

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and City of Goleta, a general law city within the County of Santa Barbara, with an address at 130 Cremona Drive, Suite B, Goleta, CA 93117 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, CONTRACTOR submitted a proposal to Planning & Development Department, seeking money from past land use projects' offsite mitigation funds to purchase a 0.25-acre parcel from a private party located along Mathilda Drive, near the Sperling Preserve, currently shown as APN No. 079-554-026 in the official records of Santa Barbara County; and

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Kathy Pfeifer at phone number (805) 568-2507 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Claudia Dato at phone number (805) 961-7554 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:	Kathy Pfeifer, County of Santa Barbara, Planning & Development Department, 123 E. Anapamu Street, CA 93101, fax: (805) 568-2030
To CONTRACTOR:	Claudia Dato, City of Goleta, 130 Cremona Drive, Suite B, Goleta, CA 93117, fax: (805) 961-8084

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

CONTRACTOR shall commence performance on January 9, 2018 and end performance upon completion, but no later than September 1, 2018 unless otherwise directed by COUNTY or unless earlier terminated, suspended, or extended in accordance with "Suspension for Convenience" in Exhibit A hereof.

5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid

taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by

COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

18. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.

1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
 3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. By CONTRACTOR. Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. **SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. **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.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY 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.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of COUNTY 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 COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

25. 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.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

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 the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF 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.

30. **AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. **SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. **PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

33. **SUBCONTRACTORS**

CONTRACTOR is authorized to subcontract with subcontractors identified in Contractor's Proposal. CONTRACTOR shall be fully responsible for all services performed by its subcontractor. CONTRACTOR shall secure from its subcontractor all rights for COUNTY in this Agreement, including audit rights.

34. **HANDLING OF PROPRIETARY INFORMATION**

CONTRACTOR understands and agrees that certain materials which may be provided by COUNTY may be classified and conspicuously labeled as proprietary confidential information. That material is to be subject to the following special provisions:

- A. All reasonable steps will be taken to prevent disclosure of the material to any person except those personnel of CONTRACTOR working on the project who have a need to use the material.
- B. Upon conclusion of CONTRACTOR'S work, CONTRACTOR shall return all copies of the material direct to party providing such material. CONTRACTOR shall contact COUNTY to obtain the name of the specific party authorized to receive the material.

35. **IMMATERIAL CHANGES**

CONTRACTOR and COUNTY agree that immaterial changes to the Statement of Work (time frame and mutually agreeable Statement of Work changes which will not result in a change to the total contract amount) may be authorized by Planning and Development Director, or designee in writing, and will not constitute an amendment to the Agreement.

36. **NEWS RELEASES/INTERVIEWS**

CONTRACTOR agrees for itself, its agents, employees and subcontractors, it will not communicate with representatives of the communications media concerning the subject matter of this Agreement without prior written approval of the COUNTY Project Coordinator. CONTRACTOR further agrees that all media requests for communication will be referred to COUNTY'S responsible personnel.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **City of Goleta**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Glenn Russell, Ph.D.

By: _____
Department Head

CONTRACTOR:

City of Goleta

By: _____
Authorized Representative

Name: _____

Title: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

EXHIBIT A

STATEMENT OF WORK

CONTRACTOR shall purchase and record in the name of County a conservation easement on the Taylor-Ash Property (APN 079-554-026), a 0.25 acre (10,890 square feet) parcel of land located south of the southerly terminus of Mathilda Drive in the City of Goleta (herein referred to as PROPERTY). PROPERTY is located in the northern reach of the Ellwood East Monarch Butterfly Grove in close proximity to the Ellwood Mesa Open Space Preserve.

CONTRACTOR prepared a maintenance plan to preserve PROPERTY and submitted plan to COUNTY. COUNTY DESIGNATED REPRESENTATIVE has evaluated the quality of the service performed and has found it to be satisfactory.

Michelle Greene the City Manager, Michael Jenkins the Interim City Attorney, Winnie Cai the Deputy City Attorney, Claudia Dato the Senior Project Manager, and Deborah Lopez the City Clerk shall be the individual(s) personally responsible for providing all services hereunder. CONTRACTOR may not substitute other persons without the prior written approval of COUNTY's designated representative.

DEFINITION OF PROPERTY: The PROPERTY purchased with this grant is defined as Assessor Parcel Number 079-554-026, as recorded in Book 79, Page 554, Parcel 26, in the Official Records of the Santa Barbara County Recorder's Office, State of California, inclusive of maps in the office of the County Recorder of said County. The property is described on the Quitclaim Deed as "Lot 22 in Block 4 of Ellwood Acres No. 2, in the City of Goleta, County of Santa Barbara, State of California, according to the map thereof recorded in Book 15, at Pages 155 and 156 of Maps in the office of the County Recorder of said County."

CONSERVATION EASEMENT: The PROPERTY's 0.25 acre of open space has natural resources and Monarch Butterfly habitat value. The land use restrictions and management measures applied to the Conservation Easement area shall be recorded through the Conservation Easement as shown in Exhibit "D" of this Agreement. The Conservation Easement area shall include the entire PROPERTY, and the easement boundary is legally described and shown in Exhibit "D" of this Agreement.

ACQUISITION BUDGET:

Maintenance Plan preparation costs: \$2,000

Purchase costs: \$100,000

Closing costs: \$2,002

Total costs: \$104,002

Suspension for Convenience. COUNTY may, without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 30 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

EXHIBIT B

PAYMENT ARRANGEMENTS Compensation Upon Completion

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed **\$104,002**.

