

**CONTRACT NO. BC-09-079**

**AGREEMENT BETWEEN THE COUNTY OF SANTA BARBARA  
AND THE TRUST FOR PUBLIC LAND**

This agreement is made on this 3<sup>rd</sup> day of February, 2009, by and between The Trust for Public Land, a non-profit, charitable corporation registered under Section 501.c.3 of the U.S. Internal Revenue Code (hereinafter referred to as "GRANTEE"), and the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), wherein COUNTY agrees to grant certain funds to GRANTEE for the purposes and on the conditions specified herein.

**RECITALS**

WHEREAS, GRANTEE has made an offer to purchase a 43.37-acre parcel on the Gaviota Coast, known as the Gaviota Village Property.

**GRANT TERMS AND CONDITIONS**

Now, therefore, in consideration of the mutual promises hereinafter set forth, it is agreed as follows:

(1) CREF GRANT FOR ACQUISITION: COUNTY shall pay a total of eight hundred and sixty thousand, nine hundred and thirty eight dollars (\$860,938) from the Coastal Resource Enhancement Fund (Fund #0063, Dept. #053, Program #5090, Account #7863, Project #0803) (hereinafter referred to as "Grant Funds") towards the purchase of the 43.37-acre Gaviota Village property as stipulated herein.

(2) DEFINITION OF PROPERTY: The subject property purchased with this grant is defined as Assessor Parcel Number Book 81, Page 130, Parcel 72 and 73 (43.37 acres), in the County of Santa Barbara, State of California, inclusive of maps in the office of the County Recorder of said County, and as defined in Exhibit A (hereinafter referred to as "PROPERTY"). The PROPERTY's 43.37 acres of open space has natural resource and recreational values.

(3) ASSIGNMENT AND TRANSFER: GRANTEE shall transfer PROPERTY to the State of California who shall own and manage PROPERTY and ensure sufficient financial resources to manage PROPERTY. Any further transfer of ownership must be approved by COUNTY to assure sufficient financial responsibility associated with post-acquisitional management and use. This approval requirement shall be included in the deed upon conveyance to the State. Neither party shall assign, subordinate, or transfer this Agreement or any right or

duty hereunder without the other party's prior written consent. Any attempt to assign, sublet, subordinate or transfer in violation of this provision shall be voidable and without legal effect.

(4) RESTRICTIONS ON USE: PROPERTY shall be dedicated exclusively and in perpetuity for one or more of the following purposes: providing open-space protection, habitat preservation/restoration and to expand public access via passive recreational use as a trailhead, trailhead parking area and site for interpretive signage. This restriction, or similar language having the same effect, shall be included in the deed upon conveyance to the State in language approved by COUNTY, which approval shall not be unreasonably withheld. Any changes to the recorded restriction on use must receive COUNTY's approval.

(5) TERMS OF PAYMENT:

(a) GRANTEE shall have secured an amount of funds not less than \$2,850,000 subject to an independent appraisal of the fair market value (including the amount of this grant) plus escrow and title fees to obtain sole interest in PROPERTY.

(b) GRANTEE shall submit escrow instructions identified in Article (6) to COUNTY 30 days before close of escrow, and COUNTY shall verify compliance with this Agreement.

(c) COUNTY shall deposit the \$860,938 award or shall wire said sums to the escrow not later than twenty-four (24) hours before the close of escrow on PROPERTY.

(d) If for any reason COUNTY shall have deposited the \$860,938 into escrow and escrow shall have failed to close, the \$860,938 shall be returned to COUNTY in its entirety within sixty (60) days of the date escrow was to have closed at the time the \$860,938 was deposited.

(e) GRANTEE guarantees that, in the event a loan is obtained as partial purchase money for the PROPERTY, GRANTEE shall use other assets as collateral for the loan and shall not encumber the PROPERTY.

(6) ESCROW: "Close of Escrow" for the purpose of this Agreement is defined as the date and time of recordation of the grant deed for PROPERTY, which shall vest title to PROPERTY in GRANTEE. GRANTEE shall execute escrow instructions as may be required by the Escrow Holder to transfer fee title to GRANTEE. Said Escrow Instructions shall be executed in accordance with the terms of this Agreement and shall include the deed restriction on the use, assignment, and sale of the property as specified in Articles (3) and (4) of this Agreement or shall incorporate by attachment the form of deed containing such restrictions. In the event of any conflict between the provisions of the Escrow Instructions and this Agreement, the terms of this Agreement shall be controlling. GRANTEE shall also deposit or have deposited into Escrow such instruments and funds as are necessary to close the Escrow and consummate the sale and purchase of PROPERTY in the manner set forth in this Agreement.

