# FIRST AMENDMENT TO GRANT USE AGREEMENT
# LAKEVIEW FARMS HABITAT RESTORATION PROJECT

THIS FIRST AMENDMENT TO THE GRANT USE AGREEMENT is made and entered on this _____day of _____, 2009, by and between the COUNTY OF PLACER, hereinafter referred to as COUNTY, and SUNDANCE PROPERTIES hereinafter referred to as LANDOWNER.

WHEREAS, on January 8, 2008, COUNTY, and LANDOWNER entered into a contract ("Contract") whereby said LANDOWNER'S property would be provided to the COUNTY for restoration; and

WHEREAS, the parties have agreed to continued services to be provided by LANDOWNER under said Contract and the compensation for those continued services.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and among the parties as follows:

1. That section 2 of the original Contract shall be amended to provide for the continued services and compensation as follows:
   a) The LANDOWNER agrees to perform the Riparian Restoration Work as described on attached Exhibit A to the performance standards and within the time frames listed therein, the total compensation to be paid LANDOWNER for these services shall not exceed twenty-eight thousand dollars($28,000), as set out in the cost proposal included in Attachment "A".

2. The COUNTY agrees to pay to LANDOWNER a total contract amount of four hundred and eight thousand dollars ($408,000) for the services set forth in the Contract and as amended by this First Amendment.

3. COUNTY shall have no liability in connection with the Riparian Restoration Work. LANDOWNER shall indemnify and hold the COUNTY harmless from any and all claims, losses and/or other damage of whatever nature relating in any way to the Riparian Restoration Work and/or Landowner's performance hereunder.

EXCEPT as specifically modified above, all of the remaining terms and conditions of the said Contract shall remain and continue in full force and effect.

COUNTY OF PLACER:

By: _____ Date: _____
Chairman, Board of Supervisors

LANDOWNER:

By: _____ Date: _____

APPROVED AS TO FORM:

By: _____ Date: _____
County Counsel

By : _____ Date : _____
Michael Johnson, Agency Director

Restoration Resources
3888 Cincinnati Avenue
Rocklin CA 95765
916 408-2990

License: 429252

# Change Order

Order#: 1

Order Date: 07/31/2008

To: Sundance Properties
3825 Atherton Road,
Ste. 115
Rocklin CA 95765

Project: 27017
Sundance Duck Encumbered
Lakeview Farms Habitat
Dowd Rd. @ Coon Creek
Lincoln CA

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract

Plans Attached ☐

Ordered By: 15 Michael Titus

Customer Order:

Specifications Attached ☐

| Description of Work | Amount |
|---|---|
| Plan Check Submittal Fee | 3,890.15 |
| Plan Approval fee/Grading Permit | 5,835.83 |
| Microfilm Fee | 96.80 |
| Gularte & Associates (soil testing) | 4,598.00 |
| Civil Engineering Services | 5,880.60 |
| Civil Engineering Services | 1,966.25 |
| Gularte & Associates (compaction tests) | 2,178.00 |
| Labor (Principal) | 3,920.00 |
| Labor (Architect) | 3,200.00 |

FEES

TESTING/ENGIN COSTS

14,622.85

**Notes**

This contract change order represents the direct expenses with a nominal administrative mark-up to meet the recently instituted Placer County requirements for a grading permit to create and construct native habitat. This recently instituted requirement necessitated Restoration Resources to secure professional services and pay all permit fees. In addition, design and consulting labor hours were necessary for the refinement of design-build plan sets to meet the demand for higher level plan sets, and additional project management to secure the permits and outside consulting services.

Restoration Resources makes this request per our verbal understanding with the County that those expenses could not have been

*Negative changes will lower the overall contract price requiring no additional payment by owner.*

**Approved Amount of Change** 31,565.63

The original Contract Sum was _____

Net change by previous Change Orders _____

The Contract Sum prior to this Change Order _____

The Contract Sum will be changed by this Change Order _____

The new Contract Sum including this Change Order will be _____

The Contract Time will be changed by _____

Approved Date _____ Date _____

Contractor _____ Owner _____

Order: 1
Date: 06-30-2009

| Description of Work | Amount |
| --- | --- |
| reasonably foreseen at the time the project costs were budgeted and proposed; the new requirement haven taken effect subsequent to our original proposal. | |



83

RESTORATION RESOURCES

September 12, 2008

**Edmund Sullivan**
County of Placer Community Development Resource Agency
Planning Department
3091 County Center Drive Suite 140
Auburn, CA 95603

Re: Sundance Habitat Restoration Project

Dear Edmund,

When this project was originally conceived back in 2007, the property owners, Sundance Properties, yourself, several members of my staff and the wetlands consultant all met with the expectation that this could be a relatively straight-forward habitat restoration project on a site that was particularly well-suited to the goals at hand. Based upon our extensive knowledge, experience and history of successfully completing projects like this in the past for other cities, counties, and federal agencies, you and Loren Clark were pleased that it would also serve Placer County's interest by providing an appropriate site for use of their habitat funding reserves. With Placer County Planning Department essentially using its own funds, along with some grant funding it was awarded, the project could be considered an in-house project, allowing a more streamlined plan check/approval process. It was a relatively simple habitat restoration project in a rural agricultural area set aside for habitat, and Restoration Resources' proposal was based on these assumptions in good faith. Our design was prepared to meet the County's budget. At the request of the property owner we developed an appropriate, site-specific, buildable plan set.