PAYMENT OF \$2,000

- B. Payment for reimbursement of **\$2,000** in costs to prepare PROPERTY's Maintenance Plan shall be made upon CONTRACTOR's submittal to the COUNTY DESIGNATED REPRESENTATIVE an invoice for the service performed in accomplishing PROPERTY's Maintenance Plan. This invoice must cite the assigned Board Contract Number. COUNTY shall pay invoice within 30 days of receipt of correct and complete invoice from CONTRACTOR.

PAYMENT OF \$102,002

- C. Upon execution of this Agreement by all parties, CONTRACTOR shall open an escrow, and shall deliver to the Escrow Officer a copy of this fully executed Agreement along with the fully-executed Purchase Contract for the PROPERTY. This Agreement shall become a part of the Escrow and shall constitute the basic instructions between the COUNTY and CONTRACTOR to the Escrow Officer.

The parties agree to execute such additional instructions and documents as are reasonably required to complete the closing of the transaction contemplated herein in accordance with the terms and conditions of this Agreement. On behalf of the COUNTY, the Director of General Services Department, or designee, shall execute the necessary escrow instructions and/or additional instructions, which may be required to complete the closing of this real property transaction. On behalf of the CONTRACTOR, the City Manager, or designee, shall execute the necessary escrow instructions and/or additional instructions, which may be required to complete the closing of this real property transaction. In case of conflict between this Agreement and any such escrow documents, the terms of this Agreement shall govern.

- D. Escrow shall close concurrently with CONTRACTOR's close of escrow for the PROPERTY, or on such other date as the parties may mutually agree in writing. The close of escrow shall occur upon:
- i. Recordation of the Grant Deed vesting fee title to the PROPERTY in CONTRACTOR,
 - ii. Recordation of the Conservation Easement Deed and Agreement vesting title to the Conservation Easement in COUNTY,
 - iii. Release of purchase funding for the PROPERTY to the property owner, and
 - iv. Payment of all escrow-related fees and costs, including title insurance.

CONTRACTOR shall pay or cause to be paid all escrow, title insurance and recording fees as well as the documentary stamp tax, if any, incurred in the conveyance of the Conservation Easement to the COUNTY. Said escrow and recording charges shall include any partial reconveyance and subordination fees as may be required. CONTRACTOR shall pay all escrow fees in the event that this escrow is canceled prior to the conveyance of the Conservation Easement to COUNTY.

- E. The escrow officer shall be responsible for the following:

- i. To obtain subordination or full reconveyance agreements from any holders of liens against the PROPERTY, provided that OWNER shall cooperate with the Escrow Officer in obtaining such documents from any and all such lien holders; and
- ii. To record the executed documents described within Agreement, with the Santa Barbara County Recorder's Office, and deliver the recorded documents to COUNTY upon close of escrow; and
- iii. To pay any existing liens on the property and to pay for closing costs and fees; and
- iv. To issue a California Land Title Association owner's policy of title insurance covering County.

Exhibit C
Risk Management

Indemnification and Insurance Requirements
(For Professional Contracts)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.

10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.



October 16, 2017

Kathy McNeal Pfeifer
County of Santa Barbara, Energy Division
123 E. Anapamu Street
Santa Barbara, CA 93101

Member Name:	City of Goleta
Additional Protected Party:	COUNTY, its officers, officials, employees, agents and volunteers
Activity:	Proof of insurance is required for a grant contract for an open space parcel acquisition with the County of Santa Barbara.
Coverage Period:	From 12:01 AM on 10/13/2017 to 11:59 PM on 6/30/2018

This Evidence of Coverage is issued on an annual basis and will be automatically reissued every June until expiration of the written contract.

The City of Goleta (Member) along with other California public agencies, is a member of the California Joint Powers Insurance Authority (California JPIA), and participates in the following self-insurance and commercial insurance program that is administered by the California JPIA for its members:

Primary Liability Program, Including Automobile Liability	
Coverage Limit:	\$1,000,000 per occurrence
Annual Aggregate Limit:	\$2,000,000

Workers' Compensation Program	
Coverage Limit	Statutory
Employers Liability	\$1,000,000

On behalf of the Member, the California JPIA agrees to include the above-named additional Protected Party as a Protected Party under the Memorandum of Coverage - Primary Liability Program, subject to the above-stated limits, but only for "Occurrences" arising out of the described activity, during the described Coverage Period, and where required under the terms of a written agreement between the Member and the additional Protected Party. The California JPIA will endeavor to provide at least thirty (30) days notice of any change in the foregoing information. If the written agreement requires, coverage shall be primary.

Coverage is subject to all the terms, Definitions, Exclusions, Conditions and Responsibilities of the Memorandum of Coverage - Primary Liability Program and the Limits of Coverage stated above. Any injury or damage caused by the sole negligence of the additional Protected Party named above is not covered.

Sincerely,

Jim Thyden
Insurance Programs Manager

cc: Maggie Connors, Goleta, mconnors@cityofgoleta.org

**Recording requested by
County of Santa Barbara**

When recorded mail to:

County of Santa Barbara
General Services Department
Real Property Division
Will Call

No Fee per Cal. Gov. Code 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 079-554-026

**CONSERVATION EASEMENT
DEED and AGREEMENT**

This Conservation Easement Deed and Agreement (“Conservation Easement”) is effective upon recordation in the Official Records of the County of Santa Barbara, State of California by the CITY OF GOLETA, a general law city within the County of Santa Barbara, California, (“CITY”), to the COUNTY OF SANTA BARBARA, a political subdivision of the State of California (“COUNTY”), each a “party” and together the “parties” to this Conservation Easement, for the purpose of establishing in perpetuity the Conservation Easement and associated rights described below.

