



Agenda Item A.7
CONSENT CALENDAR
Meeting Date: May 21, 2019

TO: Mayor and Councilmembers

FROM: Peter Imhof, Planning and Environmental Review Director

CONTACT: Anne Wells, Advance Planning Manager

SUBJECT: Coastal Conservancy Grant for Enhancement of Monarch Butterfly and Other Wildlife Habitat at the Ellwood Mesa/Sperling Preserve Open Space

RECOMMENDATION:

Adopt Resolution No. 19-__ entitled "A Resolution of the City Council of the City of Goleta, California Authorizing Execution of a Grant Agreement with the Coastal Conservancy and Acceptance of Funds for Enhancement of Monarch Butterfly and Other Wildlife Habitat at the Ellwood Mesa/Sperling Preserve Open Space." (Attachment 1)

BACKGROUND:

Ellwood Mesa is one of the most important sites for overwintering monarch butterflies in California. In fact, a portion of the site is designated by The Xerces Society as "the premier Monarch site in southern California." The butterflies typically arrive at Ellwood Mesa in mid-September and, as winter approaches, cluster into aggregation roosts, often called overwintering or wintering colonies. The Ellwood Main site has historically provided aggregation sites for overwintering butterflies, consisting of hundreds of thousands of individuals in some years. Monarch overwintering populations throughout California have been in steep decline for the past several years, which has coincided with an extended and severe drought period. Based on results of a 2018-2019 monarch butterfly survey, the current monarch population at Ellwood Mesa is less than 0.5% of its historic size. The U.S. Fish and Wildlife Service is currently evaluating whether the species warrants listing under the Endangered Species Act.

In 2017, the City assessed the health of the Ellwood Mesa eucalyptus grove. The results showed that more than 1,000 eucalyptus trees used by the local monarch population (over 20% of the population of the grove) were dead or dying due to the severe drought and subsequent vulnerability to pests. Substantial work is needed to preserve existing butterfly habitat and to enhance degraded habitat quality on Ellwood Mesa.

On March 19, 2019, the City adopted the Ellwood Mesa Monarch Butterfly Habitat Management Plan (MBHMP) and associated Mitigated Negative Declaration. The purpose of the MBHMP is to maintain and improve habitat conditions to ensure long-term

viability of the monarch butterfly population, consistent with policy direction in the City's General Plan and Ellwood Mesa / Sperling Preserve Open Space Plan. The coverage area for the MBHMP encompasses approximately 75 acres of eucalyptus habitat supporting monarch butterfly seasonal aggregation areas in the 137-acre Ellwood Mesa Open Space. The MBHMP outlines a programmatic approach and methodology for the City to manage and improve the Ellwood Mesa eucalyptus forest for the benefit of the monarch butterfly, other wildlife, and the public's use and enjoyment.

DISCUSSION:

On June 29, 2018, the Governor approved the California state budget for the 2018–2019 Fiscal Year. The budget includes a provision allocating \$3.9 million to the City for management and restoration of the monarch butterfly habitats on Ellwood Mesa. These funds will be used to support the City in implementing the MBHMP, thereby improving habitat conditions to ensure long-term viability of the monarch butterfly population at Ellwood Mesa while reducing the fiscal impact the MBHMP would otherwise have on the City's General Fund.

A condition of the grant is City Council adoption of a resolution provided in Attachment 1 to this report, which authorizes staff to execute a grant agreement with the Coastal Conservancy and accept funds for management and restoration of the monarch butterfly habitats on Ellwood Mesa. Staff is recommending Council adopt the resolution, thereby allowing the City to accept grant funds that would help support implementation of the MBHMP.

The Coastal Conservancy (Conservancy) provided terms for the grant agreement to the City on May 13, 2019, which City staff has reviewed.

The grant agreement states that “all work shall be completed by February 28, 2021 (‘the completion date’).” However, the MBHMP activities to be covered under the grant are anticipated to occur over the next five years or longer. Based on discussions with the Conservancy, the City can apply to extend the completion date within the term of the agreement, which would be from its effective date through March 31, 2039. Therefore, it is expected that the City will apply to extend the completion date to a date that would allow the grant funds to be fully expended.

The grant agreement requires the City submit a detailed work program for the project, outlining specific tasks to be performed, construction plans and specifications, a schedule of completion, and a detailed project budget. The agreement states the work program may be modified without amendment of the grant agreement, if the grantee submits, and the Conservancy approves, a modified work program. The MBHMP is programmatic and recommends a wide variety of tasks, specifics of which would depend on the conditions and needs of the site over time. It does not include specific construction plans. However, the annual implementation plans (IP) developed under the MBHMP will outline specific activities to be performed over the next year of the program. The City would seek to satisfy this condition of the grant agreement by providing a general outline of activities that would occur over the anticipated five-year period of grant-funded management activities, and specific details for activities that would occur over the next year from the 2018 IP. Each

year, the City would submit the IP for the next year's activities, including all detail required by the grant agreement, as a modification to the Work Program.

