DEED OF CONSERVATION EASEMENT  
AND AGREEMENT CONCERNING EASEMENT RIGHTS

This Grant Deed of Conservation Easement (the Conservation Easement") is granted on this ______ day of ___________2007, by ATASCADERO LAND PRESERVATION SOCIETY, a California nonprofit public benefit corporation ("Grantor), to CITY OF ATASCADERO, a California general law city ("Grantee"), hereinafter collectively referred to as the “Parties”.

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of three lots (APN 056-401-002, 056-391-003 [block 39, parcel 8, 1914 Atascadero Colony Map] and APN 056-391-001 [portion of block 61, parcel 7, 1914 Atascadero Colony Map) comprising approximately 103 acres, located in the city of Atascadero, San Luis Obispo County, California, and described in Exhibit A attached hereto (the “Property” or “Easement Area”). Grantor intends to grant to Grantee a conservation easement over the Property, as illustrated in Exhibit B incorporated herein by this reference (the “Easement Area Map”). The Easement Area consists off the entire Property.

B. Grantee is a city authorized to acquire and hold title to real property and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code. As certified by resolution of its governing body, Grantee accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement and upholding its conservation purposes.
C. The grant of this Conservation Easement, including Grantors exercise of rights as retained in the Conservation Easement, will further the purposes of several governmental conservation policies, including, but not limited to:

Section 815 of the California Civil Code, in which the California Legislature has declared: (1) that ‘the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California”; and (2) that it is in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations’;

The Atascadero General Plan 2025 adopted June 25, 2002 and updated June 23, 2004, which declares the following Goals with recommended policies to implement the goals:

Goal LOC 5 -- Preserve the Contours of the hills. Buildings built on hillsides shall conform to the topography using the slope of the land as the basis for the design of the structure.

Goal LOC 6 – Preserve natural flora and fauna and protect scenic lands, sensitive natural areas, historic buildings and cultural resources.

Goal LOC 7 – Tree covered hills shall be preserved to retain the distinctive scenic quality of the community.

Goal LOC 8 – Watershed areas of Atascadero shall be protected.

D. The Easement Area possesses ecological and scenic values (collectively, the ‘Conservation Values”) that are of great importance to Grantor, Grantee, the people of the City of Atascadero (“City”), the County of San Luis Obispo (the “County”) and the State of California, and visitors from across the United States of America. The Easement Area offers extraordinary resources on approximately 103 acres located along State Route 41 and Atascadero Creek. In addition to the size of the Easement Area, the diverse topography and climate contribute to the vast and diverse number of species on the Easement Area.

The Conservation Values include the following:

- Rich woodland and riparian habitat, with coastal oak, blue oak, sycamore, willow bay, and wild rose.
- Habitat for a number of species, including deer, raccoon, coyote, hawk, wild turkey vulture, numerous bird species, fox, and mountain lion.

- Three-quarters of one mile of frontage on Atascadero Creek, which is identified as an active steelhead nursery.

- Protection of the natural resources of Property will benefit the water quality of the Atascadero Creek, one of the few remaining steelhead runs in the Upper Salinas River watershed.

- Contribute to the local and regional trail networks that links the Property to Atascadero Lake Park and to Cerro Alto in the Los Padres National Park as part of a comprehensive trail system for hiking, mountain biking and equestrian trail riding.

- Atascadero Creek is a tributary of the Salinas River, the largest California coastal water shed south of San Francisco and the primary watershed draining to the Monterey Bay National Marine Sanctuary. Protecting the natural resources of the Property from development will reduce the types of non-point source pollution that has been detrimental to the Salinas River watershed.

E. Both Grantor and the Grantee desire to maintain these Conservation Values in perpetuity. Grantor intends, as owner of the Easement Area, to convey to Grantee the right to protect against impairment of the Conservation Values in perpetuity in accordance with the terms of this Conservation Easement.

F. This Conservation Easement eliminates current and future development rights with the exception of limited grazing for wildland fire protection and non-motorized vehicular recreational uses.

G. This Conservation Easement provides appropriate mechanisms for ensuring in perpetuity against impairment of Conservation Values through collaboration between Grantor and Grantee.

