

## **CARPINTERIA BLUFFS III ACQUISITION**

### **AGREEMENT BETWEEN THE COUNTY OF SANTA BARBARA AND CITY OF CARPINTERIA**

This Agreement is made on this 24<sup>th</sup> day of March, 2020, by and between the City of Carpinteria, a general law city within the County of Santa Barbara, California (hereinafter referred to as "GRANTEE"), and the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), wherein COUNTY agrees to grant certain funds to GRANTEE for the purposes and on the conditions specified herein.

#### **RECITALS**

WHEREAS, GRANTEE submitted an application to the Coastal Resource Enhancement Fund ("CREF"), seeking money to partially fund the purchase of approximately 21 acres, known as Carpinteria Bluffs III property (APN Nos. 001-210-020 & 001-210-024), located south of Carpinteria Avenue, east of commercial property and open space lands and west of Rincon Beach Park in the City of Carpinteria, as shown on Exhibits "A" and "B" of Attachment 1, attached hereto and incorporated herein by reference, (hereinafter the "PROPERTY");

WHEREAS, The PROPERTY's approximately 21 acres of open space has natural coastal resources and coastal tourism and recreational value; and

WHEREAS, COUNTY has chosen to award GRANTEE one hundred and forty-four thousand and seven hundred and fifty dollars (\$144,750.00) CREF grant to be paid towards acquisition of the PROPERTY once GRANTEE has secured all funds necessary to purchase and hold sole interest in the PROPERTY.

WHEREAS, GRANTEE has submitted a certified appraisal dated February 24, 2015 and an updated appraisal letter dated March 13, 2018 for the PROPERTY.

WHEREAS, The Land Trust for Santa Barbara County (hereinafter the "LAND TRUST") purchased the PROPERTY for the appraised amount of six million dollars (\$6,000,000.00) and sold it to GRANTEE on March 27, 2020 for nine hundred and forty-four thousand and seven hundred and fifty dollars (\$944,750.00) with the stipulation that GRANTEE convey a Conservation Easement over PROPERTY to LAND TRUST.

WHEREAS, on March 27, 2020, along with the purchase of PROPERTY, GRANTEE conveyed a Conservation Easement to LAND TRUST that protects the long-term conservation of the PROPERTY's open space, native habitat, and coastal access, in perpetuity.

## TERMS AND CONDITIONS

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

1. **PURPOSE:** The purpose of this Agreement is to award GRANTEE a grant of CREF funds to be used towards purchase of the fee interest in the PROPERTY and subsequently, convey or cause to be conveyed a perpetual Conservation Easement over the PROPERTY to the LAND TRUST, for the long-term conservation of the Property's open space, scenery, habitat for native plants and animals, coastal access, and trails for non-motorized recreation of many types, in perpetuity. The Conservation Easement shall be the "Conservation Easement Deed and Agreement" attached hereto as Attachment 1, incorporated herein by reference.

(a) **CREF GRANT FOR ACQUISITION:** COUNTY shall pay a total of one hundred and forty-four thousand and seven hundred and fifty dollars (\$144,750.00) from the Coastal Resource Enhancement Fund, Fund #0063, Dept. #053, Program #5090, Account #7863, Project #1702 (hereinafter referred to as "Grant Funds") towards the purchase of the PROPERTY, no later than thirty (30) days after execution of this Agreement.

(b) **DEFINITION OF PROPERTY:** The two subject properties to be purchased with this grant are defined as: 4.72-acre of the current Assessor Parcel Number Book 01, Page 210, Parcel 20 and 16.93-acre of the current Assessor Parcel Number Book 01, Page 210, Parcel 24, in the County of Santa Barbara, State of California, inclusive of maps in the office of the County Recorder of said County, hereinafter referred to as "PROPERTY", as shown in Exhibits "A" and "B" in Attachment 1, attached hereto and incorporated herein by reference.

(c) **CONSERVATION EASEMENT AREA:** The Conservation Easement area shall include the entire PROPERTY. The easement boundary is legally described and shown on Exhibits "A" and "B" of Attachment 1 of this Agreement.

The land use restrictions and management measures applied to the Conservation Easement area shall be recorded through the Conservation Easement.

Upon GRANTEE'S acquisition of the PROPERTY, GRANTEE shall own and manage the PROPERTY.