ALTERNATIVES:

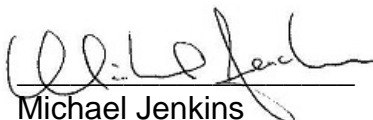
The City Council may elect not to accept the \$3.9 million in grant funds from the Coastal Conservancy that was allocated to assist the City in addressing habitat conditions on Ellwood Mesa. In this instance, the funding would no longer be available to the City due to a June 30, 2019 funding agreement deadline. The City would need to seek other funding in order to implement butterfly habitat enhancement and other activities described in the MBHMP. This would likely result in increased demands on the City's General Fund and/or delays or limitations in implementing the MBHMP.


FISCAL IMPACTS:

The estimated cost for five years of implementation of the MBHMP is \$3,898,450, including 23,082 staff hours for an cost of \$2,308,200 and \$1,590,250 of contractor costs required for this effort. The state grant funding of \$3.9 million would be used for management and restoration of the monarch butterfly habitats on Ellwood Mesa, as outlined in the MBHMP. The state funds would be maintained in an account separate from other City funds, with the use for such funds restricted to actions to restore, enhance, manage, and monitor butterfly habitats on Ellwood Mesa. In the near-term, this funding would be instrumental in getting the MBHMP's programs operational and in addressing some of the imminent habitat issues that presently face the eucalyptus grove.

Legal Review By:

Approved By:


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

- 1 Resolution No. 19-__ entitled "A Resolution of the City Council of the City of Goleta, California Authorizing Execution of a Grant Agreement with the Coastal Conservancy and Acceptance of Funds for Enhancement of Monarch Butterfly and Other Wildlife Habitat at the Ellwood Mesa/Sperling Preserve Open Space."
- 2 Draft Grant Agreement.

Attachment 1

Resolution No. 19-__ entitled "A Resolution of the City Council of the City of Goleta, California Authorizing Execution of a Grant Agreement with the Coastal Conservancy and Acceptance of Funds for Enhancement of Monarch Butterfly and Other Wildlife Habitat at the Ellwood Mesa/Sperling Preserve Open Space."

RESOLUTION NO. 19-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GOLETA, CALIFORNIA AUTHORIZING EXECUTION OF A
GRANT AGREEMENT WITH THE COASTAL CONSERVANCY
AND ACCEPTANCE OF FUNDS FOR ENHANCEMENT OF
MONARCH BUTTERFLY AND OTHER WILDLIFE HABITAT AT
THE ELLWOOD MESA/SPERLING PRESERVE OPEN SPACE**

WHEREAS Ellwood Mesa is one of the most important sites for overwintering monarch butterflies in California, with monarch butterfly populations in steep decline throughout California for the past several years, and substantial work is necessary to preserve existing butterfly habitat and to enhance degraded habitat quality at Ellwood Mesa;

WHEREAS the City adopted the Monarch Butterfly Habitat Management Plan (MBHMP) and associated Mitigated Negative Declaration on March 19, 2019, consistent with policies of the City's Open Space Element of the Goleta General Plan / Coastal Land Use Plan and Ellwood-Devereux Coast Open Space and Habitat Management Plan;

WHEREAS the MBHMP provides a programmatic approach to management of habitats that support monarch butterfly seasonal aggregations, while maintaining the functionality of habitat for other plants and wildlife species;

WHEREAS the State of California allocated \$3,900,000 to the City for management and restoration of the monarch butterfly habitats on Ellwood Mesa;

WHEREAS the State funds would be maintained in an account separate from other City funds, with the use of such funds restricted to actions to restore, enhance, manage, and monitor butterfly habitats on Ellwood Mesa;

WHEREAS the estimated cost and level of effort for five years of implementation of the MBHMP is \$3,898,450 including 23,082 staff hours totaling \$2,308,200 and \$1,590,250 of contractor costs, with funding for implementation of the MBHMP to be drawn from a variety of sources, which may include grants, donations, mitigation fees, and the City's General Fund;

WHEREAS the grant funding available from the State would be instrumental in getting the MBHMP's programs operational and in addressing some of the imminent habitat issues that presently face the grove;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLETA, AS FOLLOWS:

SECTION 1. *Recitals.* The City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2: *Grant Administration.* The City Manager is hereby authorized to execute, in the name of the City of Goleta, all necessary contracts and agreements and amendments thereto to implement and carry out the grant application package and any project approved through approval of the grant application.