As a simple habitat enhancement, there were no Coon Creek impacts, and Corps involvement was not required. All work would be outside the existing levee, there were no jurisdictional wetlands involved and the project did not have any prerequisite mitigation requirements. The normal DFG Streambed Alteration Agreement could easily be handled by us, as well as NRCS co-ordination. The Planning Department would handle and file for CEQA Exemption/Negative Declaration if needed, with information we supplied to them. No additional review or approvals were anticipated in our budget because none were required at the time.

Subsequently, a Placer County ordinance requiring a grading permit was applied to this supposedly simple in-house habitat restoration project. It would now be handled as any other commercial project, incurring the usual standard by-the-book fees customary for private/commercial projects to the tune of $9,822.78. Even though it was technically a "County-funded" project, these fees were passed on to us instead by default. There was no time to argue, just get the plans done, as construction had to begin in July. This project was a high priority to the County, and we had to do everything possible to deliver it on time.

1109 Cincinnati Avenue Rocklin, CA 95765
Phone 916-408-2900 / Fax 916-408-2999 / Lic. #499252 / www.restoration-resources.net

The Engineering Department agreed to streamline their plan check/approval process if the plans submitted were complete and up to customary standards, if they could have them in a week. The plans were completed and submitted on time as planned, and Engineering began their fast-track process to have it out the door for construction to begin by July. Everything appeared to be on schedule for Planning to have the project constructed and in the ground before the October 15th cutoff for winterization.

Additional professional services later became required, centered around satisfying the riparian habitat component by creating a floodplain for this type of necessary specialized plantings to occur. It couldn't occur in the floodplain inside the existing levee without involving the Corps directly, possibly delaying the project another year or more. The alternative was to create a new secondary levee beyond the existing levee, thereby increasing the total floodplain capacity as a bonus for the County. The new levee would only be 3 to 4' high, basically matching the existing one which was never built to any particular standards. It did not have a history of any failures, just normal over-toppings in 100 year events, and a technical hydrology report showed that flooding would be limited by natural containment within natural topography only as far north as Waltz Road. It would not affect surrounding communities, just the adjacent surrounding agricultural fields.

But to build the new levee, the County needed a post-construction technical hydrology report to confirm a negative impact, as well as detailed structural review, soil borings, and soil compaction testing during construction. All the testing required came to a combined cost of $14,622.85 to us, to verify that the design and construction was in compliance. No retesting was required. This was no simple habitat restoration project anymore, it had suddenly become a public works project. We began to wonder to ourselves "Will there be enough left to build it?" We were essentially paying the County out of our own construction budget in order to keep the job alive. Engineering review itself is not the issue, but rather the completely unanticipated fees and sub-consultant costs on a pay-as-you-go basis which grew far beyond what could have been reasonably expected for a habitat restoration project.

Later, a $7,712.00 winterization fee was imposed by County Ordinance, as if we didn't already list our verifiable contractor bonding in our contract to sufficiently serve this purpose. We had racked up about $30,000 (approaching 10% of our contract) in total unexpected County-related costs on a "County Project", and it was becoming a losing proposition for us. We still had a year of maintenance left to cover, even if we were able to get the project constructed at-cost. Thus, Change Order #1 was respectfully submitted in order for the County to see just what a problem this had turned out to be for us. Please note we have not included the $7,712.00 winterization fee in the Change Order itemization, as it is a refundable deposit *(a year from now as we understand it)*.

The project began in July and was completed in 3 weeks as originally scheduled, with no cost savings generated. We originally scheduled 3 weeks and it took all of it. The floodplain planting cannot be done until after seasonal rainfall starts. Otherwise, as of August 29th substantial completion was achieved with all wetland plantings, winterization seeding, mulching and erosion control BMPs in place, as reviewed on-site by you on that date. Our requests for the County Inspector to conduct a final inspection (and punchlist if necessary) to substantiate this have not yet been answered. Final As-Built Plans are also ready for his and the Civil Engineer's review in order to submit them to the County on a timely basis as soon as we get a response from the

Inspector. We have also prepared the additional Project Completion Supplement Report to accompany our As-Built plans as you requested on August 29th.

This habitat restoration is a valuable asset to Placer County, and we all hoped it would become an exemplary model of how projects like this could be properly done, as well as provide good use of public funds. It took everything we had, and more. But the maintenance budget in our original contract barely covers the fuel bill to keep the agricultural well pump operating to the wetlands on a regular basis, better enabling them to establish as fully as possible prior to the onset of the rainy season, let alone next spring. In retrospect, the additional costs paid to the County could have been better applied toward providing the best possible maintenance in the coming year to protect the investment in case it turns out to be another exceedingly dry one. Don't you agree?

Sincerely,

Riley Swift
President
Restoration Resources,

Charles R. Hatch, ASLA
Landscape Architect CA #1393
Restoration Resources