(7) TIME OF PERFORMANCE: This Agreement shall expire June 30, 2009 unless GRANTEE enters into a binding escrow agreement as discussed in Article 5 and such escrow closes no later than 60 days thereafter. COUNTY's Director of Planning & Development Department may extend the time of performance by up to one year for good cause.

(8) TITLE INSURANCE: As long as it is in ownership of the PROPERTY, GRANTEE and its assigns shall maintain a title insurance policy in an amount equal to that portion of the purchase price attributable to PROPERTY, or the fair market value thereof. GRANTEE shall ensure that any agreement transferring GRANTEE's ownership of PROPERTY contains a condition requiring that such transferee, and any subsequent transferee, of the PROPERTY shall also maintain a policy of title insurance in that portion of the purchase price attributable to PROPERTY or the fair market value thereof.

(9) DISCLAIMER BY COUNTY: Nothing in this Agreement is intended to nor does it commit the COUNTY with regard to the approval or disapproval of any future land use, Comprehensive Plan, Zoning, CEQA, or their discretionary review or approval, in which the COUNTY as a governmental entity may be involved.

(10) MAXIMUM CONTRIBUTION OF COUNTY UNDER THIS AGREEMENT: Notwithstanding any other provision of the Agreement, the maximum contribution of the COUNTY with regard to the CREF award and the terms of this Agreement shall not, under any circumstances, exceed the sum of \$860,938 toward the purchase price of the PROPERTY. GRANTEE shall be responsible for all costs of acquisition and any portion of the purchase price in excess of the CREF awards.

(11) FINAL REPORT: GRANTEE agrees to provide within 45 days of the acquisition, a final report that includes the following:

(a) a brief summary of PROJECT's objectives and how these objectives were accomplished,

(b) an itemized list and support documentation of all expenses (including transaction costs) incurred to complete PROJECT, and

(c) photographs showing PROJECT.

(12) PERIOD FOR WHICH RECORDS ARE AVAILABLE: GRANTEE shall maintain all records regarding performance of this contract for a minimum of four years after the close of escrow on PROPERTY. GRANTEE agrees that the COUNTY may, at any time during normal working hours and up to four years after the termination of this contract, review or audit all records regarding performance of this contract.

(13) INDEMNIFICATION: Upon transfer of award to GRANTEE, COUNTY shall have no authority or control over completion of PROJECT except as stipulated herein. GRANTEE shall defend, indemnify, and save harmless COUNTY, its agents, employees and officers from any and all claims, demands, damages, costs, and expenses (including attorney fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of GRANTEE or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney fees), judgments or liabilities resulting solely from the negligent acts or omissions or willful

misconduct of COUNTY. GRANTEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with the Agreement.

(14) ALIENATION OR ASSIGNMENT: Neither party shall assign, subordinate, or transfer this Agreement or any right or duty hereunder without the other party's prior written consent. Any attempt to assign, sublet, subordinate or transfer in violation of this provision shall be void and without legal effect. Notwithstanding anything to the contrary contained in this Agreement, COUNTY consents and approves of GRANTEE'S intended transfer of GRANTEE's rights and obligations under this Agreement to State of California.

(15) NOTICES: Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: County of Santa Barbara  
Planning & Development Department, Energy Division  
123 E. Anapamu Street  
Santa Barbara, CA 93101  
Attn: Doug Anthony, 568-2046 or  
Kathy McNeal Pfeifer, 568-2507

To GRANTEE: The Trust for Public land  
116 New Montgomery, 3<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attn: Debra Geiler, Southern California Director,  
(415) 495-5660 ext. 496

Either party may change its point of contact by providing 30 days written notice to the other party. The DIRECTOR or DEPUTY DIRECTOR may designate a new point of contact for COUNTY.

(16) SECTION HEADINGS: The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

(17) ACKNOWLEDGMENT: GRANTEE shall publicly identify on GRANTEE's quarterly newsletter that the acquisition is partially financed by the "County of Santa Barbara's Coastal Resource Enhancement Fund (CREF), a partial mitigation of impacts from the following offshore oil and gas projects: Point Arguello, Point Pedernales, Santa Ynez Unit, and Gaviota Terminal."

(18) NON-PARTNERSHIP: This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

(19) SEVERABILITY: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(20) REMEDIES NOT EXCLUSIVE: No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

(21) NO WAIVER OF DEFAULT: No delay or omission of either party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to either party shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of that party.

(22) ENTIRE AGREEMENT AND AMENDMENT: In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled superseded or changed by any oral agreements, course of conduct, waiver or estoppel.

(23) SUCCESSORS AND ASSIGNS: The provision of this Agreement shall be fully binding on all successors and assigns of the parties.

(24) CALIFORNIA LAW: This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in southern California, if in federal court.

