

## LOS CERRITOS WETLANDS AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT

### PREAMBLE

*Whereas*, The San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy was established in 1999 to acquire and manage public lands within the Lower Los Angeles River and San Gabriel River watersheds, and to provide open space, low impact recreational and educational uses, water conservation, watershed improvement, wildlife and habitat restoration and protection; and

*Whereas*, the State Coastal Conservancy was established to preserve, acquire and hold significant coastal resource sites for public use and enjoyment and to enhance and restore coastal resources which have suffered the loss of natural or scenic values as a result of incompatible land uses and natural or human-induced events,

*Whereas*, the Los Cerritos Wetlands is located within the jurisdictional boundaries of the Cities of Long Beach and Seal Beach;

*Whereas*, the City of Long Beach and the City of Seal Beach share with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and State Coastal Conservancy a desire to provide for a comprehensive program of acquisition, protection, conservation, restoration, maintenance and operation and environmental enhancement of the Los Cerritos Wetlands area consistent with the goals of habitat protection and restoration, flood protection, and improved water supply, water quality, groundwater recharge and water conservation; Now

*Therefore*, pursuant to the Joint Exercise of Powers Act (Government Code § 6500, et. seq.), the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (hereinafter “RMC”), the City of Long Beach (hereinafter “Long Beach”), the City of Seal Beach (hereinafter “Seal Beach”) and the State Coastal Conservancy (hereinafter “SCC”) (separately, a “Party”, jointly, the “Parties”) agree as follows:

#### 1. PURPOSE

1.0 There is hereby created a joint exercise of powers authority to be known as the “Los Cerritos Wetlands Authority,” (hereinafter the “AUTHORITY”). The AUTHORITY is formed by this Agreement pursuant to the provisions of Title One, Division 7, Chapter 5, Articles 1 and 2 of the Government Code (Govt. Code, § 6500 et seq.) It is the intent of the parties to this Agreement (hereinafter the “Parties”) that the AUTHORITY shall be the entity responsible for administering this Agreement and shall be a public entity separate and apart from the Parties.

1.1 The purpose of this Agreement is to provide for a comprehensive program of acquisition, protection, conservation, restoration, maintenance and operation and environmental enhancement of the Los Cerritos Wetlands area consistent with the goals of habitat protection and restoration, flood protection, and improved water supply, water quality, groundwater recharge and water conservation.

1.2 As a further necessary and integral purpose of this Agreement, the acquisition of lands for watershed protection, conservation, natural open space, and recreational purposes is contemplated using existing resources and additional resources that may be available by virtue of the joint efforts of the Parties.

1.3 Acquisition may be by way of gift, devise, purchase, or exchange and shall extend to any interest in real or personal property necessary to carry out the purposes of this Agreement.

## **2. COMMON POWERS**

2.0 The Parties agree to exercise their common powers to the maximum extent thereof for the purposes of implementing this Agreement, including, but not limited to, all the powers specified in Joint Exercise of Powers Act, codified in Chapter 5 of Division 7 of Title 1 of the Government Code (commencing with § 6500), as may be amended during the term of this Agreement.

2.1 The AUTHORITY shall have no power to acquire property by eminent domain.

2.2 The AUTHORITY shall be subject to all laws (including building ordinances and zoning ordinances), regulations and general and specific plans of the State of California and any city or county in which the AUTHORITY proposes to take action.

2.3 The AUTHORITY shall be subject to restrictions upon the manner of exercising its powers in the same manner as the City of Long Beach is restricted in the manner of exercising similar powers; provided that if the City of Long Beach withdraws as a Party to this Agreement, then the AUTHORITY shall be restricted in the exercise of its powers in the same manner as the City of Seal Beach.

## **3. JURISDICTION**

3.0 For purposes of this Agreement, the Los Cerritos Wetlands Area shall include such areas as may be needed to provide additional habitat, open space and recreational amenities that will further the purposes of the AUTHORITY including but not limited to the following parcels: the Bixby Property, Bryant Property, Hellman Ranch, State Lands Commission Property, and 5-acre Edison parcel as further specified in the attached map.