Recitals

A. COUNTY provided to CITY, pursuant to a separate agreement dated October 3, 2017 the “Agreement for Services of Independent Contractor”, (hereinafter the “Grant Agreement”) funds to purchase that certain real property commonly identified as Assessor’s Parcel Nos. 079-554-026, consisting of approximately 0.25 acres, located in the City of Goleta, State of California, described in Attachment “A” and depicted on Attachment “B,” attached hereto and incorporated herein by this reference (“Property”); and

B. The Grant Agreement requires CITY to convey or cause to be conveyed a conservation easement on the Property in favor of COUNTY and CITY has elected to comply with the Grant Agreement by acquiring title to the Property and conveying this Conservation Easement to County; and

C. COUNTY is a political subdivision of the State of California and is authorized to acquire and hold a conservation easement in accordance with the terms of Section 815.3 of the California Civil Code; and

D. The Property possesses certain environmental attributes of great importance to the people of the City of Goleta, Santa Barbara County, and the people of the State of California: valuable Monarch Butterfly habitat (dominated by blue gum, *Eucalyptus globulus*, and red river

gum, *Eucalyptus camaldulensis*), seasonal tributary creek that feeds into Devereux Creek, and open space (hereinafter “Conservation Values”); and

E. To comply with the Grant Agreement, CITY must include use of the Property for Monarch Butterfly habitat preservation consistent with the Conservation Values of the Property; and

G. CITY agrees to convey this Conservation Easement to COUNTY to assure that the Conservation Values will be conserved and sustained forever as provided in this Conservation Easement, and that uses of the land that are inconsistent with the Purpose of this Easement (as defined herein below) will be prevented or corrected; and

H. COUNTY recognizes that the Conservation Values associated with the physical environment of the Property depend on the future good stewardship decisions of CITY, and its successors. CITY is entrusted with those future management decisions, provided that any changes do not significantly impair the Conservation Values. COUNTY is entrusted with determining that the Conservation Values are protected.

Deed and Agreement

In consideration of the recitals set forth above, and in consideration of their mutual promises and covenants, CITY hereby grants and conveys to COUNTY, its successors and assigns, and COUNTY hereby accepts, a perpetual Conservation Easement as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code Section 815, *et seq.*), of the nature and character described in this Conservation Easement.

1. PURPOSE. The Purpose of this Conservation Easement is to prevent any use of the Property that will materially impair or interfere with the Conservation Values (“Purpose”). The parties intend that this Conservation Easement will limit the use of the Property to activities that are not inconsistent with the Purpose, including, without limitation, those involving the preservation and protection of the Conservation Values and the provision of public access to enjoy the Property.

2. AFFIRMATIVE RIGHTS CONVEYED TO COUNTY. To accomplish the Purpose, the CITY hereby conveys the following rights and interests to COUNTY by this Conservation Easement:

(a) Identify Resources and Values. To identify, preserve and protect in perpetuity the character, use, utility, soil and water quality, and the Conservation Values of the Property.

(b) Monitor Uses and Practices. To enter upon, inspect, observe, and study the Property for the purposes of identifying the current uses and practices thereon and to monitor the uses and practices of the Property to determine whether they are consistent with this Conservation Easement. Such entry shall be permitted upon at least five (5) business days’ prior

written notice to CITY, and shall be made in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property.

(c) **Prevent Inconsistent Uses.** To prevent or enjoin any activity on or use of the Property that is inconsistent with the Purpose and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. However, it is not the intent of COUNTY to limit CITY's discretion to implement uses and management practices in the Property, as described in Paragraph 3 below and provided that those uses and practices are consistent with the terms of this Conservation Easement.

3. PERMITTED USES AND PRACTICES. CITY and COUNTY intend that this Conservation Easement shall limit the uses of the Property to conservation activities that are consistent with the Purpose and such other related uses as are described herein. The following uses and practices, if in accordance with federal, state and county laws and ordinances, and in a manner to minimize impact on the Conservation Values are specifically permitted:

(a) **Existing Improvements:** No existing improvements occur onsite.

(b) **Additional Structures and Improvements:** CITY may construct new structures that are reasonably necessary to support activities that take place solely to protect and promote the Conservation Values on the Property; the construction of new structures shall require the prior written consent of COUNTY, as set forth in Paragraph 6 below.

(c) **Grading and Mowing** Soil grading in conjunction with permitted activities under this Conservation Easement or to control erosion in accordance with sound, generally accepted management practices is permitted. Any other grading is not permitted without the prior written approval from the COUNTY, as set forth in Paragraph 6 below. Mowing is allowed in the Property, in accordance with sound, generally accepted management practices.

(d) **Fences:** Fences may be constructed for purposes of reasonable and customary management of the Property without further permission from COUNTY, provided that any new fence shall be sited and designed in accordance with the Purpose and will not materially impair or interfere with the Conservation Values. New Fences must be wildlife-friendly.

(e) **Water Resources:** An irrigation system consisting of tanks and drip lines, and/or watering trucks may be used in the Property for the purpose of maintaining appropriate plant species and preventing dust within the Property. Any other artificial surface water reservoirs, water resources, water-related improvements, or ponds may not be developed or maintained in the Property without prior approval of the COUNTY, as set forth in Paragraph 6 below.

(f) **Control of Plants and Animals:** Pests, bullfrogs, and non-native plants may be controlled by the use of selective control techniques consistent with preservation of the Conservation Values on the Property. As used in this Conservation Easement, "selective control

techniques” mean the use of techniques or methods that are targeted to control pests, bullfrogs, and non-native plants with the least practicable impact on humans and other plants or animals.