(25) NONDISCRIMINATION CLAUSE: GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code.

(26) TAXES: GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number is 23-7222333.

(27) EXECUTION IN COUNTERPARTS: This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an

original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

(28) CERTIFICATION OF SIGNATORY: The signatory of this Agreement represents and warrants that he/she is authorized by the GRANTEE to execute this Agreement and that no additional signatures are required to bind GRANTEE to its terms and conditions or to carry out the duties contemplated herein.

(29) FACSIMILE SIGNATURES: In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile, except that funds shall not be released upon a facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk Recorder of the County.

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This Agreement between the County of Santa Barbara and GRANTEE is executed at Santa Barbara, California, on the above signed date.

**ATTEST:**

**APPROVED:**

MICHAEL F. BROWN  
Clerk of the Board

**COUNTY**

By \_\_\_\_\_  
Deputy Clerk of the Board

\_\_\_\_\_  
Joseph Centeno, Chair  
County of Santa Barbara  
BOARD OF SUPERVISORS

**CREF GRANTEE**

\_\_\_\_\_  
Tily Shue, Acting Regional Director  
The Trust for Public Land, Western Region  
CREF GRANTEE

**APPROVED AS TO FORM:**

DENNIS MARSHALL,  
County Counsel

By \_\_\_\_\_

**APPROVED AS TO  
ACCOUNTING FORM:**

ROBERT GEIS  
Auditor-Controller

By \_\_\_\_\_

**APPROVED AS TO  
INSURANCE FORM:**

RAY AROMATORIO  
Risk Program Manager

By: \_\_\_\_\_  
g:\group\energy\policy\cref08\contracts\GaviotaVillageCon

## **Exhibit A**

### **Legal Project Description**









Contract Summary Form:CREF Agreement w/The Trust for Public Land  
Contract Number : BC-09-079

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than (<\$100,000) submit a Purchasing Requisition to the Purchasing Division of General Services. See "online purchasing manual" under General Services, Purchasing, Policies and Procedures. Form not applicable to revenue contracts.

D1. Fiscal Year .....: FY 09/10  
D2. Budget Unit Number (plus -Ship/-Bill codes in paren's):  
D3. Requisition Number.....:  
D4. Department Name .....: Planning & Development Department  
D5. Contact Person .....: Kathy Pfeifer  
D6. Phone.....: 568-2507

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K1. Contract Type (check one): [ ] Personal Service [ ] Capital Project/Construction [X] Grant  
K2. Brief Summary of Contract Description/Purpose .....: CREF Grant  
K3. Original Contract Amount .....: \$860,938  
K4. Contract Begin Date.....: February 3, 2009  
K5. Original Project Completion Date .....: June 30, 2009  
K6. Amendment History (leave blank if no prior amendments):  
Seq#EffectiveDate ThisAmndtAmtCumAmndtToDateNewTotalAmtNewEndDate Purpose(2-4 words)  
K7. Department Project Number .....: 053

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B1. Is this a Board Contract? (Yes/No).....: Yes  
B2. Number of Workers Displaced (if any).....: None  
B3. Number of Competitive Bids (if any) .....: n/a  
B4. Lowest Bid Amount (if bid) .....: n/a  
B5. If Board waived bids, show Agenda Date .....:  
B6. ... and Agenda Item Number.....:  
B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) : Boilerplate Contract for CREF Grants

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F1. Encumbrance Transaction Code .....: 1701  
F2. Current Year Encumbrance Amount .....: \$0  
F3. Fund Number.....: 0063  
F4. Department Number.....: 053  
F5. Division Number (if applicable).....:  
F6. Account Number .....: 7863  
F7. Cost Center number (if applicable).....: Project Number: 0803  
F8. Payment Terms.....: see Article 5 of Contract

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V1. Vendor Numbers (A=uditor; P=urchasing) .....:  
V2. Payee/Contractor Name.....: Grantee Name: The Trust for Public Land  
V3. Mailing Address .....: 116 New Montgomery, 3<sup>rd</sup> Floor  
V4. City State (two-letter) Zip (include +4 if known).....: San Francisco, CA 94105  
V5. Telephone Number.....: (415) 495-5660 ext. 496  
V6. Contractor's Federal Tax ID Number (EIN or SSN) 23-7222333  
V7. Contact Person.....: Debra Geiler  
V8. Workers Comp Insurance Expiration Date.....:  
V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl) Indemnification Clause  
V10. Professional License Number .....: #  
V11. Verified by (name of County staff) .....: Kathy Pfeifer  
V12. Company Type (Check one): [ ] Individual [ ] Sole Proprietorship [ ] Partnership [ ] Corporation

**I certify:** information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date :

Authorized Signature.....