

RESOLUTION NO. 2015-125

**A RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
AUTHORIZING THE COUNTY EXECUTIVE OFFICER TO EXECUTE
FUNDING AGREEMENTS TO IMPLEMENT A TAX NEUTRALITY REQUIREMENT**

WHEREAS, the Funding Agreement to Implement Tax Neutrality Requirement ("Agreement") as described in Exhibit A, is entered into as of the effective date by and between the Pacific Forest and Watershed Lands Stewardship Council, a California nonprofit public benefit corporation ("Stewardship Council") and County of Shasta, a public entity ("County") with reference to the following; and

WHEREAS, the Stewardship Council was created to oversee the "Land Conservation Commitment" described in that certain Settlement Agreement among Pacific Gas and Electric Company ("PG&E"), PG&E Corporation, and the California Public Utilities Commission (the "Commission") as modified and approved by the Commission in its Opinion and Order of December 18, 2003 (Decision 03-12-035) (the "Settlement Agreement"); and that certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "Stipulation"). The Stewardship Council has limited assets and no foreseeable sources of revenue and consequently the Stewardship Council is anticipated to dissolve or otherwise wind down or cease to operate in the future; and

WHEREAS, pursuant to the Settlement Agreement and Stipulation, certain lands owned by PG&E at the time of the Settlement (the "PG&E Watershed Lands") are to be conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The Stewardship Council is charged with developing a Land Conservation Plan ("LCP") for the protection and enhancement of the PG&E Watershed Lands; and

WHEREAS, in connection with the Land Conservation Commitment, approximately 23,500 acres of PG&E Watershed Lands in Shasta County that PG&E agreed to make available for donation are anticipated to be donated to eligible organizations; and

WHEREAS, the Settlement Agreement requires that the LCP assess that any donation will not adversely impact local tax revenue, and the Stipulation requires that an appropriate entity provide property tax revenue, other equivalent revenue source, or a lump sum payment so that the totality of the dispositions in each affected county under the Land Conservation Commitment will be tax neutral for that county ("Tax Neutrality Requirement"). By and through the Agreement, Shasta County and Stewardship Council desire, among other things, to confirm and acknowledge that the Tax Neutrality Requirement has been met; and

WHEREAS, in consideration of the covenants and obligations set forth herein, the Stewardship Council intends that the funding be provided to Shasta County as described below, and Shasta County desires to accept such funding, all subject to the terms and conditions described in the Agreement;

NOW, THEREFORE, BE IT RESOLVED, each Agreement shall become effective as of the last date it has been signed by both parties ("Effective Date"). The provisions of each Agreement shall survive the closing of the transactions contemplated hereby and Stewardship Council's dissolution, winding down or ceasing operations.

BE IT FURTHER RESOLVED, that the County Executive Officer is hereby authorized to execute all funding agreements to implement tax neutrality.

BE IT FURTHER RESOLVED, that the County of Shasta elects to receive the Tax Neutrality Requirement payments in annual installments with the understanding that within 60 days of the recording of the Grant Deed for each property that PG&E conveys, the Stewardship Council will do one of the following: (1) for an initial period of time, make installment payments itself to the County of Shasta, or (2) after the donation of lands to a tax exempt entity, deposit the funding stipulated by the funding agreement with a third party trustee which would be responsible for making annual payments to Shasta County.

BE IT FURTHER RESOLVED, within 30 days of the execution of the first Agreement, the Stewardship Council will make a \$3,000 payment to County for its administrative costs to set up the process to allocate payments to special districts consistent with the methodologies described in Division 1 of the California Revenue and Taxation Code.

