

Project: Newport Bay Naturalists and Friends Agreement No. D07-171

ORIGINAL  
OFFICE OF THE BOARD  
ORANGE COUNTY

# AGREEMENT

THIS AGREEMENT, for purposes of identification hereby dated the 17th day of June, 2008, is

BY AND BETWEEN Newport Bay Naturalists and Friends, a non-profit corporation incorporated in the state of California, hereinafter referred to as "NATURALISTS".

AND The County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY".

## RECITALS

WHEREAS, since 1968, NATURALISTS has worked in partnership with COUNTY to preserve wetlands within the Upper Newport Bay Nature Preserve, hereinafter referred to as "PRESERVE", as well as adjacent open space areas; and

WHEREAS, the NATURALISTS has raised and contributed approximately \$250,000 in funds through private donations and will continue to fundraise toward the development of the Muth Interpretive Center and other improvement projects at PRESERVE; and

WHEREAS, the COUNTY Orange County Parks', hereinafter referred to as "OC Parks", Mission states as a steward of significant natural and cultural resources, OC Parks manages and operates a system of regional parks, beaches, harbors, trails and historic sites that are places of recreation and enduring value; and

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1 WHEREAS, the NATURALISTS is committed to continue in their mission to  
2 restore and preserve the native habitat of Upper Newport Bay Nature Preserve, hereinafter  
3 referred to as PRESERVE; educate the public about the ecological value of the PRESERVE;  
4 and to achieve good water quality, healthy native flora and fauna, and compatible public use of  
5 a protected ecosystem in a dense urban environment, hereinafter referred to as "SUPPORT  
6 SERVICES"; and

7 WHEREAS, within the COUNTY OC Parks Strategic Plan one of the adopted  
8 goals is to create strategic alliances by proactively engaging other organizations and the  
9 community at large; and

10 WHEREAS, the COUNTY and NATURALISTS share an interest in continuing  
11 their partnership toward accomplishing a variety of environmental stewardship, interpretive  
12 program and park improvement projects, including but not limited to such key planned projects  
13 as shade sails, refurbishment of estuary exhibit, updating of multi-media theater and other  
14 projects authorized in the General Development Plan, approved by the Board of Supervisors or  
15 permitted with a Public Property Permit to be implemented through cooperative management;  
16 and

17 WHEREAS, the COUNTY requires current and future volunteer and docent  
18 programs at the PRESERVE or other COUNTY facilities to comply with applicable County  
19 standards regarding the utilization of volunteers.

20 NOW, THEREFORE, THE PARTIES DO MUTUALLY AGREE AS FOLLOWS:

21 A. RECITALS

22 The recitals set forth above are true and correct, are a material part of this  
23 AGREEMENT, and are incorporated by this reference.

24 B. DESIGNATED REPRESENTATIVES

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1. NATURALISTS shall initially designate its President (or designee), hereinafter referred to as "President", to be NATURALISTS' liaison for all matters in regard to this AGREEMENT.
2. COUNTY shall designate the Director, OC Community Resources (OCCR), OC Parks Function (or designee), hereinafter referred to as "DIRECTOR", to be COUNTY's liaison for all matters in regard to this AGREEMENT.

C. PURPOSE

The purpose of this AGREEMENT is to facilitate the volunteer contributions of the NATURALISTS in support of the PRESERVE in a manner consistent with applicable COUNTY standards for: the utilization of volunteers and the reporting of their hours and accomplishments; to establish terms for partnering on PRESERVE PARK PROJECTS, media outreach, reporting guidelines for the NATURALISTS financial support of PRESERVE, and other activities that have mutually agreed upon benefits to PRESERVE.

D. TERM

The term of this AGREEMENT shall commence upon execution by the COUNTY'S Board of Supervisors and may be terminated as provided under Paragraph R ("Termination").

