

1 RECORDING REQUESTED BY:  
California Department of Parks and Recreation  
2 Office of Grants and Local Services

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder

54.00

2011000524314 1:20 pm 10/20/11

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3 WHEN RECORDED MAIL TO:  
Office of Grants and Local Services  
4 PO Box 942896  
Sacramento, CA 94296-0001  
5 Attn: Melinda Steinert

6  
7  
8 **DEED RESTRICTION**

9  
10 I. WHEREAS, City of Costa Mesa

11 \_\_\_\_\_ (hereinafter referred to as "Owner(s)" is/are recorded  
12 owner(s) of the real property described in Exhibit A, attached and incorporated herein by reference  
13 (hereinafter referred to as the "Property"); and

14 II. WHEREAS, the California Department of Parks and Recreation (hereinafter referred to  
15 as "DPR") is a public agency created and existing under the authority of section 5001 of the California  
16 Public Resources Code (hereinafter referred to as the "PRC"). And

17 III. WHEREAS, Owner(s) (or Applicants) applied to DPR for grant funds available pursuant  
18 to the Habitat Conservation Fund , Riparian Habitat for A project in the City of Costa Mesa to restore  
19 approximatley 10 acres of riparian habitat in Fairview Park. on the Property; and

20 IV. WHEREAS, on 9/7/11, DPR's Office of Grants and Local Services conditionally approved  
21 Grant HR-30-010 , (hereinafter referred to as "Grant") for A project in the City of Costa Mesa to restore  
22 approximatley 10 acres of riparian habitat in Fairview Park. on the Property, subject to, among other  
23 conditions, recordation of this Deed Restriction on the Property; and

24 V. WHEREAS, but for the imposition of the Deed Restriction condition of the Grant, the  
25 Grant would not be consistent with the public purposes of the Habitat Conservation Fund, Riparian  
26 Habitat and the funds that are the subject of the Grant could therefore not have been granted; and  
27

1 VI. WHEREAS, Owner(s) has/ve elected to comply with the Deed Restriction of the Grant,  
2 so as to enable Owner(s), to receive the Grant funds and perform the work described in the Grant;

3 NOW, THEREFORE, in consideration of the issuance of the Grant funds by DPR, the  
4 undersigned Owner(s) for himself/herself/themselves and for his/her/their heirs, assigns, and successors-  
5 in-interest, hereby irrevocably covenant(s) with DPR that the condition of the grant (set forth at  
6 paragraph(s) 1 through 5 and in Exhibit B hereto) shall at all times on and after the date on which this  
7 Deed Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use  
8 and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective  
9 components thereof.

10 1. DURATION. (a) This Deed Restriction shall remain in full force and effect and shall  
11 bind Owner(s) and all his/her/their assigns or successors-in-interest for the period running from July 1,  
12 2011 through June 30, 2031.

13 2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable  
14 and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the  
15 California Constitution; and b) section 402.I of the California Revenue and Taxation Code or successor  
16 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to  
17 the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or  
18 successor statute, which survives a sale of tax-deeded property.

19 3. RIGHT OF ENTRY. DPR or its agent or employees may enter onto the Property at times  
20 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being  
21 observed.

22 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether  
23 written or oral which uses or would cause to be used or would permit use of the Property contrary to the  
24 terms of this Deed Restriction will be deemed a violation and a breach hereof. DPR may pursue any and  
25 all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction.  
26  
27

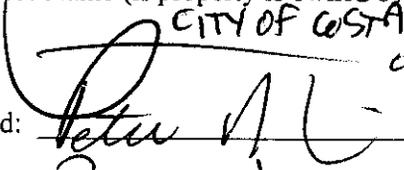
1 In the event of a breach, any forbearance on the part of DPR to enforce the terms and provisions hereof  
2 shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

3 5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any  
4 reason becomes unenforceable, no other provision shall be affected or impaired.

