

Recording requested by and
when recorded mail to:

(Name), Local Assistance Engineer
State of California
Department of Transportation, District (District No.)
Office of Local Assistance
(Address)
(City, CA Zip)

(Space above for Recorder’s use.)
Applicant Must Record ADRC Immediately Upon
Close of Escrow and Send Original to Caltrans, or
Risk Project Funds.

SAMPLE

AGREEMENT DECLARING RESTRICTIVE COVENANTS (ADRC)

State Project Number: EEM-_____
Agreement Number: _____

This Agreement Declaring Restrictive Covenants, hereinafter referred to as “ADRC”, is entered into effective this _____ day of _____, 2xxx, by and between the _____, hereinafter referred to as “APPLICANT,” and the California Department of Transportation, hereinafter referred to as the “CALTRANS.”

- A. WHEREAS, APPLICANT acquires the real property described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, hereinafter referred to as “REAL PROPERTY,” in fee simple; and
- B. WHEREAS, the REAL PROPERTY possesses wildlife and habitat values, hereinafter referred to collectively as CONSERVATION VALUES, of great importance to the CALTRANS, APPLICANT and the People of the State of California; and
- C. WHEREAS, APPLICANT is authorized to hold property in fee simple for these purposes pursuant to Governing Body Resolution, and other California Law; and
- D. WHEREAS, the REAL PROPERTY is intended to provide mitigation of certain direct and/or indirect impacts of the transportation project described in Attachment B, “Original EEM Application” of Exhibit 20-E ADRC, attached and hereto incorporated herein by this reference; and
- E. WHEREAS, the APPLICANT is intend to use the REAL PROPERTY only as detailed in Attachment B of Exhibit 20-E ADRC, and for no purpose that are inconsistent with Attachment A, attached hereto and incorporated herein by this reference, hereinafter referred to as "ENHANCEMENT AND MITIGATION REQUIREMENTS"; and
- F. WHEREAS, CALTRANS will provide funds allocated by the California Transportation Commission to Applicant to purchase REAL PROPERTY to satisfy said ENHANCEMENT AND MITIGATION REQUIREMENTS; and

G. WHEREAS, both CALTRANS and APPLICANT desire and intend permanently restrict the REAL PROPERTY uses to preserve, protect, enhance, monitor and restore in perpetuity the CONSERVATION VALUES of the REAL PROPERTY so that the State of California shall be benefited and each successive APPLICANT of all or part of said REAL PROPERTY shall be benefited by the preservation of the species and habitat preserved and protected on the REAL PROPERTY in accordance with the MITIGATION REQUIREMENTS, hereinafter referred to as the "CONSERVATION PURPOSES."

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenants, covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind their successors in interest, the said parties agree as follows:

Management and Maintenance of Property

1. Only the detailed uses described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, shall be made of the REAL PROPERTY. Any uses inconsistent with the uses explicitly stated in Attachment A of Exhibit 20-E ADRC, are not allowed.
2. Applicant will own, use, manage and maintain now and in the future, the REAL PROPERTY pursuant to this ADRC and consistent with the CONSERVATION PURPOSES, the MITIGATION REQUIREMENTS and the ADRC. If Applicant or Applicant's successors or assignees fail to use, manage and maintain the REAL PROPERTY consistent with the terms of the CONSERVATION PURPOSES, the MITIGATION REQUIREMENTS and this ADRC, Applicant or Applicant's successors or assignees will be required to cure said noticed violation within forty-five (45) calendar days of becoming aware of that violation. If Applicant or Applicant's successors or assignees fail to cure the violation within forty-five (45) calendar days of becoming aware or where the violation cannot reasonably be cured within forty-five (45) calendar days, fails to begin curing such violation within that forty-five (45) calendar day period, or fails to continue diligently to cure such violation until finally cured, such failure will be deemed as a default of this ADRC. If default occurs, the CONSERVATION PURPOSES will have deemed violated and Applicant or Applicant's successors or assignees must comply with the requirements set forth in Section 4 below.
3. All the REAL PROPERTY acquired to satisfy the MITIGATION REQUIREMENTS shall be subject to this ADRC. If REAL PROPERTY is sold, transferred, traded, or taken by an exercise of the power of eminent domain, in whole or in part, Applicant or Applicant's successors or assignees, shall notify CALTRANS of the proposed sale, transfer, trade or taking by sending written notice to: State of California, Department of Transportation, Legal Division - MS 57, 1120 N Street, Sacramento, CA 95814.
4. In the event of a default, sale, transfer, trade or taking, Applicant or Applicant's successors or assignees shall reimburse an amount either equal to CALTRANS' funding participation of \$_____ for the purchase and/or improvements of the REAL PROPERTY (determined to be _____%) subsequent fair market value, including improvements at the time of default sale, trade, transfer or taking, whichever is higher. Applicant or Applicant's successors or assignees shall not be obligated to repay the CALTRANS if the CALTRANS agrees in writing that Applicant or Applicant's successors or assignees may utilize those proceeds for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable.
5. With CALTRANS's prior written approval, Applicant or Applicant's successors or assignees may modify or transfer the Application, use, management and maintenance responsibilities established by the REAL PROPERTY restrictive covenants.

Term

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this ADRC.

Assignment

7. Without the prior written consent of CALTRANS, this ADRC is not assignable in whole or in part by Applicant or Applicant's successors or assignees.

Amendment and Revocation

8. Conditional upon CALTRANS receiving full fair market value return in the event of any reduction in the restrictions placed on the use of this REAL PROPERTY, unless the DEPARTMENT agrees in writing that Applicant or Applicant's successors or assignees may utilize the value received for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable, this ADRC and any amendments to it may be amended in any respect by the execution by the DEPARTMENT and Applicant or Applicant's successors or assignees of any written instrument amending or revoking this ADRC. The amending or revoking instrument shall make appropriate reference to this ADRC, and its amendments and shall be signed by both parties thereto, acknowledged and recorded in the Office of County Recorder of the counties in which the property is located.