E. USE

1. COUNTY shall have overall responsibility for the supervision, maintenance and management of the PRESERVE's facilities, resources and assets.
2. COUNTY shall grant to NATURALISTS and its contractor(s) – in order to perform design, construction and/or fabrication and installation of PRESERVE PARK PROJECTS – the non-exclusive right to enter and use

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the PRESERVE. Prior to any construction or other work being done at PRESERVE by NATURALISTS, NATURALISTS and its contractor(s) shall be required to obtain a COUNTY public property permit or special permit, which includes indemnification and insurance provisions, and provide any additional security that may be required.

3. COUNTY shall grant NATURALISTS – in order to perform its volunteer services – the non-exclusive right to enter and use the PRESERVE for such purposes.

F. STATUS OF NATURALISTS

NATURALISTS is, and shall at all times be deemed to be, an independent contractor and, shall be wholly responsible for the manner in which it performs the services and activities required by the terms of this AGREEMENT. Nothing contained herein shall be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and NATURALISTS or any of NATURALISTS agents, volunteers, or employees. NATURALISTS assumes exclusive responsibility for the acts of its agents, volunteers, or employees as they relate to the services and activities to be provided during the course and scope of their engagement or employment. NATURALISTS and its agents, volunteers and employees shall not be entitled to any rights and/or privileges of COUNTY employees and shall not be considered in any manner to be COUNTY employees.

G. SUPPORT SERVICES RESPONSIBILITIES

1. NATURALISTS shall:

- a) Maintain for the duration of the term of this AGREEMENT, and for three (3) years thereafter as set forth in Subparagraph J (1) below, reasonable accounting records for all revenues and expenditures related to projects, services and activities under

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- terms of this AGREEMENT. COUNTY shall have access to any books, records, and documents that are related to this AGREEMENT (except privileged or confidential information relating to the donors or donations to NATURALISTS), for audits, examinations, excerpts, and transactions. Copies thereof may be made by COUNTY if requested. COUNTY shall provide NATURALISTS with reasonable notice of intent to exercise said access rights; and
- b) Grow and expand its fundraising activities, maintain control of its donations and manage expenditure of those funds raised for PRESERVE development and research projects in a manner that results in improved public access, educational opportunities and resource management practices as consistent with the mission and goals of both parties; and
- c) Commit designated financial resources in support of PRESERVE to park enhancement and improvement projects that will be mutually agreed upon and annually prioritized through discussions with the Senior or Supervising Park Ranger; and
- d) Create a seat for DIRECTOR or designee on NATURALISTS Board of Directors, if so desired; and
- e) Provide Senior or Supervising Park Ranger with monthly interpretive and volunteer program schedules for coordination with and approval by the Senior or Supervising Park Ranger; and

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- f) Limit sale of merchandise to approximately 50 square feet of space within the Muth Interpretive Center and to items of an appropriate nature to the interpretive themes and educational programs of the PRESERVE as mutually agreed upon by the NATURALISTS and Senior or Supervising Park Ranger; and
- g) Not transfer its rights to sell merchandise at the PRESERVE according to the terms of this AGREEMENT to individual vendors or others; and
- h) Secure money and receipts from sale of merchandise and make deposits on a semi-monthly basis or sooner when amount reaches \$500; and
- i) Exclusively handle and retain control of all money and receipts for the merchandise sales and of all funds it has raised on behalf of PRESERVE in separate accounts; and
- j) Retain control of all donations and funds from its fundraising activities until such time that payment to contractors is made or until such time as a separate agreement dictates payment of donation funds; and
- k) Enter into donor agreements with certain donors for specific cooperative projects which shall detail how the donated funds are to be spent and in what form any recognition will be received by the donor referenced in Paragraph G.2.d below; and
- l) Assist in registering all NATURALISTS volunteers and employees who provide public services and volunteer