5  
6 Dated: OCTOBER 3, 2011

7  
8 Business Name (if property is owned by a business): N/A

9 CITY OF COSTA MESA

10 Signed: 

Signed: N/A

11 PETER NAGHAVI  
12 PRINT/TYPE NAME & CAPACITY OF ABOVE  
(GRANTEE'S AUTHORIZED REPRESENTATIVE)

\_\_\_\_\_  
PRINT/TYPE NAME & CAPACITY OF ABOVE  
(ADDITIONAL SIGNATURE, AS REQUIRED)

13  
14  
15  
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18  
19 **\*\*NOTARY ACKNOWLEDGEMENT ON THE NEXT PAGE\*\***  
20  
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27

1 State of California

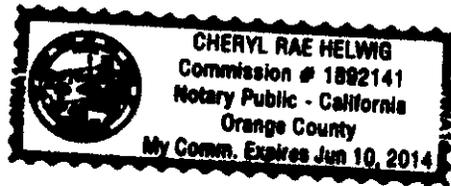
2 County of orange

3 On october 3, 2011 before me, Cheryl Rae Helwig a Notary Public,  
4 personally appeared Peter Noghari, who proved to me on the basis of  
5 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
6 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
7 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
8 person(s) acted, executed the instrument.  
9

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

12 WITNESS my hand and official seal.

13 Signature Cheryl Rae Helwig (Seal)



15 State of California

16 County of \_\_\_\_\_

17 On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public,  
18 personally appeared \_\_\_\_\_, who proved to me on the basis of  
19 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
20 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that  
21 by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
22 person(s) acted, executed the instrument.  
23

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

26 WITNESS my hand and official seal.

27 Signature \_\_\_\_\_ (Seal)

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT A OF THE BANNING TRACT, IN THE RANCHO SANTIAGO DE SANTA ANA, AS SHOWN ON A MAP OF SAID TRACT FILED IN ACTION NO. 6385, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, BEING AN ACTION FOR PARTITION, ENTITLED HANCOCK BANNING AND OTHERS VS. MARY H. BANNING AND ALSO THAT PORTION OF LOTS 3, 4 AND 5 OF THE J.A. DAY TRACT, RECORDED IN BOOK 4 PAGE 50 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND MORE PARTICULARLY SHOWN ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF FAIRVIEW FARMS, AS SHOWN ON A MAP RECORDED IN BOOK 8 PAGE 71 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY AND THE CENTER LINE OF PLACENTIA AVENUE, AS SAID CENTER LINE IS SHOWN ON THE MAP OF TRACT NO. 2215 RECORDED IN BOOK 106 PAGE 34, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID FAIRVIEW FARMS, SOUTH  $89^{\circ} 27' 30''$  WEST 2640.02 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH  $0^{\circ} 32' 30''$  WEST 660.00 FEET; THENCE NORTH  $89^{\circ} 27' 30''$  EAST 660.14 FEET; THENCE NORTH  $0^{\circ} 32' 30''$  WEST 209.11 FEET; THENCE NORTH  $51^{\circ} 50' 47''$  EAST 662.84 FEET; THENCE NORTH  $37^{\circ} 15' 16''$  EAST 30.00 FEET TO A POINT ON A CURVE, CONCAVE NORTHEASTERLY SAID POINT BEING ON THE CENTERLINE OF PLACENTIA AVENUE, HAVING A RADIUS OF 800.00 FEET; A RADIAL LINE FROM SAID POINT BEARS NORTH  $37^{\circ} 15' 16''$  EAST; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $52^{\circ} 31' 27''$ , AN ARC DISTANCE OF 733.38 FEET; THENCE NORTH  $0^{\circ} 13' 17''$  WEST 426.91 FEET TO THE NORTHWEST CORNER OF PARCEL "F" AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH  $68^{\circ} 48' 33''$  EAST 997.43 FEET ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL "F" TO THE SOUTHEASTERLY CORNER OF PARCEL "E" AS SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL "E", NORTH  $0^{\circ} 12' 30''$  WEST 98.24 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 550.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $22^{\circ} 30' 00''$ , AN ARC DISTANCE OF 215.98 FEET; THENCE NORTH  $22^{\circ} 17' 30''$  EAST 317.12 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 350.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $78^{\circ} 13' 11''$  AN ARC DISTANCE OF 477.82 FEET TO A POINT; A RADIAL LINE FROM SAID POINT BEARS SOUTH  $34^{\circ} 04' 19''$  WEST; THENCE NORTH  $0^{\circ} 12' 30''$  WEST 890.81 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT A OF THE BANNING TRACT; THENCE ALONG THE NORTHERLY LINE OF SAID LOT A, SOUTH  $89^{\circ} 28' 13''$  WEST 3164.10 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT EASTERLY 455.00 FEET MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE SANTA ANA RIVER CHANNEL, AS SAID CENTER LINE IS SHOWN ON A MAP FILED IN BOOK 12 PAGE 25 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE, STATE OF CALIFORNIA; THENCE SOUTH  $13^{\circ} 24' 49''$  WEST ALONG SAID PARALLEL LINE, 4034.61 FEET TO THE NORTHERLY LINE OF SAID FAIRVIEW FARMS; THENCE NORTH  $89^{\circ} 27' 30''$  EAST 2260.02 FEET ALONG THE NORTHERLY LINE OF SAID FAIRVIEW FARMS TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM PARCEL H-1 AS SHOWN ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