(g) **Utility Easements:** With approval by County, as set forth in Paragraph 6, utility easements may be granted to public and quasi-public utilities, so long as such easements are subject to this Conservation Easement and will not materially impair or interfere with the Conservation Values. Any proceeds from the sale of a utility easement shall be used by the CITY for operation and maintenance of the Property.

(h) **Public Access:** The Property may be used for research and educational uses, as well as noncommercial passive recreational uses such as wildlife viewing, hiking and photography and associated facilities may be constructed for passive recreational uses including but not limited to creek bridges, hiking and equestrian trails, and any other accessible trails, to provide public access, (“public access purposes”) provided that all public access purposes shall be compatible with the Conservation Values of the Property.

(i) **Roads:** All roads within the Property shall be limited to light dirt roads used for operations, maintenance, and emergencies only.

4. PROHIBITED AND LIMITED USES. Unless otherwise permitted under this Conservation Easement, any activity on or use of the Property that is inconsistent with the Purpose or would materially impair or interfere with the Conservation Values or the public access purposes is prohibited. CITY shall not perform, or knowingly allow others to perform, any act or use on or affecting the Property in conflict with the covenants set forth in this Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are deemed inconsistent with the Purpose of this Conservation Easement and are expressly prohibited:

(a) **Residential Use.** Construction and use of any residential and accessory structures within the Property is prohibited.

(b) **Subdivision.** CITY shall not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. Notwithstanding the existence of legal parcels, assessor’s parcels, or the previous granting of certificates of compliance by public agencies, the following uses are inconsistent with the Purpose and are prohibited: (i) the division or subdivision of the Property (whether by physical, legal, or any other process); and (ii) the sale or conveyance of any portion of the Property, separate from the sale or conveyance of the Property as a whole.

(c) **Development Rights.** CITY and COUNTY hereby agree that all development rights, except as specifically reserved to CITY herein, that are now or hereafter allocated to, implied, reserved or inherent in the Property, are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded and described, or to any other property adjacent or otherwise. The Property may not be used for the purpose of calculating permissible development or lot yield of any other property. CITY and COUNTY agree that the Property consists of one (1) legal parcel and that no

additional separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to Government Code Section 66499.35, based upon previous patent or deed conveyances, subdivisions or surveys. CITY will not apply for or otherwise seek recognition of additional legal parcels within the Property that affect the Property, based on certificates of compliance or any other authority.

(d) Construction of Buildings, Facilities and Other Structures. The construction of any structure of any type within the Property, unless specifically authorized by Paragraph 3 above, is prohibited.

(e) Signs. No billboards shall be erected in the Property. Signs describing the permitted activities in the Property, erected to control unauthorized entry or use, or for public access purposes, or as required by COUNTY or by the CITY are permitted, so long as such signs do not materially impair or interfere with the Conservation Values.

(f) Paving and Road Construction CITY shall not pave any existing unpaved road or construct any new paved road within the Property, whether for access or for another purpose, without prior notice to and approval of COUNTY, as set forth in Paragraph 6 below. COUNTY's approval of additional road paving or construction shall be based upon CITY's demonstration that the proposed improvements and location of any such road is consistent with the Purpose or, if this finding cannot be made, that the road improvements and location are necessary to provide access to structures or improvements or fulfill public access purposes permitted by this Conservation Easement or are necessary to meet governmental requirements. Subject to prior notice to COUNTY, CITY may relocate existing unpaved roads within the Property as unpaved roads, provided that abandoned roads shall be allowed to return to a natural condition as may be permitted under this Conservation Easement. For purposes of this paragraph, references to "paving" shall include covering of the soil surface with concrete, asphalt, or other impervious material, provided that in order to make unpaved roads passable, the CITY may apply a limited amount of gravel sufficient to maintain a light dirt road to existing or future unpaved roads in the Property. Nothing in this Paragraph 4(f) shall be interpreted to prevent the installation of a trail to serve passive recreational use of the Property pursuant to Paragraph 3(h).

(g) Motorized Vehicles. The use of motorized vehicles off of roads within the Property is prohibited, except by CITY for management uses of the Property; provided that other uses of motorized and/or off-road vehicles may be permitted within the Property when necessary for maintenance of utilities, retrieval of animals and plants, use of the Property by persons with disabilities or for emergency purposes.

(h) Erosion. Any use or activity that causes significant degradation of topsoil quality, pollution or an increase in the risk of erosion in the Property is prohibited.

(i) Mining.

(i) **Surface Mining.** The mining, extraction, or removal of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method, is prohibited in the Property.

(ii) **Mineral Rights.** Any right, title, and interest in subsurface oil, gas, and minerals shall not be sold separately from the surface property, and the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, and shall not materially impair or interfere with the Conservation Values of the Property, and shall not involve disturbance of the surface of the Property.

(j) **Watercourses.** Except for creek restoration and water quality improvement purposes, the alteration or manipulation of watercourses located on or near the Property is prohibited.

(k) **Native Tree and Vegetation Management.** Cutting or clearing of native trees and vegetation is prohibited in areas outside of existing or approved roads, trails and utility easements, except as provided below. Selective control and removal of non-native invasive vegetation is permitted and encouraged. CITY may clear or trim native trees and vegetation only:

(i) To maintain defensible space, pursuant to the requirements of the Santa Barbara Fire Department, around existing structures, roads and utilities.

(ii) In an emergency when necessary to prevent personal injury or property damage such as flood or fire. CITY shall notify COUNTY prior to or as soon as possible after beginning any emergency clearing as set forth in Paragraph 6 below.

(iii) To control insects and disease or promote the ecological health of the trees or vegetative community, including thinning of undergrowth and removal of senescent, dead and decadent plant material, under the direction of a qualified biologist or certified arborist and in a manner consistent with the Conservation Values.