DULY PASSED AND ADOPTED this 13th day of October, 2015 by the Board of Supervisors of the County of Shasta by the following vote:

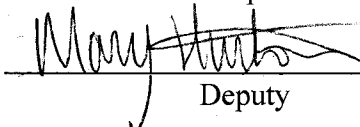
AYES:	Supervisors Kehoe, Moty, Giacomini, Schappell and Baugh
NOES:	None
ABSENT:	None
ABSTAIN:	None
RECUSE:	None



LEONARD MOTY, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: 
Deputy

**Template Funding Agreement
to Implement Tax Neutrality Requirement
(clean version with revisions accepted by Shasta County on 12.1.14)**

This Funding Agreement to Implement Tax Neutrality Requirement ("Agreement") is entered into as of the Effective Date (defined below) by and between the **Pacific Forest and Watershed Lands Stewardship Council**, a California nonprofit public benefit corporation ("**Stewardship Council**") and **County of Shasta**, a public entity ("**County**") with reference to the following facts:

A. The Stewardship Council was created to oversee the "**Land Conservation Commitment**" described in (1) that certain Settlement Agreement among Pacific Gas and Electric Company ("**PG&E**"), PG&E Corporation, and the California Public Utilities Commission (the "**Commission**") as modified and approved by the Commission in its Opinion and Order of December 18, 2003 (Decision 03-12-035) (the "**Settlement Agreement**"); and (2) that certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "**Stipulation**"). The Stewardship Council has limited assets and no foreseeable sources of revenue, and consequently the Stewardship Council is anticipated to dissolve or otherwise wind down or cease to operate in the future.

B. Pursuant to the Settlement Agreement and Stipulation, certain lands owned by PG&E at the time of the Settlement (the "**PG&E Watershed Lands**") are to be conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The Stewardship Council is charged with developing a Land Conservation Plan ("**LCP**") for the protection and enhancement of the PG&E Watershed Lands.

C. In connection with the Land Conservation Commitment, PG&E has agreed to donate a portion of the PG&E Watershed Lands to eligible organizations, including the lands described below in paragraph 2.

D. The Settlement Agreement requires that the LCP assess that any donation will not adversely impact local tax revenue, and the Stipulation requires that an appropriate entity provide property tax revenue, other equivalent revenue source, or a lump sum payment so that the totality of the dispositions in each affected county under the Land Conservation Commitment will be tax neutral for that county ("**Tax Neutrality Requirement**"). By and through this Agreement, County and Stewardship Council desire, among other things, to confirm and acknowledge that the Tax Neutrality Requirement has been met for the Property that is the subject of this Agreement.

E. In consideration of the covenants and obligations set forth herein, the Stewardship Council intends that the funding be provided to County as described in Section 3, and County desires to accept such funding, all subject to the terms and conditions described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, and the mutual covenants and obligations of the parties herein contained, the Stewardship Council and County agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective as of the last date it has been signed by both parties. ("**Effective Date**"). The provisions of this Agreement shall survive the closing of the transactions contemplated hereby and Stewardship Council's dissolution, winding down or ceasing operations.

2. **Property.** The Property consists of approximately _____ acres of real property located in the County of Shasta, State of California, within what is commonly known as the _____ Planning Unit and as more particularly described in Exhibit A attached and incorporated by this reference. The Property is expected to be transferred to the [name of fee title donee and status, e.g. a political subdivision of the State of California, nonprofit, etc.]

3. **Funding Allocation.** Within 60 days of the recording of the Grant Deed in favor of the [fee title donee] in the Official Records of Shasta County (the "Recording Date"), the Stewardship Council will set aside and provide for the sum of _____ (\$_____) ("**Funding Allocation**"), to be paid to County or to an account holder for the benefit of County ("**Designee Account Holder**"), or to be reserved by the Stewardship Council for initial annual installment payments under Option B. County elects the payment method selected below as indicated by the checked box with the understanding that the availability of Option B is contingent upon sufficient participation by counties in Option B to meet the Designee Account Holder's minimum account size. *[Drafting Note: If a Welfare Exemption is needed for a fee title donee, the language of this paragraph would be revised so that it would state that the payment would be made the later of the following: within 60 days of the Recording Date or receipt by the fee title donee of a Welfare Exemption letter for the Property. The same change would be made in the below sections pertaining to Option A and Option B]*

☐ **Option A: Lump Sum.** The Funding Allocation will be paid to County in a single lump sum payment of _____ no later than 60 days after the Recording Date based upon the Payment Calculation provided in Exhibit B.