TOGETHER WITH ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO SUCH EASEMENT OR EASEMENTS AS ARE SHOWN ON RECORD OF SURVEY MAP FILED IN BOOK 53 PAGES 35 AND 36 OF RECORD OF SURVEY AND ACQUIRED BY GRANTOR UNDER THAT CERTAIN AGREEMENT RECORDED IN BOOK 4152 PAGE 223, OFFICIAL RECORDS AND DEED RECORDED IN BOOK 6799 PAGE 513, OFFICIAL RECORDS AS IT AFFECTS SUBJECT PROPERTY.

THIS CONVEYANCE IS SUBJECT TO THE EXPRESS CONDITION SUBSEQUENT THAT THE REAL PROPERTY CONVEYED SHALL BE USED ONLY FOR PARK AND RECREATION PURPOSES FOR A PERIOD OF 25 YEARS. SHOULD SAID EXPRESS CONDITION BE VIOLATED, THE STATE OF CALIFORNIA SHALL HAVE THE RIGHT TO RE-

**LEGAL DESCRIPTION**

**EXHIBIT "A" (CONTINUED)**

ENTER AND TAKE POSSESSION OF THE REAL PROPERTY, AND UPON SUCH RE-ENTRY, TITLE THERETO SHALL THEREUPON REVERT TO THE STATE OF CALIFORNIA.

**PARCEL 2:**

THAT PORTION OF LOT "A" OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA AND MORE PARTICULARLY DESIGNATED PARCEL "F" ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL "F", BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN CURVE IN THE BOUNDARY OF SAID PARCEL "F", CONCAVE SOUTHERLY AND HAVING A RADIUS OF 800.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID TERMINUS BEARS SOUTH 28° 22' 42" WEST; THENCE ALONG THE BOUNDARY OF SAID PARCEL "F" THE FOLLOWING COURSES:

NORTHWESTERLY AND WESTERLY ALONG SAID CURVE 229.45 FEET THROUGH A CENTRAL ANGLE OF 16° 25' 59"; THENCE TANGENT TO SAID CURVE, NORTH 78° 03' 17" WEST, 122.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 760.00 FEET; THENCE WESTERLY, NORTHWESTERLY AND NORTHERLY ALONG SAID CURVE 1086.76 FEET THROUGH A CENTRAL ANGLE OF 77° 50' 00"; THENCE TANGENT TO SAID CURVE, NORTH 0° 13' 17" WEST, 426.91 FEET; THENCE SOUTH 68° 48' 33" EAST, 997.43 FEET TO THE WESTERLY LINE OF THAT CERTAIN EASEMENT DEFINED AND DELINEATED IN BOOK 4761 PAGE 550 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID WESTERLY LINE SOUTH 0° 12' 30" EAST, 64.91 FEET; THENCE NORTH 89° 47' 30" EAST, 37.00 FEET; THENCE SOUTH 0° 12' 30" EAST, 885.32 FEET TO THE POINT OF BEGINNING.

**PARCEL 3:**

THAT PORTION OF LOT A OF THE BANNING TRACT, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION AND BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES MORE PARTICULARLY DESIGNATED AS PARCEL H-1 ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF ORANGE COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL H-1 THE FOLLOWING COURSES:

NORTH 79° 29' 00" WEST, 540.24 FEET; THENCE NORTH 0° 24' 54" WEST, 740.07 FEET TO A POINT ON THE CENTERLINE OF THAT CERTAIN EASEMENT DESCRIBED AND DELINEATED IN BOOK 4761 PAGE 550 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CENTERLINE AND CONTINUING NORTH 89° 35' 23" EAST, 97.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY 447.40 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51° 16' 07"; THENCE TANGENT TO SAID CURVE SOUTH 39° 08' 30" EAST, 134.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY 171.06 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 36' 06" 800.00 FEET A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 76° 37' 28" WEST; THENCE LEAVING THE CENTERLINE OF SAID EASEMENT DESCRIBED IN BOOK 4761 PAGE 550 OF OFFICIAL RECORDS AND CONTINUING ALONG THE BOUNDARY OF SAID PARCEL H-1, THE FOLLOWING COURSES:

