

**Recording Requested By and
When Recorded Return to:**

State Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, CA 94612

Attn: Legal Counsel: GA

EXEMPT FROM RECORDING FEES -- GOVERNMENT CODE SECTION 6103

**AGREEMENT PROTECTING THE PUBLIC INTEREST
IN CERTAIN IMPROVEMENTS AND DEVELOPMENT
(Public Resources Code § 31116(c))**

Marsh Creek, Contra Costa County, California

This agreement is entered into by the California State Coastal Conservancy (“the Conservancy”), American Rivers, a District of Columbia nonprofit organization (“the Nonprofit Organization”), and the Contra Costa County Flood Control and Water Conservation District (“the District”).

PERTINENT FACTS

- A. California Public Resources Code §§ 31116 authorizes the Conservancy to award grants to nonprofit organizations for the purposes of Division 21 of the Public Resources Code.
- B. The Nonprofit Organization is a District of Columbia nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code and whose purposes are consistent with Division 21.
- C. The District owns real property (“the Property”), located in Contra Costa County, California and described in Exhibit A, which is incorporated by reference and attached.
- D. On October 5, 2006, the Conservancy authorized a grant to the Nonprofit Organization, subsequently awarded under Grant Agreement No. 06-053 to construct a fish ladder over a grade-control drop structure located approximately three miles from the mouth of Marsh Creek in the County of Contra Costa.
- E. Public Resources Code § 31116(c) requires that the Conservancy execute an agreement sufficient to protect the public interest in any improvements or development constructed under its grant; this agreement must be recorded in the county in which the Property is located.

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- F. The grant referred to above was conditioned on the Nonprofit Organization, the District, and the Conservancy executing and recording an agreement to protect the public interest in all improvements or developments constructed with Conservancy funds, in accordance with Public Resources Code § 31116(c).
- G. The Nonprofit Organization seeks to assist the Contra Costa County Flood Control and Water Conservation District in providing fish passage along Marsh Creek by constructing the fish ladder.

THE PARTIES AGREE AS FOLLOWS, in order to carry out the purposes of Public Resources Code § 31116(c), and in light of the Pertinent Facts, above:

1. **DURATION**. The term of this agreement shall be from the date last signed by a party below, through the reasonable lifetime of the improvements made with Conservancy funds, but in no event less than twenty years from commencement.
2. **CONSTRUCTION AND MAINTENANCE**. The Nonprofit Organization assumes all responsibility for constructing the fish ladder improvement. Upon final construction of the ladder, the District shall maintain and operate fish passage improvements and shall use the Property and fish passage improvements in a manner consistent with the purposes of the Conservancy's grant to the Nonprofit Organization.
3. **SIGNS**. The Nonprofit Organization shall provide, and the District shall permit, the erection of permanent signs on the Property identifying the fish ladder improvement. The number, design, placement and wording of the signs shall be subject to the approval of the Executive Officer of the Conservancy and the District.
4. **ACCESS**. The Nonprofit Organization and the Conservancy, its agents or employees shall have access to the Property to accomplish the purposes of this agreement. Any access to the Property required outside areas generally accessible to the public will require written permission from the District. Such permission will not be unreasonably withheld.
5. **INSPECTION**. The Nonprofit Organization and the District shall permit the Conservancy, its agents or employees, to visit the project site at reasonable intervals to determine whether access is being provided to the public on a nondiscriminatory basis in accordance with this agreement.
6. **DISTRICT'S USE OF THE PROPERTY**. The District reserves the right to use the Property in any manner, provided that its use does not unreasonably interfere with this agreement. The District may temporarily suspend the function of the fish ladder in order to perform necessary maintenance or repairs, or when necessary to protect the integrity of the drop structure, but in a manner and at a time least harmful to the fish under the circumstances.

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7. **LIABILITY**. The Nonprofit Organization and the District, respectively, shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the fish ladder improvement, except for active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. The Nonprofit Organization and the District waive any and all rights to any type of express or implied indemnity or right of contribution from the Conservancy, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the fish ladder improvement.
8. **SUCCESSORS TO THE NONPROFIT ORGANIZATION**. If, for any reason, including, but not limited to the dissolution and winding up of the Nonprofit Organization, the Nonprofit Organization is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of the Nonprofit Organization under this agreement.
9. **SUCCESSORS IN INTEREST**. The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.
10. **FORBEARANCE NOT A WAIVER**. Any forbearance on the part of the Conservancy, or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the Conservancy's right regarding any subsequent violation or breach.
11. **SEVERABILITY**. If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
12. **TERMINATION**. This agreement may be terminated at any time upon the mutual written agreement of the parties.
13. **NOTICES**. Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612

PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))
Marsh Creek Fish Ladder, Contra Costa County, CA

American Rivers
432 Broad Street
Nevada City, CA 95959

And

American Rivers
1101 14th St NW, Suite 1400
Washington, DC 20005

Contra Costa County Flood Control and Water Conservation District
255 Glacier Drive
Martinez, CA 94553

14. **RECORDATION**. This agreement shall be recorded in the official records of the County of Contra Costa.
15. **LOCUS OF CONTRACT**. This agreement is entered into in the County of Contra Costa, California.
16. **COUNTERPARTS**. This agreement may be signed in counterparts, each one of which shall be deemed an original once all parties have signed.

STATE COASTAL CONSERVANCY

Samuel Schuchat
Executive Officer

Date

AMERICAN RIVERS

William P. Lee
Chief Operating Officer

Date

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**CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT**

Julia R. Bueren,
Chief Engineer

Date

Approved as to Form:
Sharon Anderson
County Counsel

By: _____
(Deputy County Counsel)

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[ADD ACKNOWLEDGMENTS]

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EXHIBIT A

Legal Description

Add legal description.