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- 1 programs at the PRESERVE in accordance with applicable  
2 County standards for the utilization of volunteers and in  
3 compliance with State and Federal laws; and  
4 m) Require all NATURALISTS' volunteers and employees  
5 performing work under this AGREEMENT to submit to a  
6 background check by OC PARKS including but not limited to  
7 fingerprinting and screening, in accordance with the OC  
8 PARKS volunteer program and Public Resources Code 5164;  
9 and  
10 n) Require, after successful background screening, those  
11 volunteers and employees to wear a identification badge  
12 agreed upon by the COUNTY and NATURALISTS when  
13 volunteering at PRESERVE or other COUNTY property; and  
14 o) Inform NATURALISTS volunteers and employees performing  
15 work under this AGREEMENT that they are not an employee  
16 of the COUNTY and that as NATURALISTS volunteers are not  
17 covered by Worker's Compensation or the County's  
18 Memorandum of Understanding and that nothing contained  
19 herein shall be construed as creating the relationship of  
20 employer and employee, or principal and agent, between  
21 COUNTY and NATURALISTS or any of NATURALISTS'  
22 agents, volunteers or employees; and  
23 p) Inform NATURALISTS volunteers and employees performing  
24 work under this AGREEMENT that the COUNTY and its  
25 officers, employees and agents shall not be held liable for any

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- 1 death, injury or property damage claims arising from volunteer  
2 work; and should any claim arise out of the forgoing, the  
3 NATURALISTS shall defend, indemnify and save harmless the  
4 COUNTY and its officers, employees and agents from the  
5 same; and
- 6 q) Require volunteers and employees to demonstrate their  
7 agreement to Subsections (k) and (l) above by signing  
8 volunteer agreement form; and
- 9 r) Include the agreed upon sections of the COUNTY Adopt-A-  
10 Park Volunteer Manual in the NATURALISTS Volunteer  
11 Manual; and
- 12 s) Require NATURALISTS volunteers to attend a mandatory  
13 volunteer orientation; and
- 14 t) Structure mandatory volunteer orientation to include all  
15 relevant COUNTY safety standards and volunteer  
16 requirements in addition to including NATURALISTS  
17 sponsored specific activity training, ongoing education,  
18 volunteer insurance coverage, CPR and First Aid courses and  
19 recognition activities; and
- 20 u) Provide NATURALISTS Board meeting agenda and minutes  
21 prior to regularly scheduled meeting to OC PARKS Director;  
22 and
- 23 v) Report volunteer hours and SUPPORT SERVICES activities in  
24 the manner consistent with the current County standards for  
25 the utilization of volunteers; and



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- 1 w) Comply with all COUNTY regulations for holding special  
2 events, including special provisions for serving food and  
3 alcohol on public property as appropriate and mutually agreed  
4 upon with the Supervising or Senior Park Ranger as further  
5 described in Paragraph G.2, subsections (e) and (f); and  
6 x) Use its best efforts to ensure that it has raised adequate funds  
7 to pay for mutually agreed upon proportional share of a  
8 cooperative project and upon completion, dedicate and  
9 transfer ownership of the improvement or display or product of  
10 such project to COUNTY; and  
11 y) Maintain habitat restoration team trailer and provide to  
12 DIRECTOR proof of current registration and insurance as  
13 required by all applicable state, federal and county laws  
14 regarding such trailers/vehicles.

15 2. COUNTY shall:

- 16 a) Provide access to a set of keys and security access to  
17 PRESERVE for PRESIDENT or designee(s) for the exclusive  
18 use to implement the terms of this AGREEMENT and specified  
19 purposes subject to the Senior and Supervising Ranger's  
20 approval; and  
21 b) Provide NATURALISTS a limited number of mutually agreed  
22 upon computer network account(s) as a resource tool for the  
23 performance of volunteer and educational programs in support  
24 of PRESERVE; and  
25

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- 1 c) Collaborate with NATURALISTS in limited public affairs tours,  
2 assisting with staff and transportation for the benefit of public  
3 outreach and to increase awareness by policy-makers and  
4 potential donors of the benefits gained through their support of  
5 the PRESERVE, subject to the Senior or Supervising Park  
6 Ranger's approval; and
- 7 d) Permit the NATURALISTS to raise designated funds by  
8 offering naming opportunities associated with specific exhibits  
9 and PARK PROJECTS to be funded by the NATURALISTS,  
10 subject to the Senior or Supervising Park Ranger's approval.  
11 Donor recognition will be limited to donor names with limited  
12 use of quotes of an appropriate nature to the interpretive  
13 themes and educational programs, subject to the Senior or  
14 Supervising Park Ranger's approval. The naming will remain  
15 for the useful life of the exhibit or park improvement or for as  
16 long as funds are donated to refurbish such; and
- 17 e) Allow for the NATURALISTS to serve alcohol at limited  
18 functions only, subject to Senior or Supervising Park Ranger's  
19 approval, by a licensed and insured server. Attendance at  
20 these functions must be by invitation or hard ticket only and  
21 controlled access to the event must be provided. Alcohol will  
22 not be allowed outside of designated areas and a bonded  
23 security company must be retained to insure the safety of the  
24 facility and its guests. The NATURALISTS must also provide  
25 verification of liquor liability insurance of no less than one