SOUTHERLY 157.19 FEET ALONG SAID CURVE OF 800.00 FOOT RADIUS, THROUGH A CENTRAL ANGLE OF 11° 15' 29"; THENCE SOUTH 24° 38' 01" WEST, 145.87 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 800.00 FEET; THENCE SOUTHERLY 167.10 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 58' 04" TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, LYING BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

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**LEGAL DESCRIPTION**  
**EXHIBIT "A" (CONTINUED)**

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR STREET AND HIGHWAY PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

THAT PORTION OF LOT "A" OF THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION AND BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND MORE PARTICULARLY DESIGNATED ON A MAP FILED IN BOOK 53 PAGES 34 TO 36 OF RECORD OF SURVEY OF SAID COUNTY OF ORANGE, SITUATED WITHIN A 60 FOOT STRIP OF LAND LYING 30 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT "A" AND THE EASTERLY LINE OF PARCEL H-2, ALL AS SHOWN ON SAID RECORD OF SURVEY; THENCE SOUTH  $0^{\circ} 31' 47''$  EAST, 301.45 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY AND HAVING A RADIUS OF 800 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF  $25^{\circ} 09' 48''$ , A DISTANCE OF 351.34 FEET; THENCE SOUTH  $24^{\circ} 38' 01''$  WEST, 145.87 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 800 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH AN ANGLE OF  $24^{\circ} 51' 18''$ , A DISTANCE OF 347.04 FEET THENCE SOUTH  $0^{\circ} 13' 17''$  EAST, 436.80 FEET.

THE SIDE LINES OF SAID STRIP SHALL BE LENGTHENED OR SHORTENED TO TERMINATE IN SAID NORTH LINE OF LOT "A", AND IN THE SOUTHERLY LINE, AND ITS WESTERLY PROLONGATION OF PARCEL "E" AS SAID SOUTHERLY LINE IS SHOWN ON SAID RECORD OF SURVEY.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 3.

State of California - Natural Resources Agency  
Department of Parks and Recreation  
GRANT CONTRACT  
Habitat Conservation Fund  
Riparian Habitat

MS

GRANTEE City of Costa Mesa

PROJECT PERFORMANCE PERIOD is from July 01, 2011 thru March 31, 2016

PROJECT TITLE FAIRVIEW PARK WETLANDS AND RIPARIAN HABITAT PROJECT NUMBER HR-30-010

Under the terms and conditions of this agreement, the applicant agrees to complete the project as described in the project description, and the State of California, acting through its Director of Parks and Recreation pursuant to the program named above, agrees to fund the project up to the total grant amount indicated.

PROJECT DESCRIPTION

A project in the City of Costa Mesa to restore approximately 10 acres of riparian habitat in Fairview Park.

Total State Grant not to exceed \$225,000.00 (or 50% of the total project, which ever is less)

City of Costa Mesa

Grantee

The General and Special Provisions attached are made a part of and incorporated into the Contract.

By Peter Nagitan  
Typed or printed name of Authorized Representative

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

[Signature]  
Signature of Authorized Representative

By Din Chu

Address 77 FAIRVIEW DR. COSTA MESA  
92628

Date September 7, 2011

Title Director of Public Services

Date 9.1.11

CERTIFICATION OF FUNDING

CONTRACT NO C9767007	AMENDMENT NO	CALSTARS VENDOR NO. 000000402200 ✓			PROJECT NO. HR-30-010
AMOUNT ENCUMBERED BY THIS DOCUMENT \$225,000.00		FUND. Habitat Conservation Fund			
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT		ITEM 3790-101-0262(1)	CHAPTER 33/11	STATUTE 11	FISCAL YEAR 2011/12
TOTAL AMOUNT ENCUMBERED TO DATE \$ 225,000.00		INDEX. 1091	OBJ. EXPEND 702	PCA. 63660	PROJECT / WORK PHASE
T.B.A. NO.	I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance.				
B.R. NO.	ACCOUNTING OFFICER'S SIGNATURE <u>[Signature]</u>				DATE 9/9/11