**DEED AND AGREEMENT**

In consideration of the recitals set forth above, and of their mutual promises and covenants, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its permitted successors and assigns, and Grantee hereby accepts, a perpetual “conservation easement” as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code, Section 815 et seq.), of the nature and character described in this Conservation Easement, over the Easement Area.
1. Conservation Purpose. The purpose of this Conservation Easement is to achieve protection of the Conservation Values by sustaining in perpetuity a natural habitat within the Easement Area in accordance with the terms and conditions of this Conservation Easement (the "Conservation Purpose). Consistent with the requirements set forth in Treasury Regulations sections 1.170A-14(e)(1)-(2), no use or activity shall be permitted that would result in the impairment of Conservation Values protected by this Conservation Purpose.

The Parties agree that Grantor's retention of certain rights specified in this Conservation Easement, including specified limited grazing for wildland fire protection and non-motorized vehicular recreational uses, is consistent with the Conservation Purpose, provided that those rights are exercised in accordance with this Conservation Easement.

Under this Conservation Easement, “impairment” of Conservation Values means a material adverse change in Conservation Values. The consideration of actual and potential impacts of a particular activity or use on Conservation Values shall take into account the impacts of the activity or use in question as well as the cumulative impacts of other uses and activities on the Easement Area, except elements of nature, actions taken by Grantor under emergency conditions, and non-permitted acts of unrelated third parties, each as specifically described in Section 2, below. In every evaluation of whether Impairment of Conservation Values has occurred or is threatened, both the magnitude and the duration of the actual or potential change(s) shall be considered.

2. Prohibited Acts. Grantor promises that it will not perform, or knowingly allow others to perform, any activity or use on the Easement Area in conflict with the covenants set out in this Conservation Easement. Grantor authorizes Grantee to enforce these covenants. Nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Easement Area caused by (i) the elements of nature, which include, without limitation, fire, climatic change, flood, storm, earth movement, or natural evolutionary changes in the condition of the Easement Area from that described in the Baseline Conditions Report; (ii) any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area or to any person resulting from such causes; or (ii) the non-permitted acts of unrelated third parties so long as Grantor has taken reasonable steps to control such acts. Grantor understands and agrees that nothing in this Conservation Easement relieves it of any obligation or restriction in relation to the development or use of the Easement Area imposed by law, including but not limited to local land use restrictions.

3. Construction of Buildings, Facilities and Other Structures. The construction or reconstruction of any building, facility or structure of any type, is prohibited except for the limited purpose of providing facilities for hikers, mountain biking and equestrian trail riding.
4. Signs. No billboards or signs shall be erected within the Easement Area except as provided below:

(a) Grantee may install and maintain, at Grantee’s sole cost and expense, signage within the Easement Area to indicate the participation of Grantee, Grantor, and of any of Grantor’s public or private funding sources in the acquisition and maintenance of the Conservation Easement provided, that the size, location, number, text and design of any such sign shall be subject to the reasonable approval of Grantee; provided further, that Grantee agrees that the standard logos of the Grantor, and each agency of the State of California that has provided funding for Grantor’s acquisition of the Conservation Easement, may be included on any such sign.

(b) Grantor and/or Grantee may install and maintain directional signs for purposes of the use of the trails throughout the Easement Area.

5. Subdivision. Grantor shall not separately sell, transfer or subdivide (by legal or any other process) any portion of the Easement Area.

6. Development Rights. Grantor and Grantee hereby agree that all development rights are terminated and extinguished on the Property.

7. Mining. Exploration for, or the development, mining, removal or extraction of any soil, sand, gravel, rock, oil, gas, or any other mineral or non-mineral substance by any surface or subsurface mining or extraction method, is prohibited.

