Property (including, without limitation, water and mineral interest) that otherwise would conflict or be inconsistent with this Conservation Easement which have not been expressly subordinated to this Conservation Easement by a written, recorded subordination agreement approved by Grantee and the Third-Party Beneficiaries. In recognition of the third-party mineral interest identified in Exhibit C, the probability that any third party holder of mineral rights in the Property will extract or remove minerals from the Easement Area by surface mining has been determined by a qualified professional geologist to be so remote as to be negligible, as set forth in a report dated October 5, 2016 by Matthew Tidwell and Jim Brake, State of California Registered Professional Geologist No. 5753. A true and complete copy of the report has been provided to Grantor and to Grantee.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area or any portion thereof (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “Transfer”) any mineral, air, or water right or any water associated with the Property, without first obtaining the written consent of Grantee and the Third-Party Beneficiaries. Such consent may be withheld if Grantee or a Third-Party Beneficiary determines that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Easement Area. This section 15(k) shall not limit the provisions of section 2(d) or 3(n), nor prohibit transfer of a fee, license, or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with section 11. Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to the Grantee and the Third-Party Beneficiaries.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiaries.

Grantor and Grantee acknowledge that the CDFW and USFWS (the “Third-Party Beneficiaries”) are each a third-party beneficiary of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor’s obligations under section 15, and all other rights and remedies of Grantee under this Conservation Easement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

(n) Exhibits.

The following Exhibits referenced in this Conservation Easement are attached to and incorporated by reference in this Conservation Easement:

- EXHIBIT A – Property Legal Description
- EXHIBIT B – Easement Area Legal Description and Plat
- EXHIBIT C – Approved Encumbrances

**GRANTOR:**

**GRANTEE:**

ALAMEDA COUNTY WASTE  
MANAGEMENT AUTHORITY,  
a California joint powers agency

CALIFORNIA RANGELAND TRUST,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Wendy Sommer  
Title: Executive Director

By: \_\_\_\_\_  
Name: Nita C. Vail  
Title: Chief Executive Officer

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Approved as to form:**

OFFICE OF THE REGIONAL SOLICITOR, PACIFIC SOUTHWEST REGION  
OFFICE OF THE SOLICITOR  
U.S. DEPARTMENT OF THE INTERIOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Regional Solicitor

Dated: \_\_\_\_\_

**Exhibit A to  
Conservation Easement Deed**

**PROPERTY LEGAL DESCRIPTION**

Property lying and being in the unincorporated area in Alameda County, State of California, described as follows:

The northeast  $\frac{1}{4}$  of Section 10, Township 3, Range 3 East, Mount Diablo Base and Meridian.

**Exhibit B to  
Conservation Easement Deed**

**EASEMENT AREA LEGAL DESCRIPTION AND PLAT**

EXHIBIT "A"

LEGAL DESCRIPTION

PROPERTY LYING AND BEING IN THE UNINCORPORATED AREA IN ALAMEDA COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE NORTHEAST ¼ OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPTING THEREFROM THE FOLLOWING:

EXCEPTION AREA 1

THE 0.56 ACRE DIRT/GRAVEL ROAD AND COMMUNICATION SITE AS SHOWN ON THE ATTACHED EXHIBIT "B".

THE EXISTING ROAD IS 12 FEET WIDE. THE COMMUNICATION SITE IS A FENCED AREA. THE ENTRANCE TO PATTERSON PASS ROAD IS A FENCED AREA.

EXCEPTION AREA 2

THE 0.23 ACRE CORRAL AREA AS SHOWN ON THE ATTACHED EXHIBIT "B".

THE CORRAL AREA IS 100' X 100' LOCATED SOUTH OF THE WATER TANK.

EXCEPTION AREA 3

THE 0.43 ACRE PATTERSON PASS ROAD PAVED ROAD AS SHOWN ON THE ATTACHED EXHIBIT "B". PATTERSON PASS ROAD IS DEFINED BY THE PHYSICAL EDGE OF PAVEMENT.

EXCEPTION AREA 4

THE 0.59 ACRE AREA SOUTH OF PATTERSON PASS ROAD PAVED ROAD AS SHOWN ON THE ATTACHED EXHIBIT "B".

THIS AREA IS DEFINED BY THE TWO AREAS BEING FROM THE SOUTH SIDE OF PATTERSON PASS ROAD AS PAVED, DOWN TO THE SOUTHERLY PROPERTY LINE.

CONTAINING 160.96 ACRES MORE OR LESS.

EXHIBIT "B" ATTACHED HERE TO AND MADE A PART HEREOF.



SWEET, DARRELL & KAREN  
099A-1810-2-1

**N88°36'44"W 2624.87'**

PG&E TRANS. EASE  
(3620 OR 4)

PG&E TRANS. EASE  
(2412 DEEDS 212)

CL 40' PG&E EASEMENT  
2607 OR 116

**ALAMEDA COUNTY WASTE M.A.  
099A-1820-002  
NE 1/4 OF SEC 10**

**TOTAL AREA = 162.77 AC. +/-  
NET AREA = 160.96 AC. +/-**

FENCED  
AREA

12' WIDE DIRT/GRAVEL ROAD &  
FENCED COMMUNICATION SITE  
EXCEPTION AREA 1 = 0.56 AC. +/-

CL 15' PG&E POLE EAS.  
2210 OR 409

CL SIERRA & SFP POLE EAS.  
2412 OR 211

CL 10' PG&E EAS.  
2011-262762

DIRT ROAD  
GRAVEL  
FENCE

**N89°17'08"W 2601.65'(T)**

AREA SOUTH OF  
PATTERSON PASS ROAD  
EXCEPTION AREA 4  
0.59 AC. +/-

PATTERSON PASS ROAD (PAVED)  
EXCEPTION AREA 3 = 0.43 AC. +/-

VIERA RANCH INVESTMENTS  
099A-1820-003-2

EXHIBIT "B"

# **GOLDEN HILLS MITIGATION LANDS**

ALAMEDA COUNTY CALIFORNIA  
JANUARY 20, 2017

EDF RENEWABLE LAND HOLDINGS  
099A-1800-001

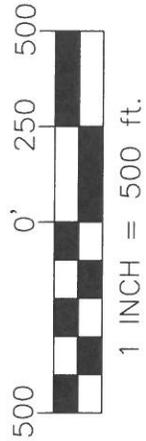
FND. AL CAP LS 6627 IN FENCE POST

VIERA RANCH INVESTMENTS  
099A-1800-003-1

**N173°42'E 2697.97'**

CORRAL AREA  
EXCEPTION AREA 2 = 0.23 AC.  
100' X 100' AREA SOUTH  
OF THE WATER TANK

CL 10' PG&E  
ELECTROLYTIC EAS.  
SERIES NO. AX/2336



NOTE: BOUNDARY PER RECORD  
OF SURVEY 34 LSM 34

SWEET MICHELLE TRUST  
099A-1820-001

**Exhibit C to  
Conservation Easement Deed**

**APPROVED ENCUMBRANCES**

*[List of Approved Encumbrances TBD]*

MITIGATION AGREEMENT  
ACWMA Property Parcel 6

This MITIGATION AGREEMENT (the “**Agreement**”), dated \_\_\_\_\_, 2018 for reference purposes only, is entered into by and among ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, a California joint powers agency (“**Landowner**”), GOLDEN HILLS WIND, LLC, a Delaware limited liability company (“**Golden Hills**”) (“**Endowment Funder**”), and CALIFORNIA RANGELAND TRUST, a California nonprofit public benefit corporation (“**Rangeland Trust**”). Landowner, Endowment Funder and Rangeland Trust are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**.” This Agreement will become effective as specified in Section X of the Agreement.

RECITALS

**A. Purpose.**

The purpose of this Agreement is to provide for the management of endowment funding to support the implementation of certain land management and biological monitoring responsibilities to be undertaken by Landowner and Rangeland Trust on certain real property located in Alameda County, California, as legally described in Exhibit A attached hereto and incorporated herein by reference (the “**Preserve Property**”) in accordance with the permits and approvals described in Recital C below.

**B. Conservation Easement and Management Plan.**

Golden Hills has arranged for Landowner to convey to Rangeland Trust a conservation easement interest in the Preserve Property (the “**Conservation Easement**”) to satisfy certain mitigation requirements for the Golden Hills Wind Energy Facility Repowering Project in Alameda County California as set forth, collectively, in the following-listed regulatory authorizations (the “**Project Permits**”): California Endangered Species Act Incidental Take Permit No. 2081-2014-034-03 approved by the California Department of Fish and Wildlife (“**CDFW**”) on April 3, 2015; the Biological Opinion, File No. FF08ESMF00-2015-F-0006, issued by the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service (“**USFWS**”) on March 5, 2015; and Resolution No. Z-14-40, adopted on November 12, 2014 by the East County Board of Zoning Adjustments, Alameda County Planning Department (“**County**”), approving Conditional Use Permit PLN20014-00032, with its associated conditions of approval. The Conservation Easement incorporates by reference the Management Plan for the Golden Hills Ecological Preserve at ACWMA, which is attached hereto as Exhibit B and incorporated herein by reference (the “**Management Plan**”).

**C. Preserve Manager and Preserve Monitor.**

In the Management Plan, Landowner is designated as the Preserve Manager and Rangeland Trust is designated as the initial Preserve Monitor. The respective responsibilities of each of the Preserve Manager and the Preserve Monitor for the implementation of the Management Plan are set forth therein. In accordance with the Management Plan each of Landowner and Rangeland Trust may contract with qualified third parties for the performance of

their respective responsibilities as Preserve Manager and Preserve Monitor under the Management Plan.

**D. Management Funding.**

Landowner and Golden Hills have agreed that Rangeland Trust, as the holder of the Conservation Easement, hold and manage in accordance with this Agreement the funding to be provided by Golden Hills to fund the implementation of the Management Plan. The amount of such funding has been determined by that Property Analysis Record attached hereto and incorporated herein by reference as **Exhibit C** (the “**PAR**”), which PAR has been approved by USFWS, CDFW and County.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing recitals, which are specifically incorporated into the body of this Agreement, the mutual promises contained herein and the material reliance by the Parties thereon, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

**I. Term.** This Agreement shall remain in effect for so long as the Preserve Property is required to be managed in accordance with the Management Plan under the requirements of the applicable permits and approvals referenced in Recital B hereof.

**II. Funding Requirements and Management.**

**A. Preserve Management and Monitoring Funding.** Concurrent with the Landowner’s conveyance of the Conservation Easement to Rangeland Trust, Endowment Funder shall deliver to Rangeland Trust funding in the amount of One Million Four Hundred Twenty-Three Thousand Forty-Three Dollars and Sixty-Two Cents (\$1,423,043.62) (the “**Preserve Management and Monitoring Funding**”), which Rangeland Trust shall manage as set forth in Subsection II.B, below.

**B. Funding Management.**

**1. Funding for Years 1 – 5.** Rangeland Trust shall hold, manage and disburse up to Three Hundred Sixty-Six Thousand Eight Hundred and Thirty Dollars and Thirty-One Cents (\$ 366,830.31) of the Preserve Funding, plus any earnings therefrom (collectively the “**Initial Management and Monitoring Funding**”) to fund the costs and expenses of the Preserve Property management and monitoring tasks shown in the PAR for the first five-year period following the Effective Date. Any portion of such Initial Management and Monitoring Funding remaining at the end of such five-year period shall be added to the Management and Monitoring Endowment (as defined in Section II.B.2, below).

