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**CONSERVATION EASEMENT**

*THIS CONSERVATION EASEMENT* is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by CITY OF COSTA MESA ("**Grantor**") in favor of ORANGE COUNTY FLOOD CONTROL DISTRICT ("**Grantee**") with reference to the following facts:

**RECITALS**

A. Grantor is the sole owner in fee simple of certain real property containing approximately 208-acres, in the County of Orange, State of California, commonly referred to as "Fairview Park." Fairview Park is legally described and depicted on **Exhibit "A"** attached hereto and incorporated herein by this reference. Grantor intends to grant a conservation easement over a 17-acre portion of Fairview Park (the "**Easement Area**"). The Easement Area is legally described and depicted on **Exhibit "B"** attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of California, and the United States.

C. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property.

D. The Easement Area provides, among other things, mitigation for certain impacts of the Santa Ana River Mainstem Project Reach 2 Channel Excavation (the "**Project**") undertaken by the United States Army Corps of Engineers ("**USACE**") and Grantee, pursuant to requirements of the following state and federal agency approvals, collectively referred as to the "**Agency Agreements**":

1. The Agreement Regarding Proposed Activities Subject to California Fish and Game Code Section 1601 and any amendments thereto, No. R5-2002-0305, issued by the California Department of Fish and Game ("**CDFG**"); and

2. Biological Opinion No. FWS-OR-1304.8 dated December 2003 issued by the United States Fish and Wildlife Service ("**USFWS**").

E. The Easement Area is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, “**Conservation Values**”).

F. In connection with the Project, it is expected that USACE will construct and Grantee will maintain, monitor, and rehabilitate the Easement Area in accordance with the Mitigation Plan defined below and the terms of the Local Cooperation Agreement of December 13, 1989 and amendments and supplements thereto, between USACE and Grantee. In general, the Mitigation Plan provides that the Easement Area will be planted and seeded with native plant species to create and enhance riparian habitat.

G. Riparian habitat creation in Fairview Park is governed by the 1997 Fairview Park Master Plan, as amended (“**Master Plan**”).

H. To ensure Project commitments and conservation measures are carried out, USACE is a third party beneficiary of this Conservation Easement.

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purpose.

(a) The Purpose of this Conservation Easement is to ensure the Easement Area will be preserved in a Natural Condition, defined herein, in perpetuity and to prevent any use of the Easement Area that will materially impair or interfere with the Conservation Values of the Easement Area (the “**Purpose**”). Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Conservation Easement.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Mitigation measures, including implementation, maintenance, and monitoring activities (collectively, “**Compensatory Mitigation**”), required by the Agency Agreements and as described in the Fairview Park Wetlands and Riparian Habitat plan dated \_\_\_\_\_, 200\_ (“**Mitigation Plan**”), the cover page and Executive Summary of which are attached as **Exhibit “C”**;