(iv) To protect and preserve the Property under the direction of a qualified biologist.

(v) As part of a native habitat restoration project or program.

(l) **Trash.** The disposal, dumping, or accumulation of any kind of trash, refuse or derelict equipment in the Property is prohibited.

(m) **Agricultural Intensification and Other Incompatible Uses.** There shall be no disking, row crop cultivation, vineyard installation, plowing, agricultural grading or till

operations within the Property. The use of the Property for construction or operation of a golf course, or similar high intensity activity is prohibited.

(n) **Industrial and Non Agricultural Commercial Uses.** All industrial, commercial, and commercial recreational uses of the Property not expressly authorized herein are prohibited. Nothing in this Paragraph will prohibit the CITY from charging a fee or allowing a fee to be charged for passive recreational activities where needed to defray the cost of such activities, for example, providing a docent or wildlife biologist for guided activities. However, no fees shall be charged Property admittance alone.

(o) **Animal Feedlots or Greenhouses.** The construction, maintenance or use of any animal feedlot, livestock pen or greenhouse structure in the Property is prohibited.

(p) **Storage of excess material.** Long-term (longer than three (3) consecutive months) storage of excess material (pipes, lumber, and other construction material for work to be done on the Property, etc.) is prohibited.

(q) **Harm to Small Mammals.** Except as provided in Section 3(f) above, poisoning, trapping, shooting, or otherwise harming native mammals or their burrows within Property is prohibited without the prior written approval of COUNTY as set forth in Paragraph 6 below.

(r) **Hunting Uses.** Recreational hunting is not permitted on the Property.

(s) **Mitigation Use of Property.** Use of the Property for mitigation purposes is expressly prohibited. CITY shall not use or allow the use of any portion of the Property for mitigation purposes (in other words, to compensate for adverse changes to the environmental elsewhere).

(t) **Transfer of the Property.** CITY shall not transfer the Property (or any interest in it) without the prior written approval of COUNTY.

(u) **Use of the Property as Security for a Debt.** CITY shall not use the Property as security for any debt.

(v) **Use of the Property for Solar or Wind Energy Generation:** Use of the property for solar or wind energy generation is prohibited.

5. **RESERVED RIGHTS.** CITY reserves to itself, and to its representatives, heirs, successors and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Purpose of this Conservation Easement.

Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) **Water Rights.** CITY shall retain, maintain and preserve the right to use all water rights associated with the Property, consistent with preservation of the Conservation Values on the Property. CITY shall not transfer, encumber, lease, sell, or otherwise separate any water rights from the Property.

(b) **Mineral Rights.** CITY reserves all right, title, and interest in subsurface oil, gas, and minerals, subject to Paragraph 4(i) above.

(c) **Responsibilities of CITY and COUNTY Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the COUNTY, or in any way to affect any existing obligation of the CITY, as owner of the Property. Among other things, this shall apply to:

(i) Taxes/Special Assessments. CITY shall pay before delinquency all taxes, assessments, fees and charges of whatever description legally and properly levied on or assessed against the Property. If COUNTY is ever required to pay any taxes or assessments on the Property, CITY will promptly reimburse COUNTY for the same.

(ii) Upkeep and Maintenance. CITY shall continue to be solely responsible for the upkeep and maintenance of the Property. COUNTY shall have no obligation for the upkeep or maintenance of the Property.

(iii) Liability and Indemnification. In view of COUNTY's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, CITY shall indemnify, protect, defend and hold COUNTY, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns harmless from and against all liabilities, costs, losses, orders, liens, penalties, damages, expenses, or causes of action, claims, demands, or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless arising from the gross negligence or willful misconduct of the COUNTY. COUNTY shall be named as an additional insured on all of CITY's third party insurance policies related to the Property.

6. NOTICE AND APPROVAL. The purpose of requiring CITY to notify COUNTY to obtain COUNTY's approval before undertaking certain permitted activities is to afford COUNTY an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the Purpose of this Conservation Easement. CITY shall notify COUNTY in writing not less than thirty (30) days prior to the date CITY intends to undertake the activity in question. For notices during emergency situations (i.e., public safety situations), CITY shall provide written notice at least 2

full business days prior to CITY's proposed activity. CITY's notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit COUNTY to make an informed judgment as to its compliance with this Conservation Easement. COUNTY shall respond in writing within one hundred and eighty (180) days of receipt of CITY's written request. COUNTY'S approval may be withheld only upon a reasonable determination by COUNTY that the action as proposed would be inconsistent with the Purpose of this Conservation Easement, and any denial of approval must be accompanied by written reasons given in detail for such denial.

7. PROPERTY MANAGEMENT AND ISSUE RESOLUTION.

(a) **Management Practices.** CITY recognizes that the Conservation Values of the Property are best protected if CITY conducts all operations in accordance with generally accepted, sustainable practices that address soil and water conservation, erosion control, pest management, nutrient management, and habitat protection. COUNTY has responsibility under this Conservation Easement to undertake regular monitoring of the Property. The parties agree that, whenever possible, they will take a cooperative approach to monitoring and management of the Property and will conduct joint qualitative monitoring to ensure that the Conservation Values are being protected. Monitoring will also consider issues such as site potential, weather conditions, unusual economic circumstances, vegetative variety and quality and trends in resource conditions.

(b) **Management Plan.** CITY prepared the *Taylor-Ash Property Monarch Habitat Maintenance Plan, February of 2017* that provides CITY with guidance to manage PROPERTY's monarch butterfly habitat in conjunction with the larger Ellwood Mesa/Sperling Preserve Open Space and monarch butterfly aggregation sites. If in the future a management plan is developed for the Property, then the preservation activities for the Property shall be governed by the terms of this Conservation Easement.