**2. Management and Monitoring Endowment.** Rangeland Trust shall hold, manage and disburse endowment funding in the amount of One Million Fifty-Six Thousand Two Hundred and Thirteen Dollars and 31 Cents (\$ 1,056,213.31), plus any amount of the Initial Preserve Management and Monitoring Funding remaining at the end of the fifth year following the Effective Date (the “**Management and Monitoring Endowment**”) to cover the costs and

expenses of the Preserve Property management and biological monitoring tasks beginning in the sixth year following the Effective Date. The Parties agree that the amount of the Management and Monitoring Endowment is reasonably anticipated to cover the annual costs and expenses of the management and biological monitoring tasks specified in the Management Plan, beginning in the sixth year following the Effective Date, as set forth in the PAR. Rangeland Trust shall manage the Management and Monitoring Endowment and disburse earnings therefrom in accordance with the following requirements: (a) Rangeland Trust may commingle the Management and Monitoring Endowment with other funds under its control for management and investment purposes, but shall account separately for the earnings attributed to and expenditures paid from the Management and Monitoring Endowment, and shall disburse the Management and Monitoring Endowment solely to fund the undertaking of the Preserve Manager and Preserve Monitor tasks specified in the Management Plan in accordance with this Agreement; (b) Rangeland Trust shall hold, manage, invest and disburse the Management and Monitoring Endowment consistent with the Uniform Prudent Management of Institutional Funds Act, Probate Code Sections 18501-18510, as amended (“UPMIFA”); and (c) Rangeland Trust shall utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board (or successor entity) in accounting for its management of the Management and Monitoring Endowment.

**C. Disbursements from Management and Monitoring Funding.**

**1. To Preserve Manager.**

**a) Timing of Disbursements.** Rangeland Trust shall disburse to Preserve Manager an advance payment (each such payment, a “**Management Payment**”) for each calendar year in which Preserve Manager is responsible for undertaking management tasks in accordance with the Management Plan for which funding is to be provided from the Preserve Management and Monitoring Funding. For the calendar year in which the Management Plan is first implemented, the Management Payment shall be made in the escrow concurrently with the closing of conveyance of the Conservation Easement. Preserve Manager thereafter shall submit to Rangeland Trust each written request for a Management Payment not later than November 15<sup>th</sup> of the year preceding the year for which such payment is requested; Rangeland Trust shall deliver each Management Payment to Preserve Manager by January 15<sup>th</sup> of the year for which the payment is made. The Management Payment may include compensation for the loss of grazing revenue by the Preserve Manager if under the Management Plan, Rangeland Trust, USFWS, or CDFW determines that grazing on the Preserve Property must be reduced or suspended, temporarily or permanently, and the suspension or reduction of grazing results in a loss of grazing revenue by the Preserve Manager. A loss in revenue occurs if the allowed number of animal unit mouths (“AUMs”) on the Preserve Property is fewer than 94 during a one year period or fewer than 7.8 AUM during any given month, in which case, the Rangeland Trust shall compensate the Preserve Manager for the difference between 94 AUMs (annual) or 7.8 AUMs (monthly) and the actual AUMs allowed on the Preserve Property at the dollar per AUM rate used by Preserve Manager to establish rent under its grazing license for the Preserve Property.

**b) Limit on Amounts of Disbursements.** Unless Preserve Manager can demonstrate to the reasonable satisfaction of Rangeland Trust that it is prudent to spend

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additional funds, each Management Payment is subject to a maximum dollar limit equal to the lesser of the (i) the inflation-adjusted total amount allocated in the PAR, exclusive of any contingency amount, for the management task(s) for which the Management Payment is to be made, or (ii) the sum of the portion of the total amount of the earnings of the Management and Monitoring Funding (either the Initial Management and Monitoring Funding component or the Management and Monitoring Endowment component, as applicable) in the preceding calendar year allocable in accordance with the PAR to the management task(s) to be performed plus any capital and earnings accumulated (either as part of the Initial Management and Monitoring Funding or the Management and Monitoring Endowment, as applicable) specifically to fund such management task(s) in accordance with the PAR; *provided*, that in no event shall the annual expenditures from the Management and Monitoring Endowment exceed the amount permissible pursuant to UPMIFA. The inflation adjustment shall be calculated by Rangeland Trust, using the United States Department of Labor’s Bureau of Labor Statistics’ Consumer Price Index for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-San Jose area (1982-84=100) or the successor of such index over the same period of time, as of the latest month for which such index has been published in the year of the request for the Management Payment in relation to the index value published for December 2017. If Preserve Manager asserts that the amount of a Management Payment, as determined in accordance with the foregoing provisions, will be insufficient to fund the projected costs of the management tasks(s) for which the Management Payment has been requested, Preserve Manager shall so notify Rangeland Trust in writing of such determination and include an explanation of the Preserve Manager’s calculation of the amount of the expected shortfall. Rangeland Trust shall proceed in accordance with the provisions of Section II.E to address any such anticipated shortfall.

**c) Overages in Payments.** Any portion of a Management Payment remaining unexpended and uncommitted by Preserve Manager at the completion of the task(s) for which the Management Payment was made shall be retained by Preserve Manager to apply to the costs and expenses of subsequent management tasks to be performed by Preserve Manager, and Preserve Manager shall account to Rangeland Trust for such remaining portion of the Management Payment in the Management Expenditure Report (as defined in Section II.C.1.e. below) covering the Management Payment.

**d) Funding Shortfalls.** If the available amount of funding, as determined in accordance with the provisions of Section II.C.1.b above, is not sufficient to cover the total estimated costs and expenses of the management tasks to be undertaken in the year for which the Management Payment is requested, Preserve Manager and Rangeland Trust shall follow the procedure set forth in Section II.E., below, to allocate the available funding.

**e) Expenditure Reports.** By February 15 of each year following a year in which Preserve Manager received a Management Payment, Preserve Manager shall provide Rangeland Trust with a written report (each such report a “**Management Expenditure Report**”) accounting for the expenditure during the preceding calendar year of the Management Payment and the amount of any remaining portion thereof.

**2. To Preserve Monitor.**

**a) Timing of Disbursements.** Rangeland Trust shall disburse to Preserve Monitor an advance payment (each such payment, a “**Monitoring Payment**”) for each calendar year in which Preserve Monitor is responsible for undertaking monitoring tasks in accordance with the Management Plan for which funding is to be provided from the Management and Monitoring Funding. Preserve Monitor (if other than Rangeland Trust) shall submit to Rangeland Trust each written request for a Monitoring Payment not later than November 15th of the year preceding the year for which such payment is requested; Rangeland Trust shall deliver each Monitoring Payment to Preserve Monitor (if other than Rangeland Trust) by January 15th of the year for which the payment is made.

**b) Limit on Amounts of Disbursements.** Unless Preserve Monitor (if other than Rangeland Trust) can demonstrate to the reasonable satisfaction of Rangeland Trust, or Rangeland Trust as Preserve Monitor determines, that it is prudent to spend additional funds, each Monitoring Payment is subject to a maximum annual dollar limit equal to the lesser of (i) the inflation-adjusted total amount allocated in the PAR, exclusive of any contingency amount, for the monitoring task(s) for which the Monitoring Payment is to be made, or (ii) the sum of the portion of the total amount of the earnings of the Management and Monitoring Funding (either the Initial Management and Monitoring Funding component or the Management and Monitoring Endowment component, as applicable) in the preceding calendar year allocable in accordance with the PAR to the monitoring task(s) to be performed plus any capital and earnings accumulated (either as part of the Initial Management and Monitoring Funding or the Management and Monitoring Endowment, as applicable) specifically to fund such monitoring task(s) in accordance with the PAR; *provided*, that in no event shall the annual expenditures from the Management and Monitoring Funding exceed the amount permissible pursuant to UPMIFA. The inflation adjustment shall be calculated by Rangeland Trust, using the United States Department of Labor’s Bureau of Labor Statistics’ Consumer Price Index (not seasonally adjusted) San Francisco-Oakland-San Jose area (1982-84=100), or the successor of such index over the same period of time, as of latest month for which such index has been published in the year of the request for the Monitoring Payment in relation to the index value published for December 2016.. If Preserve Monitor (if other than Rangeland Trust) asserts, or Rangeland Trust as Preserve Monitor determines, that the amount of a Monitoring Payment, as determined in accordance with the foregoing provisions, will be insufficient to fund the projected costs of the monitoring tasks(s) for which the Monitoring Payment has been requested, Preserve Monitor (if other than Rangeland Trust) shall so notify Rangeland Trust of such determination and the amount of the expected shortfall. Rangeland Trust shall proceed in accordance with the provisions of Section II.E to address the anticipated shortfall.

**c) Overages in Payments.** Any portion of a Monitoring Payment remaining unexpended and uncommitted by Preserve Monitor at the completion of the task(s) which the Monitoring Payment was made shall be retained by Preserve Monitor to apply to the costs and expenses of subsequent monitoring tasks to be performed by Preserve Monitor, and Preserve Monitor (if other than Rangeland Trust) shall account to Rangeland Trust for such remaining portion of the Monitoring Payment in Monitoring Expenditure Report (as defined in Section II.C.2.e below) covering the Monitoring Payment.

d) **Funding Shortfalls.** If the available amount of funding, as determined in accordance with the provisions of Section II.C.2.b above, is not sufficient to cover the total estimated costs and expenses of the monitoring tasks to be undertaken in the year for which the Monitoring Payment is requested, Preserve Monitor (if other than Rangeland Trust) and Rangeland Trust shall follow the procedure set forth in Section II.E., below, to allocate the available funding.

e) **Expenditure Reports.** By February 15 of each year following a year in which Preserve Monitor received a Monitoring Payment, Preserve Monitor (if other than Rangeland Trust) shall provide Rangeland Trust with a written report (each such report an “**Monitoring Expenditure Report**”) accounting for the expenditure of the Monitoring Payment and the amount of any remaining portion thereof.

**D. Annual Fiscal Report.** On or before April 1<sup>st</sup> of each year, Rangeland Trust shall provide Preserve Manager and CDFW with a fiscal report covering the preceding calendar year and setting forth the following information with respect to the Management and Monitoring Endowment (the “**Annual Fiscal Report**”):

1. The amount of the balance of the Management and Monitoring Endowment at the beginning of the reporting period;
2. The amount of any contribution to the Management and Monitoring Endowment during the reporting period including, but not limited to, gifts, grants, and contributions received;
3. The net amounts of investment earnings, gains, and losses for the Management and Monitoring Endowment during the reporting period, including both realized and unrealized amounts;
4. The amounts distributed from the Management and Monitoring Endowment during the reporting period that accomplish the purpose for which the Management and Monitoring Endowment was established, and the amounts, if any, of accumulated earnings and the management and/or monitoring tasks to which the accumulated earnings are allocated;
5. The administrative expenses charged to the Management and Monitoring Endowment from internal or third-party sources during the reporting period;
6. The balance of the Management and Monitoring Endowment at the end of the reporting period;
7. The specific asset allocation percentages of the Management and Monitoring Endowment including, but not limited to, cash, fixed income, equities, and alternative investments; and
8. The most recent financial statements of Rangeland Trust audited by an independent auditor who is, at a minimum, a certified public accountant.
9. Any other information required by Government Code Section 65966(e), as it may be amended from time to time.

