

ATTACHMENT A

CONDITIONAL AGREEMENT TO RECORD A RESTRICTION ON USE OF PROPERTY

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This CONDITIONAL AGREEMENT TO RECORD A RESTRICTION ON USE OF PROPERTY (“AGREEMENT”) is entered into by and between the COUNTY OF SANTA BARBARA (“COUNTY”), a political subdivision of the State of California, and Foothills Forever, Inc. (“FOOTHILLS FOREVER”), a California non-profit public benefit corporation, each being individually a “PARTY”, and collectively “the PARTIES”, to the AGREEMENT.

RECITALS

WHEREAS, COUNTY is the owner of approximately 200 acres of land located in the foothills above the City of Santa Barbara and to the northeast of the intersection of San Marcos Pass and Foothill Road and identified as the “Designated Remainder” in Tract Map No. 14,585, commonly known as the “San Marcos Foothills Preserve”; and

WHEREAS, as set forth in the Purpose Statement of FOOTHILLS FOREVER’s Articles of Incorporation, FOOTHILLS FOREVER was incorporated “to support, protect and conserve Santa Barbara’s Foothills lands, in particular the San Marcos Foothills Preserve, and the habitat, cultural, recreational and other resources present and the community benefits provided by these lands”; and FOOTHILLS FOREVER is “authorized to undertake all activities allowable by a § 501(c)(3) organization in furtherance of these and other comparable and similar land conservation purposes and to hold, receive and disburse funds, property and other assets for this purposes.”; and

WHEREAS, by separate agreements, the COUNTY has negotiated with the current owner of approximately 101 acres of land adjacent to the existing San Marcos Foothills Preserve (the “West Mesa Properties”) to acquire the West Mesa Properties subject to a deed restriction limiting future use of the West Mesa Properties to public open space in perpetuity; and

WHEREAS, the PARTIES wish to enter into a conditional agreement whereby the COUNTY agrees to record the same irrevocable restriction on use proposed for the West Mesa Properties onto the property constituting the existing San Marcos Foothills Preserve, limiting future use to public open space in perpetuity, in consideration for, and upon, FOOTHILLS FOREVER’s full and complete performance of specific obligations, including creation of separate Operational and Restoration Endowments, preparation of Conceptual ADA Improvements and Trails Master Plans, and adoption of by-laws providing for COUNTY representation on the FOOTHILLS FOREVER Board of Directors.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES hereby agree as follows:

ARTICLE I

1.1 FOOTHILLS FOREVER Obligations. FOOTHILLS FOREVER shall:

- A. Create and fund an irrevocable, perpetual Operational Endowment in an initial amount of not less than \$1,000,000.00 (one million dollars).
 - i. FOOTHILLS FOREVER shall create and fund, for the benefit of the County of Santa Barbara, the Operational Endowment upon the following terms:
 - a) The Operational Endowment shall be held by a qualified endowment holder approved by the COUNTY, including but not limited to the Santa Barbara Foundation, and the Operational Endowment Agreement shall be subject to review and approval by the COUNTY.
 - b) Upon the creation of the Operational Endowment, any interest accrued on the principal funds held in the Operational Endowment, minus the annual administrative costs required by the qualified endowment holder, shall be annually distributed directly to the COUNTY as set forth in the approved Operational Endowment Agreement and in accordance with The Uniform Management of Institutional Funds Act (UMIFA) and other applicable laws.