(c) **Mediation and Arbitration.** If a dispute arises between the parties concerning the consistency of any existing or proposed use, structure or activity with the language and purpose of this Conservation Easement, and if the parties agree, the dispute may be mediated by one to three persons familiar with agricultural and conservation practices and conservation easements in Santa Barbara County. If the parties agree, they may next request arbitration, supervised by the Santa Barbara County Superior Court, unless extraordinary relief or injunction is necessary to protect against irreparable injury as provided in herein.

(d) **Notice of Violation.** Where CITY is alleged to be in violation of this Conservation Easement, COUNTY may give CITY written notice of a violation. Not later than fourteen (14) days after the delivery of such written notice, the parties shall meet to discuss the circumstances of the violation and to attempt to agree on appropriate corrective action. If the parties are unable to agree on corrective action, COUNTY may demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore that portion of the Property so injured.

(d) **Judicial Enforcement; Injunctive Relief.** When an ongoing or imminent violation of this Conservation Easement could substantially diminish or impair the Conservation Values of the Property, or if CITY fails to cure a violation within a thirty (30) day period after receipt of notice thereof from COUNTY, or fails to continue diligently to cure such violation until finally cured, then COUNTY may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury.

(f) **Damages.** COUNTY shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any of the Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting CITY's liability therefore, COUNTY shall apply any damages recovered to the cost of undertaking any corrective action in the Property.

(g) **Scope of Relief.** COUNTY's rights under this Paragraph shall apply equally to threatened as well as actual violations of the terms of this Conservation Easement, and CITY agrees that COUNTY's remedies at law for any violation of the terms hereof are inadequate and that COUNTY shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which COUNTY may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. COUNTY's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 *et seq.*, are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. COUNTY retains the discretion to choose the appropriate method to enforce the provisions of this Conservation Easement, and shall not be required to exhaust the provisions of one subsection hereof in order to be entitled to the benefits of another.

(h) **Costs of Enforcement.** Any reasonable costs incurred by COUNTY in non-judicial enforcement of the terms of this Conservation Easement against CITY, and any costs of restoration necessitated by CITY's violation of the terms hereof shall be borne by CITY; provided however that CITY shall not be responsible for the costs of restoration necessary to remedy damage to Property caused by the conduct of third parties acting without permission or knowledge of CITY. The prevailing party in any judicial action brought pursuant to the provisions of this Conservation Easement, including without limitation mediation or arbitration, shall be entitled to recovery of its reasonable costs of suit, including, without limitation, attorneys' and experts' fees, from the other party.

(j) **Enforcement Discretion.** Enforcement of the terms of this Conservation Easement shall be at the discretion of COUNTY, and any forbearance by COUNTY to exercise its rights hereunder shall not be deemed or construed to be a waiver by COUNTY of such rights or of any subsequent breach of the same or any other terms of this Conservation Easement, or of

its rights hereunder. No delay or omission by COUNTY in the exercise of any right or remedy upon any breach by CITY shall impair such right or remedy or be construed as a waiver, and CITY hereby waives any defense of laches, estoppel or prescription.

(k) Acts Beyond CITY Control. Nothing contained in this Conservation Easement shall be construed to entitle COUNTY to bring any action against CITY for any injury to or change in the Property resulting from causes beyond CITY's control, including, without limitation, fire, flood, storm and earth movement, or actions by persons outside the control and knowledge of CITY, or from any prudent action by CITY under emergency conditions, to prevent, abate or mitigate significant injury to the Property resulting from such causes.

8. NO PUBLIC DEDICATION OR GENERAL RIGHT OF PUBLIC ACCESS. Nothing contained in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Property. This instrument does not convey a general right of access to the public.

9. CITY'S TITLE WARRANTY. CITY represents and warrants that CITY has good fee simple title to the Property, subject to such liens, encumbrances and matters of record as may be approved by COUNTY, and hereby promises to defend the same against all claims that may be made against it. COUNTY's failure to object to any item or exception shown on a preliminary title report of the Property prior to the Closing Date shall constitute an approval by COUNTY of such item or exception.

10. ENVIRONMENTAL PROVISIONS.

(a) CITY's Environmental Warranty. CITY warrants that CITY has no knowledge of a release or threatened release of hazardous substances or wastes on or that could affect the Property and, as more generally set out in Paragraph 5(c) above, agrees to indemnify, defend, protect and hold COUNTY, its directors, officers, employees, agents, and contractors, and their heirs, successors, and assigns, harmless from and against all litigation costs, demands, penalties, damages, liabilities, claims or expenses (including reasonable attorney fees) arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws as a result of or arising out of the activities of CITY in the Property, or any breach of this Conservation Easement.

(b) COUNTY Not an Owner, Operator, or Responsible Party. Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives the COUNTY:

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

(ii) the obligations or liability of a person described in 42 USC § 9607(a)(3) or (4);

(iii) the obligations of a responsible person under any applicable environmental laws;

(iv) the right to investigate and remediate any hazardous materials associated with the Property; or

(v) any control over CITY's ability to investigate, remove, remediate, or otherwise clean up any hazardous materials associated with the Property.

11. TRANSFER BY COUNTY. COUNTY may transfer this Conservation Easement to any public or non-profit agency authorized to hold conservation easements pursuant to Section 815.3 of the California Civil Code.