SECTION 3: *Certification.* The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 21st of May 2019.

PAULA PEROTTE
MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

MICHAEL JENKINS
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, DEBORAH S. LOPEZ, City Clerk of the City of Goleta, California, DO
HEREBY CERTIFY that the foregoing Resolution No. 19-__ was duly adopted by
the City Council of the City of Goleta at a regular meeting held on the 21st day of
May 2019, by the following vote of the Council:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

Attachment 2
Draft Grant Agreement

MODEL PLAN-PREPARATION GRANT AGREEMENT 2/14/2019

Grantee's full, legal name: City of Goleta

Taxpayer ID Number: 77-0590291

Address: 130 Cremona Drive, Suite B
Goleta, CA 93117

Phone No.: (805) 961-7541

Name of Person Signing: Michelle Greene

Title of Person Signing: City Manager

Contact Person, if different than Person Signing:

Name of Contact: Peter Imhof

Title of Contact: Planning and Environmental Review Director

SCOPE OF AGREEMENT

Pursuant to Chapter 5.5 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") hereby grants to **the City of Goleta** ("the grantee") a sum not to exceed \$ 3,900,000 (three million, nine hundred thousand dollars), subject to this agreement. The grantee shall use these funds to implement the Monarch Butterfly Habitat Management Plan ("the plan" or "the project") for the Ellwood Mesa area of Goleta, as shown on Exhibit A, which is incorporated by reference and attached.

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

The project consists of preparation of implementation plans called for by the Monarch Butterfly Habitat Management Plan (MBHMP) for Ellwood Mesa, preparation of permit applications, and implementation of elements of the MBHMP including restoration and enhancement of butterfly overwintering habitat, enhancement of other wildlife habitat, education and outreach, construction of trail improvements, installation of signage, monitoring, research, and adaptive management.

The grantee shall carry out the project in accordance with this agreement and a work program as provided in the “WORK PROGRAM” section, below. The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the project.

CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT

The grantee shall not commence the project and the Conservancy shall not be obligated to disburse any funds under this agreement until the following conditions precedent have been met:

1. The City Council of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

2. The Executive Officer of the Conservancy (“Executive Officer”) has approved in writing:
 - a. The work program for the project as provided in the “WORK PROGRAM” section, below.
 - b. A plan for installation of signs and acknowledgment of Conservancy support, as provided in the “SIGNS AND ACKNOWLEDGMENT” section, below.
 - c. All contractors that the grantee intends to retain in connection with the project.

The grantee must provide written evidence to the Conservancy that each contractor has complied with the bonding requirements described in the “BONDING” section, below.
3. The grantee has provided written evidence to the Conservancy that:
 - a. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.
 - b. All permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained.

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

Notwithstanding the above, the grantee may begin to prepare plans, specifications and engineering work upon meeting condition precedent no.1, and upon the Executive Officer's review and approval of a separate work program (tasks, budget and timeline) and approval of any contractors that the grantee will retain to perform the work.

TERM OF AGREEMENT

This agreement shall take effect when signed by both parties and received in the office of the Conservancy together with the resolution described in the "CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT" section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

This agreement shall run from its effective date through March 31, 2039 ("the termination date") unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by December 31, 2020 ("the completion date").

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

AUTHORIZATION

The signature of the Executive Officer of the Conservancy on this agreement certifies that at its May 16, 2019 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit B. This agreement is executed under that authorization.

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

Standard Provisions

WORK PROGRAM

Before beginning the project, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with this grant agreement. The work program shall include:

1. The specific tasks to be performed.
2. Construction plans and specifications, if applicable.
2. A schedule of completion for the project, specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project, including the grantee's labor and materials costs and costs to be incurred under a contract with any third party retained by the grantee for work under this agreement. For each project component, the project budget shall list all intended funding sources including the Conservancy's grant and all other sources of monies, materials, or labor. The grantee shall review the plans on-site with Conservancy staff.

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HABITAT ENHANCEMENT PROJECT

If all or any part of the project to be funded under this agreement will be performed by third parties (“contractors”) under contract with the grantee, then the grantee shall, prior to initiating any contractor selection process, submit the selection package to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the contractor selection process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to project commencement.

The work program shall have the same effect as if included in the text of this agreement. However, the work program may be modified without amendment of this agreement upon the grantee’s submission of a modified work program and the Executive Officer’s written approval of it. If this agreement and the work program are inconsistent, the agreement shall control.

The grantee shall carry out the project in accordance with the approved work program.