8. Roads. Any road existing on the Effective Date and any new road approved and constructed as hereinafter provided, may be maintained, repaired, repaved, and rebuilt on the original alignment at Grantor’s discretion without having to seek permission from Grantee. Any new or relocated road may be constructed only with Grantee’s advance written permission, which shall be provided upon Grantor’s demonstration that the design and location of the proposed new or relocated road supports permitted uses and activities in the Easement Area and will not impair Conservation Values; provided, that in the case of a new or Improved road required by any regulatory agency or reasonably necessary In order for Grantor to exercise a right retained by Grantor under this Conservation Easement, Grantee shall approve the proposed new road or a reasonable alternative route. No road on the Easement Area that is unpaved on the Effective Date shall subsequently be paved without Grantee’s advance written permission, which shall be provided upon Grantor’s demonstration In accordance with the preceding requirements. Unpaved roads existing on the Effective Date may be relocated as unpaved roads as required by permitted activities or uses in the Easement Area. For purposes of this paragraph, “pave”, “unpaved”, or “paving” shall Include any impermeable covering of the soil surface, including, but not limited to, concrete and asphalt. To the extent reasonably necessary, Grantor may apply a reasonable amount of gravel or red rock material, or other permeable surface to provide
an all-weather surface for roads in the Easement Area, and such all-weather surfacing shall not be considered paving.

9. Agricultural Rights,

(a) Agricultural Uses. Agriculture uses on the Easement Area are prohibited, including but not limited to grazing, row crops or any form of commercial agriculture. As used herein, “Commercial Agriculture’ shall mean: 1) soil cultivation and the raising and/or harvesting of any agricultural or horticultural commodity (including the raising, keeping, shearing, feeding, caring for, training, and management of animals) on the Easement Area; 2) the handling, processing, drying, packing, grading, storing or sale of any agricultural or horticultural commodity produced predominantly on the Easement Area. The prohibition on grazing shall not include limited grazing of livestock for the sole purpose of vegetation management to reduce fire risk on the Property when this action is approved by the Atascadero Fire Department. Any grazing of livestock on the Property shall be with the prior written approval of Grantee.

10. Storage and Disposal Areas. Permanent storing, dumping, or otherwise disposing of non-compostable refuse or trash is prohibited.

11. Restrictions on Uses Other Than Recreation Uses. All uses of the Easement Area other than for Recreation Uses are prohibited.

12. Water Rights. Grantor shall retain, maintain and preserve the right to develop and put to reasonable and beneficial use all water and water rights associated with the Easement Area, including surface and groundwater, so long as such use is consistent with maintaining adequate water supply and water quality so as not to impair Conservation Values. Grantor shall not transfer, encumber, lease, sell or separate any water or water rights from the Easement Area.

The use of groundwater on the Easement Area shall be reasonable and beneficial, and consistent with water uses and water quality required so as not to impair Conservation Values. Groundwater well pumping by Grantor in and adjacent to the Easement Area shall be subject to a monitoring plan that is protective against impairment of Conservation Values.

13. Rights Retained by Grantor. Except as expressly restricted or extinguished by the terms and conditions of this Conservation Easement, Grantor retains all ownership rights in the Easement Area and retains the right to perform any act not prohibited or limited by this Conservation Easement. Grantor retains the obligation to ensure that third party uses of the Easement Area authorized by Grantor are in compliance with this Conservation Easement.

14. Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or
other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantee as owner of the Easement Area. Among other things, this shall apply to:

(a) **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area or the property underlying the Easement Area by competent authority, and Grantor shall promptly reimburse Grantee for any tax or assessment on the Conservation Easement that Grantee is required to pay; provided, that the preceding provisions shall be interpreted to not obligate Grantor to pay any capital gains tax owed by Grantee as a result of a voluntary or involuntary transfer by Grantee of its interests under this Conservation Easement.

(b) **Upkeep and Maintenance.** Grantee shall have no obligation for the upkeep or maintenance of the Easement Area unless Grantor and Grantee mutually agree on cooperative programs and cost sharing for specific projects.

(c) **Liability and indemnification.**

1. Grantor shall and hereby agrees to hold harmless, indemnify, protect, and defend Grantee, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (collectively “Grantee Indemnified Parties”) from and against all liabilities, penalties, costs, losses, orders, liens, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys’ and experts’ fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Easement Area, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Grantee indemnified Parties; (b) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or any party other than one of the Grantee Indemnified Parties acting upon permission from Grantor, in any way affecting, involving or relating to the Easement Area, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties; (c) the breach by Grantor of any of its obligations set forth in this Conservation Easement.