- 3.1 The AUTHORITY, upon approval of all the Parties may acquire property, or engage in activities outside the Los Cerritos Wetlands Area as defined in section 3.0 of this Agreement, to the extent necessary to carry out the purposes set forth in Section One of this Agreement.

#### **4. GOVERNING BOARD**

4.0. The AUTHORITY shall be governed by a “board constituted pursuant to the agreement” within the meaning of Government Code § 6506.

4.1 The Governing Board of the AUTHORITY shall consist of four (4) voting members as follows:

- (a) One voting member appointed by the Governing Board of the RMC except that the Board shall not appoint an elected official, appointed official or employee of the City of Long Beach or the City of Seal Beach.
- (b) One voting member appointed by the City Council of Long Beach;
- (c) One voting member appointed by the City Council of Seal Beach;
- (d) One voting member appointed by the Governing Board of the State Coastal Conservancy except that the Board shall not appoint an elected official, appointed official or employee of the City of Long Beach or the City of Seal Beach.

4.2. Each appointee shall serve at the pleasure of the appointing body and may be removed by the appointing body at any time with or without cause.

#### **5. MEETINGS**

5.0. All meetings of the Governing Board shall be called, held, and conducted in accordance with the provisions of the Ralph M. Brown Act and with such further rules of the Governing Board as are not inconsistent therewith.

5.1. The AUTHORITY shall keep, or cause to be kept, the minutes of the Governing Board's meetings, and shall as soon as possible after each meeting, forward a copy of the minutes to each member of the Governing Board and to the governing body of each of the Parties.

#### **6. QUORUM AND PROCEDURE**

6.0. A majority of the Governing Board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of those members present and voting shall constitute an action of the Governing Board.

6.1 The affirmative vote of two thirds of those members present and voting, but not less than three votes, shall be required for approval of the following actions: adoption of annual budgets; all contracts and expenditures not otherwise expressly approved in an adopted budget over \$20,000; authorization to accept, acquire or convey interests in property; the addition of other public agencies as Parties; and authorizations to sue.

6.2. Where applicable, Robert's Rules of Order, Newly Revised, shall govern the procedures of the Governing Board, except when inconsistent with the Ralph M. Brown Act.

6.3 The Governing Board shall elect a Chair and Vice Chair who shall serve for a two year term.

## **7. COMPENSATION**

7.0. Members of the Governing Board shall serve without compensation except that a reasonable stipend for attendance at meetings of the Governing Board, as determined by the Governing Board, may be paid to the public members in an amount not to exceed \$50 to the extent compatible with Government Code § 1126, Public Contract Code §§ 10410 and 10411, and any other applicable statute and the availability of funds for this purpose

## **8. ADMINISTRATION**

8.0. The AUTHORITY shall be administered in accordance with the policies and directives of the Governing Board. It shall have an Executive Officer who shall perform the functions stated in Government Code § 6505.1.

8.1. The Executive Officer of the RMC shall serve ex officio, without compensation, as the interim Executive Officer of the AUTHORITY, until a permanent Executive Officer of the AUTHORITY is chosen.

8.2 The Governing Board shall set the terms and conditions for employment of an Executive Officer including but not limited to at will employment status, salary and duties.

8.3. The Executive Officer shall be responsible for establishing and implementing the policies and priorities of the Authority under the direction of the Governing Board and shall further be responsible for the Authority's operation, budget development and administration, contracts, and personnel matters.

8.4. The AUTHORITY may use counsel provided by one of the Parties, or it may retain independent counsel.

8.5. To implement this Agreement the Parties may loan employees or otherwise make their services available to the AUTHORITY.

## **9. FISCAL CONTROLS**

9.0. The fiscal year of the AUTHORITY shall be the fiscal year of Long Beach.

9.1. To the extent funds are legally available and authorized by their respective governing bodies, the Parties may make payments and contributions of public funds to the AUTHORITY for the purposes of this Agreement, or such payments and contributions may be made directly to defray the cost of such purposes, as provided in Section 6504 of the Government Code.

9.2. The AUTHORITY shall be strictly accountable for all funds, receipts, and disbursements as required by Government Code Section 6505. The AUTHORITY shall adopt an annual budget. Public funds may not be disbursed by the AUTHORITY except pursuant to a budget which has been adopted by the Governing Board of the AUTHORITY and approved by the governing bodies of the Parties, and all receipts and disbursements shall be in strict conformance with the adopted and approved budget.