Grantee - 9/7/11

## GRANT CONTRACT

### I. RECITALS

1. This agreement is entered into between the State of California, by and through the California Department of Parks and Recreation (hereinafter referred to as "STATE") and the City of Costa Mesa (hereinafter referred to as "grantee").
2. The California Wildlife Protection Act of 1990, Fish and Game Code, Chapter 9, commencing with Section 2780 (the ACT) authorizes the STATE to award grants to eligible entities.
3. Pursuant to the California Wildlife Protection Act of 1990, Fish and Game Code, Chapter 9, commencing with Section 2780, the STATE is authorized to oversee and manage grants to eligible entities for the purposes stated within its provisions. Funding for this \$2,000,000 GRANT program was made available through the California Wildlife Protection Act of 1990, Fish and Game Code, Chapter 9 (commencing with Fish and Game Code § 2780).
4. The STATE hereby grants to grantee a sum (hereinafter referred to as "grant monies") not to exceed Two hundred and twenty five thousand Dollars (\$ 225,000), subject to the terms and conditions of this agreement, the HCF Application GUIDES, any legislation applicable to the ACT and the APPLICATION.
5. In consideration thereof grantee agrees to abide by the terms and conditions of this agreement as well as the provisions of the ACT. Grantee acknowledges that the grant monies are not a gift or a donation.
6. In addition to the terms and conditions of this agreement, the parties agree that the terms and conditions contained in the documents set forth below are hereby incorporated into and made part of this agreement.
  - a. The Grant Administration Guide
  - b. The APPLICATION GUIDE
  - c. The submitted APPLICATION

### II. SPECIAL PROVISIONS

1. This agreement includes the following special provisions, when project circumstances warrant (by either party):

### III. GENERAL PROVISIONS

#### A. Definitions

As used in this agreement, the following words shall have the following meanings:

1. The term "ACT" means the statutory basis for this grant program.
2. The term "APPLICATION" means the individual project APPLICATION packet for a grant pursuant to the enabling legislation and/or grant program process Grant Administration Guide requirements.
3. The term "ACQUISITION" means to obtain fee title of real property or a permanent easement which provides the recipient permanent rights to use the property for the purposes of the project. Leases or rentals do not constitute ACQUISITION.
4. The term "CONTRACT PERFORMANCE PERIOD" means the period of time described in Section 1 of this agreement.
5. The term "DEVELOPMENT" (trails category only) means capital improvements to real property by, but not limited to, improvement, construction, reconstruction, and/or protection of permanent or fixed features of the property.
6. The term "ENHANCEMENT" means to increase the habitat value of the land to benefit the targeted species.
7. The term "GRANT PERFORMANCE PERIOD" means the period of time described in Section 1 of this agreement, during which eligible costs can be charged to the grant and which begins on the appropriation date and ends on the fund liquidation date.
8. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE /cost estimate form found in the APPLICATION.
9. The term "GUIDES" means the documents identified as the APPLICATION and Grant Administration GUIDES for the Habitat Conservation Fund program for deer/mountain lion habitat, rare, endangered, threatened, or fully-protected species habitat, wetlands, anadromous salmonids and trout habitat, riparian habitat, trails, and WILDLIFE AREA ACTIVITIES.
10. The term "RESTORATION" means the act of bringing either land or a species back into a former, non-impaired condition.
11. The term "STATE" refers to the State of California acting by and through the Department of Parks and Recreation.

12. The term "WILDLIFE AREA ACTIVITIES" means an event, or series of events to be accomplished with grant funds, such as a nature interpretation, educational, or other enrichment project, (e.g., classes, trips, etc.), organized and/or conducted by the grantee, and intended to bring urban residents into park and wildlife areas.

## **B. Project Execution**

1. Subject to the availability of grant monies in the ACT, the STATE hereby grants to the grantee a sum of money not to exceed the amount stated in Section I of this agreement, in consideration of, and on condition that, the sum be expended in carrying out the purposes set forth in the GRANT SCOPE, and under the terms and conditions set forth in this agreement.  

The grantee shall assume the obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE.
2. After the STATE has approved the APPLICATION, all changes and alterations to the GRANT SCOPE must be approved in writing by the STATE. Grantee's failure to comply with this provision may be construed as a breach of the terms of the agreement and result in the termination of payment of the grant monies provided for in this agreement.
3. To maintain the integrity of the competitive grant program, the grantee agrees that any other project changes or alterations which deviate from the GRANT SCOPE in the original competitive APPLICATION must be submitted in writing to the STATE for prior approval.
4. The grantee shall complete the GRANT SCOPE in accordance with the time of the GRANT PERFORMANCE PERIOD set forth on page one of this agreement, and under the terms and conditions of this agreement.
5. The grantee shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq., Title 14, California Code of Regulations, Section 15000 et. seq.).
6. The grantee shall at all times comply with all applicable current laws and regulations affecting ACQUISITION, ENHANCEMENT, RESTORATION, DEVELOPMENT, AND WILDLIFE AREA ACTIVITIES projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and the California Unruh Act (California Civil Code §51 et seq.)