2. Grantee shall hold harmless, indemnify, and defend Grantor and its officers, directors, employees, contractors, legal representatives, agents, heirs, personal representatives, successors and assigns, and each of them (collectively ‘Grantor Indemnified Parties’) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims demands, or judgments, including without limitation, reasonable attorneys' and experts' fees, arising from or in any way connected with any injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area except to the extent caused by the negligence or willful misconduct of Grantor Indemnified Parties.
(d) Insurance,

(1) Grantor shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than two million dollars ($2,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI (as defined below); provided, Grantor may self insure to the extent reasonably approved by Grantee. I The 'CPI' means the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U, all items) (1982-84=100), or the successor of such Index. Grantee shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantee. Grantor waives all rights of subrogation against Grantee and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Grantor shall furnish Grantee with certificate(s) of insurance, executed by a duly authorized representative of each Insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to Grantee prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantee to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantee to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantor’s obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

(2) Grantee shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than two million dollars ($2,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI; provided, Grantee may self insure to the extent reasonably approved by Grantor, Grantor shall be named as an additional insured on the policy, The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantor. Grantee waives all rights of subrogation against Grantor and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by Insurance maintained pursuant to this Conservation Easement. Grantee shall furnish Grantor with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to Grantor prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantor to demand such certificate or other evidence of full compliance with these Insurance requirements or failure of Grantor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantee’s obligation to maintain such insurance. The foregoing
insurance requirements do not replace, waive, alter or limit the hold harmless or Indemnification provisions of this Conservation Easement.

15. **Right of Entry and Issue Resolution.**

   (a) **Right of Entry.** Officers, directors and employees of Grantee, and Grantee’s contractors shall have the right to enter the Property at any time to monitor the Grantor’s compliance with this Easement Agreement and to otherwise enforce the terms of this Easement Agreement. Grantee is granted an easement on, over, under, and across the Property for ingress and egress for the purposes of exercising this right of inspection.

   (b) **Issue Resolution** If either Party to this Conservation Easement (the “Non-Defaulting Party”) determines that the other Party (the “Defaulting Party”) is in violation of any term of this Conservation Easement or that a violation is threatened, the Non-Defaulting Party shall deliver written notice (“Default Notice”) to the Defaulting Party of such violation. If any violation asserted in the Default Notice has resulted or threatens to result in Impairment of Conservation Values, the Default Notice shall include a reasonably detailed written explanation of such asserted actual or threatened impairment of Conservation Values. Not later than fourteen (14) days after the delivery of such written notice, the Parties shall meet on site with an agreed upon expert, such as wildlife biologist, fisheries biologist, botanist or plant ecologist, duly qualified in the subject matter of the asserted violation (“Consulting Expert”) to discuss the circumstances of the asserted violation and to attempt to agree on appropriate corrective action. The Parties shall share equally the costs of retaining the services of the agreed upon Consulting Expert for such discussion; provided, if the Parties are unable to agree on the selection of a Consulting Expert, each Party may retain the services of a private entity expert at its own expense. If the Parties are unable to agree on appropriate corrective action, the Non-Defaulting Party shall deliver a further written notice to the Defaulting Party to demand particular corrective action to cure the violation. The Defaulting Party shall cure the violation within thirty (30) days after receipt of such further notice, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, shall commence curing such violation as soon as possible within such thirty (30) day period and shall continue diligently to cure such violation until finally cured.

   (c) **Judicial Enforcement.** If the Defaulting Party fails to cure the violation within thirty (30) days after receipt of such further notice from the Non-Defaulting Party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Non-Defaulting Party may bring an action at law or in equity in a court of competent Jurisdiction to enforce the terms of this Conservation Easement.
(d) **Expert Assistance.** The opinions of any Consulting Expert, if jointly engaged to assist the Parties in the resolution of any claim of impairment of Conservation Values, shall be admissible in any Judicial proceedings conducted with respect to that asserted violation.