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- 1 million dollars per occurrence, listing the County of Orange as  
2 additionally insured; and
- 3 f) Allow the sale or serving of food by the NATURALISTS at  
4 limited special events and fundraising activities as approved  
5 by the Senior or Supervising Park Ranger. This does not  
6 extend to commercial vendors; and
- 7 g) Allow for special events upon NATURALISTS demonstrated  
8 willingness to comply with subsections (e) and (f) above and  
9 all terms and provisions as mutually agreed upon with the  
10 Senior and Supervising Park Ranger; and
- 11 h) Permit the NATURALISTS use of transportable trailer for  
12 carrying tools and landscape supplies to habitat restoration  
13 project sites within PRESERVE for implementation of park  
14 improvement projects. The trailer will only be parked or stored  
15 in the employee parking area of the park. The trailer will be  
16 allowed in the PRESERVE only when the restoration crew is  
17 on site working and will not remain on the project site  
18 overnight; and
- 19 i) Permit the NATURALISTS and/or other partners on the habitat  
20 restoration team to place their logo along with the County logo  
21 on the trailer with the approval of the Senior or Supervising  
22 Park Ranger.

23 3. BOTH PARTIES shall:  
24  
25

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- 1 a) Include each other in all distribution of public information,  
2 notices and news releases for which the subject is the  
3 PRESERVE or PRESERVE related projects and activities; and  
4 b) Attend an annual meeting between the parties of this  
5 agreement to discuss NATURALISTS financial support,  
6 progress toward the mutual goals and terms of this  
7 Agreement, and to review and update PARK PROJECTS  
8 (Exhibit A).

9 H. PARK PROJECTS RESPONSIBILITIES:

10 1. NATURALISTS shall:

- 11 a) Before commencing detailed design (e.g., shop drawings, etc.)  
12 and fabrication or construction activities for any PARK  
13 PROJECTS under this AGREEMENT, NATURALISTS shall  
14 first submit to DIRECTOR for review and written approval a  
15 CONCEPTUAL PLAN. The CONCEPTUAL PLAN shall include  
16 information on the design, proposed location, implementation  
17 schedule and cost of each proposed PARK PROJECTS, as  
18 well as the broad outline of NATURALISTS's proposed  
19 fundraising activities related thereto; and  
20 b) The PARK PROJECTS approved in concept by the  
21 DIRECTOR shall be attached hereto as EXHIBIT A, and  
22 incorporated herein as though set forth in full and thereafter  
23 may not be materially modified without the reasonable consent  
24 of COUNTY and NATURALISTS; and  
25

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- 1 c) EXHIBIT A shall be updated on an annual basis. For purposes  
2 of this AGREEMENT "annual" shall coincide with the fiscal  
3 year ending June 30. Any request for subsequent changes to  
4 any part of the aforementioned services, activities or  
5 schedules shall be submitted to DIRECTOR a minimum of  
6 thirty (30) working days in advance of the proposed  
7 implementation date. All such changes shall be deemed  
8 approved unless otherwise notified by DIRECTOR or his/her  
9 designee in writing; and
- 10 d) With respect to the design and implementation of the PARK  
11 PROJECTS, NATURALISTS shall: (i) develop a scope of work  
12 for the contractor(s) it selects; (ii) negotiate a contract between  
13 one or more consultants, as independent contractors, with  
14 NATURALISTS as client; (iii) raise sufficient contributions or  
15 funds which, when combined with other assets of  
16 NATURALISTS, shall be sufficient to pay the consultants for  
17 performing the applicable scope of work relating to the PARK  
18 PROJECTS; (iv) develop preliminary cost estimates for the  
19 PARK PROJECTS; and (v) present to COUNTY for approval  
20 by DIRECTOR or designee a proposed program (hereinafter  
21 referred to as the "CONCEPTUAL PLAN" which shall include  
22 scaled design development drawings including all size  
23 dimensions, a plan, location, estimated cost and schedule) for  
24 each PARK PROJECT and the general outline of a fund-  
25 raising program to pay for the PARK PROJECTS; and