☐ **Option B: Installment Payments.** Annual installment payments will be paid to County initially by either the Stewardship Council or the Designee Account Holder and ultimately solely by the Designee Account Holder.

a. If the Stewardship Council elects to make one or more initial installment payments itself, the annual installment would be \$ _____ per year unless an adjustment to the amount is made pursuant to Section 4 of this Agreement. The amount of the installment payment for the year during which the Property was transferred will be prorated and payable to County no later than 60 days after the Stewardship Council and County have agreed to any adjustment of the annual payment amount pursuant to Section 4 of this Agreement. Thereafter, in any year when the Stewardship Council elects to make the annual payment, the payment will be made no later than the close of County's fiscal year (June 30). *[Drafting Note: The amount of the annual installment would be equal to the reduction in the amount of annual taxes received by the County General Funds, schools and fire districts, other special districts due to the transfer of the Property to a tax exempt entity as calculated in the year that the transfer of the Property occurred.]*

b. Upon the Stewardship Council's election to transfer the annual installment payment obligation to the Designee Account Holder, the Stewardship Council will transfer the Funding Allocation in the amount set forth in Option A above to the Designee

Account Holder and the Designee Account Holder would deposit the Funding Allocation in an investment account ("**Funding Allocation Account**").

Each annual installment payment made by the Designee Account Holder will be equal to four percent of the rolling twenty quarter average of the net fair market value of the assets of the Funding Allocation Account valued as of the first day of each taxable year of the account (hereinafter "**the valuation date**"). The installment payments will be made annually at the end of each calendar year from income and, to the extent income is not sufficient, from principal. Any income of the Funding Allocation Account for a taxable year in excess of the installment amount shall be added to principal. *[Drafting Note: If Option B is selected and a Designee Account Holder has been selected before the date this Agreement is executed, an Exhibit E would be attached to the agreement providing more details about the trustee and nature of the investment account.]*

4. Change of Annual Taxes Due to Passage of Time. The parties acknowledge that the Funding Allocation amount described in Section 3 above is based upon the most recent assessed value and tax rate available at the time the agreement was executed. At the Recording Date, if the annual taxes paid by PG&E have changed due to the passage of time, the parties will amend the agreement in a timely manner to reflect a revised Funding Allocation based upon the new property tax amount.

5. Satisfaction of Tax Neutrality Requirement.

a. The County hereby agrees with the Tax Neutrality Methodology attached hereto as Exhibit C as being an appropriate method to calculate the Funding Allocation.

b. The parties hereby agree and acknowledge that the Funding Allocation represents a reasonable payment to the County in lieu of property taxes which might otherwise have been received by County from the owner of the Property, and that the Funding Allocation satisfies the Tax Neutrality Requirement with regard to the donation of the Property.

c. The County hereby waives and releases all claims, currently known or unknown, relating to the final calculation of the Funding Allocation and the Tax Neutrality Methodology that was used by the Stewardship Council to determine the amount of the Funding Allocation.

6. Welfare Exemption. County agrees that the County Assessor will not unreasonably withhold approval of the Welfare Exemption from Property Taxes in the event that the Property is subsequently conveyed to another organization qualified for said exemption with regard to the Property.

7. Risk of Loss; Waiver and Release; Estoppel.

a. Provided that County selected the Option B Funding Allocation, effective upon the date that the Option B Funding Allocation has been transferred to the Designee Account Holder, County will assume the risk that the Option B Funding Allocation may be reduced or lost due to market conditions and/or use of principal to make installment payments. Neither the Stewardship Council nor any of the Stewardship Council's direct and indirect past, present and future shareholders, partners, members, trustees, officers, directors, principals, parents, subsidiaries, affiliates, employees, agents, contractors, transferees, successor(s), and

assignees (collectively, the "**Related Entities**"), except for the Designee Account Holder, is responsible for management of the funds in the Funding Allocation Account by Designee Account Holder or oversight of the Designee Account Holder.