9.3. The treasurer of Long Beach shall act as the treasurer of the AUTHORITY and shall be the depository and have custody of all money of the AUTHORITY from whatever source. The AUTHORITY shall reimburse Long Beach for costs incurred pursuant to this section, subject to prior approval of the Governing Board. The treasurer so designated shall:

- (a) Receive all money of the AUTHORITY and place it in the treasury of Long Beach, or other appropriate account, to the credit of the AUTHORITY.
- (b) Be responsible on his official bond for the safekeeping and disbursement of all AUTHORITY money so held by him or her.
- (c) Pay, when due, out of money of the AUTHORITY so held, all sums due on outstanding obligations of the AUTHORITY. Said sums shall be paid only by warrants of the public officer performing the functions of auditor or controller of the AUTHORITY pursuant to Section 6505(d) of the Government Code.
- (d) Verify and report in writing on a quarterly basis to the AUTHORITY and to the Parties the amount of receipts since the last report, and the amount paid out since the last report.

9.4. The Auditor of Long Beach shall perform the functions of auditor or controller of the AUTHORITY. The Auditor shall either contract with a certified public accountant or prepare an annual audit of the accounts and records of the AUTHORITY. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code, and shall conform to generally accepted auditing standards. Where an audit of an account and records is made by a certified public accountant, a report thereof shall be filed as a public record with each of the Parties. Such report shall be filed within six months of the end of the fiscal year under examination. Any costs of the audit, including contracts with or employment of a certified public accountant shall be borne by the AUTHORITY and charged against any unencumbered funds of the AUTHORITY. The AUTHORITY shall reimburse Long Beach for costs incurred in connection with the performance of any other functions by the Auditor Controller, pursuant to this section, subject to prior approval of the Governing Board.

9.5. The AUTHORITY shall have the power to invest any money in the treasury of the AUTHORITY that is not required for the immediate necessities of the AUTHORITY, as the AUTHORITY determines advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code.

## 10. BONDS

10.0. Each member of the Governing Board, the Executive Officer, and treasurer shall file an official bond with the AUTHORITY. When deemed appropriate by the AUTHORITY, a master bond may be utilized as referred to in Government Code Section 1481, and the bond shall also comply with the requirements of Title 1, Division 4, Chapter 3 of the Government Code. The bond shall be in the amount of not less than \$50,000. The premium shall be paid by the AUTHORITY.

## 11. LIABILITY

11.0. The tort liability of the AUTHORITY and of all members of the Governing Board, and the executive officer and employees of the Parties, who may be loaned to the AUTHORITY, shall be controlled by the provisions of Division 3.6 of the Government Code. The provisions of Division 3.6 of the Government Code relating to indemnification of public employees and the defense of actions arising out of any act or omission occurring in the scope of their employment shall apply to all members of the Governing Board, officers, and employees of the AUTHORITY.

11.1. The Parties specify pursuant to Government Code Section 6508.1 and in recognition of Tucker Land Co. v. State of California (2002) 94 Cal.App.4th 1191, that the debts, liabilities, contracts and obligations of the AUTHORITY shall not be the debts, liabilities, contracts and obligations of any of the Parties.

11.2. Neither the AUTHORITY nor the Governing Board shall have the power or authority to bind the Parties, or any of them to any debt, liability, contract, or obligation, or to employ any person on behalf of the Parties, or any of them.

11.3. No action or omission of the Parties or any of them shall be attributable to any other Parties to this Agreement

## 12. INSURANCE

12.0 The AUTHORITY shall maintain such public liability and other insurance as in its discretion is deemed appropriate and to the extent the cost of premiums thereof are provided for in the approved budget of the AUTHORITY.

12.1. In addition, the AUTHORITY may insure itself and the Parties, and the officers and employees of the Parties, in a manner, form and amount appropriate and acceptable to the Governing Board of the AUTHORITY.