7. If the GRANT SCOPE includes ACQUISITION of real property, the grantee agrees to comply at all times with all applicable STATE and local laws or ordinances affecting relocation and real property ACQUISITION.
8. Grantee agrees that lands acquired with grant monies shall not be acquired through the use of eminent domain.

### **C. Project Costs**

1. Grantee agrees to abide by the GUIDES.
2. Grantee acknowledges that the STATE may make reasonable changes to its procedures as set forth in the GUIDES. If the STATE makes any changes to its procedures and guidelines, the STATE agrees to notify grantee within a reasonable time.

### **D. Project Administration**

1. If the STATE advances grant monies for ACQUISITION projects, the STATE shall place the grant monies in an escrow account. If grant monies are advanced and not expended, the unused portion of the advanced funds shall be returned to the STATE within 60 days after the close of escrow.
2. If grant monies are advanced for an ENHANCEMENT, RESTORATION, DEVELOPMENT, or WILDLIFE AREA ACTIVITIES project, the advanced funds shall be placed in an interest-bearing account until expended. Advanced funds must be spent within six months from the date of receipt, unless the STATE waives this requirement. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the grant and any interest earned shall be returned to the STATE within 60 days after project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier.
3. The grantee shall submit written status reports within 30 calendar days after the STATE has made such a request. In any event, the grantee shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified on page one of this agreement.
4. The STATE shall have the right to inspect all property or facilities acquired and/or developed pursuant to this agreement and the grantee shall make such property or facilities available for inspection upon 24 hours notice from the STATE.
5. The grantee and the STATE agree that if the GRANT SCOPE includes ENHANCEMENT, RESTORATION, DEVELOPMENT, or WILDLIFE AREA ACTIVITIES project activities, final payment may not be made until the work described in the GRANT SCOPE is complete.

6. Any grant funds that have not been expended by the grantee shall revert to the STATE.

#### **E. Project Termination**

1. In the event of non-completion of a GRANT SCOPE, the STATE may request the return of any grant funds advanced or reimbursed.
2. This agreement may be rescinded, modified or amended only by mutual written agreement between the grantee and the STATE, unless the provisions of this agreement provide that mutual agreement is not required for a rescission, modification or amendment.
3. Failure by the grantee to comply with the terms of this agreement, as well as any other agreements that grantee has entered into with STATE, may be cause for suspension of all obligations of the STATE under this agreement unless the STATE determines that such failure was due to no fault of the grantee. In such case, STATE may reimburse grantee for eligible costs properly incurred in performance of this agreement despite non-performance of the grantee. To qualify for such reimbursement, grantee agrees to mitigate its losses to the best of its ability.
4. The grantee agrees that in the event of a breach of this agreement, the STATE may seek, in addition to all remedies provide by law, specific performance of the agreement in accordance with the purpose of the agreement to preserve, protect and increase the quantity and quality of habitat opportunities and/or resources available to the people of the State of California.

#### **F. Budget Contingency Clause**

For purposes of this program, if funding for any fiscal year is reduced or deleted by the budget act, executive order, the legislature, or by any other provision of statute, the STATE shall have the option to either cancel this agreement with no liability occurring to the STATE, or offer an amendment to the agreement to reflect a reduced grant amount. This paragraph shall not require the mutual agreement as addressed in Paragraph E, subsection 2, of this agreement.

#### **G. Indemnity**

1. The grantee shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property or property arising from, growing out of or in any way connected with or incident to this agreement, except valid legal claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.
2. To the fullest extent of the law, the grantee shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands,

damages, costs, expenses or liability costs arising out of an ACQUISITION, ENHANCEMENT, RESTORATION, DEVELOPMENT, or WILDLIFE AREA ACTIVITIES project, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.