2. **GRANTEE'S RESPONSIBILITY:** On March 27, 2020, GRANTEE paid LAND TRUST the necessary consideration for the purchase of the PROPERTY, acquiring fee interest in said PROPERTY. On March 27, 2020, GRANTEE conveyed the Conservation Easement over said PROPERTY to LAND TRUST as set forth in Attachment 1 hereto. GRANTEE further agrees to be the long-term steward of the PROPERTY.

(a) GRANTEE purchased the PROPERTY from LAND TRUST for nine hundred and forty-four thousand and seven hundred and fifty dollars (\$944,750.00). Along with CREF

Grant Funds in the amount of one hundred and forty-four thousand and seven hundred and fifty dollars (\$144,750.00), GRANTEE secured an additional amount of funds not less than eight hundred thousand dollars (\$800,000.00), plus escrow and title fees to obtain fee interest in the PROPERTY and to pay the escrow, title, and related fees and costs. Upon close of escrow, GRANTEE obtained a California Land Title Association owner's policy of title insurance covering six million dollars (\$6,000,000.00), PROPERTY's appraised value. Costs of such policy shall be paid by GRANTEE.

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

(c) GRANTEE represents and warrants to the County that to the best of GRANTEE's knowledge, after appropriate due diligence, including a title report, that there are no outstanding monetary or mechanic's liens to which the Conservation Easement will be subject, the foreclosure of which would cause the Conservation Easement to be extinguished.

**3. COUNTY'S RESPONSIBILITY:** COUNTY agrees to pay the Grant Funds (\$144,750.00) to fund the purchase of the PROPERTY.

Notwithstanding any other provision of this Agreement, the maximum contribution of the COUNTY with regard to the CREF award and the terms of this Agreement shall not, under any circumstances, exceed the Grant Funds sum of \$144,750.00, which may only be used toward the purchase price of the PROPERTY. GRANTEE shall be responsible for all costs of acquisition, including escrow and title insurance fees and any portion of the purchase price in excess of the CREF Grant Funds.

**4. GOOD FAITH DISCLOSURES BY GRANTEE:** GRANTEE shall make a good faith disclosure to COUNTY of any and all facts, findings, and information concerning the PROPERTY in GRANTEE's knowledge or possession, including without limitation historical uses; prior permitted uses; current uses including, but not limited to, express or implied contracts, leases and/or permits; geological conditions; biological conditions; archaeological sites; flood hazard area(s); special studies zones; zoning report; environmentally hazardous material such as asbestos, dioxins, oils, PCB's, solvents, waste disposal, gasoline tank leakage, pesticide use and spills, herbicide use or spills or any other substances and/or products of environmental contamination. Any and all facts or information known to GRANTEE concerning the condition of the PROPERTY shall be delivered to COUNTY no later than thirty (30) days following COUNTY'S execution of this Agreement.

If such facts, findings or information provided by GRANTEE disclose conditions that adversely affect the continued or contemplated use of the PROPERTY and that COUNTY reasonably deems unacceptable, or if COUNTY otherwise discovers such facts or information which disclose such conditions, and GRANTEE is unwilling or unable to correct such conditions to

the reasonable satisfaction of COUNTY or any governmental body having jurisdiction over the Property, then COUNTY, in its sole option, may terminate this Agreement. Within ten (10) business days of actual receipt of GRANTEE'S disclosure information, COUNTY shall notify GRANTEE of any condition it deems unacceptable and the correction desired and shall ask GRANTEE, at GRANTEE'S expense, to correct the identified condition(s) to the reasonable satisfaction of COUNTY or any governmental body having jurisdiction over the PROPERTY. GRANTEE'S failure to make the requested corrections shall be grounds for termination of this Agreement.

Copies of any and all original documents and/or information relating to the PROPERTY, to the extent they exist and are in GRANTEE'S custody, shall be delivered by GRANTEE to COUNTY. Nothing will obligate GRANTEE to provide any privileged documents or information or attorney work product.

**5. TERMINATION:** COUNTY shall have the right to terminate this Agreement only following GRANTEE'S failure to cure a material breach following ten (10) days written notice. GRANTEE shall have the right to terminate this Agreement at any time prior to the payment of CREF Grant Funds, subject to the terms set forth herein. Should GRANTEE terminate this Agreement, it shall within thirty (30) days of notice of termination return all GRANT FUNDS to COUNTY, if such GRANT FUNDS were previously disbursed to GRANTEE, and pay COUNTY an additional sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) as partial reimbursement of COUNTY'S professional staff costs accrued in the preparation of this Agreement.