COORDINATION AND MEETINGS

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

The grantee shall coordinate closely with Conservancy staff and other involved entities, including local, state and federal agencies, and shall participate in meetings and other communications as necessary to ensure coordination.

SIGNS, WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT

All material, data, information, and written, graphic or other work produced, developed or acquired under this agreement is subject to the unqualified and unconditional right of the Conservancy to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, the Conservancy is granted and shall have a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

The grantee shall include in any contract with a third party for work under this agreement terms that preserve the rights, interests, and obligations created by this section, and that identify the Conservancy as a third-party beneficiary of those provisions.

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HABITAT ENHANCEMENT PROJECT

The grantee shall not utilize the work produced under this agreement for any profit-making venture, or sell or grant rights to a third party for that purpose.

Prior to commencement of the project , the grantee shall submit a plan to the Executive Officer for the installation of signs and acknowledgment of Conservancy support. Except as the Executive Officer agrees otherwise, the plan shall commit the grantee to mention the Conservancy's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

The plan shall commit the grantee to install and maintain a sign or signs visible from the nearest public roadway identifying the project, acknowledging Conservancy assistance and displaying the Conservancy's logo. The Conservancy shall provide to the grantee specifications for the signs. The grantee may incorporate the required information into other signs as approved by the Executive Officer. In special circumstances, where the placement of signs or the general specifications are inappropriate, the Executive Officer may approve alternative, more appropriate methods for acknowledging the sources of funding. The plan shall describe the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method. The grantee shall implement the approved signs and acknowledgment plan as approved by the

ELLWOOD MESA MONARCH BUTTERFLY
HABITAT ENHANCEMENT PROJECT

Conservancy. The Conservancy will withhold final disbursement until the signs are installed consistent with the approved plan.

BONDING

If the grantee intends to use any contractors on any portion of the project to be funded under this agreement, construction shall not begin until each contractor has furnished a performance bond in favor of the grantee in the following amounts: for faithful performance, one hundred percent (100%) of the contract value; and for labor and materials, one hundred percent (100%) of the contract value. This requirement shall not apply to any contract for professional services or to any contract for less than \$20,000.

Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.

COSTS AND DISBURSEMENTS

When the Conservancy determines that all “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

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HABITAT ENHANCEMENT PROJECT

The withholding for this agreement is five percent. The Conservancy shall disburse funds for costs incurred to date, less five percent, upon the grantee's satisfactory progress under the approved work program and upon submission of a "Request for Disbursement" form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the five percent withheld upon the grantee's satisfactory completion of the project and compliance with the "PROJECT COMPLETION" section, below, and upon the Conservancy's acceptance of the project.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations ("CCR"), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

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HABITAT ENHANCEMENT PROJECT

The grantee shall request disbursements by filing with the Conservancy a fully executed “Request for Disbursement” form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. Hourly rates billed to the Conservancy and specified in the approved work program budget shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the form. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.

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HABITAT ENHANCEMENT PROJECT

3. A supporting progress report summarizing the current status of the work and comparing it to the status required by the work program (budget, timeline, tasks, etc.), including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee unless and until the grantee corrects all deficiencies.

EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided that the grantee first submits a revised budget to the Conservancy and requests disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the project budget by

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more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

PROJECT COMPLETION

Within thirty days of completion the project, the grantee shall supply the Conservancy with evidence of completion by submitting a final report which includes:

1. The work products specified in the work program for the project, each in a format or formats (for example, paper, digital, photographic) approved by the Executive Officer.
2. A report certifying completion of the project according to the approved work program, including photographs documenting project completion.
3. Documentation that signs are installed as required by the “SIGNS AND ACKNOWLEDGMENT” section of this agreement.
4. A fully executed final “Request for Disbursement.”

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5. A final inspection report by a licensed architect or registered engineer or the grantee's Public Works Director, and a copy of "as built" drawings of the completed project.

Within thirty days of the grantee's submission of the above, the Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

Before the project has commenced, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

Before the project is complete, the Conservancy may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In either case, the grantee shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend,

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but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Conservancy may have for breach of this agreement.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Conservancy with seven days notice in writing and repaying to the Conservancy all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

On or before the date of termination of the agreement under this section, whether terminated by the grantee or the Conservancy, the grantee shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced,

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developed or acquired under this agreement (whether completed or partial), in appropriate, readily useable form.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

OPERATION AND MAINTENANCE

The grantee shall use, manage, maintain and operate the project throughout the term of this agreement consistent with the purposes for which the Conservancy's grant was made.