**E. Funding Shortfalls.** If Rangeland Trust determines pursuant to the provisions of Section II.C.1.b or Section II.C.2.b above that there will not be sufficient funding available from the earnings of the Management and Monitoring Funding to fund the costs and expenses of the land management and biological monitoring tasks scheduled to be undertaken in a given year under the provisions of the Management Plan, whether as a result of a shortfall in earnings relative to the amount projected in the PAR, and/or as a result of a higher rate of inflation or higher costs and expenses of particular land management or biological monitoring activities than estimated in the PAR, then Rangeland Trust will notify CDFW, Preserve Manager, and Landowners (if Landowners are not the Preserve Manager), and Preserve Monitor (if other than Rangeland Trust) and implement the task prioritization process in Section 7.3 of the Management Plan. Based on the outcome of that process, Rangeland Trust will determine if it is prudent and permissible pursuant to UPMIFA to fund some or all of the amount of the projected shortfall from the Management and Monitoring Funding. Rangeland Trust shall document the outcome of such consultation in the Annual Fiscal Report covering the year of the projected shortfall. Preserve Manager and Preserve Monitor shall be obligated to perform their respective tasks under the Management Plan only to the extent that funding from the Preserve Management and Monitoring Funding has been provided for those tasks.

### **III. Rangeland Trust's Representations**

**A. Qualifications of Rangeland Trust.** In accordance with Government Code Section 65968(e), Rangeland Trust certifies that Rangeland Trust meets all of the following qualifications for holding and managing the Management and Monitoring Endowment in accordance with this Agreement.

1. Rangeland Trust has the capacity to effectively manage the Management and Monitoring Endowment.
2. Rangeland Trust has the capacity to achieve reasonable rates of return on the investment of the Management and Monitoring Endowment similar to those of other prudent investors for endowment funds and shall manage and invest the Management and Monitoring Endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with UPMIFA.
3. Rangeland Trust utilizes generally accepted accounting practices as promulgated by the Financial Accounting Standards Board.
4. Rangeland Trust will be able to ensure that the Management and Monitoring Endowment is accounted for, and tied to, the Property in accordance with this Agreement.
5. Rangeland Trust is a nonprofit organization and has an investment policy that is consistent with UPMIFA.

**B. No Private Inurement and No Conflict of Interest.** To the best knowledge of Rangeland Trust, after diligent inquiry, none of the transactions contemplated by this Agreement will result in a private inurement for any director, officer, or staff member of the Rangeland Trust, or any person or entity related to or controlled by, directly or indirectly, such individuals.

To the best knowledge of the Rangeland Trust, after diligent inquiry, no member, officer, employee or consultant of Endowment Funder is a trustee, director, officer, executive director or staff member of the Rangeland Trust or an individual that has legal or de facto power to exercise a controlling influence over the management or policies of Rangeland Trust.

**IV. Assignment of Rangeland Trust’s Rights and Obligations.**

**A. Voluntary.** Rangeland Trust shall assign its rights and obligations under this Agreement only to a qualified entity pursuant Government Code section 65965 *et seq.* and only with the prior written consent of Preserve Manager, Landowner (if Landowner is not the Preserve Manager), Endowment Funder (or any successor holder of the Project Permits) and CDFW. In connection with such an approved assignment, Rangeland Trust shall transfer to the approved assignee the remaining unexpended and unobligated amount of the Management and Monitoring Endowment then held by Rangeland Trust. Rangeland Trust, and each successor Preserve Monitor, shall assign its rights and obligations as Preserve Monitor under this Agreement only with the prior written consent of Landowner, Preserve Manager (if different than Landowner) and CDFW. Concurrently with any such approved assignment, Rangeland Trust, or its successor Preserve Monitor, as applicable, shall assign and convey by recorded instrument all of its title, rights and interest, and delegate all of its obligations, as Grantee under that certain Grant of Easement for Right of Entry for Biological Monitoring and Agreement Concerning Rights between Rangeland Trust and Landowner recorded in the Official Records of the County of Alameda, State of California, on even date with the Conservation Easement.

**B. Involuntary.** If Rangeland Trust (i) is dissolved or otherwise ceases to exist, or (ii) becomes bankrupt or insolvent, or (iii) is determined by CDFW or USFWS to not be holding, managing, investing, or disbursing the Management and Monitoring Endowment for conservation purposes consistent with the agreement and legal requirements, then, pursuant to the provisions of Government Code sections 65968(g) and (h), the remaining unexpended and unobligated amount of the Management and Monitoring Endowment shall revert to CDFW, and CDFW either shall hold, manage, and disburse monies therefrom for the long-term stewardship and benefit of the Preserve Property or arrange for another qualified entity pursuant to Government Code section 65965 *et seq.* to assume those responsibilities.

**V. Force Majeure Events**

Any failure by Preserve Manager, Preserve Monitor or Rangeland Trust to perform an obligation under this Agreement shall be excused to the extent that, and for so long as, such failure is caused by flood, drought, disease, regional pest infestation, acts of God, fire or other casualty, excessive adverse weather conditions, strikes or labor disputes, the inability to obtain plant or other materials, or any other cause beyond the reasonable control of Preserve Manager, Preserve Monitor or Rangeland Trust, as applicable.

**VI. Adaptive Management; Cooperation.**

The Parties acknowledge and agree that the Management Plan provides for adaptive management of the Preserve Property and agree to cooperate in amending the Management Plan

as reasonably necessary to implement the adaptive management principles set forth in the Management Plan. The Parties shall consult from time to time with respect to the continuing efficacy of management practices, and a Party may propose amendments to the Management Plan, including but not limited to amendments in response to changes in scientific understanding of stewardship practices or changes in available monitoring technologies, to better protect the Preserve Property in accordance with the purpose of the Conservation Easement. The Parties acknowledge and agree that any amendment of the Management Plan shall require the consent of each of Preserve Manager, Preserve Monitor, Rangeland Trust, USFWS and CDFW in accordance with the terms thereof.

## **VII. Remedies and Enforcement of Agreement**

**A.** The Parties shall each have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and to seek remedies for any breach or violation thereof.

**B.** The Parties agree to work together in good faith to resolve disputes concerning this Agreement but any Party may seek any available remedy. Unless an aggrieved Party has initiated administrative proceedings or suit in court, the Parties may elect to employ an informal dispute resolution process whereby:

**1.** The aggrieved Party shall notify each other Party of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation;

**2.** The Party alleged to be in violation shall have thirty (30) days or such other time as may be agreed upon to respond and, during this time, may seek clarification of the initial notice and shall use its best efforts to provide any responsive information; and

**3.** Within thirty (30) days after such response was provided or due, Party representatives shall confer and negotiate in good faith toward a resolution satisfactory to each Party, or shall establish a specific process and timetable to seek such solution.

**VIII. Attorneys' Fees.** In any action or proceeding to enforce or interpret this Agreement or any portion thereof, the prevailing party shall be entitled to all costs incurred and reasonable attorneys' and experts' fees to the fullest extent consistent with applicable law.

**IX. Notices.** All notices, demands, or requests from one Party to another other shall be in writing and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

<b>Endowment Funder:</b>	Golden Hills Wind, LLC 700 Universe Blvd. (FEB/JB) Juno Beach, FL 33408 Attn: Emre Ergas Business Management Northern California E-mail: Ergas@nexteraenergy.com
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**REVIEW DRAFT – 08/31/18**

**Landowner:** Alameda County Waste Management Authority  
Attn: Executive Director  
1537 Webster Street  
Oakland, CA 94612  
E-mail: wsommer@stopwaste.org

**Rangeland Trust:** California Rangeland Trust  
Attn: Transaction Director  
1225 H Street  
Sacramento, CA 95814  
E-mail: mdelbar@rangelandtrust.org

Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail. Each Party may change the address to which such notices, payments, or other communications may be sent by giving the other Party written notice of such change.

**X. Effective Date.** The effective date of this Agreement (the “**Effective Date**”) shall be the date on which the Conservation Easement has been recorded in the Official Records of the County of Alameda, State of California.

**XI. Successors and Assigns.** The rights, obligations, covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, successors, and assigns.

**XII. “PDF” File Deemed Original.** This Agreement and any amendment hereto, may be executed and distributed as a “pdf” file attachment to electronic mail and a copy of this Agreement or any such amendment executed and distributed as a “pdf” file attachment to electronic mail shall be deemed an original for all purposes.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

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**XIII. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by as a “pdf” file attachment to electronic mail) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

IN WITNESS of the foregoing provisions, the Parties have executed this Agreement as set forth below.

**LANDOWNER:**

Alameda County Waste Management Authority,  
a California joint powers agency

By: \_\_\_\_\_  
Name: Wendy Sommer  
Its: Executive Director

Date: \_\_\_\_\_

**RANGELAND TRUST:**

California Rangeland Trust,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Nita C. Vail  
Its: Chief Executive Officer

Date: \_\_\_\_\_

**ENDOWMENT FUNDER:**

Golden Hills Wind, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibits:**

- A – Legal Description of Preserve Property
- B – Management Plan
- C – PAR

**REVIEW DRAFT – 08/31/18**

**EXHIBIT A  
TO  
MITIGATION AGREEMENT**

**PRESERVE PROPERTY LEGAL DESCRIPTION**

**REVIEW DRAFT – 08/31/18**

**EXHIBIT B  
TO  
MITIGATION AGREEMENT**

**MANAGEMENT PLAN**

**[The Management Plan follows.]**

**REVIEW DRAFT – 08/31/18**

**EXHIBIT C  
TO  
MITIGATION AGREEMENT**

**PROPERTY ANALYSIS RECORD**

**[The PAR follows.]**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CALIFORNIA RANGELAND TRUST  
1225 H Street  
Sacramento, CA 95814-1910  
Attn: Transactions Director

Space above this line for Recorder's use.

**GRANT OF EASEMENT FOR RIGHT OF ENTRY  
FOR BIOLOGICAL MONITORING  
AND AGREEMENT CONCERNING RIGHTS AND OBLIGATIONS  
ACWMA Property Parcel 6**

This GRANT OF EASEMENT FOR RIGHT OF ENTRY FOR BIOLOGICAL MONITORING AND AGREEMENT CONCERNING RIGHTS (the “**Easement and Agreement**”) is made and entered into by and between ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, a California joint powers agency (“**Grantor**”), in favor of CALIFORNIA RANGELAND TRUST, a California nonprofit public benefit corporation (“**Grantee**”), a California nonprofit public benefit corporation. Grantor and Grantee are referred to collectively herein as the “Parties.”

**RECITALS**

A. Grantor has granted to Grantee, on even date herewith, a conservation easement interest in approximately 160 acres owned by Grantor in the unincorporated area of Alameda County, California, more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “**Preserve Property**”), in accordance with the terms and conditions of that certain Conservation Easement Deed recorded in the Official Records of Alameda County (“**Official Records**”) concurrently with this Agreement (the “**Conservation Easement**”), which is incorporated herein by reference as **Exhibit B**.

B. This Easement and Agreement is being executed and delivered to allow Grantee to enter the Preserve Property for the limited purpose of conducting biological monitoring on the Preserve Property in accordance with that certain Management Plan - Golden Hills Ecological Preserve at ACWMA, dated \_\_\_\_\_, 2017 (the “**Management Plan**”), as such Management Plan may be amended from time to time in accordance with its provisions, which Management Plan is incorporated by reference in the Conservation Easement and is also incorporated herein by reference as **Exhibit C**.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual promises contained herein and the

material reliance by the Parties thereon, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants to Grantee, in accordance with California Civil Code Section 802, the rights of entry of the nature and character hereinafter set forth (the "**Easement**").

1. **Description of Easement.** Grantee and Grantee's contractors and agents (the "**Grantee Parties**") shall have the non-exclusive right in gross to enter upon the Preserve Property at all times and in such manner as is reasonably necessary to conduct biological monitoring within the Preserve Property in accordance with the Management Plan, subject to all applicable restrictions in the Conservation Easement. Grantor shall provide to Grantee any keys to gates needed for Grantee's entry as herein provided.