- c) The funds annually distributed to the COUNTY shall be used at the COUNTY's sole discretion exclusively on activities benefiting the San Marcos Foothills Preserve and the West Mesa Properties, including, but not limited to, maintenance, repairs, restoration, improvements, enforcement, staff, overhead, and administration.
 - d) In the event that FOOTHILLS FOREVER dissolves, winds up, or ceases to operate or exist, the COUNTY shall remain the beneficiary and recipient of all funds associated with the Operational Endowment. Any future dissolution of the Operational Endowment shall be subject to prior COUNTY approval.
 - ii. For purposes of triggering the COUNTY's performance obligations under this AGREEMENT, FOOTHILLS FOREVER shall have fully performed this obligation upon the COUNTY's prompt review and approval, not to be unreasonably withheld, of written documentation showing, to the COUNTY's satisfaction, the creation and funding of the Operational Endowment upon the terms set forth herein. The COUNTY Board of Supervisors may delegate authority to a COUNTY officer responsible for reviewing and approving the Operational Endowment Agreement.
- B. Create, fund, and maintain in perpetuity an irrevocable Restoration Endowment in an initial amount of not less than \$1,000,000.00 (one million dollars)
 - i. FOOTHILLS FOREVER shall create and maintain the Restoration Endowment upon the following terms:
 - a) The Restoration Endowment shall be held by the same endowment holder that holds the Operational Endowment.
 - b) Upon the creation of the Restoration Endowment, annual distributions shall be made directly to FOOTHILLS FOREVER in accordance with the investment and spending policies for the Endowment that attempt to provide a predictable stream of funding for SMF Preserve restoration projects (as defined therein) while seeking to maintain the purchasing power of the endowment assets, minus the annual administrative costs required by the qualified endowment holder, as set forth in the approved Operational Endowment Agreement and in accordance with The Uniform Management of Institutional Funds Act (UMIFA) and other applicable laws for distribution by FOOTHILLS FOREVER as provided herein.
 - c) Any funds distributed by FOOTHILLS FOREVER from the Restoration Endowment:
 - I) shall be used exclusively for on-site habitat management activities, including restoration, enhancement and maintenance; installation of native plants; managing environmental education and passive recreational uses while protecting ecological function and cultural values; research strategies for lands and habitat management; preservation and the promotion of ecological health; Chumash ethnobotanical and suitable interpretative programs; responding to threats and damage to ecological and cultural resources; maintain a wildfire buffer; and other activities on San Marcos Foothills Preserve and the West Mesa Properties in accordance with the Restoration Endowment Grant Guidelines, attached as Exhibit C and as may be periodically revised. In the event of any conflict between the authorized uses of funds listed above and those contained in the Restoration Endowment Grant Guidelines, the Guidelines shall control, subject to COUNTY's authority to provide written approval for the specific activities funded by the Restoration Endowment set forth below;
 - II) shall only be used on San Marcos Foothills Preserve and the West Mesa Properties following recordation of the restriction limiting use to public open-space in perpetuity; and

- iv. Implementation of the Conceptual Trails and Roads Plan shall be at the sole discretion of the COUNTY. The COUNTY's acceptance of the Conceptual Trails and Roads Plan shall not constitute approval of the Plan, or any individual component thereof.
 - v. For purposes of triggering the COUNTY's performance obligations under this AGREEMENT, Foothills Forever shall have fully performed this obligation upon the COUNTY's prompt acceptance, not to be unreasonably withheld, by written notice of the Conceptual Trails and Roads Plan.
- E. Create and maintain by-laws for Foothills Forever that provide for COUNTY representation on the Foothills Forever Board of Directors.
- i. The Foothills Forever by-laws shall provide:
 - a) for one COUNTY representative that shall serve as a full, voting member of the Foothills Forever Board of Directors, and shall be the Supervisor on the COUNTY Board of Supervisors whose District includes the San Marcos Preserve; and
 - b) for one COUNTY representative from the Parks Department that shall serve, ex-officio, as a non-voting member of the Foothills Forever Board of Directors, and that shall be appointed by the COUNTY Board of Supervisors; and
 - c) for a process for any successor entity to assume responsibility for ongoing maintenance and administration of the Operational Endowment and Restoration Endowment, subject to the County's approval, as set forth herein.
 - ii. For purposes of triggering the COUNTY's performance obligations under this AGREEMENT, Foothills Forever shall have fully performed this obligation upon the COUNTY's acceptance by written notice of Foothills Forever's adopted by-laws, satisfying to the COUNTY's satisfaction the requirements of this Section.

