

**RIGHT OF ENTRY AGREEMENT BETWEEN CITY OF TEMECULA AND
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
(APNS 922-210-060, 961-440-012, 961-450-015, 961-450-011, 961-450-064 & 961-450-001)**

This Right of Entry Agreement (“Right of Entry”) is entered into by the CITY OF TEMECULA (referred to herein as “GRANTOR”) and CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) (referred to herein as “GRANTEE”). GRANTOR and GRANTEE are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. GRANTOR is the owner of certain real properties located along the Temecula Creek and Murrieta Creek and identified as Riverside County Tax Assessor’s Parcel Numbers 922-210-060, 961-440-012, 961-450-015, 961-450-011, 961-450-064 and 961-450-001 (“Property”). The Property is roughly depicted on Exhibit “A” attached hereto and incorporated herein.

B. GRANTEE desires to obtain GRANTOR’s permission to enter onto the Property, on a temporary basis, for the purpose of conducting walking and water quality surveys for steelhead trout pursuant to the species monitoring requirements of the California Monitoring Plan.

C. The Parties wish to enter into this Right of Entry whereby GRANTOR will allow GRANTEE to enter onto the Property, on a temporary basis, for the above stated purpose.

NOW, THEREFORE, GRANTOR and GRANTEE do hereby agree as follows:

AGREEMENT

1. Right of Entry. GRANTOR hereby grants to GRANTEE and its agents, employees and contractors including, but not limited to, the CDFW monitoring staff (collectively “GRANTEE DESIGNEES”) the temporary right to enter onto the Property for the purpose of conducting walking and water quality surveys for steelhead trout pursuant to the species monitoring requirements of the California Monitoring Plan (“Right of Entry Activities”).

2. Term. The term of this Right of Entry shall commence on the date of the last signature on this Right of Entry, assuming that the Right of Entry is executed by all the Parties hereto (“Effective Date”). This Right of Entry shall automatically terminate April 25, 2025. The term may be extended by written notice from GRANTOR to GRANTEE.

3. Lien Waivers. GRANTEE agrees to keep the Property free of any liens, including without limitation, any liens made by contractors, subcontractors, suppliers, engineers, architects and surveyors that arise out of the use of the Property pursuant to this Right of Entry by GRANTEE DESIGNEES in connection with the Right of Entry Activities. If any such lien is filed on any portions of the Property as a result of GRANTEE DESIGNEES’ right to enter on the Property pursuant to this Right of Entry, GRANTEE will, at its sole cost and expense, have the lien released and discharged of record in a manner satisfactory to GRANTOR within thirty days

of receiving notice of the lien. If GRANTEE fails to remove the lien within such 30-day period, GRANTOR will have the right to remove the lien, and GRANTEE, upon demand, will reimburse GRANTOR for all reasonable costs and expenses incurred by GRANTOR in connection with such removal. Upon receipt of a written request from GRANTOR, GRANTEE will provide to GRANTOR lien waivers following completion of GRANTEE DESIGNEES' entry on the Property pursuant to this Right of Entry, in form and substance reasonably satisfactory to GRANTOR, from each and every contractor, subcontractor, supplier, engineer, architect and surveyor who might have lien rights against any portion of the Property for work or studies performed or commenced in connection with GRANTEE DESIGNEES' Right of Entry Activities pursuant to this Right of Entry. To the extent permitted by applicable law, GRANTEE hereby indemnifies the GRANTOR from and against any claims or demands for payment, or any liens or lien claims made against the GRANTOR as a result of the GRANTEE DESIGNEES' Right of Entry Activities conducted on the Property pursuant to this Right of Entry

4. Indemnification. GRANTEE shall indemnify and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property from claims arising from GRANTEE's, its agent's or its contractor's negligent acts or omissions or willful misconduct related to entry on and use of the Property in connection with the Right of Entry Activities pursuant to this Right of Entry, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

5. Notices. All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with an overnight carrier service. The Parties will address such notices as provided below or as may be amended by written notice:

GRANTOR: City of Temecula
41000 Main Street
Temecula, California 92590
Attention: City Manager

COPY TO: Richards, Watson & Gershon
Attention: Peter M. Thorson, City Attorney
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071

GRANTEE: California Department of Fish and Wildlife
Attention: Kyle Evans, Senior
Environmental Scientist
1933 Cliff Dr, Suite 27
Santa Barbara, CA 93109

6. Authority to Enter into Right of Entry. GRANTOR hereby warrants that it is the owner of the Property and that the undersigned is authorized to grant GRANTEE permission to enter onto the Property for the use specified in this Right of Entry. GRANTEE hereby warrants that the undersigned is authorized to execute this Right of Entry on behalf of GRANTEE.

7. Permits and Applicable Law. GRANTEE shall be responsible for securing and maintaining all necessary permits and approvals from other appropriate local, state and federal agencies for its use of the Right-of-Entry Area, and GRANTEE shall comply with all applicable laws and regulations concerning its use of the Right-of-Entry Area.

8. Entire Agreement. This Right of Entry is the result of negotiations between the Parties. This Right of Entry is intended by the Parties as a full and final expression of their understanding with respect to the matters contained in this Right of Entry.

9. Amendment; Modification. No supplement, modification, or amendment of this Right of Entry shall be binding unless executed in writing and signed by both Parties.

10. Governing Law, Venue. This Right of Entry shall be governed by the laws of the State of California. Venue shall be in Riverside County.

11. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

12. Legal Representation. The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Right of Entry, they have each had the opportunity to be represented by independent counsel of their own choosing and the Parties executed the Right of Entry after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Right of Entry, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Right of Entry.

13. Interpretation and Construction. Each party has reviewed this Right of Entry and each has had the opportunity to have its respective counsel and real estate advisors review and revise this Right of Entry. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Right of Entry or any amendments or exhibits thereto. In this Right of Entry, the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and

“party” include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the Sections and Subsections of this Right of Entry are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Right of Entry.

14. Severability. If any part, term or provision of this Right of Entry is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Right of Entry did not contain the particular part, term or provision held to be invalid

15. Fees and Costs. Each of the Parties to this Right of Entry shall bear its own attorneys’ fees and costs, including, but not limited to expert fees, incurred in connection with negotiating the matters described in this Right of Entry.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry on the date as indicated beside each Party’s signature.

**GRANTOR:
CITY OF TEMECULA, a municipal corporation**

Date: _____

By: _____
Zak Schwank, Mayor

ATTEST:

Randi Johl, City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON

Peter M. Thorson, City Attorney

**GRANTEE:
CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE**

Date: _____

By: _____
Kyle Evans, Senior Environmental Scientist

APPROVED AS TO FORM:

By: _____

Exhibit "A"
Depiction of Property

Exhibit A

APN: 922-210-060



Exhibit A

APN: 961-440-012



Exhibit A

APN: 961-450-015



Exhibit A

APN: 961-450-011



Exhibit A

APN: 961-450-064



Exhibit A

APN: 961-450-001