3. The grantee agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et. seq., the grantee shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the STATE shall bear its own litigation costs, expenses, and attorney's fees.
4. The grantee and the STATE agree that in the event of judgment entered against the STATE and the grantee because of the concurrent negligence of the STATE and the grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction.
5. The grantee shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the grantee has certified. The grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

#### **H. Financial Records**

1. The grantee shall maintain satisfactory financial accounts, documents and records for the project and make them available to the STATE for auditing at reasonable times. The grantee also agrees to retain such financial accounts, documents and records for at least five years following project termination or final payment, whichever is later.
2. The grantee shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of grant monies, (b) the total cost of the project, (c) the amount and nature of project funds provided by other sources, and (d) any other records that will facilitate an effective audit of the grant monies.
3. The grantee agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this agreement or matters related thereto during regular office hours. The grantee shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this agreement. Such accounts, documents, and records shall be retained by the GRANTEE for at least 5 years following final payment of grant monies.
4. The grantee shall use a generally accepted accounting system.

## **I. Use of Facilities**

1. The grantee agrees to operate and maintain project sites and/or locations for the duration of the CONTRACT PERFORMANCE PERIOD. If any property is acquired, enhanced, restored, or developed with grant monies, the grantee is required to operate and maintain the same for the duration of the CONTRACT PERFORMANCE PERIOD.
2. The grantee agrees that during the GRANT PERFORMANCE PERIOD, any income earned by the grantee from a STATE-approved use of the project shall be used for project purposes, or, if approved by the STATE, for other purposes within the grantee's jurisdiction.
3. The grantee acknowledges that reasonable public access shall be provided except when that access may interfere with habitat protection.
4. All facilities shall have operating hours consistent with the times proposed in the APPLICATION and be open to members of the public in accordance with the project selection criteria in the APPLICATION, unless otherwise granted permission by the STATE and except as noted under the special provisions of this agreement or under provisions of the enabling legislation and/or grant program.
5. The grantee agrees that for the duration of the CONTRACT PERFORMANCE PERIOD, any property acquired, enhanced, restored or developed with grant monies under this agreement shall be used only for the purposes of the grant and consistent with the GRANT SCOPE referenced in the APPLICATION unless prior written approval is given by the STATE.
6. The grantee agrees to use any property acquired, enhanced, restored, or developed with grant monies under this agreement only for the purposes of the grant and no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the legislature in which event the property shall be replaced by the grantee with property of equivalent value and usefulness as determined by the STATE.
7. The property acquired, enhanced, restored, or developed with grant monies may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this agreement and with written approval of the STATE.
8. Any real property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE, provided that such approval shall not be unreasonably withheld as long as the purposes for which the grant monies were awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE's rights to enforce performance under this agreement.
9. All real property or rights thereto, acquired with grant monies shall be subject to an appropriate form of restrictive title, rights, or covenants required and approved by the STATE. If the project property is taken by use of eminent domain, grantee shall

reimburse the STATE an amount at least equal to the amount of grant monies received from the STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.

10. If eminent domain proceedings are initiated against grantee, grantee shall notify the STATE within 10 days of receiving the complaint.

#### **J. Nondiscrimination**

1. The grantee shall not discriminate against any person on the basis of sex, race, creed, color, national origin, age, religion, ancestry, sexual orientation, disability, medical condition, or marital status in the use of project site(s) as included in the APPLICATION.
2. The grantee shall not discriminate against any person on the basis of residence, and shall not apply differences in admission or other fees on the basis of residence. Fees shall be reasonable and not unduly prevent use by economically disadvantaged members of the public.

#### **K. Severability**

If any provision of this agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the agreement which can be given effect without the invalid provision or application, and to this end the provisions of this contract are severable.

#### **L. Liability**

STATE assumes no responsibility for assuring the safety of construction, site improvements or programs related to the GRANT SCOPE. The STATE's rights under this agreement to review, inspect, and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

#### **M. Assignability**

Without the written consent of the STATE, the grantee's interest in and responsibilities under this agreement shall not be assignable by the grantee either in whole or in part.

#### **N. Section Headings**

The headings and captions of the various sections of this agreement have been inserted only for the purpose of convenience and are not a part of this agreement and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this agreement.

#### **O. Waiver**

Any failure by a party to enforce its rights under this agreement, in the event of a breach, shall *not* be construed as a waiver of said rights; and waiver of any breach under this agreement shall *not* be construed as a waiver of any subsequent breach.

City of Costa Mesa

Grantee

By:  \_\_\_\_\_  
Signature of Authorized Representative (Position Authorized in the Resolution)

Title: Director, Public Services Department

Date: 9.14.11