The grantee assumes all operation and maintenance costs of these facilities and structures; the Conservancy shall not be liable for any cost of maintenance, management, or operation. The grantee may be excused from its obligations for operation and maintenance during the term of this agreement only upon the written approval of the Executive Officer.

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For purposes of this agreement, “operation costs” include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. “Maintenance costs” include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

MITIGATION

Without the written permission of the Executive Officer, the grantee shall not use or allow the use for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) of any portion of real property on which the Conservancy has funded construction. In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy. As used in this section, mitigation includes, but is not limited to, any use of the property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

INSPECTION

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Throughout the term of this agreement, the Conservancy shall have the right to inspect the project area to ascertain compliance with this agreement.

INDEMNIFICATION AND HOLD HARMLESS

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors and employees, or in any way connected with or incident to this agreement, except for the active negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code Section 2778. This agreement supersedes any right the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

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Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

INSURANCE

Throughout the term of this agreement, the grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, employees, volunteers, or contractors associated with the project undertaken pursuant to this agreement.

As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractors' procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee's participation in a "risk management" plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section.

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1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. Insurance Services Office (“ISO”) Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
 - b. Automobile Liability coverage - ISO Form Number CA 0001, Code 1 (any auto).
 - c. Workers’ Compensation insurance as required by the Labor Code of the State of California, and Employer’s Liability insurance.

2. Minimum Limits of Insurance. Grantee shall maintain coverage limits no less than:
 - a. General Liability: \$1,000,000 per occurrence for bodily injury,
(Including operations, products personal injury and property damage. If
and completed operations, as Commercial General Liability Insurance or other
applicable) form with a general aggregate limit is used, either
the general aggregate limit shall apply separately
to the activities under this agreement or the
general aggregate limit shall be twice the required
occurrence limit.

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b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

c. Worker's Compensation As required by law with Employer's Liability of no less than \$1,000,000

3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.

4. Required Provisions Concerning the Conservancy and the State of California.

a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Conservancy; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to the Conservancy. The grantee shall notify the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses

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- or is cancelled, the grantee shall provide the Conservancy with evidence of renewal or replacement of the policy.
- b. The grantee hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee 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 grantee has received a waiver of subrogation endorsement from the insurer.
- c. The general liability and automobile liability policies are to contain, or to be endorsed to contain, the following provisions:
- (i) The State of California, its officers, agents and employees are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with such work or operations.

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- (ii) For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance with respect to the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
 - (iii) The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.
 - d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy reserves the right to require complete, certified copies

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of all required insurance policies, including endorsements affecting the coverage, at any time.

7. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain errors and omissions liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project.
8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to work under the agreement. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other

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material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following final disbursement by the Conservancy. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention period.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

After completing the work, the grantee shall promptly conduct a final financial and compliance audit of revenue and expenditures. An independent Certified Public Accountant shall conduct the audit and prepare a report in compliance with GAAP. In place of performing a separate audit, the grantee may submit to the Conservancy, within a time that the Conservancy specifies, a copy of the grantee's federal "single audit."

COMPUTER SOFTWARE

The grantee certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this contract, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the Fair

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Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Conservancy to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Conservancy upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Conservancy shall require to ascertain compliance with this clause. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

PREVAILING WAGE

Work done under this grant agreement may be subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations.

The grantee shall review applicable statutory provisions and the regulations adopted under the provisions and the information available on the Department of Industrial Relations website (<http://www.dir.ca.gov/Public-Works/PublicWorks.html>) to determine its responsibilities. The grantee may also review the Conservancy publication, *Information on Current Status of Prevailing Wage Laws for State Coastal Conservancy Grantees (March 2015)*, available from the Conservancy on request, for additional information.

DRUG-FREE WORKPLACE

The grantee's signature on this agreement constitutes the certification required by Government Code Section 8355, which requires that all state grantees provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions that will be taken against employees for violations of the prohibition.

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(2) Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.
- b. The person's or organization's policy of maintaining a drug-free workplace.
- c. Any available drug counseling, rehabilitation, and employee assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the grant be given a copy of the drug-free workplace statement and that, as a condition of employment on the grant, the employee agrees to abide by the terms of the statement.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of the grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

ASSIGNMENT

Without the written consent of the Executive Officer, this agreement is not assignable by the grantee in whole or in part.

TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

Except as expressly provided in this agreement, no change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

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LOCUS

This agreement is deemed to be entered into in the County of Alameda.

SURVIVAL

The obligations in the “WORK PRODUCTS AND ACKNOWLEDGMENT OF CONSERVANCY SUPPORT” and “INDEMNIFICATION AND HOLD HARMLESS” sections, above, shall survive the termination of this agreement.