(a) Voluntary Transfer. In selecting an appropriate transferee entity, preference will be given to a qualified agency or organization with a conservation purpose that has board, staff, or consultants with practical management experience, which agency or organization expressly agrees to assume the responsibility imposed on the COUNTY by this Conservation Easement. If such agency or organization cannot be found, or is not suitable for any reason, then another qualified agency or organization that expressly agrees to assume the responsibility imposed on the COUNTY by this Conservation Easement may be selected. COUNTY shall provide to CITY notice of any proposed transfer, information about the proposed transferee(s), and an opportunity for input. If more than one qualified agency or organization meets the foregoing criteria and all are equally capable of affecting the purposes of this Conservation Easement, COUNTY may select the organization that shall be the transferee. As a condition of such transfer or assignment, COUNTY shall require that the Purpose set forth in Section 1 hereof shall be carried out and enforced in perpetuity. Notice of such restrictions, including the Conservation Easement, shall be recorded in the County where the Property is located. The failure of COUNTY to perform any action required by this paragraph shall not impair the validity of this Conservation Easement or its enforcement in any way.

(b) Involuntary Transfer. If COUNTY ever ceases to exist or no longer qualifies under applicable state law or fails to perform its responsibilities under this Conservation Easement, CITY shall have the right to seek transfer, through a court of competent jurisdiction, of this Conservation Easement to another qualified organization having substantially similar purposes that agrees to assume the responsibilities imposed on COUNTY by this Conservation Easement.

12. TRANSFER OF PROPERTY. Any time the Property or any interest in it is transferred by CITY to any third party, CITY shall notify COUNTY and obtain approval in writing prior to the transfer of the Property or any interest in it, and CITY's deed of conveyance shall expressly refer to this Conservation Easement and incorporate the terms of this Conservation Easement. Such transfer shall not result in a merger of the Conservation Easement

and the Property in a single Property owner (thereby extinguishing the Conservation Easement) if no method or mechanism deemed adequate to preserve, protect, and sustain the Conservation Values of the Property in perpetuity has been established. Failure to notify COUNTY or include the required reference to this Conservation Easement in the deed shall not affect the continuing validity and enforceability of this Conservation Easement.

13. AMENDMENT. This Conservation Easement may be amended only with the written consent of CITY and COUNTY. Any such amendment shall be consistent with the Purpose of this Conservation Easement and shall comply with California Civil Code Section 815 *et seq.*, and any regulations promulgated in accordance with these statutes, and with the adopted amendment policy of COUNTY.

14. EXTINGUISHMENT. If circumstances arise in the future which render the Purpose impossible to accomplish, this Conservation Easement shall be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

15. CONDEMNATION. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Conservation Easement, in whole or in part, CITY and COUNTY shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by CITY and COUNTY in connection with the taking or in lieu purchase shall be paid out of the amount recovered. If only a portion of the Property is subject to such exercise of eminent domain, this Conservation Easement shall remain in effect as to all other portions of the Property.

16. VALUATION. This Conservation Easement constitutes a real property interest immediately vested in COUNTY. For the purpose of this Conservation Easement, the parties stipulate that this Conservation Easement has a fair market value determined by multiplying (a) the fair market value of the Property unencumbered by the Easement (minus any increase in value attributable to improvements made after the date of this Conservation Easement) by (b) the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the easement.

17. SUBORDINATION. If, at the time of conveyance of this Conservation Easement, the Property is subject to any mortgage or deed of trust encumbering the Property, CITY shall obtain from the holder of any such mortgage or deed of trust an agreement to subordinate its rights in the Property to this Conservation Easement to the extent necessary for the COUNTY to enforce the purpose hereof in perpetuity and to prevent any modification or extinguishment of this Conservation Easement by the exercise of any rights of the mortgage or deed of trust holder.

18. GENERAL PROVISIONS.

(a) **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California and applicable Federal law.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to affect the purpose of this Conservation Easement. 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 any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

19. PERPETUAL DURATION. The Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to CITY and COUNTY shall also apply to and be binding upon their respective agents, heirs, beneficiaries, executors, administrators, successors and assigns.

20. NOTICES. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, or by another common method or service where receipt is confirmed, addressed as follows or such other address as either party from time to time shall designate by written notice to the other.

To CITY: City of Goleta
Michelle Greene, City Manager
130 Cremona Drive, Suite B
Goleta, CA 93117
(805) 961-7501
mgreene@cityofgoleta.org

With a copy to: City of Goleta
Michael Jenkins, Interim City Attorney
130 Cremona Drive, Suite B
Goleta, CA 93117
(805) 961-7576
mjenkins@localgovlaw.com

To COUNTY: Real Property Division
County of Santa Barbara
General Services Department
1105 Santa Barbara Street,
Second Floor, Courthouse East Wing

Santa Barbara, CA 93101
Attn: Don Grady, Real Property Manager
(805) 568-3065
dgrady@countyofsb.org

With a copy to: County of Santa Barbara
Planning & Development Department, Energy Division
123 E. Anapamu Street
Santa Barbara, CA 93101
Attn: Kathy McNeal Pfeifer, Planner
(805) 568-2507
Kathypm@countyofsb.org

21. LAWS CURRENTLY IN EFFECT. All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

22. ENTIRE AGREEMENT. This instrument with the Attachments incorporated herein sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings or agreements relating to the Property, all of which are herein merged.

23. COUNTERPARTS. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

24. ATTACHMENTS. The Attachments attached hereto are incorporated herein by this reference:

ATTACHMENT A: Property legal description

ATTACHMENT B: Property map depiction

25. EFFECTIVE DATE; RECORDATION. This Conservation Easement is effective upon recordation in the Official Records of the County of Santa Barbara, State of California, as provided in California Civil Code section 815.5. GRANTOR shall cause this Conservation Easement to be recorded.