2. **Term.** The Easement shall run with the Preserve Property for so long as biological monitoring is required to be conducted on the Preserve Property under the Management Plan. Every provision, right and obligation under this Easement and Agreement that applies to Grantor and Grantee shall also apply to and be binding upon their respective agents, heirs, executors, administrators, successors and assigns.

3. **Grantors' Representations and Warranties.** Each Grantor makes the following representations and warranties with respect to the portion(s) of the Preserve Property in which such Grantor holds a fee ownership interest.

(a) Grantor has full power and authority to enter into this Easement and Agreement, and to convey the Easement in accordance with this Easement and Agreement.

(b) Grantor has no knowledge of any suit, action, arbitration, legal, administrative or other proceeding or inquiry, pending or threatened against or relating to Grantor which would affect Grantor's ability to perform its obligations under this Easement and Agreement.

(c) Other than the liens and encumbrances listed in **Exhibit D** attached hereto and incorporated herein by reference, Grantor has no knowledge of encumbrances or liens against any portion of the Preserve Property, including, but not limited to, unexpired leases, options, mortgages or deeds of trust, which may conflict with the Easement.

(d) Grantor's performance of this Easement and Agreement will not constitute a breach or default under any other agreement, whether written or oral, to which Grantor is bound and/or to which the Preserve Property is subject.

(e) Grantor has no knowledge of any condition at, on, under or related to the Preserve Property presently or potentially posing a significant hazard to human health or the environment.

4. **Taxes; No Liens.** Grantors shall pay before delinquency all taxes and property assessments, fees and charges of whatever description levied on or assessed against the Preserve Property by competent authority (collectively, "**taxes**"), including any taxes imposed upon, or incurred as a result of, the Preserve Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantors shall keep Grantee's interest in the Preserve Property free from any liens, including those arising out of any obligations incurred by a Grantor

for any labor or materials furnished or alleged to have been furnished at or for use on the Preserve Property; *provided*, that except for the lien of any taxes imposed upon, or incurred as a result of, the Easement, Grantors' obligation to keep Grantee's interest in the Preserve Property free from any liens shall not extend to liens imposed solely to secure an obligation incurred by Grantee.

5. **Costs and Liabilities.** Grantors retain all rights and responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Preserve Property, subject to this Easement and Agreement, provided that with respect to such costs and liabilities for which funding is to be provided from the endowment fund established to support the performance of the perpetual management, maintenance, biological monitoring, and reporting obligations under the Management Plan ("Endowment Fund"), Grantor shall retain responsibilities and bear costs and liability only to the extent funds are made available to Grantor from the Endowment Fund.

6. **Indemnification.**

(a) **Grantors.** Grantors shall hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**Grantee's Indemnified Parties**"), from and against all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Preserve Property, including but not limited to any such act, omission, condition or other matter occurring in connection with the presence of the general public on the Preserve Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of Grantee or any other of Grantee's Indemnified Parties; or (b) Grantor's obligations specified in this Easement and Agreement; or (c) a breach of any of Grantor's representations or warranties made in this Easement and Agreement; or (d) any violation of, or other failure to comply with, any state, federal or local law, regulation or requirement related to the Preserve Property, by Grantor, or any entity other than a Grantee Indemnified Party acting upon permission from Grantee, in any way affecting, involving or relating to the Preserve Property.

(b) **Grantee.** Grantee shall hold harmless, indemnify, and defend Grantors and their respective employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (each a "**Grantor Indemnified Party**" and, collectively, "**Grantors' Indemnified Parties**"), from and against any and all Claims arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, occurring on or about the Preserve Property, resulting from the negligence of any of Grantee's Indemnified Parties; or (b) Grantee's obligations specified in this Easement and Agreement; or (c) any violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by any Grantee Indemnified Party, in any way affecting, involving or relating to the Preserve Property.

7. **Insurance or Self-Insurance.**

(a) **Grantor's Insurance.** Grantor, at its sole cost and expense, shall carry insurance –or self-insure - its activities in connection with this Easement and Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. Grantor shall provide Grantee thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage applicable to this Easement and Agreement. At any time that Grantor is not a self-insured California state or local agency, Grantor shall maintain the following insurance: (1) a comprehensive general liability policy insuring against bodily injury and property damage on the Preserve Property in the amount of not less than one million dollars (\$1,000,000); (2) workers' compensation insurance as required by law and employer's liability coverage, with limits of \$1,000,000 per occurrence; and (3) automobile liability insurance (bodily injury and property damage) extending to owned, non-owned, rented and hired vehicles and including contractual liability covering all liability assumed under the Easement and Agreement in an amount not less than \$1,000,000 per occurrence. All insurance amounts shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI. Grantee shall be named as an additional insured on each required policy. The insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantee. Grantor waives all rights of subrogation against each Grantee Indemnified Party for recovery of damages to the extent the damages are covered by insurance maintained by Grantor pursuant to this Easement and Agreement. Each of the above policies must contain a provision that the policy shall not be canceled or materially changed without thirty (30) days' prior written notice to Grantee. Grantor shall furnish Grantee with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Any failure of Grantee to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of Grantee to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantee's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Easement and Agreement.

(b) **Grantee's Insurance.** Grantee shall maintain the following insurance: (1) a comprehensive general liability policy insuring against bodily injury and property damage on the Preserve Property in the amount of not less than one million dollars (\$1,000,000); (2) workers' compensation insurance as required by law and employer's liability coverage, with limits of \$1,000,000 per occurrence; and (3) automobile liability insurance (bodily injury and property damage) extending to owned, non owned, rented and hired vehicles and including contractual liability covering all liability assumed under the Easement and Agreement in an amount not less than \$1,000,000 per occurrence. All insurance amounts shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI. Grantor shall be named as an additional insured on each required policy. The insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantor. Grantee waives all rights of subrogation against each Grantor Indemnified Party for recovery of damages to the extent the damages are covered by insurance maintained by Grantee pursuant to this Easement and Agreement. Each of the above policies must contain a provision that the policy shall not be canceled or materially changed without thirty (30) days' prior written notice to Grantor. Grantee shall furnish Grantor with certificate(s) of insurance, executed by a duly

authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Any failure of Grantor to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of Grantor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantee's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Easement and Agreement.

8. **Environmental Provisions.**

(a) **Grantee Not An Owner, Operator, Or Responsible Party.**

Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement and Agreement to be construed such that it creates in or gives the Grantee:

(i) The obligations or liability of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.* and hereinafter "CERCLA");

(ii) The obligations or liability of a person described in 42 U.S.C. § 9607(a)(3) or (4);

(iii) The obligations of a responsible person under any applicable Environmental Law, as defined below;

(iv) The right to investigate and remediate any **Hazardous Substance** (as defined below) associated with the Preserve Property; or

(v) Any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Substances, as defined below, associated with the Preserve Property.

(b) **Environmental Liabilities and Indemnification.** In addition to the indemnity and defense obligations of Grantors under Section 6(a), above, Grantors shall indemnify, protect and defend with counsel acceptable to Grantee, and hold harmless the Grantee Indemnified Parties (as defined in Section 6(a), above) from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the claimed presence or Release (as defined below) of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property; (ii) any violation or alleged violation of Environmental Law (as defined below) affecting the Preserve Property, whether occurring prior to or during Grantor's ownership of the Preserve Property and whether caused or permitted by Grantor or any person other than Grantor; or (iii) any claim or defense by Grantor or any third party that any Grantee Indemnified Party is liable as an "owner" or "operator" of the Preserve Property under any Environmental Law. The foregoing indemnity obligations shall not apply with respect to any Hazardous Substance

released or deposited as a result of action by any Grantee Indemnified Party while acting under the authority of Grantee, on or about the Preserve Property. Notwithstanding any statutory limitation otherwise applicable, or the provisions of Section 13(d), below, the indemnity obligations of Grantor to Grantee's Indemnified Parties pursuant to this Section 8(b) shall continue after transfer to a successor in interest unless and until terminated as hereinafter provided. The indemnity obligations of a Grantor to Grantee's Indemnified Parties pursuant to this Section 8(b) shall terminate upon written approval by Grantee of a written request for consent to assignment of such indemnity obligations to a successor in interest. In considering any request for a consent to a Grantor's assignment of the indemnity obligations under this Section 8(b), Grantee may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. Grantee's consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

(c) **Definitions.**

(i) The term "**Environmental Law**" shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations thereunder, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(ii) The term "**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not caused by, contributed to, permitted by, acquiesced to or known to Grantor.

(iii) The term "**Hazardous Substance**" shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Preserve Property or to persons on or about the Preserve Property, or cause the Preserve Property to be in violation of any Environmental Law; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (iii) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including: CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the California Hazardous Waste Control Law, Cal. Health & Safety § 25100 et seq.; the Hazardous Substance Account Act, Cal. Health & Safety Code § 25300, et seq., the Porter-Cologne Water Quality Control Act, Cal. Water Code

§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code § 25249.5 et seq.; Title 22 of the California Code of Regulations, Division 4, Chapter 30; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Preserve Property or the owners and/or occupants of property adjacent to or surrounding the Preserve Property, or any other person coming upon the Preserve Property or adjacent property; and (v) any other chemical, materials or substance which may or could pose a hazard to the environment.

9. **Compliance With Law.** Grantee shall comply with all applicable requirements of all governmental authorities at Grantee's cost and expense with regard to its uses of the Easement.

10. **Assignment.** Grantee may transfer the rights of entry herein granted only in accordance with the Mitigation Agreement.

11. **Notice.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Easement and Agreement in writing shall be given in the manner set forth below, addressed to the Party to be served at the addresses set forth beneath such Party’s signature on this Easement and Agreement, or at such other address for which that Party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day (not including Saturday) immediately following the date it was deposited with such common carrier; or (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger. Any notice or other communication under this Agreement may be given on behalf of a Party by the attorney for such Party.

Grantor: Alameda County Waste Management Authority  
1537 Webster Street  
Oakland, CA 94612  
Attn: Executive Director

Grantee: California Rangeland Trust  
1225 H Street  
Sacramento, CA 95814  
Attn: Transaction Manager

The Parties may change their respective notice information from time to time by providing notice as set forth above.

12. **Legal Costs.** If any Party to this Easement and Agreement shall take any action to enforce this Easement and Agreement or bring any action for any relief against any other Party, declaratory or otherwise, arising out of this Easement and Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys’ and experts’ fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein,

all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder. The amount of such fees and costs shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) post-judgment motions; (b) appeal proceedings; (c) contempt proceedings; (d) garnishment, levy, and debtor and third party examinations; (e) discovery; and (f) bankruptcy litigation.

13. **Miscellaneous Terms.**

(a) **Governing Law.** This Easement and Agreement shall be governed by and construed in accordance with the laws of the State of California. Any proceeding or action to enforce this Agreement shall occur in the Alameda County Superior Court.

(b) **Entire Agreement.** This Easement and Agreement constitutes the entire agreement between the Parties relating to this Easement and Agreement. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, relating to this Easement and Agreement are merged into and superseded by this Easement and Agreement. Any modification or amendment to this Easement and Agreement shall be of no force and effect unless it is in writing and signed by the Parties.

(c) **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Easement and Agreement and shall not be used in construing this Agreement.

(d) **Binding Effect.** This Easement and Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives and successors.

(e) **Drafting.** The Parties agree that this Easement and Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each party to this Agreement waives the effect of such statute.

(f) **Authorization to Record; Effective Date.** Grantee is authorized to record this Easement and Agreement in the Official Records of the County of Alameda, State of California, and the effective date of the Agreement shall be the date on which it is so recorded.