b. Regardless of the payment option selected, County hereby waives and releases the Stewardship Council and any of the Related Entities, except for the Designee Account Holder, from all claims, currently known or unknown, which may arise from any reduction or loss of the Option B Funding Allocation when held by the Designee Account Holder, any reduction or loss of Funding Allocation under Option A, or potential or actual tax loss, and County is estopped from asserting that the Funding Allocation was not a reasonable payment in lieu of taxes, or otherwise does not satisfy the Tax Neutrality Requirement with regard to the donation of the Property.

c. County expressly waives any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

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

8. Distribution of Funding Allocation to Other Local Agencies.

a. County agrees to pay reasonable and timely distributions from said Funding Allocation to special districts and other local agencies consistent with the methodologies described in Division 1 of the California Revenue and Taxation Code. Distributions from the Funding Allocation shall be the sole responsibility of the County and the Stewardship Council shall have no responsibility to verify or ensure that such distributions are paid or made consistent with the methodologies described in Division 1 of the California Revenue and Taxation Code.

b. In consideration for the additional administrative responsibility of the County to set up the process to allocate payments to special districts, the Stewardship Council will provide funding to County as follows:

- (1) For the first fee title donation of land located in the County, the Stewardship Council will make a \$3,000 payment to the County for County's anticipated costs to perform such activities. Said payment will be made at the time the Stewardship Council makes its lump-sum tax neutrality payment to County or if the County selects the annual payment option within 60 days of recording of the Grant Deed in favor of [the fee title donee].
- (2) For each of the subsequent fee title donations of lands located in the County, the County may submit a request to the Stewardship Council for additional funding to set up the process to allocate payments to special districts. The funding request must be submitted no later than 60 days following the recording of the grant deed for the fee title

donation or the execution of the associated tax neutrality funding agreement, whichever comes later. Within 60 days of the Stewardship Council's receipt and approval of the funding request, the Stewardship Council will provide the County with sufficient funds to cover all reasonable anticipated costs for the County to set up the payment process.

9. **Record Keeping.** County will indicate the Funding Allocation separately on its books of account, charge expenditures made in furtherance of the purposes of this Agreement against the Funding Allocation, and keep records adequate to enable the use of the Funding Allocation with regard to distributions to special districts and local agencies pursuant to Section 8 to be checked readily by the Stewardship Council or its designee, or to the extent permitted by the California Public Records Act, by members of the public.

10. **Communications.** The Stewardship Council may include information regarding this Agreement and County in its periodic public reports, press releases, or other public communications.

11. **County's Representations.** County represents that it was represented by Counsel in connection with the negotiation of this Agreement and that in agreeing to execute this Agreement gave due consideration to all relevant factors, including the current and future property tax potential of the Property and any development potential the Property might have had.

12. **Due Authorization.** This Agreement and the performance of County's obligations under it are duly authorized and executed, and are, or will be upon the Effective Date, legal, valid, and binding obligations of County; the resolution confirming same shall be attached to this Agreement as Exhibit D. No consent of any judicial or administrative body, government agency, or other party is required for County to enter into and/or to perform County's obligations under this Agreement, except as has already been obtained. County warrants and represents that it is a political subdivision of the State of California or is otherwise an organization described in Section 170(c)(1) or Section 511(a)(2)(B) of the Internal Revenue Code (IRC), and that the undersigned representative of County is duly authorized and empowered to sign this Agreement.

13. **Indemnification.** County hereby agrees to indemnify, defend, and hold harmless the Stewardship Council and any of the Related Entities, except for the Designee Account Holder, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that any one or more of them may incur or suffer and that result from, or are related to, breach of this Agreement by County or any liability or claim made by the County or by any third party in connection with the County's use, management, or distribution of the Funding Allocation.