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IN WITNESS WHEREOF, the parties have executed this Conservation Easement Deed and Agreement by the respective authorized signatories as set forth below to be effective upon final execution by all parties hereto and recordation.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

[Page Intentionally Left Blank; Insert Notary for County Signature here.]

COUNTY APPROVAL AS TO FORM

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

**APPROVED AS TO
ACCOUNTING FORM:**

Theodore Fallati, CPA
Auditor-Controller

By: _____
Deputy

**APPROVED AS TO FORM:
Risk Management**

By: _____
Risk Management

**APPROVED AS TO FORM:
Real Property**

By: _____
Real Property

IN WITNESS WHEREOF, the parties have executed this Conservation Easement Deed and Agreement by the respective authorized signatories as set forth below to be effective upon final execution by all parties hereto and recordation.

CITY OF GOLETA

Paula Perotte
Mayor

By: _____
Mayor

ATTEST:

Deborah Lopez
City Clerk

By: _____
City Clerk

APPROVED AS TO FORM:

Michael Jenkins,
Interim City Attorney

By: _____
Interim City Attorney

[Page Intentionally Left Blank; Insert Notary for City Signature here.]

Attachment A

Legal Description

That certain real property in the City of Goleta, County of Santa Barbara, State of California described as follows:

Lot 22 in Block 4 of Ellwood Acres No. 2, in the City of Goleta, County of Santa Barbara, State of California, according to the map thereof recorded in Book 15, at Pages 155 and 156 of Maps in the office of the County Recorder of said County.

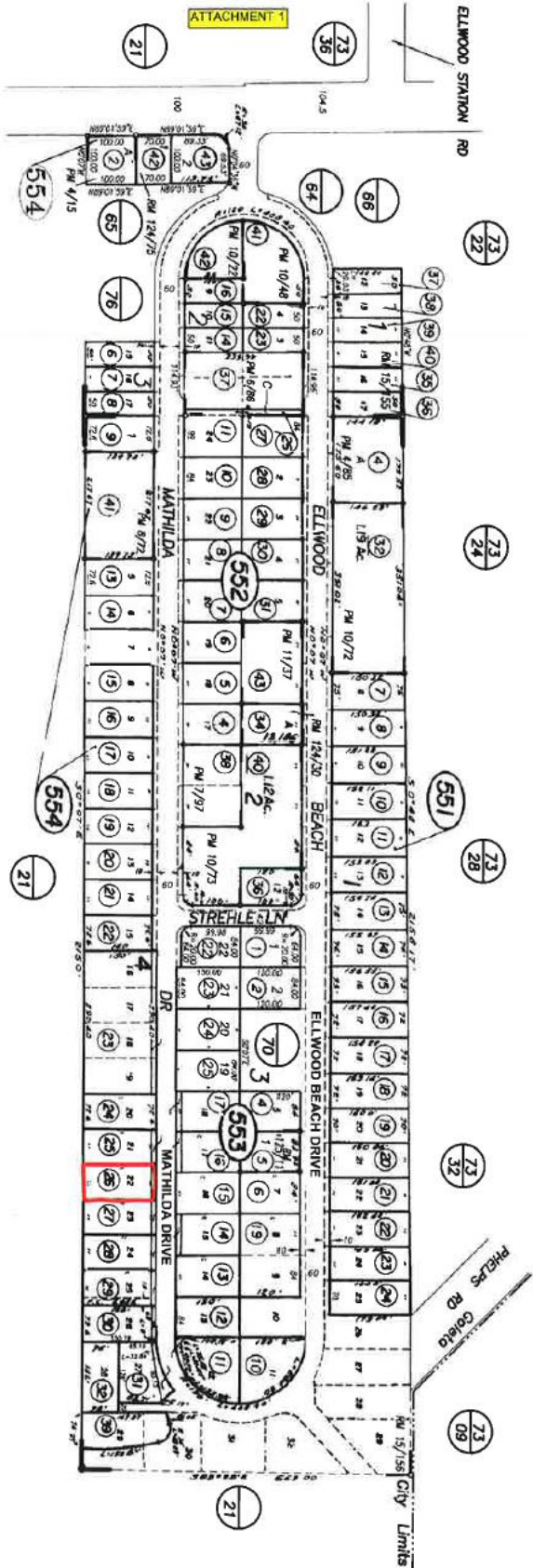
APN: 079-554-026

Attachment B

Maps - Depiction of Property

POR. RANCHO LOS DOS PUEBLOS

079-55



- 6/16/1927 R.M. Bk. 15, Pg. 155, Tract "Elwood Acres No. 1"
- 6/16/1927 R.M. Bk. 15, Pg. 156, Tract "Elwood Acres No. 2"
- 7/7/1983 R.M. Bk. 124, Pg. 30-31, Tract 13186
- 10/5/1983 R.M. Bk. 124, Pg. 75-76, Tract 13409
- 11/18/1983 R.M. Bk. 125, Pg. 11-12, Tract 13091

NOTICE
 Assessor's Parcels are for tax assessment
 purposes only and do not indicate either
 parcel legality or a valid building site.

City of Goleta
 Assessor's Map Bk. 079-Pg. 55
 County of Santa Barbara, Calif.

(10/06) 553-20 PMS 553-22 & 23
 553-21 PMS 553-24 & 25



- Taylor-Ash Parcel
- Monarch Butterfly Habitat



City of Goleta

2016 Santa Barbara County
NAIP Imagery
Map Updated: February 15, 2017, 04:06 PM


ALTHOUSE AND MEADE, INC.
 BIOLOGICAL AND ENVIRONMENTAL SERVICES