(g) **Execution in Counterparts.** This Easement and Agreement may be executed and delivered in any number of counterparts or copies ("counterpart") by the Parties. When each party has signed and delivered at least one counterpart (including copies sent to a party via facsimile transmission or as a "pdf" attachment to electronic mail) to the other party hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Easement and Agreement as set forth below.

**GRANTOR:**

Alameda County Waste Management Authority,  
a California joint powers agency

**GRANTEE:**

California Rangeland Trust,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Wendy Sommer  
Title: Executive Director

By: \_\_\_\_\_  
Nita C. Vail  
Title: Chief Executive Officer

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBITS:**

- Exhibit A: Preserve Property Legal Description
- Exhibit B – Reference to Conservation Easement
- Exhibit C: Reference to Management Plan
- Exhibit D: Approved Encumbrances

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

State of California )  
 ) SS  
County of \_\_\_\_\_ )

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

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

Witness my hand and official seal.

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

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

State of California )  
 ) SS  
County of \_\_\_\_\_ )

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

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

Witness my hand and official seal.

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

**EXHIBIT A**

**PRESERVE PROPERTY LEGAL DESCRIPTION**

**EXHIBIT B**

**CONSERVATION EASEMENT**

**[Each Party has a copy of the Conservation Easement identified in Recital A of the Easement and Agreement, which Conservation Easement is incorporated herein by reference.]**

**EXHIBIT C**

**MANAGEMENT PLAN**

**[Each Party has a copy of the Management Plan identified in Recital B of the Easement and Agreement, which Management Plan is incorporated herein by reference.]**

## **EXHIBIT D**

### **APPROVED ENCUMBRANCES**

The approved encumbrances consist of liens for non-delinquent real property taxes and assessments, and the following-listed exceptions taken from that certain Preliminary Report, Title Number \_\_\_\_\_, dated \_\_\_\_\_, issued by Chicago Title Company.

823639.5

## **AGREEMENT FOR CONVEYANCES OF EASEMENTS**

### **GOLDEN HILLS ECOLOGICAL PRESERVE – ACWMA PROPERTY PARCEL 6**

This AGREEMENT FOR CONVEYANCES OF EASEMENTS – GOLDEN HILLS ECOLOGICAL PRESERVE – ACWMA PROPERTY PARCEL 6 (the “**Agreement**”), dated \_\_\_\_\_, 2016 for reference purposes only, is by and between ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY, a California joint powers agency (“**ACWMA**”), CALIFORNIA RANGELAND TRUST, a California nonprofit public benefit corporation (“**Rangeland Trust**”) and GOLDEN HILLS WIND, LLC, a Delaware limited liability company (“**Golden Hills**”). ACWMA, Rangeland Trust and Golden Hills are referred to herein collectively as the “**Parties**” and individually as a “**Party**.” The “**Effective Date**” of this Agreement shall be the date as of which the Parties have fully executed the Agreement.

### **RECITALS**

A. ACWMA owns certain real property located in the unincorporated area of Alameda County, California, as legally described in **Exhibit A** attached hereto and incorporated herein by reference, and delineated on the map attached hereto and incorporated herein by reference as **Exhibit B** (the “**Preserve Property**”).

B. Golden Hills has arranged for ACWMA to convey to Rangeland Trust certain easement interests in the Preserve Property to satisfy certain mitigation requirements for the Golden Hills Wind Energy Facility Repowering Project in Alameda County California as set forth, collectively, in the following-listed regulatory authorizations: California Endangered Species Act Incidental Take Permit No. 2081-2014-034-03 approved by the California Department of Fish and Wildlife (“**CDFW**”) on April 3, 2015; the Biological Opinion, File No. FF08ESMF00-2015-F-0006, issued by the Sacramento Fish and Wildlife Office of the U.S. Fish and Wildlife Service (“**USFWS**”) on March 5, 2015; and Resolution No. Z-14-40, adopted on November 12, 2014 by the East County Board of Zoning Adjustments, Alameda County Planning Department (“**County**”), approving Conditional Use Permit PLN20014-00032, with its associated conditions of approval.

C. Rangeland Trust is a conservation organization that is qualified to do business in California, and 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. Rangeland Trust is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder, 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. Rangeland Trust is not a private foundation within the meaning of Section 509(a) of the Code.

D. Rangeland Trust is willing to accept from ACWMA, in accordance with the terms and conditions of this Agreement, a grant of a conservation easement interest in the Preserve Property and the grant of an easement for right of entry to allow Rangeland Trust to enter upon Preserve Property to conduct certain biological monitoring.

E. ACWMA acknowledges that Rangeland Trust is entering into this Agreement in its own right and that Rangeland Trust is not an agent of any governmental agency or entity.

## AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Agreement, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Conveyance Terms.**

(a) **Conservation Easement.** Subject to the terms and conditions of this Agreement, ACWMA shall convey to Rangeland Trust, and Rangeland Trust shall accept from ACWMA, a grant of a conservation easement covering the Preserve Property in the form and substance of the instrument attached hereto as **Exhibit C** and incorporated herein by reference (the “**Conservation Easement**”). The Conservation Easement, together with the Management Plan for the Golden Hills Ecological Preserve at ACWMA, attached hereto as **Exhibit D** and incorporated herein by reference (the “**Management Plan**”), shall be subject to review and approval by USFWS, CDFW and County (collectively, the “**Approval Agencies**”). If any of the Approval Agencies requires any revisions to either the Conservation Easement or the Management Plan, then ACWMA and Rangeland Trust each shall have the right to approve or disapprove such revisions, each in its sole discretion. If either ACWMA or Rangeland Trust disapproves any such revisions, the disapproving Party shall be entitled to terminate this Agreement upon delivery of written notice of disapproval to the other Party, upon which the Parties’ obligations under this Agreement shall terminate.

(b) **Biological Monitoring Easement.** Subject to the terms and conditions of this Agreement, ACWMA shall grant to Rangeland Trust, and Rangeland Trust shall accept from ACWMA, the grant of an easement for right of entry for biological monitoring to allow Rangeland Trust to enter upon Preserve Property to conduct biological monitoring in accordance with the Management Plan pursuant to a grant in the form and substance of the instrument attached hereto as **Exhibit E** and incorporated herein by reference (the “**Biological Monitoring Easement**”).

2. **Conditions Precedent.** ACWMA’s obligations to convey the Conservation Easement and the Biological Monitoring Easement to Rangeland Trust, and Rangeland Trust’s obligation to accept the conveyances of the Conservation Easement and the Biological Monitoring Easement from ACWMA, shall be conditioned upon and subject to each of the conditions precedent set forth in this Section (collectively, the “**Conditions Precedent**”). In the event that any of the Conditions Precedent is not timely satisfied or waived by the benefited Party(ies), this Agreement shall terminate and, except as otherwise provided herein, the Parties shall have no further rights or obligations under this Agreement.

(a) **Agency Approvals.** The Approval Agencies each shall have approved the Conservation Easement, including the Management Plan and the Mitigation Agreement (as defined in Section 3.B hereof) incorporated by reference therein.

(b) **Phase I Environmental Site Assessment.** Rangeland Trust shall have received a Phase I Environmental Site Assessment covering the Preserve Property, prepared in accordance with the requirements for “all appropriate inquiries” set forth in 40 C.F.R. Part 312

for reliance thereon by Rangeland Trust, and issued within six (6) months of the Closing (as defined in Section 6(b) below), which shall not identify any “recognized environmental conditions” on, over or under the Preserve Property (the “**Phase 1 Environmental Site Assessment**”).

(c) Rangeland Trust Funding. At the Closing, Golden Hills shall have paid the full amounts of the Conservation Easement Stewardship Funding, the Preserve Management and Monitoring Funding and the Easement Protection and Transaction Funding (each as defined in Section 3 hereof) (collectively, the “**Rangeland Trust Funding**”).

(d) Rangeland Trust Title Policy. The underwriter for Escrow Holder (as defined in Subsection 6(a) hereof), shall be irrevocably committed to issue to Rangeland Trust the Rangeland Trust Title Policy (as defined in Subsection 5(b) hereof).

(e) Representations and Warranties. All representations and warranties made by the Parties in this Agreement shall be true in all material respects as of the Closing (as defined in Section 6(b) hereof).

### 3. **Rangeland Trust Funding.**

(a) Conservation Easement Stewardship Funding. At Closing (as defined in Subsection 6(b) hereof) Golden Hills shall pay Rangeland Trust the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Conservation Easement Stewardship Funding**”) in support of funding Rangeland Trust’s monitoring and enforcement of the Conservation Easement. The calculation of the amount of the Conservation Stewardship Funding is shown in the Property Analysis Record set forth as **Exhibit F** attached hereto and incorporated herein by reference (the “**Conservation Easement Stewardship Funding PAR**”).

(b) Preserve Management and Monitoring Funding. At the Closing (as defined in Section 6(b) hereof) Golden Hills shall pay Rangeland Trust the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Preserve Management and Monitoring Funding**”), pursuant to a mitigation agreement in the form of the Mitigation Agreement for the Golden Hills Ecological Preserve – ACWMA Property set forth as **Exhibit G** attached hereto and incorporated herein by this reference (the “**Mitigation Agreement**”), to support the management tasks to be performed by the Preserve Manager (as defined in the Management Plan) and the biological monitoring tasks to be performed by the Preserve Monitor (as defined in the Management Plan), and associated administrative functions, all as specified in the Management Plan.

(c) Easement Protection and Transaction Funding. At the Closing (as defined in Section 6.B. below) Golden Hills shall pay Rangeland Trust the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (the “**Easement Protection and Transaction Funding**”) to support Rangeland Trust’s general land conservation purposes and legal defense of the conservation easements that it holds.

4. **Covenants Upon Termination or Failure to Close.**

(a) In the event of a termination of this Agreement or the failure of Escrow to close as provided herein due to a default of a Party, then the defaulting Party (as the case may be) shall pay any cancellation costs imposed by the Escrow Holder (as defined in Subsection 6(a) hereof).

(b) In the event of any termination of this Agreement as provided herein through no default of a party, including the circumstance of the exercise of a Party's right to terminate as provided herein, then Golden Hills shall pay any cancellation costs imposed by the Escrow Holder.

5. **Title.**

(a) **Title Review.** Rangeland Trust has reviewed the Preliminary Title Report, Title No. FWAC-TO1002866-DO, dated as of August 22, 2016 issued by Chicago Title Company (the "**Preserve Property Title Report**"), which covers the Preserve Property. Not later than fifteen (15) days prior to the Closing (as defined in Section 6(b), below), Golden Hills shall deliver or cause to be delivered to Rangeland Trust an updated report dated not earlier than thirty (30) days before the Closing (the "**Preserve Property Title Report Update**") (and copies of additional documents referred to therein as additional exceptions, if any). Rangeland Trust shall have ten (10) days from its receipt of the Report Update (and copies of additional documents referred to therein as additional exceptions) to approve or disapprove any additional matters referred to therein. At the Closing, ACWMA shall deliver to Rangeland Trust title to the Conservation Easement and title to the Biological Monitoring Easement free and clear from all monetary liens and encumbrances (except any statutory liens for non-delinquent real property taxes or assessments), and subject only to: (i) Exception Nos. 1 - 10, 13, 14, 16, 19 and 22 (but not 20, 21, 23, 24, 25 set forth in the Title Report; (ii) any additional exceptions in the Preserve Property Title Report Update approved by Rangeland Trust; (iii) an exception for the terms and conditions of the Conservation Easement (but not the provisions creating the insured interest); (iv) an exception for the terms and conditions of the Biological Monitoring Easement (but not the provisions creating the insured interest); (v) an exception for the off-record Alameda County Waste Management Grazing License dated November 1, 2015 (the "**Grazing License**") shown subordinated to the Conservation Easement and to the Biological Monitoring Easement; and (vi) the standard printed exceptions and exclusions from coverage (collectively, the "**Approved Preserve Property Exceptions**").