(e) **Immediate Relief.** Notwithstanding any of the foregoing, if at any time an ongoing or imminent violation of the terms of this Conservation Easement could impair Conservation Values of the Easement Area and there is a showing that irreparable harm would result if Grantee were required to first complete the issue resolution process set forth in Subsections 15(b) and (c), above, Grantee may proceed immediately to seek an injunction to stop the violation, temporarily or permanently. Injunctive relief or other judicial relief will not be allowed to interfere with the rights of Grantor as reserved in this Conservation Easement.

(f) **Alternative and Cumulative Remedies.** The remedies described in this Section 15 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815 at seq. are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. The prevailing party shall be entitled to recover its costs incurred in any such enforcement effort, including reasonable attorneys', consultants' and experts' fees and costs. Notwithstanding the foregoing, to the maximum extent allowed by law, the issue resolution process provided for in Subsection 15(b) shall be followed.

16. **Forbearance No Waiver.** Forbearance by the Grantee or Grantor to exercise its respective rights under this Conservation Easement shall not be construed to be a waiver by the Grantee or Grantor of such term or of any subsequent breach of the same or any other term of this Conservation Easement. No delay or omission in the exercise of any right or remedy by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.

17. **Grantor Transfer of the Easement Area.**

**Notification.** Any time the Easement Area, or any portion thereof, or any interest in any portion thereof, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer, and the deed of conveyance or other transfer Instrument shall expressly refer to this Conservation Easement. Failure to notify Grantee or include the required reference to this Conservation Easement in the deed or other transfer Instrument shall not affect the continuing validity and enforceability of this Conservation Easement.

18. **Amendment of Conservation Easement.** This Conservation Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the Conservation Purpose and shall comply with § 170(h) of the U.S. internal Revenue Code, California Civil Code section 815 at seq., and
any regulations promulgated in accordance with those statutory provisions. Any such amendment shall also be consistent with California law governing conservation easements and shall not affect the perpetual duration of this Conservation Easement. All amendments shall refer to this Conservation Easement and shall be recorded in the official records of San Luis Obispo County.

19. Grantor’s Title Warranty; No Prior Conservation Easements. Grantor represents and warrants that Grantor has good fee simple title to the Easement Area, free from any and all liens or encumbrances except those liens and encumbrances shown in the preliminary title report provided to Grantee or otherwise disclosed to Grantee prior to recordation of this Conservation Easement. Grantor represents and warrants that the Easement Area is not subject to any other conservation easement.


(a) Grantee Not an Owner, Operator or Responsible Party.

(1) Notwithstanding any other provision herein to the contrary, the Parties do not intend this Conservation Easement to be construed such that it creates in or gives the Grantee:

(A) the obligations or liability of an “owner or “operator” as those words are defined and used in Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC section 9601 at seq. and hereinafter CERCLA”);

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

(C) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(D) the right to investigate and remediate any Hazardous Substances, as defined below, associated with the Easement Area; or

(E) any control over Grantor’s ability to investigate, remove, remediate, or otherwise clean up any Hazardous Substances associated with the Easement Area.

(b) Environmental Liabilities and Indemnification. Grantor and Grantor’s successors in interest shall indemnify, protect and defend with counsel acceptable to Grantee, and hold harmless the Grantee Indemnified Parties from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative
proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys’ fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the claimed presence or Release (as defined below) of any Hazardous Substance, affecting the air, soil, surface water or groundwater of or at the Easement Area; (ii) any violation or alleged violation of Environmental Law (as defined below) affecting the Easement Area, whether occurring prior to or during Grantor’s ownership of the Easement Area and whether caused or permitted by Grantor or any person other than Grantor; or (iii) any claim or defense by Grantor or any third party that any of the Grantee Indemnified Parties is liable as an “owner” or “operator” of the Easement Area under any Environmental Law. The foregoing Indemnity obligations shall not apply with respect to any Hazardous Substance released or deposited as a result of action by the Grantee Indemnified Parties on or about the Easement Area. The indemnity obligations of any successor in interest of Grantor pursuant to this Subsection 2D(b) shall be limited to the portion of the Easement Area to which the successor takes title. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Grantor to the Grantee Indemnified Parties pursuant to this Subsection 2D(b) shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by Grantee. In considering any such request, Grantee may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. Grantee’s consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

(c) Definitions

(1) The term “Environmental Law” shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations there under, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, or common law, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii), the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(2) The term “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not
caused by, contributed to, permitted by, acquiesced to or known to Grantor.