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1 e) NATURALISTS shall not proceed to enter into any said  
2 contract or any other agreement which entails one or more  
3 contractor(s) entering upon and/or using the PARKS without  
4 such prior written approval by DIRECTOR. Each such contract  
5 shall be with a contractor approved by DIRECTOR and shall  
6 contain certain clauses such as those relating to insurance,  
7 indemnity, licensure, and compliance with State or Federal  
8 laws in favor of the COUNTY as set forth in the standard  
9 specifications and provisions as contained within its standard  
10 construction agreements.

11 2. COUNTY shall:

- 12 a) Assist NATURALISTS with the public property permit  
13 process and provide a no-fee permit for PARK PROJECTS in  
14 which all permit conditions and/or special provisions are  
15 agreed upon by both parties; and  
16 b) Act in the capacity of "lead agency" for services required  
17 under this AGREEMENT within the context of the California  
18 Environmental Quality Act (CEQA).

19 I. OWNERSHIP OF IMPROVEMENTS

20 All buildings, improvements and facilities constructed or placed within the  
21 PRESERVE by NATURALISTS must upon completion be free and clear of liens, claims or  
22 liability for labor or material; and, at COUNTY option, shall be the property of the COUNTY at  
23 termination of this AGREEMENT or upon earlier acceptance in writing by the COUNTY in a  
24 manner consistent with COUNTY policies and procedures regarding gifts and donations. An  
25

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1 annual report of the improvements transferred to COUNTY ownership will be provided to the  
2 Board of Supervisors.

3                   Following construction of the buildings, improvements and facilities,  
4 NATURALISTS will endeavor to provide financial support for the completed projects by way of  
5 fund raising activities and to provide an endowment for adding, updating and enhancing the  
6 improvements consistent with the approved General Development Plan and Resource  
7 Management Plan, respectively, for the PRESERVE.

8           J.     ACCOUNTING REPORTS

- 9                   1. An annual accounting report of all financial records pertaining to the  
10                   SUPPORT SERVICES and PARK PROJECTS within COUNTY-  
11                   owned park land and/or facilities, for the year ending December 31,  
12                   2008 and subsequent years on that date through the term of this  
13                   AGREEMENT shall be completed and submitted by PRESIDENT, no  
14                   later than March 31, 2008 and of each following year, respectively.
- 15                   2. A final accounting report of all financial records pertaining to the  
16                   SUPPORT SERVICES and PARK PROJECTS at PRESERVE and  
17                   within COUNTY-owned park land and/or facilities shall be completed  
18                   and submitted by PRESIDENT within ninety (90) days of expiration or  
19                   termination of this AGREEMENT. The final accounting report shall  
20                   include a reconciliation of all expenditures for the entire term of this  
21                   AGREEMENT is in effect.

22           K.     FINANCIAL RECORDS

- 23                   1. NATURALISTS shall at all times during the term of this AGREEMENT  
24                   keep or cause to be kept true and complete books, records and accounts  
25                   of all financial expenditures and/or transactions necessary for the

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operation of its organization. All records must be supported by source documents such as receipts, cash register tapes, purchase invoices or other pertinent documents.

2. Financial records shall be retained by NATURALISTS for a minimum of three (3) years after termination of this AGREEMENT. COUNTY shall have access to any books, records and transactions; and copies thereof shall be furnished, if requested. COUNTY shall provide NATURALISTS with reasonable notice of intent to exercise said access rights.