The Stewardship Council hereby agrees to indemnify, defend, and hold harmless the County, and the County's past, present, and future officers, directors, and employees, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that any of them may incur or suffer and that result from, or are related to, breach of this Agreement by the Stewardship Council.

14. Third Party Beneficiaries. The Related Entities, except for the Designee Account Holder, are express third party beneficiaries of this Agreement and shall be entitled to enforce the provisions hereof against County.

15. Attorney Fees. In the event of any action or proceeding to enforce a term or condition of this Agreement, or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, or the nondismissing party when the dismissal occurs other than by a settlement, will be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, will be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

16. Assignment. The benefits to be provided under this Agreement are personal to County, and may not be assigned or transferred by County without the prior written approval of the Stewardship Council. The Stewardship Council may assign its rights and obligations hereunder to a third party upon written notice to County. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit and burden of the parties and their respective heirs, successors and assigns.

17. Amendment; Entire Agreement. This Agreement may not be amended or modified except by written instrument signed by both parties. This Agreement constitutes the entire understanding of the parties concerning the subject matter hereof, and supersedes any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein.

18. Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

19. Headings. The headings used in this Agreement are provided for convenience only and this Agreement will be interpreted without reference to any headings.

20. Governing Law. This Agreement shall be governed by the laws of the State of California.

21. Counterparts. This Agreement may be executed in counterparts which together shall constitute a single agreement.

IN WITNESS WHEREOF, Stewardship Council and County have entered into this Funding Agreement to Implement Tax Neutrality Requirement as of the dates set forth below.

Pacific Forest and Watershed Lands Stewardship Council,
a California Nonprofit Public Benefit Corporation

By: _____

Title: _____

Date: _____

COUNTY OF SHASTA

By: _____

Title: _____

Date: _____

Approved as to form:

County Counsel

By: _____

Exhibit A

Donated lands are indicated by the cross-hatched area in the map below, also described as the SBE and APN numbers as shown in Exhibit B.

DRAFT

Exhibit B

Payment Calculation (Sample)

LEGAL ID #	SBE NO.	APN NO.	Total Acres	Non-Unitary Prop Tax	Unitary Prop Tax	Total Taxes	Acres Donated	Taxes on Acres Donated
174	130-45-1-11	018-010-001	640	5,938	0	5,938	632	5,865
	130-45-1-12	018-010-006	398	3,691	0	3,691	398	3,691
	130-45-1-18	016-410-007	640	5,511	427	5,938	574	5,323
	130-45-1-19	018-010-002	643	5,714	251	5,965	619	5,744
	130-45-1-20	018-010-008	640	6,511	169	6,680	621	6,480
	130-45-1-23	016-390-011	560	742	4,453	5,195		0
	130-45-1-24	016-410-005	640	5,863	74	5,938	178	1,652
	130-45-1-25	016-410-008	400	3,683	28	3,711	391	3,624
	130-45-1-27	016-420-001	200	1,855	0	1,855	123	1,139
	135-45-17-6	016-320-026	2	0	21	21	0	0
	135-45-17A-1	023-540-034	80	669	371	1,040		0
	135-45-20-1	016-320-013	184	793	1,234	2,027	54	592
	135-45-20-2	016-410-006	582	5,865	551	6,416	473	5,208
	135-45-20-3	016-390-008, 016-410-002	498	3,279	2,203	5,482	0	0
	135-45-20-4	016-390-010, 016-410-004	571	4,089	2,203	6,293	0	0
	135-45-20-5	016-390-005	123	0	1,357	1,357	0	0
	135-45-20-6	016-250-024, 016-320-012	59	0	652	652		0
	135-45-33-2	018-010-003	271	4,086	0	4,086	256	3,861
	135-45-33-6	018-010-009	202	3,049	0	3,049	173	2,611
174 Total			7,333	61,338	13,996	75,334	4,491	45,791

Funding Allocation Amount Calculation

Annual Base Value:	45,791
÷ capitalization rate:	4.0%
= Funding Allocation Amount:	1,145,000

Exhibit D

Resolution
(to be attached)

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