## 13. DISPOSITION OF PROPERTY AND FUNDS

13.0. Upon termination of this Agreement, the AUTHORITY forthwith shall wind up its affairs, including discharging all of its outstanding legal obligations. Personal property and funds remaining with the AUTHORITY shall be returned to the Party from which the fund or personal property were obtained, except as mutually agreed by the Parties. All real property, if any, owned by the AUTHORITY shall be conveyed as the AUTHORITY shall determine prior to termination of this Agreement.

#### **14. WITHDRAWAL OR ADDITION OF PARTIES AND TERMINATION OF AGREEMENT**

14.0. Any Party may withdraw as a Party to this Agreement provided that: (1) at the time of withdrawal, that Party has either discharged, or arranged to the satisfaction of the other Parties for the discharge of, any pending legal, environmental or financial obligations it has assumed under or pursuant to this Agreement and (2) it provides written notice of its intent to withdraw to the Executive Officer of the AUTHORITY not less than three months prior to the effective date of its withdrawal.

14.1. Additional "public agencies" within the meaning of Section 6500 *et seq.* of the Government Code may become a Party by resolution of the governing boards of each of the then existing Parties and majority approval of the Governing Board of the AUTHORITY.

#### **15. CONTRIBUTIONS OF THE PARTIES**

15.0. Contribution is here defined to include monetary contributions, if any, and the reasonable value of the services of any employees of any Party loaned by it to the AUTHORITY, if any.

15.1. Each Party shall, subject to the availability of funds, make an equal annual contribution to or on behalf of the AUTHORITY for purposes of this Agreement, as specified in the approved annual budget of the AUTHORITY. It is anticipated that each Party shall contribute a minimum of \$5,000 and a maximum of \$25,000 per annum to cover project management and associated administrative expenses.

15.2. Section 15.1 shall not affect the mutual exchange of services between the Parties to this Agreement and the AUTHORITY without payment of any consideration other than such services. Such mutual exchange of services is hereby authorized to the extent permitted by Section 6506 of the Government Code. One or more Parties may, however, provide all or a portion of its annual contribution in the form of services to the AUTHORITY with the prior approval of the Governing Board.

15.3. The Parties acknowledge that RMC and SCC, as state agencies, may not enter into contracts in amounts exceeding \$35,000 (which amount may be adjusted pursuant to the State Administrative Manual or State Contracting Manual) without the approval from the California Department of General Services.

#### **16. NON- DISCRIMINATION**

16.0 The Authority shall comply with the provisions of the State of California Non-Discrimination Compliance Statement which requires compliance with Government Code Section 12990 (a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. The Authority shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age (over 40), marital status, denial of family care leave and denial of pregnancy disability leave.

### **17. PARTICIPATION GOALS**

17.0. The participation goals specified in Government Code Section 6522 are by this reference incorporated herein and shall apply to contracts executed by the AUTHORITY.

### **18. AMENDMENT TO THE AGREEMENT**

18.0. The provisions of this Agreement may be amended upon the adoption of a resolution to amend by the governing body of each Party.

### **19. TERM**

19.0. This Agreement shall continue in full force and effect from year to year until terminated.

19.1 The Parties may mutually agree to terminate this Agreement and the AUTHORITY shall thereby dissolve in accordance with applicable law. The vote of the Governing Board to dissolve shall be unanimous.

### **20. STATUTORY NOTICE REQUIREMENTS**

20.0. Within thirty (30) days after the date on which all of the Parties have executed this Agreement or any amendment hereto (whichever the case may be), the AUTHORITY shall cause a notice of such Agreement or such amendment to be prepared and filed with the office of the Secretary of State for the State of California in accordance with the requirements of Government Code section 6503.5.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed on the dates shown below by their duly authorized representatives.

**SAN GABRIEL AND LOWER LOS ANGELES RIVERS AND MOUNTAINS CONSERVANCY**

Date: 2/28/06

By: Belinda V. Fuentes

**STATE COASTAL CONSERVANCY**

Date: 3/17/06

By: Annun Chabat

**CITY OF LONG BEACH,**

Date: 2/27/06

By: Mark Miller

**CITY OF SEAL BEACH,**

Date: 03-06-06

By: Charles Carter

APPROVED AS TO FORM  
2/24, 2006  
ROBERT E. SHANNON, City Attorney  
By: [Signature]  
DEPUTY CITY ATTORNEY