L. GOVERNING LAW AND VENUE

The parties further agree that this AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

M. WAIVER OF RIGHTS

The failure of COUNTY or NATURALISTS to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that COUNTY or NATURALISTS may have and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of this AGREEMENT.

N. NONDISCRIMINATION



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NATURALISTS shall not employ any discriminatory practices in the performance of this AGREEMENT on the basis of race, sex, religion, national origin, or ancestry.

O. CHANGES AND MODIFICATIONS

DIRECTOR, or his designee, shall have the authority to make adjustments to this AGREEMENT with concurrence of NATURALISTS, as deemed necessary in order to advance the purposes of this AGREEMENT, provided that such action does not in the aggregate change the total amount or value of in-kind service contributions specified in Paragraphs G and H ("Support Services Responsibilities" and "Park Project Responsibilities") above, unless approved by the COUNTY Board of Supervisors.

P. DELEGATION AND ASSIGNMENT

NATURALISTS may not delegate the obligations or assign the rights hereunder, either in whole or in part.

Q. NOTICES

COUNTY:

Director, OC Parks

OC Community Resources

County of Orange

13042 Old Myford Road

Irvine, California 92602-2304

FAX NO. 714-667-6512

NATURALISTS:

President

Newport Bay Naturalists and Friends

P.O. Box 10804

Newport Beach California 92658-5008

FAX NO. (949) 640-1742

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1 Notices or other communications which may be required or provided under the terms of  
2 this AGREEMENT shall be deemed effective when in writing and delivered in person, deposited  
3 in the COUNTY inter-office mail, or deposited in the United States mail, first class, postage  
4 prepaid. Any notices, correspondence, reports and/or statements authorized or required by this  
5 AGREEMENT, addressed in any other fashion, shall be deemed not given. The parties may  
6 change the addresses to which notices are to be sent by giving written notice of such change to  
7 the other party.

8 R. TERMINATION

9 Either party may terminate this AGREEMENT with ninety (90) days notice to the  
10 other party. Notice of termination shall be in writing and shall state the cause for termination  
11 and the date upon which such termination is effective. Notice shall be served as provided in  
12 Paragraph Q ("Notices") above.

13 Unrestricted funds raised through private donations for support of the  
14 PRESERVE shall remain within a fund for use within the PRESERVE.

15 Restricted funds raised through private donations for support of the PRESERVE  
16 may be returned to donors or remain within a fund for use within the PRESERVE.

17 S. EFFECT OF AGREEMENT

18 This AGREEMENT fully expresses all understandings of the parties and is the  
19 total AGREEMENT between the parties as to the subject matter of this AGREEMENT. No  
20 addition to or alteration of the terms of this AGREEMENT, whether written or verbal, by the  
21 parties, their officers, agents or employees, shall be valid, except as provided in Paragraph O  
22 ("Changes and Modifications") above, unless in the form of a written amendment to this  
23 AGREEMENT, which is formally approved and executed by all parties.

24 T. INSURANCE

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1 NATURALISTS agrees to purchase all required insurance at NATURALISTS  
2 expense and to deposit with the COUNTY certificates of insurance, including all endorsements  
3 required herein, necessary to satisfy the COUNTY that the insurance provisions of this  
4 AGREEMENT have been complied with and to keep such insurance coverage and the  
5 certificates and endorsements therefore on deposit with the COUNTY during the entire term of  
6 this AGREEMENT. This AGREEMENT shall automatically terminate at the same time  
7 NATURALISTS insurance coverage is terminated. If within ten (10) business days after  
8 termination under this Clause NATURALISTS obtains and provides evidence of the required  
9 insurance coverage acceptable to DIRECTOR, this AGREEMENT may be reinstated at the sole  
10 discretion of the DIRECTOR. NATURALISTS shall pay COUNTY Two Hundred and Fifty Dollars  
11 (\$250) for processing the reinstatement of this AGREEMENT.