**6. DISCLAIMER BY COUNTY:** Nothing in this Agreement is intended to or commits the COUNTY with regard to the approval or disapproval of any future land use, Comprehensive Plan, Zoning, CEQA, or their discretionary review or approval, in which the COUNTY as a governmental entity may be involved.

**7. PERIOD FOR WHICH RECORDS ARE AVAILABLE:** GRANTEE shall maintain all records regarding performance of this contract for a minimum of four (4) years after the close of escrow on Grantee's purchase of the PROPERTY. GRANTEE agrees that the COUNTY may, at any time during normal working hours and up to four (4) years after the full performance or termination of this contract, review or audit all records regarding performance of this contract.

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

resulting solely from the negligent acts or omissions or willful misconduct of COUNTY. GRANTEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with the Agreement.

**9. ALIENATION OR ASSIGNMENT:** Neither party shall assign, subordinate, or transfer this Agreement or any right or duty hereunder without the other party's prior written consent. Any attempt to assign, sublet, subordinate or transfer in violation of this provision shall be void and without legal effect.

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

To COUNTY: County of Santa Barbara  
Planning & Development, Energy & Minerals Division  
123 E. Anapamu Street  
Santa Barbara, CA 93101  
Attn: Kathy McNeal Pfeifer, 568-2507  
[kathypm@countyofsb.org](mailto:kathypm@countyofsb.org)

AND

For all escrow related matters:

General Services Department  
Real Property Division  
1105 Santa Barbara Street, East Courthouse Wing, 2<sup>nd</sup> Floor  
Santa Barbara, CA. 93101  
Attn: Julie Lawrence  
[juliel@countyofsb.org](mailto:juliel@countyofsb.org)  
(805) 568-3065

To GRANTEE: City of Carpinteria  
5775 Carpinteria Avenue  
Carpinteria, CA 93013  
Attn: Matt Robert, Parks & Recreation Director  
[matt@ci.carpinteria.ca.us](mailto:matt@ci.carpinteria.ca.us)  
805-755-4449

Either party may change its point of contact by providing thirty (30) days written notice to the other party. The Director or Deputy Director may designate a new point of contact for COUNTY.

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

12. **ACKNOWLEDGMENT**: GRANTEE shall publicly identify in a news release and in GRANTEE's newsletter (or equivalent printed or emailed publication) that includes a description of the transaction that the acquisition is partially financed by the "County of Santa Barbara's Coastal Resource Enhancement Fund (CREF), a partial mitigation of impacts from the following offshore oil and gas projects: Point Arguello, Point Pedernales, and Santa Ynez Unit." On a dedication sign located at the PROPERTY, GRANTEE shall publicly identify the "County of Santa Barbara's Coastal Resource Enhancement Fund."

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

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

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

16. **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.

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

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

**19. NONDISCRIMINATION CLAUSE:** GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code, as it may be amended from time to time, as if set forth fully herein.

**20. TAXES:** GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number is 95-2414438.

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

**22. FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile or electronically transmitted documents which include signatures, such documents shall be accepted by GRANTEE as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of the electronic or facsimile transmission.

This Agreement between the COUNTY and GRANTEE is executed on the dates shown below and shall be effective when signed by all parties.

**COUNTY OF SANTA BARBARA**

**ATTEST:**

CLERK OF THE BOARD

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

\_\_\_\_\_  
Chair, Board of Supervisors

**COUNTY APPROVAL AS TO FORM**

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

BETSY SCHAFFER, CPA  
AUDITOR-CONTROLLER

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

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

REAL PROPERTY

RISK MANAGEMENT

By: \_\_\_\_\_  
Carlo Achdjian,  
Real Property Manager

By: \_\_\_\_\_  
Ray Aromatorio, ARM, AIC  
Risk Manager

**CITY OF CARPINTERIA**

GRANTEE:

BY: \_\_\_\_\_  
Dave Durflinger, City Manager  
City of Carpinteria



**ATTACHMENT 1**

**CONSERVATION EASEMENT  
DEED and AGREEMENT**