1.2. COUNTY Obligations.

- A. Upon Foothills Forever's full and complete performance of all its obligations set forth in Section 1.1, above, the COUNTY shall record the irrevocable restriction on the use of property in perpetuity, attached hereto as Exhibit A, on the property constituting the existing San Marcos Foothills Preserve, specifically described in Exhibit B.
- B. This AGREEMENT shall expire, and COUNTY shall have no obligation to perform, if Foothills Forever has not provided full and complete performance of all its obligations, as defined in Section 1.1, above, within three (3) years of the Effective Date of this AGREEMENT. This deadline for full and complete performance by Foothills Forever may be unilaterally extended, at the COUNTY's sole discretion, through written notice to Foothills Forever.
- C. COUNTY shall reasonably cooperate with Foothills Forever's 200 Acres Forever Campaign to fund the Operational Endowment and support the efficient and timely completion of Foothills Forever's obligations contained herein, including support of public and/or private grant applications that are consistent with the Management Plan; however, the COUNTY's failure to take any specific action or to reasonably cooperate shall not excuse Foothills Forever's performance obligations hereunder.

ARTICLE II

2.1 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 with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:

County of Santa Barbara
General Services Real Property Division
260 N. San Antonio, Casa Nueva
Santa Barbara, California 93110

To FOOTHILLS FOREVER:

President
Foothills Forever, Inc.
1221 State Street, # 92233
Santa Barbara, California 93101

With an email Copy to Marc Chytilo: Marc@lomcsb.com (delivery of which shall not constitute notice) or any successor designated in writing to COUNTY.

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.

ARTICLE III

3.1 Costs. Each PARTY shall bear its own costs in performing its obligations under this AGREEMENT.

3.2 Remedies. If the AGREEMENT does not expire as set forth in Section 1.2, above, following either FOOTHILLS FOREVER's completion of its performance hereunder or the COUNTY's recordation of the restrictive covenant, the PARTIES agree that irreparable damage would occur in the event that either PARTY breached its ongoing obligations under this AGREEMENT. It is accordingly agreed that the PARTIES shall be entitled to an injunction or injunctions to prevent breaches of any ongoing obligations under this AGREEMENT and to enforce specific performance thereof in a court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

3.3 Term. This AGREEMENT shall become effective ("Effective Date") upon execution by the COUNTY, and shall remain in full force and effect unless it expires as set forth in Section 1.2, above. The restrictive covenant shall be effective upon recordation, and shall thereafter be irrevocable in perpetuity.

3.4 Assignment. FOOTHILLS FOREVER shall not assign or otherwise transfer 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 or transfer without such consent shall be void and without legal effect and shall constitute breach of the AGREEMENT.

3.5 Entire Agreement. 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.

3.6 Applicable Law. This AGREEMENT shall be governed by and construed and enforced in accordance with the laws of the State of California.

3.7 Venue. 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.

3.8 Authority. All signatories 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.

3.9 No Waiver. The failure of any PARTY to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that PARTY may have hereunder at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the first date duly executed by all of the parties hereto (“Effective Date”).

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Laura Capps, Chair
Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Kirk Lagerquist, Director
General Services Department

By: DocuSigned by:
Kirk Lagerquist

19AEDA90054E4CE
Department Head

Foothills Forever, Inc.

By: DocuSigned by:
Dani Lynch

Name: 0A250FA9E015449...
Dani Lynch
Title: _____
Co-President

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: Signed by:
Tyler Sprague

0AC56B8DE45F483
Deputy County Counsel

Foothills Forever, Inc.