Enforcement

9. Enforcement shall be by proceedings at law or in equity against any person or persons or party or parties violating or attempting to violate any covenant either restraining violation or to recovery of damages.

Indemnification

10. Neither the DEPARTMENT nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to APPLICANT or Applicant's successors or assignees under this ADRC. It is understood and agreed that pursuant to Government Code Section 895.4, APPLICANT or Applicant's successors or assignees shall fully defend, indemnify and save harmless the DEPARTMENT and all of its officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code 810.8) occurring by reason of anything done or omitted to be done by Applicant or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to Applicant or Applicant's successors or assignees under this ADRC. The DEPARTMENT reserves the right to represent itself in any litigation in which DEPARTMENT's interests are at stake.

Purpose of ADRC

11. This ADRC is solely for the purpose of protecting and maintaining the present and future restricted use of all the REAL PROPERTY solely for the MITIGATION REQUIRMENTS and these enhancements tied to the preservation of the CONSERVATION PURPOSE.

Severability

12. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this ADRC by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPLICANT'S NAME

Signature certifies ADRC-Attachments A and B are attached and ADRC has been signed and notarized by the Applicant.

Signature certifies ADRC-Attachments A and B are attached and the entire document will be recorded with the original and returned to Caltrans.

By: _____
(Signature)

By: _____
(Applicant's Representative Signature)

(Name), District Right-of-Way Division Chief

(Name and Title)

(Agency)

(City, State, Zip)

(Phone no.)

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LEGAL DESCRIPTION OF REAL PROPERTY

*(Insert the legal description of the property to be purchased by Applicant to satisfy the
MITIGATION REQUIRMENTS.)*

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ORIGINAL EEM APPLICATION

(Attach a clean copy of the original application sent to the Resource Agency for this project.)

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RECORDING REQUESTED BY,
AND WHEN RECORDED, MAIL TO:

SPACE BELOW FOR RECORDER'S USE
Applicant Must Record RCACE Immediately upon Close of
Escrow and send Original to Caltrans, or Risk Project Funds.

District ____ Local Assistance Engineer
State of California
Department of Transportation
Division of Local Assistance
Address
City, CA, ZIP

**ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM
RESTRICTIVE COVENANTS AGREEMENT FOR CONSERVATION
EASEMENT (RCACE)**

State Project Number: _____

Agreement Number: _____

This Restrictive Covenants Agreement for Conservation Easement, hereinafter referred to as "RCACE", is entered into as of this ____ day of _____, 20xx, by and between the State of California, acting by and through the California Department of Transportation, hereinafter referred to as "STATE", and _____, hereinafter referred to as "APPLICANT".

Recitals

WHEREAS, APPLICANT acquires the Conservation Easement described in Attachment A, "Legal Description of Conservation Easement," of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference hereinafter referred to as "EASEMENT," for the public purpose of undertaking EASEMENT as an EEM Program project;"

WHEREAS, APPLICANT will be the owner of the EASEMENT to be acquired which is described in Attachment A of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, the EASEMENT to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. _____ by the APPLICANT, will be operated, managed, and maintained into the future consistent with the description in Attachment B, "EEM Original Application" of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, STATE has allocated funds to APPLICANT for EASEMENT as provided in section 164.56 of the Streets and Highways Code; and

WHEREAS, both APPLICANT and STATE desire and intend to restrict the EASEMENT uses to environmental enhancement and mitigation purposes and each successive owner of said EASEMENT shall be benefited by the preservation of EASEMENT for environmental enhancement and mitigation purposes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived there from, and to bind their successors in interest, the said parties agree as follows:

Condemnation Grid

If the EASEMENT described in Attachment A of Exhibit 20-E1 RCACE, of this Agreement, is taken, in whole or in part, by exercise of the power of eminent domain by any public, corporate, or other authority, the STATE shall make the determination if such a taking creates a loss of use as described in Attachment B of Exhibit 20-E1 RCACE, due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by the Conservation Easement. If the STATE determines there is such a loss, the Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests at the time of this grant, it being expressly agreed that the Conservation Easement constitutes a compensable property right. Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the easement to the value of the underlying Fee is _____%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by _____, dated _____, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring an EASEMENT in the amount of \$_____ (the "EEM Grant"). The EEM Grant represents _____% (the "EEM Share") of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part, by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department, 1120 "N" Street - MS 57, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, _____%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee's use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, _____%, of the net proceeds received by Grantee is less than the EEM Grant, \$_____, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining _____% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, \$_____, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds, if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the Easement, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

Term

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this Agreement.

Assignment

(RCACE)

Without the written consent of STATE, this Agreement is not assignable in whole or in part by APPLICANT.

Enforcement

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Gov. Code #8108) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

Purpose of Agreement

This Agreement is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Environmental Enhancement and Mitigation (EEM) Program Applicant-State Agreement No. _____, or the application for funds as prepared by APPLICANT.

Severability

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Agreement by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPLICANT

By: _____
(Signature)

By: _____
(Applicant Representative Signature)

(Name), District Right-of-Way Division Chief

(Name and Title)

(Agency)

(City, CA, Zip)

LEGAL DESCRIPTION OF CONSERVATION EASMENT

(For this EEM project, insert the legal description of the conservation easement to be purchased by the applicant consistent with the project application, or as approved by CTC or State.)

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EEM ORIGINAL APPLICATION

(Insert the original EEM application that was submitted to the Resources Agency.)

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