12 NATURALISTS agrees that NATURALISTS shall not operate on the PRESERVE  
13 Premises at any time the required insurance is not in full force and effect as evidenced by a  
14 certificate of insurance and necessary endorsements or, in the interim, an official binder being in  
15 the possession of the DIRECTOR. In no cases shall assurances by NATURALISTS, its  
16 employees, agents, including any insurance agent, be construed as adequate evidence of  
17 insurance. The DIRECTOR will only accept valid certificates of insurance and endorsements, or  
18 in the interim, an insurance binder as adequate evidence of insurance. NATURALISTS also  
19 agrees that upon cancellation, termination, or expiration of NATURALISTS' insurance, COUNTY  
20 may take whatever steps are necessary to interrupt any operation from or on the Premises until  
21 such time as the DIRECTOR reinstates the AGREEMENT.

22 If NATURALISTS fails to provide DIRECTOR with a valid certificate of insurance and  
23 endorsements, or binder at any time during the term of the AGREEMENT, COUNTY and  
24 NATURALISTS agree that this shall constitute a material breach of the AGREEMENT. Whether  
25 or not a notice of default has or has not been sent to NATURALISTS, said material breach shall

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1 permit COUNTY to take whatever steps necessary to interrupt any operation from or on the  
2 Premises, and to prevent any persons, including, but not limited to, members of the general  
3 public, and NATURALISTS' employees and agents, from entering the PARKS' Premises until  
4 such time as DIRECTOR is provided with adequate evidence of insurance required herein.  
5 NATURALISTS further agrees to hold COUNTY harmless for any damages resulting from such  
6 interruption of business and possession, including, but not limited to, damages resulting from  
7 any loss of income or business resulting from the COUNTY's action.

8 All contractors performing work on behalf of NATURALISTS pursuant to this  
9 AGREEMENT shall obtain insurance subject to the same terms and conditions as set forth  
10 herein for NATURALISTS. NATURALISTS shall not allow contractors or subcontractors to work  
11 if contractors have less than the level of coverage required by the COUNTY from the  
12 NATURALISTS under this AGREEMENT. It is the obligation of the NATURALISTS to provide  
13 written notice of the insurance requirements to every contractor and to receive proof of  
14 insurance prior to allowing any contractor to begin work within the Premises. Such proof of  
15 insurance must be maintained by NATURALISTS through the entirety of this AGREEMENT and  
16 be available for inspection by a COUNTY representative at any reasonable time.

17 All insurance policies required by this AGREEMENT shall declare any deductible or self-  
18 insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability),  
19 which shall specifically be approved by the County Executive Office (CEO)/Office of Risk  
20 Management. NATURALISTS shall be responsible for reimbursement of any deductible to the  
21 insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the  
22 certificate of insurance.

23 If the NATURALISTS fails to maintain insurance acceptable to the COUNTY for the full  
24 term of this AGREEMENT, the COUNTY may terminate this AGREEMENT.

25 Qualified Insurer

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The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the NATURALISTS shall provide the minimum limits and coverage as set forth below:

Coverages

Minimum Limits

Commercial General Liability including broad form property damage, contractual liability and products liability.

\$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate

Automobile Liability including coverage of all owned, non-owned and hired vehicles.

\$1,000,000 combined single limit per occurrence.

Workers' Compensation

Statutory

Employer's Liability

\$1,000,000 per occurrence.

Sexual Misconduct Liability

\$1,000,000 per occurrence.

Alcohol Liability

\$1,000,000 per occurrence.

All liability insurance required by this AGREEMENT shall be at least \$1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

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1 The County of Orange shall be added as an additional insured on all insurance policies  
2 required by this AGREEMENT with respect to work done by the NATURALISTS under the terms  
3 of this AGREEMENT (except Workers' Compensation/Employers' Liability). An additional  
4 insured endorsement evidencing that the County of Orange is an additional insured shall  
5 accompany the certificate of insurance.

6 The County of Orange shall be a loss payee on the Fire policy and a Loss Payee/Obligee on the  
7 Employee Dishonesty Coverage (if required).

8 All insurance policies required by this AGREEMENT shall be primary insurance, and any  
9 insurance maintained by the County of Orange shall be excess and non-contributing with  
10 insurance provided by these policies. An endorsement evidencing that the NATURALISTS'  
11 insurance is primary and non-contributing shall specifically accompany the certificate of  
12 insurance for the Commercial General Liability and Sexual Misconduct Liability (if required).