(b) **Title Insurance.** At Closing (as defined in Subsection 6(b) hereof) Rangeland Trust shall obtain a CLTA owner's policy of title insurance in the coverage amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (the "**Rangeland Trust Title Policy**") insuring that title to the Conservation Easement and title to the Biological Monitoring Easement is vested in Rangeland Trust subject only to the Approved Preserve Property Exceptions.

6. **Escrow and Closing.**

(a) **Escrow.** Golden Hills has opened an escrow (the "**Escrow**") with Chicago Title Company, 711 Third Avenue, New York, NY 10017, Attn: Siu Y. Cheung ("**Escrow Holder**"), for the purpose of holding funds and closing the conveyances of the

Conservation Easement and the Biological Monitoring Easement in accordance with this Agreement. The Parties shall deliver to the Escrow Holder such escrow instructions and other documents, in addition to the documents identified in Section 6(c) hereof, as are reasonable and necessary to carry out the provisions of this Agreement.

(b) **Closing**. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall occur not later than thirty (30) days following the satisfaction of the Conditions Precedent set forth in Section 2 above; *provided*, that this Agreement shall terminate if the Closing has not occurred by \_\_\_\_\_.

(c) **Deliveries into Escrow**.

(i) **By ACWMA**. ACWMA shall deliver, or cause to be delivered, to Escrow Holder: An original grant of the Conservation Easement, duly executed and acknowledged by ACWMA; an original grant of the Biological Monitoring Easement, duly executed and acknowledged by ACWMA; an original Mitigation Agreement, duly executed by ACWMA; and two (2) duplicate originals of the Baseline Conditions Report (as defined in Recital I of the Conservation Easement), duly executed by ACWMA.

(ii) **By Rangeland Trust**. Rangeland Trust shall deliver to Escrow Holder: An original grant of the Conservation Easement, duly executed and acknowledged by Rangeland Trust; an original grant of the Biological Monitoring Easement, duly executed and acknowledged by Rangeland Trust; an original Mitigation Agreement, duly executed by Rangeland Trust; a Consent and Subordination Agreement subordinating the off-record Grazing License to the Conservation Easement and the Biological Monitoring Easement, in a form approved by legal counsel for ACWMA and legal counsel for Rangeland Trust, duly executed and acknowledged by Rangeland Trust; and two (2) duplicate originals of the Baseline Conditions Report (as defined in Recital I of the Conservation Easement), duly executed by Rangeland Trust.

(iii) **By Golden Hills**. Golden Hills shall deliver into Escrow: The amount of the Rangeland Trust Funding; the amount of the Closing Expenses (as defined in Section 6(d) hereof); original counterpart(s) of the Conservation Easement, countersigned to show approval as to form by each of the Approval Agencies; an original Mitigation Agreement, duly executed by Golden Hills and approved as to form by USFWS, CDFW and County, which approval may take the form of written communication rather than counter-execution of the Mitigation Agreement.

(d) **Closing Expenses**. Golden Hills shall pay all fees and expenses of the Closing including, without limitation, all escrow fees, recording costs, document transfer fees and the premium for the Rangeland Trust Title Policy.

7. **Representations, Warranties and Covenants**.

(a) **ACWMA’s Representations and Warranties**. ACWMA makes the following representations and warranties.

(i) ACWMA has full power and authority to enter into this Agreement, and, as of the Closing, shall have the full power and authority to convey the

Conservation Easement and the Biological Monitoring Easement in accordance with this Agreement.

(ii) This Agreement has been duly executed and delivered by an authorized representative of ACWMA and constitutes the legal, valid and binding obligations of ACWMA in accordance with its terms.

(iii) Other than matters identified in the Title Report and in that certain Grazing License by and between ACWMA and Joseph R. and Charlene F. Paulo, dated November 1, 2015 (“Grazing License”), which by its terms and conditions will be subordinate to the Conservation Easement, no entity other than ACWMA will be in possession of any portion of the Preserve Property at the Closing.

(iv) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry, pending or threatened against or relating to ACWMA which would affect ACWMA’s ability to perform its obligations under this Agreement.

(v) Other than the liens and encumbrances identified in the Title Report and the Grazing License, there are no encumbrances or liens against any portion of the Preserve Property, including, but not limited to, unexpired leases, options, mortgages or deeds of trust.

(vi) ACWMA’s performance of this Agreement will not constitute a breach or default under any other agreement, whether written or oral, to which ACWMA is bound and/or to which the Preserve Property is subject.

(vii) Except as may be identified in the Environmental Phase 1 Site Assessment, to the best of ACWMA’s knowledge, without duty of inquiry, there is no condition at, on, under or related to the Preserve Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as defined below) on the Preserve Property nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Preserve Property or into or upon ground or surface water at the Preserve Property or within two thousand (2,000) feet of the boundaries of the Preserve Property. No Hazardous Substance is now or ever has been stored on the Preserve Property in pits or surface impoundments; nor is there any electrical transformer or other electrical equipment containing PCBs on the Preserve Property. For purposes of this Agreement, “**Hazardous Substance**” means any substance which is (A) defined as a hazardous waste, pollutant or contaminant under any Environmental Law (as defined below), (B) a petroleum hydrocarbon, including crude oil or any fraction thereof, (C) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or reproductive toxicant, (D) regulated pursuant to any environmental law, or (E) any pesticide regulated under state or federal law; and the term “**Environmental Law(s)**” means each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each agency or other governmental authority, pertaining to the protection of human health and safety or the environment.

(b) **Rangeland Trust's Representations and Warranties.** Rangeland Trust makes the following representations and warranties:

(i) Rangeland Trust has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(ii) This Agreement has been duly executed and delivered by a duly authorized representative of Rangeland Trust and constitutes the legal, valid and binding obligations of Rangeland Trust in accordance with its terms.

(iii) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry, pending or threatened against or relating to Rangeland Trust which would affect Rangeland Trust's ability to perform its obligations under this Agreement.

(iv) Rangeland Trust's performance of this Agreement will not constitute a breach or default under any other agreement, whether written or oral, to which Rangeland Trust is bound.

(v) Rangeland Trust is exempt from taxation under Section 501(c)(3), and is described in Section 170(h), of the Internal Revenue Code of 1986, as amended, and is not a private foundation within the meaning of Section 509(a) of the Code. Rangeland Trust has not received any notice from the Internal Revenue Service or from the State of California that its exempt status is under examination.

(vi) Rangeland Trust is authorized to hold conservation easements pursuant to California Civil Code §815.3 and has not received any notice from the State of California that such authorization is under examination.

(c) **Golden Hills' Representations and Warranties.** Golden Hills represents and warrants that this Agreement has been duly executed and delivered by an authorized representative of Golden Hills and constitutes the legal, valid and binding obligations of Golden Hills in accordance with its terms.

(d) **ACWMA's Covenants.** On and after the Effective Date and prior to Closing, unless specifically authorized by Rangeland Trust in writing, ACWMA shall not enter into any agreement that provides for the sale or transfer of all or a portion of the Preserve Property, including but not limited to conveyance of any natural resources on or underlying the Preserve Property; nor shall ACWMA sell, lease, transfer or convey all or any portion of the Preserve Property. In addition to ACWMA's covenant in the immediately preceding sentence, prior to the Closing ACWMA shall not take any of the following actions: (a) make or allow to be made, extend or allow to be extended any leases, contracts, options or agreements whatsoever affecting the Preserve Property that ACWMA cannot discharge or otherwise remove at Closing; (b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Preserve Property; (c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to ACWMA's actions or omissions, including but not limited to failure to make a required payment or failure to obtain the consent of a beneficiary under any deed of trust and/or mortgagee under any mortgage on the Preserve Property, if such consent is required under the terms of such deed of trust and/or mortgage; (d) sell, assign or otherwise transfer to any other

party any of the water rights, or other rights appurtenant to or relating to any portion of the Preserve Property; (e) undertake any work or improvements of any kind upon any part of the Preserve Property; or (f) use, produce, treat, store, release, transport or dispose of any Hazardous Substance on the Preserve Property.

8. **Breach of Representations, Warranties or Covenants.**

(a) **ACWMA's Breach of Representations, Warranties or Covenants.** All ACWMA's representations, warranties and covenants made in this Agreement are material and are relied upon by Rangeland Trust and Golden Hills in entering into this Agreement. All representations and warranties shall be deemed to have been made as of the date of the execution of this Agreement, and as of the Closing, and, notwithstanding the provisions of Section 14(d) of the Conservation Easement and the provisions of Section 13(b) of the Biological Monitoring Easement, all of ACWMA's representations and warranties shall survive the Closing. ACWMA shall indemnify, defend with counsel, reasonably acceptable to Rangeland Trust and to Golden Hills, and hold Rangeland Trust, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (the "**Rangeland Trust Indemnified Parties**") and Golden Hills, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (the "**Golden Hills Indemnified Parties**"), harmless from all expense, loss, liability, damages and claims, including attorneys' and experts' fees, arising out of the breach of any of ACWMA's representations, warranties and covenants. Upon Closing, if Rangeland Trust or Golden Hills so requests, ACWMA shall deliver to Rangeland Trust and/or Golden Hills a certificate in a form satisfactory to Rangeland Trust's counsel and/or to Golden Hills' counsel, as applicable, stating that all of their respective representations and warranties are true and correct as of the Closing.

(b) **Rangeland Trust's Breach of Representations or Warranties.** All Rangeland Trust's representations and warranties made in this Agreement are material and are relied upon by ACWMA and Golden Hills in entering into this Agreement. All representations and warranties shall be deemed to have been made as of the date of the execution of this Agreement, and as of the Closing, and, notwithstanding the provisions of Section 14(d) of the Conservation Easement and the provisions of Section 13(b) of the Biological Monitoring Easement, all of Rangeland Trust's representations and warranties shall survive the Closing. Rangeland Trust shall indemnify, defend with counsel reasonably acceptable to ACWMA and to Golden Hills, and hold ACWMA, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (the "**ACWMA Indemnified Parties**") and the Golden Hills Indemnified Parties harmless from all expense, loss, liability, damages and claims, including attorneys' and experts' fees, arising out of the breach of any of Rangeland Trust's representations, warranties and covenants. Upon Closing, if ACWMA or Golden Hills so requests, Rangeland Trust shall deliver to ACWMA and/or Golden Hills a certificate in a form satisfactory to ACWMA's counsel and/or to Golden Hills' counsel, as applicable, stating that all of their respective representations and warranties are true and correct as of the Closing.

(c) **Golden Hills' Breach of Representations or Warranties.** All Golden Hills' representations, warranties and covenants made in this Agreement are material and are relied upon by ACWMA and Rangeland Trust in entering into this Agreement. All representations and warranties shall be deemed to have been made as of the date of the execution

of this Agreement, and as of the Closing, and, notwithstanding the provisions of Section 14(d) of the Conservation Easement and the provisions of Section 13(b) of the Biological Monitoring Easement, all of Golden Hills' representations and warranties shall survive the Closing. Golden Hills shall indemnify, defend with counsel, reasonably acceptable to ACWMA and to Rangeland Trust, and hold the ACWMA Authority Indemnified Parties and the Rangeland Trust Indemnified Parties harmless from all expense, loss, liability, damages and claims, including attorneys' and experts' fees, arising out of the breach of any of Golden Hills' representations, warranties and covenants. Upon Closing, if ACWMA or Rangeland Trust so requests, Golden Hills shall deliver to ACWMA and/or Rangeland Trust and Golden Hills a certificate in a form satisfactory to ACWMA's counsel and/or to Rangeland Trust's counsel, as applicable, stating that all of their respective representations and warranties are true and correct as of the Closing.