By: Signed by:
M. Parra

Name: D48D6DC7593A4F6...
Marianne Parra
Title: _____
Co-President

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: Signed by:
Shawna Jorgensen

DF6DB6D7D6344E6...
Deputy

Exhibit A

Declaration of Restrictive Covenant

Recording request by and
when recorded, mail to:
County of Santa Barbara
General Services Dept- Casa Nueva
Real Property Division
260 N San Antonio Rd
Santa Barbara, CA 93110

**COUNTY OF SANTA BARBARA
OFFICIAL BUSINESS**

No fee pursuant to Government Code § 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE
APNS: 055-010-014 & -027 and 059-020-060
Real Property Division No. 003515

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is executed by the County of Santa Barbara, a political subdivision of the State of California, ("County" or "Declarant") on the signature date set forth below. Declarant promises, agrees and covenants to restrict the development and use of the property described below in accordance with the terms, conditions and restrictions set forth in this Declaration.

WHEREAS, County has entered into a "Conditional Agreement to Record a Restriction on use of Property" ("Agreement") with Foothills Forever, Inc. ("Foothills Forever") a California non-profit public benefit corporation, whereby the County has agreed to record a restrictive covenant on the Property upon Foothills Forever's full and complete performance of specific obligations set forth in the Agreement; and

WHEREAS, the purpose of this Declaration is to limit future use of the Property to public open space in perpetuity; and

WHEREAS, County has authorized execution and recordation of this Declaration upon Foothills Forever's full and complete performance of its specific obligations set forth in the Agreement.

NOW, THEREFORE, in consideration of the obligations as set forth in the Agreement, County hereby declares and agrees as follows:

1. Covenant Running with Land. Declarant does hereby covenant and agree to restrict, and does by this instrument intend to restrict, the future development and use of the Property as set forth below, by the establishment of this covenant running with the land.

2. Restrictive Covenants. The following restrictive covenant shall apply to the land comprising the Property:
 - A. Use of the Property shall be limited to open space and passive recreational uses, such as hiking trails, as well as use for wildlife, native plants and habitat preservation, and ecological restoration and protection of native species and their habitats.
 - B. Recreational and open space use of the Property shall exclude the use of motorcycles, bicycles, equestrian uses and dogs off leash.
3. Successors and Assign Bound. Declarant hereby agrees and acknowledges that the Property shall be held, sold, conveyed, owned, developed and used subject to the applicable terms, conditions and obligations imposed by this Declaration relating to the development and use of the Property, and matters incidental thereto. Such terms, conditions, and obligations are a burden and restriction on the development and use of the Property, as applicable. The provisions of this Declaration shall, subject to the limitations contained in this Declaration and without modifying the provisions of this Declaration, be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land comprising the Property, and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, successors, and assigns, grantees, lessees, mortgagees, lienors, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries, administrators, any person who claims an interest in the Property, and upon future owners and lessees of the Property and each of them.
4. No Other Restrictions. This Declaration imposes no obligations or restrictions except as expressly stated herein.
5. General Provisions
 - A. Controlling Law. The interpretation and performance of this Declaration shall be governed by the laws of the State of California.
 - B. Severability. If any provision of this Declaration or the application thereof is found to be invalid, the remaining provisions of this Declaration or the application of such provisions other than that found to be invalid shall not be affected thereby.

- C. Modification and Release. This Declaration shall not be amended, released, terminated, or removed from the Property except as provided for in the Agreement.
- D. Recordation. This Declaration shall be recorded in the Santa Barbara County Recorder's Office and shall take effect upon recordation

IN WITNESS WHEREOF, the COUNTY OF SANTA BARBARA, a political subdivision of the State of California, has executed this Declaration of Restrictive Covenant on the *insert day* day of *insert month*, *insert year*.