13 All insurance policies required by this AGREEMENT shall give the County of Orange  
14 thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement  
15 separate from the certificate of insurance. In addition, the cancellation clause must include  
16 language as follows, which edits the pre-printed ACORD certificate:

17 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED  
18 BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL  
19 ~~ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE~~  
20 ~~HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE~~  
21 ~~SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE~~  
22 ~~COMPANY ITS AGENT OR REPRESENTATIVE~~

23 All insurance policies required by this AGREEMENT shall waive all rights of subrogation  
24 against the County of Orange and members of the Board of Supervisors, its elected and  
25

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1 appointed officials, officers, agents and employees when acting within the scope of their  
2 appointment or employment.

3 The Commercial General Liability policy shall contain a severability of interests clause.

4 The NATURALISTS is aware of the provisions of Section 3700 of the California Labor  
5 Code which requires every employer to be insured against liability for Workers' Compensation  
6 or be self-insured in accordance with provisions of that code. The NATURALISTS will comply  
7 with such provisions and shall furnish the COUNTY satisfactory evidence that the  
8 NATURALISTS has secured, for the period of this AGREEMENT, statutory Workers'  
9 Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000  
10 per occurrence.

11 Insurance certificates and endorsements shall be forwarded to the County of Orange  
12 (OC Community Resources, Orange County Parks, P.O. Box 4048, Santa Ana, CA 92702-  
13 4048). NATURALISTS has ten (10) business days to provide adequate evidence of insurance  
14 or this AGREEMENT may be cancelled.

15 COUNTY expressly retains the right to require NATURALISTS to increase or decrease  
16 insurance of any of the above insurance types throughout the term of this AGREEMENT. Any  
17 increase or decrease in insurance will be as deemed by County Executive Office (CEO)/Office  
18 of Risk Management as appropriate to adequately protect COUNTY.

19 COUNTY shall notify NATURALISTS in writing of changes in the insurance  
20 requirements. If NATURALISTS does not deposit copies of acceptable certificates of insurance  
21 and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt  
22 of such notice, this AGREEMENT may be in breach without further notice to NATURALISTS,  
23 and COUNTY shall be entitled to all legal remedies.

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The procuring of such required policy or policies of insurance shall not be construed to limit NATURALISTS' liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

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IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates opposite their respective signatures:

NEWPORT BAY NATURALISTS AND FRIENDS ,  
a non-profit corporation

Date: 20 Mar '08

By: Dennis Baker  
Dennis Baker, President

COUNTY OF ORANGE

Date: \_\_\_\_\_

By: John H. M. [Signature]  
Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF  
THIS AGREEMENT HAS BEEN DELIVERED TO  
THE CHAIRMAN OF THE BOARD

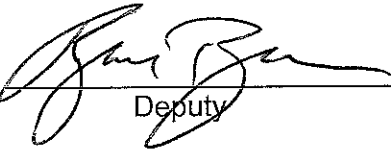
Date: 6/23/08

By: Darlene J. Bloom  
DARLENE J. BLOOM Ed 6/17/08 #12  
Clerk of the Board of Supervisors of  
Orange County, California



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APPROVED AS TO FORM  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By  Deputy

## EXHIBIT A

UPPER NEWPORT BAY NATURE PRESERVE  
NATURALISTS AND FRIENDS PARK PROJECTS

1. Installation of shade sails over the outdoor amphitheater between the Interpretive Center building and the Board Butterfly Garden. Estimated cost \$12,000.
2. Reconstruction and enhancement of the entryway and the "What is an Estuary?" and "Food Web" exhibits to increase storage space and provide more exciting visitor attraction. Estimated cost \$100,000.
3. Modernization of the Interpretive Center multi-media theater to incorporate latest digital audio-visual technology. Estimated cost to be determined.
4. Other projects authorized in the General Development Plan, approved by the Board of Supervisors or permitted with a Public Property Permit to be implemented through cooperative management as mutually agreed upon and reviewed annually per the terms of Agreement No. D07-171