9. **Interest.** If any monetary obligations arise amongst or between the Parties, the Party or Parties owing such funds shall pay to the Party or Parties due such funds (collectively, "**Creditor Party**"), on demand, interest, at the rate of one percent (1%) per annum (based on a 360-day year and charged on the basis of actual days elapsed) in excess of Bank of America's "Prime Rate" in effect from time to time, on any costs, fees (including attorneys' fees, consultant fees, and expert fees) or expenses incurred by Creditor Party in the enforcement of this Agreement or on any sums Creditor Party is obligated to pay in respect to the Creditor Party matters with respect to which indemnity is given under this Agreement, from the date of Creditor Party's demand. As used herein, the term "Prime Rate" means a base rate of interest which Bank of America establishes from time to time and which serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto. Any change in the rate of interest on such expense, costs or sums due to a change in the Prime Rate shall be effective on the date each such change in the Prime Rate is announced by Bank of America.

10. **Legal Costs.** If any Party to this Agreement shall take any action to enforce this Agreement or bring any action for any relief against any other Party, declaratory or otherwise, arising out of this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs due hereunder. The amount of such fees and costs shall be determined by a court of competent jurisdiction and not by a jury. For the purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees incurred in the following: (a) post-judgment motions; (b) appeal proceedings; (c) contempt proceedings; (d) garnishment, levy, and debtor and third party examinations; (e) discovery; and (f) bankruptcy litigation.

11. **Broker's Commission.** ACWMA, Rangeland Trust and Golden Hills each warrants and represents to each other Party that it has not retained, nor is it obligated to, any person or entity for brokerage, finder's or similar services in connection with the transactions contemplated by this Agreement, and that no commission, finder's fee or other brokerage or agent's compensation can be properly claimed by any person or entity based upon the acts of such party with regard to the transactions which are the subject matter of this Agreement. Each Party shall indemnify, defend and hold harmless each other Party from and against all obligations, liabilities, claims, damages, costs, expenses and fees (including reasonable

attorneys' and experts' fees and costs) arising from or related to such party's breach of the foregoing representation and warranty, and, notwithstanding the provisions of Section 14(d) of the Conservation Easement and the provisions of Section 13(b) of the Biological Monitoring Easement, such indemnity obligations shall survive the Closing, or the earlier termination of this Agreement, as applicable.

12. **Further Assurances.** The Parties agree to execute such additional documents and to take such additional actions as are consistent with, and which may be reasonable and necessary to carry out the provisions of, this Agreement.

13. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Agreement in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth beneath such party's signature on this Agreement, or at such other address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given on the second (2nd) business day immediately following the date it was deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day (not including Saturday) immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic mail shall be deemed to have been given on the earlier of (i) the date and at the time as the sending party (or such party's agent) shall have received from the receiving party (or such party's agent) oral or electronic confirmation of the receipt of such transmission or (ii) one hour after the completion of transmission of the entire communication.

14. **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 other day on which public agencies and major banks are not open for business in California (each a "Non-Business Day"), such date shall be deemed to be the succeeding business day. For purposes of this Agreement, a "business day" shall mean a day other than a Non-Business Day.

15. **Entire Agreement; Modification; Waiver.** This Agreement contains the entire agreement between Rangeland Trust and ACWMA pertaining to the Preserve Property and supersedes all prior and contemporaneous agreements, representations, and understandings by and between Rangeland Trust and ACWMA. This Agreement and the Conservation Services Agreement by and between Golden Hills and Rangeland Trust dated June 28, 2016 for reference purposes only, together contain the entire agreement between Golden Hills and Rangeland Trust pertaining to the Preserve Property and supersede all prior and contemporaneous agreements, representations, and understandings by and between Rangeland Trust. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by 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.

16. **Binding on Successors.** This Agreement shall be binding upon the Parties and also upon their assigns, and other successors in interest.

17. **Assignment.** Rangeland Trust may not assign its interests under this Agreement to any other party without the prior written consent of ACWMA and Golden Hills, each of which may grant or withhold in its sole discretion. ACWMA may not assign its obligations under this Agreement to any other party without the prior written consent of Rangeland Trust and Golden Hills, each of which may grant or withhold in its sole discretion. Golden Hills may not assign its obligations under this Agreement to any other party without the prior written consent of ACWMA and Rangeland Trust, each of which may grant or withhold in its sole discretion.

18. **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, so long as the provision(s) determined to be unenforceable does/do not materially alter the essential terms of this Agreement.

19. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any dispute arising hereunder shall be in Alameda County, California.

20. **Drafting.** The Parties acknowledge and agree that each Party and its counsel have reviewed and revised this Agreement and that the rule of construction and provisions of California Civil Code Section 1654 to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

21. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission or as a “pdf” file attached to an electronic mail message) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

IN WITNESS of the foregoing provisions, the Parties have executed this Agreement as set forth below.

**ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY,**  
a California joint powers agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Wendy Sommer  
Title: Executive Director

Address:  
Alameda County Waste Management Authority  
Attn: Executive Director  
1537 Webster Street  
Oakland, CA 94612  
Tel: 510-891-6551

E-Mail: [wsommer@stopwaste.org](mailto:wsommer@stopwaste.org)

**CALIFORNIA RANGELAND TRUST,**  
a California non profit public benefit corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nita C. Vail  
Its: Chief Executive Officer

Address:  
California Rangeland Trust  
1221 H Street  
Sacramento, CA 95814  
Attn: Chief Operating Officer  
Tel: 916-444-2096  
E-mail: [mdelbar@rangelandtrust.org](mailto:mdelbar@rangelandtrust.org)

**GOLDEN HILLS WIND, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Its:

Date: \_\_\_\_\_

Address:

Golden Hills Wind, LLC

Attn: \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Exhibits:**

- A – Legal Description of Preserve Property
- B – Map of Preserve Property
- C – Form of Conservation Easement
- D – Management Plan
- E – Conservation Easement Stewardship PAR
- F – Form of Biological Monitoring Easement
- G – Mitigation Agreement

**Exhibit A to  
Agreement for Conveyances of Easements**

**LEGAL DESCRIPTION OF PRESERVE PROPERTY**

Real property in the unincorporated area of the County of Alameda, State of California,  
described as follows:

**Exhibit B to  
Agreement for Conveyances of Easements**

**MAP OF PRESERVE PROPERTY**

**[SEE FOLLOWING PAGE.]**

**Exhibit C to  
Agreement for Conveyances of Easements**

**CONSERVATION EASEMENT**

**[FOLLOWING IS THE FORM OF THE CONSERVATION EASEMENT.]**

**Exhibit D to  
Agreement for Conveyances of Easements**

**MANAGEMENT PLAN**

**[FOLLOWING IS THE MANAGEMENT PLAN.]**

**Exhibit E to  
Agreement for Conveyances of Easements**

**CONSERVATION EASEMENT STEWARDSHIP PAR**

**[FOLLOWING IS THE APPROVED CONSERVATION EASEMENT STEWARDSHIP  
PAR.]**

**Exhibit F to  
Agreement for Conveyances of Easements**

**PRESERVE MONITORING SERVITUDE**

**[FOLLOWING IS THE FORM OF PRESERVE MONITORING SERVITUDE.]**

**Exhibit G to  
Agreement for Conveyances of Easements**

**MITIGATION AGREEMENT**

**[FOLLOWING IS THE FORM OF MITIGATION AGREEMENT.]**

823610.4

**AMENDMENT TO AGREEMENT FOR PURCHASE OF CONSERVATION  
EASEMENT**

This AMENDMENT TO AGREEMENT FOR PURCHASE OF CONSERVATION EASEMENT ("Amendment") effective as of August \_\_\_\_, 2018 ("Effective Date") is made by and between Alameda County Waste Management Authority ("Seller") and Golden Hills Wind, LLC, a Delaware limited liability company ("Buyer"). Seller and Buyer are each individually referred to as a "Party" and collectively as the "Parties".

**RECITALS**

A. Seller and Buyer entered into that certain Agreement for Purchase of Conservation Easement, dated September 17, 2015 ("Purchase Agreement") encumbering the real property described on Exhibit A, attached to the Purchase Agreement.

B. The Parties acknowledge the Purchase Agreement is in full force and effect.

C. The Parties wish to amend the Purchase Agreement in the manner hereinafter provided.

**NOW THEREFORE**, in consideration of the foregoing recitals and the agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree to amend the Purchase Agreement as follows:

1. Unless otherwise defined in this Amendment, all capitalized terms used herein shall have the meanings given to them in the Purchase Agreement. Except as modified by this Amendment, the Purchase Agreement remains in full force and effect; provided, however, that in the event of any conflict between the Purchase Agreement and this Amendment, this Amendment shall govern and control.

2. The Recitals set forth above are true and correct.

3. Section 8.2, Closing Date, is amended by replacing "September 30, 2017" with "June 30, 2019".

4. The Purchase Price under Section 2.2(b) of the Purchase Agreement is hereby replaced with the following:

"(1) If the Conservation Easement is recorded on or before December 31, 2018, Buyer shall pay to Seller eleven thousand dollars (\$11,000) per acre for two hundred (200) acres of the Conservation Easement Property. However, if CDFW or USFWS has provided written documentation prior to December 31, 2018 stating or showing that some portion of the Conservation Easement Property is not suitable for mitigation, pursuant to Section 2.2(a), Buyer shall pay Seller eleven thousand dollars (\$11,000) per acre for only the acreage of the Conservation Easement Property (if any) that is suitable for mitigation.

(2) If the Conservation Easement is recorded after December 31, 2018 and prior to June 30, 2019, Buyer shall pay to Seller eleven thousand five hundred dollars (\$11,500) per acre for two hundred (200) acres of the Conservation Easement Property. However, if CDFW or USFWS has provided written documentation prior to December 31, 2018 stating or showing that some portion of the Conservation Easement Property is not suitable for mitigation, pursuant to Section 2.2(a), Buyer shall pay Seller eleven thousand five hundred dollars (\$11,500) per acre for only the acreage of the Conservation Easement Property (if any) that is suitable for mitigation.

(3) If the Conservation Easement is not recorded prior to the Closing Date of June 30, 2019, then prior to July 31, 2019 Buyer shall pay Seller directly eleven thousand five hundred dollars (\$11,500) for two hundred (200) acres of the Conservation Easement Property. However, if CDFW or USFWS has provided written documentation prior to June 30, 2019 stating or showing that some portion of the Conservation Easement Property is not suitable for mitigation, pursuant to Section 2.2 (a) Buyer shall pay Seller eleven thousand five hundred dollars (\$11,500) per acre for only the acreage of the Conservation Easement Property (if any) that is suitable for mitigation. If the payment required by this Section is not received prior to July 31, 2019, interest shall accrue at ten percent (10%) per annum. Buyer shall pay the amount due under this Section even if the Conservation Easement is never recorded.”

5. Section 9.2, Failure to Record Easement, is amended by replacing “September 30, 2017” with “June 30, 2019”.

6. Section 9.3, Written Notice of No Suitable Mitigation Acreage, is amended by replacing “August 31, 2017” with “June 30, 2019”.

7. Buyer shall pay Seller two hundred thousand dollars (\$200,000) within twenty (20) days of the Amendment Effective Date which shall be a credit towards the Purchase Price at the closing.

8. The Parties agree to execute a memorandum of this Amendment in the form attached hereto as **Exhibit 1** simultaneously with the execution of this Amendment, which memorandum may be recorded by Buyer at its expense in the Official Records.

9. The terms and provisions of the Purchase Agreement, as amended hereby, are hereby ratified and affirmed and declared to be in full force and effect. This Amendment shall become legally binding on the Parties upon its execution, which may occur in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Amendment effective as of the date written above.

**SELLER**

Alameda County Waste Management Authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Amendment effective as of the date written above.

**PURCHASER**

Golden Hills Wind, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Vice President

**EXHIBIT 1**  
[MEMORANDUM ON THE FOLLOWING PAGE]

After Recording Return To:  
Joshua Escoto  
NextEra Energy Resources, LLC  
700 Universe Blvd. (LAW/JB)  
Juno Beach, FL 33408

This document does not grant, assign, transfer, convey or vest title to real property within the meaning of Section 11911 of the California Revenue and Taxation Code, and hence NO DOCUMENTARY TRANSFER TAX IS DUE.

APN 099A-1770-004 and APN 099A-1820-002

**MEMORANDUM OF AMENDMENT TO AGREEMENT FOR PURCHASE OF  
CONSERVATION EASEMENT**

This MEMORANDUM OF AMENDMENT TO AGREEMENT FOR PURCHASE OF CONSERVATION EASEMENT ("Amendment") effective as of August \_\_, 2018 ("Effective Date") is made by and between Alameda County Waste Management Authority ("Seller") and Golden Hills Wind, LLC, a Delaware limited liability company ("Buyer"). Seller and Buyer are each individually referred to as a "Party" and collectively as the "Parties".

**RECITALS**

- A. Seller and Buyer entered into that certain Agreement for Purchase of Conservation Easement, dated September 17, 2015 ("Purchase Agreement") encumbering the real property described on Exhibit A, attached to the Purchase Agreement.
- B. The Parties acknowledge the Purchase Agreement is in full force and effect and neither Party is in default of its obligations thereunder.
- C. The Parties wish to amend the Purchase Agreement in the manner hereinafter provided.

**NOW THEREFORE**, in consideration of the foregoing recitals and the agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

- 1. The Closing Date shall be on or before June 30, 2019.
- 2. The terms and provisions of the Purchase Agreement, as amended, are hereby ratified and affirmed and declared to be in full force and effect. This Amendment shall become

legally binding on the Parties upon its execution, which may occur in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Amendment effective as of the date written above.

**SELLER**

Alameda County Waste Management Authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

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

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

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

WITNESS my hand and official seal.

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



## EXHIBIT "A"

### Description of Property

#### Conservation Easement Property

##### Parcel 1

The Southwest 1/4 of Section 4 Township 3 South, Range 3 East, Mt. Diablo Base and Meridian, according to the Official Plat of the survey of said lands returned to the general land Office by the surveyor general.

Excepting from the above described land the portion thereof included in a forty foot roadway conveyed by T.W. Twohey, et al, to County of Alameda, by Deed dated March 31, 1914 and Recorded June 4, 1915, in Book 2339 of Deeds at Page 285, Alameda County Records.

Excepting therefrom:

All oil, minerals, gas or mines in, on, or under the herein described property, as reserved in the following deeds:

(1) Mary Seeband to John W. Twohney, dated August 14, 1917 and recorded in Book 2585 of Deeds, at Page 357, Series No. R29163 Alameda County Records, affecting an undivided 1/8 interest;

(2) Elizabeth Smith to John W. Twohney, dated August 14, 1917 and recorded in Book 2604 of Deeds, at Page 59, Series No. R29165 Alameda County Records, affecting an undivided 1/8 interest;

(3) Joseph P. Twohney and wife to Margaret Twohney, dated January 28, 1918 and recorded in Book 2758 of Deeds, at Page 113, Series No. S11606 Alameda County Records, affecting an undivided 1/8 interest.

(4) From Mary Fallon et ux, recorded February 9, 1979, Series No. 79-25834, Alameda County Records as follows: Grantor reserves 75% of oil petroleum, natural gas, mineral rights and other hydrocarbon substances lying below a depth of 500 vertical feet from the surface of said land for the purpose of exploring for, extracting, mining, boring, removing or marketing said substances, however, without any right of entry upon the surface of said land.

Excepting therefrom that portion described in the deed to the County of Alameda, Recorded June 4, 1915, Book 2339 of Deeds, Page 285, Series No. Q2320, Alameda County Records.

Assessor's Parcel No. 099A-1770-004

##### Parcel 2

The Northeast 1/4 of Section 10, Township 3 South, Range 3 East, Mount Diablo Base and Meridian.

Assessor's Parcel No.: 099A-1820-002

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Assistant General Counsel – Real Estate  
NextEra Energy Resources, LLC  
700 Universe Boulevard (LAW/JB)  
Juno Beach, Florida 33408

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Assessor's Parcel No. 99A-1770-004

**SECOND AMENDMENT TO AMENDED  
AND RESTATED EASEMENT AGREEMENT**

This Second Amendment to Amended and Restated Easement Agreement (“**Second Amendment**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“**Effective Date**”), by and between ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY (“**ACWMA**”) and GOLDEN HILLS WIND, LLC, a Delaware limited liability company (“**Operator**”), who are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, on October 21, 2004 Green Ridge Power, LLC and ACWMA entered into an Amended and Restated Easement Agreement, which was subsequently amended in that First Amendment to Amended and Restated Easement Agreement dated June 6, 2014 (“**First Amendment**”), both evidenced by that certain Memorandum of Easement and Amendment recorded on August 18, 2014 as Instrument No. 2014203236 Official Records of Alameda County, California (collectively “**Amended Agreement**”);

WHEREAS, Green Ridge Power, LLC assigned the Amended Agreement to Operator by Assignment of Wind Farm Easement Agreements and Short Form of Wind Farm Easement Agreements, recorded April 20, 2015 as Instrument No. 2015102132 Official Records of Alameda County, California;

WHEREAS, the real estate encumbered by the Amended Agreement is situated in Alameda County, California and was more particularly described on Exhibits “A”, “B”, “C” (as amended by the First Amendment), and “E”, attached to the Amended Agreement (collectively, “**Amended Agreement Property**”);

WHEREAS, Operator delivered a Repowering Notice to ACWMA in accordance with the Amended Agreement which was recorded April 20, 2015 as Instrument No. 2015102134 Official Records of Alameda County, California, which identified the portion of the Amended Agreement Property on which the Operator intended to install new wind generators, towers, and associated

facilities (“**Repowering Project**”);

WHEREAS, the Repowering Notice did not include that portion of the Amended Agreement Property described in Exhibit E attached to the Amended Agreement and more particularly described on **Exhibit A** attached to this Second Amendment and incorporated herein by reference (“**Non-Repowering Property**”); and

WHEREAS, the Parties hereto agree to amend the Amended Agreement in the manner set forth herein as to the Non-Repowering Property only.

NOW THEREFORE, for good and valuable consideration set forth herein, the adequacy and receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. The Recitals set forth above are true and correct and incorporated herein.
2. All capitalized terms used in this Second Amendment shall have the same meaning given them in the Amended Agreement except as otherwise defined in the Second Amendment.
3. Effective February 16, 2019, subsection D.1.1 in Exhibit D to the First Amendment, is hereby amended to provide that “Commencing on July 31, 2019, all Installment Payments shall be paid on or before July 31<sup>st</sup> each year, on an annual basis beginning July 1<sup>st</sup> of the preceding year to June 30<sup>th</sup> of the subsequent year, in the amount of the Minimum Payment plus the difference between the Minimum Payment and the Royalty Payment (as defined below) for the previous complete or partial annual period, provided the Royalty Payment exceeds the Minimum Payment. For greater clarity, on February 15, 2019, Operator shall make the Installment Payment as contemplated under the First Amendment and on July 31, 2019, Operator shall make an Installment Payment which shall apply to a partial annual period beginning January 1, 2019 and ending June 30, 2019. Thereafter, Operator shall make Installment Payments on July 31, 2020 (which shall apply to a complete annual period beginning July 1, 2019 and ending June 30, 2020) and on each July 31 thereafter.”
4. Except as reserved in Section 5, Section 6 and Section 7 below, Operator hereby releases all right, title and interest in the Non-Repowering Property to construct Green Ridge Facilities or engage in Green Ridge Activities. The “Property” as defined in the Amended Agreement and as used in this Second Amendment shall exclude the Non-Repowering Property such that all references in the Amended Agreement and this Second Amendment to “Property” shall not include the Non-Repowering Property.
5. ACWMA’s activities and any grants of rights ACWMA have made or after the Effective Date may make to any other person or entity on the Non-Repowering Property shall not materially interfere with Green Ridge Activities. Material interference with Green Ridge Activities is defined as material interference with the wind speed or wind direction over the Property or the Non-Repowering Property or engaging in any other activity on the Non-Repowering Property that causes a material decrease in the output and efficiency of the Green Ridge Facilities. The following activities shall be deemed not to interfere materially with Green Ridge Activities: (i) studies, research and programs that investigate species on, and characteristics

of, the Non-Repowering Property; (ii) habitat restoration and protection of the Non-Repowering Property through the creation of a conservation easement, to the extent none of the activities increase Operator's compliance requirements, result in violations of law for the Repowering Project or involve the construction or installation of any permanent structures; (iii) the grazing of livestock; (iv) implementation, operation and maintenance of grazing livestock operations on the Non-Repowering Property, including routine maintenance of plumbing, fencing, water and other related facilities. Notwithstanding the restrictions in this Section, ACWMA expressly reserves the right to use the Non-Repowering Property for agricultural purposes and for exploitation of oil, gas and mineral rights that will not interfere materially with Operator's operations and enjoyment of the right granted to Operator.

6. In the event ACWMA wishes to approve, construct and/or operate a facility on the Non-Repowering Property that could have the potential to materially interfere with Green Ridge Activities, the ACWMA shall consult with Operator, and the Parties shall discuss in good faith whether the proposed facility would materially interfere with Green Ridge Activities, and if so, how to modify the proposed facility or activity to avoid, if possible, such material interference. ACWMA shall provide, at its expense, plans, drawings and such other information needed for Operator to determine whether the proposed facility would materially interfere with Green Ridge Activities. If Operator determines the proposed facility would interfere then Operator shall also provide any additional supporting documentation used to make the determination to ACWMA.

7. ACWMA hereby releases Operator from any and all claims for damages arising from any injury, loss, harm or conditions due to nuisance, trespass, disturbance, effects, diminishment of the value of the Non-Repowering Property, proximity of the Repowering Project to the Non-Repowering Property, or interference with the ability to use or enjoy the Non-Repowering Property, which may appear or develop in the future, caused or alleged to be caused by the Repowering Project whether claimed or not claimed, or which hereinafter might be brought by ACWMA or any of their successors and assigns. Notwithstanding the foregoing, ACWMA does not release Operator from any claims or damages resulting from any violation of applicable law.

8. All of the terms, conditions and provisions of the Amended Agreement not in conflict herewith shall remain in full force and effect and are hereby ratified.

9. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

SIGNATURES ON NEXT PAGES





## EXHIBIT "A"

The Southwest 1/4 of Section 4 Township 3 South, Range 3 East, Mt. Diablo Base and Meridian, according to the Official Plat of the survey of said lands returned to the general land Office by the surveyor general.

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Assessor's Parcel No. 99A-1770-004