"DECLARANT"

COUNTY OF SANTA BARBARA, a
political subdivision of the State of
California

By: _____
Laura Capps, Chair
Board of Supervisors

NOT FOR RECORDATION

ACKNOWLEDGMENT

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

State of California
County of Santa Barbara

On _____ before me, _____, a Deputy Clerk, personally appeared Supervisor Laura Capps, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature (Seal)

Exhibit B

DESCRIPTION OF PROPERTY

Exhibit C

DRAFT Restoration Endowment Grant Guidelines

Foothills Forever, Inc. | San Marcos Foothills Preserve
Restoration Endowment Fund Grant Guidelines
Approved by Foothills Forever Executive Committee 11.15.23

Foothills Forever, Incorporated, is a community-based organization whose objectives and purposes are to support, protect and conserve Santa Barbara's Foothills lands, in particular the San Marcos Foothills Preserve ("Preserve"), and the habitat, cultural, recreational and other resources present and the community benefits provided by these lands, recognizing that these are unceded Chumash ancestral lands. These purposes may be fulfilled through, among other things, advisory participation in the County's stewardship of the Preserve and the development and allocation of funds for use at the Preserve.

Overview of the Restoration Endowment Fund (REF)

The Restoration Endowment Fund (REF) provides support for habitat restoration activities at the San Marcos Foothills Preserve, in Santa Barbara County, with an emphasis on the West Mesa's 101 acres. The REF is intended to provide additional support for the Foothills where there are gaps in government and foundation support. Funding will be allocated by the FFI Board of Directors, based on the spending policies in the SB Foundation / REF Agency Endowment Fund Agreement and these Grant Making Guidelines.

Grant Making Guidelines

The Foothills Forever, Inc. believes that in addition to preservation, stewardship of the land at the San Marcos Foothills is vital. The Restoration Endowment Fund (REF) will provide important financial resources that run with the land to ensure its active care and restoration. The exclusive goals of the Restoration Endowment Fund are to provide funding for projects that take place either 1) on the West Mesa, or, 2) in the event these lands are permanently protected as open space, on the adjacent 200 acres that provide direct habitat value to the West Mesa.

Projects must also meet one or more of these priority areas:

- Restore and establish native plants to combat climate change and enhance vital wildlife habitat
- Enhance the Preserve as a public open space for passive recreation and environmental education for youth and adults while protecting its ecological function
- Maintain the Preserve as a critical wildfire buffer for Santa Barbara;
- Plant and/or maintain a Chumash ethnobotanical garden and related projects;
- Provide opportunities for research on biodiversity, sequestration of carbon, and other subjects relevant to preservation;
- Ensure stabilization or enhancement of biological and natural resources, and/or mitigate invasive plants, when altered by storms or other environmental or human-made conditions;
- Develop and implement supervised hands-on volunteer projects to aid restoration and provide training in restoration methodologies.

Applications generally should also:

- Fall within the approved County of SB Foothills Work Plan, informed by the Foothills Community Advisory Council.
- Describe how the project will connect and share outcomes of projects with an array of community groups on fire, biodiversity, climate change, and community engagement in land preservation and other projects;
- State if the project is planning to leverage additional government, individual, or foundation support, and if so, the status of the other funding;
- Share technical data with other interested and qualified researchers and Project Applicants.

Single or multi-year grants of a variety of amounts up to \$40,000 will be considered in an annual funding cycle, although \$40,000 is the anticipated total annual grantmaking. Funding may be available in between cycles for unforeseen/urgent needs. Projects with other (or matching) funding sources are encouraged.

A grant report is due one year after funding is received and should include project outcomes, a final budget, and photographs, and/or a site tour.

There is no appeals process for unfunded projects, however applicants may reapply the following year.

Applications & Deadline to Apply

Two options for application: Use the S.B. County Roundtable Common Grant Application form available [HERE](#) OR create a short list of questions and ask for a simple letter and budget. Please send your application to: Foothills Forever, Inc. [email] or [USPS address] Applicants are not required to be recognized as § 501(c)(3) exempt organizations, but if they are not, projects must fall within FFI's mission and exempt purposes

Applications will be coordinated with the SMFCAC review process and the County Annual Work Plan processes, and are due to FFI by XX. (Fill in a timeline that meshes well after the Annual Work Plan is approved by the County so applicants know that their projects will qualify.)

Questions?

Contact Info XX