(3) The term “Hazardous Substance” shall mean (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (1) pose a hazard to the Easement Area or to persons on or about the Easement Area or (ii) cause the Easement Area to be in violation of any Environmental Law; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (c) any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including CERCLA, 42 USC section 9601, et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC section 1251, et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety Code section 25100, et seq., Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Easement Area or the owners and/or occupants of property adjacent to or surrounding the Easement Area, or any other person coming upon the Easement Area or adjacent property; and (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

21. Interpretation. This instrument shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give effect to its Conservation Purpose. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

22. Captions. The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon its construction or interpretation.

23. Perpetual Duration. The easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision, right and obligation of this Conservation Easement that applies to Grantor and Grantee shall also apply to and be
binding upon their respective agents, heirs, executors, administrators, successors and assigns.

24. Notices. Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, addressed as follows or such other address as either Party from time to time shall designate by written notice to the other.

To GRANTOR: Atascadero Land Preservation Society

With a copy to:

To GRANTEE: City of Atascadero
Attention: City Manager
6907 El Camino Real
Atascadero, CA 93422
Telephone: (805) 470-3400
FAX: (805) 461-7612

25. Condemnation. If all or any part of the Easement Area is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Conservation Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests in the Easement Area so taken or purchased, and all direct or incidental damages resulting therefrom. If only a portion of the Easement Area is subject to such exercise of eminent domain, this Conservation Easement shall remain in effect as to all other portions of the Easement Area.

26. Extinguishment. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee, if any, shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by applicable Federal or California law at the time, in accordance with Section 27. Grantee shall use any
proceeds received under the circumstances described in this paragraph in a manner consistent with the conservation purposes which are exemplified by this Conservation Easement.

27. Valuation. This Conservation Easement constitutes a real property Interest immediately vested in Grantee. For the purpose of Section 26, Extinguishment, the Parties stipulate that this Conservation Easement has a fair market value determined by multiplying (a) the fair market value of the Easement Area (at the time of extinguishment) unencumbered by the Conservation Easement (minus any increase in value attributable to improvements made after the date of this Conservation Easement) by (b) the ratio of the fair market value of the Conservation Easement to the fair market value of the Easement Area, as of the Effective Date, unencumbered by the Conservation Easement. The values as of the Effective Date shall be those values used to calculate the deduction for federal Income tax purposes allowable by reason of this Conservation Easement pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended. For the purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Easement Area unencumbered by the Conservation Easement shall remain constant.

28. Laws Currently In Effect. All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

29. Entire Agreement. This Instrument sets forth the entire agreement of the Parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement Area, all of which are herein merged.

30. Counterparts. The Parties may execute this Instrument In two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it.

31. Attorneys’ Fees. Should proceedings be brought to enforce or Interpret any of the terms of this instrument, the prevailing Party In any such proceedings shall be entitled to recover from the non-prevailing Party its costs, including reasonable attorneys’ fees and expert’s fees.

32. Permission. Whenever permission, consent or approval (Permission”) is required pursuant to this Conservation Easement such Permission shall be obtained in advance and In writing signed by the Party from whom Permission Is to be obtained. Except as otherwise provided in this Conservation Easement, whether Permission should be granted or denied shall be determined based upon the purposes of this Conservation Easement, and shall not be unreasonably withheld, unless consent or permission is specified in the Conservation Easement as being within the sole discretion
of a Party.

33. Exhibits. The following exhibits are incorporated herein by this reference:

   Exhibit A  Easement Area Map (attached)
   Exhibit B  Assessor’s Parcels Maps (2)

34. Effective Date. This Conservation Easement is effective as of the date of recordation in the Official Records of the County of San Luis Obispo ("Effective Date").

Agreed to and executed by:

ATASCADERO LAND PRESERVATION SOCIETY,
GRANTOR:
By:

CITY OF ATASCADERO,
GRANTEE:
By: