



CITY OF ESCONDIDO
DALEY RANCH CONSERVATION BANK
CREDIT PURCHASE AGREEMENT AND ACKNOWLEDGEMENT

This Daley Ranch Conservation Bank Credit Purchase Agreement and Acknowledgement ("Agreement") is made this _____ day of _____ 2008.

Between: CITY OF ESCONDIDO
 a Municipal Corporation
 201 N. Broadway
 Escondido, California 92025
 Attn: Jonathan Brindle, Director of Community Development
 760-839-4671
 ("City")

And: Vista Towers, LLC.
 10161 Broadview Place
 North Tustin, CA 92705
 (650) 703-7217
 ("Purchaser")

The purpose of this Agreement is to establish the terms and conditions for the sale and transfer of Conservation Bank credits from the Daley Ranch Conservation Bank. The City and Purchaser are to be referred to jointly as "Parties."

RECITALS

- A. The CITY entered into a Conservation Bank Implementation Agreement for the Daley Ranch Conservation Bank ("Conservation Bank Agreement") in January 1997 with the California Department of Fish and Game (CDFG) and the U. S. Fish and Wildlife Service (USFWS). The purpose of the Conservation Bank Agreement was to establish terms and conditions for establishing a conservation bank on property owned by the City to be known as the Daley Ranch Conservation Bank.
- B. The Conservation Bank Agreement provides for conservation in perpetuity of certain portions of the Daley Ranch property, the use of such land as mitigation under specified circumstances, and the sale of Conservation Bank credits to third parties ("Credit Purchasers") in need of such mitigation.
- C. The City has exclusive right to independently determine the price for any and all of its credits offered for sale or conveyance to a Credit purchaser. Credit purchasers are entitled to sell credits to other Credit purchasers and have the exclusive right to independently determine the price for any and all of its credits subsequently offered for sale or conveyance.

- D. The Conservation Bank Agreement requires each Credit purchaser to execute a Conservation Credit Purchase Agreement and Acknowledgement which shall evidence the transfer of the applicable credits and the development project to which the credits apply, and shall recite that any subsequent transactions shall be reported by the Credit purchaser to the City.
- E. Credit Purchaser has requested to purchase 1.17 Engelmann Oak Woodland Credits from the Daley Ranch Conservation Bank, intended as mitigation for the construction of a multi-carrier communications facility on a 107.6 acre site, located in the County of San Diego, unincorporated area, (APN 248-020-11).
- F. On November 16, 2006, the City Council authorized the administrative approval of the full price purchase of credits from the Daley Ranch Conservation Bank at a price per credit of \$20,000 for Engelmann Oak Woodland Credits. The total purchase price of 1.17 Engelmann Oak Woodland Credits is \$23,400. The City Council further authorized the execution of all purchase agreements on behalf of the City.
- G. The City Council further authorized the execution of all purchase agreements on behalf of the City.
- H. Credit Purchaser and City desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Credit purchase will be implemented.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Compensation. It has been determined to be in the CITY'S best interest to sell 1.17 Engelmann Oak Woodland Credits from the Daley Ranch Conservation Bank to Purchaser, at a purchase price of \$20,000 per credit, for a total purchase price of \$23,400. Credit Purchaser shall pay said amount upon execution of this Agreement.
2. Effective Date. The effective date of the credit transaction shall be the date upon which this Agreement is fully executed and payment to City is made.
3. Ledger. City will maintain a database for purposes of tracking the conveyance of credits to Credit Purchasers and the application of credits to development projects ("Ledger"). City will report all credit transactions within its knowledge to CDFG and USFWS as required by the Conservation Bank Implementation Agreement for the Daley Ranch Conservation Bank.
4. Credit Purchaser Responsibility. Credit Purchaser agrees to comply with all terms of the Conservation Bank Implementation Agreement for the Daley Ranch Conservation Bank, including registration of the Credit acquisition with the City, which registration shall consist of providing City with a notarized statement of the Credit transaction parties indicating: (i) the name of the person/entity receiving the credits; (ii) the number of credits sold; (iii) the effective date of the transfer;

(iv) the name of the development project to which the credits have been or will be applied; and (v) the date of the application of the credits to the project.

5. Credit Verification. Purchaser shall be solely responsible for verifying both the ownership of the credits it is purchasing and the status of the credits with respect to the application to a development project.
6. Transfer of Credits. Purchaser agrees to execute a Conservation Credit and Purchase Agreement and Acknowledgement identical to this document with any successor Credit Purchasers (i) which shall evidence the transfer of the applicable credits and the development project to which the credits apply, if any is then known, and (ii) which shall recite that the subject transaction and that any subsequent transaction shall be reported by the Credit Purchaser to City in the form set forth in Section 4 above within 10 days of the transaction, so that City may enter the transaction in the Ledger. Credit Purchaser hereby indemnifies and agrees to hold harmless from any damage which may occur to City as a direct result of Credit Purchaser's failure to notify the City of and subsequent transfers of which Credit Purchaser is aware.
7. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
8. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
9. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.
10. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO:

Date: _____

Signature

Jonathan H. Brindle, Director of Community Development
Department or Division Head Name & Title

Date: _____

PURCHASER:

Vista Towers, LLC.
10161 Broadview Place
North Tustin, CA 92705
(650) 703-7217
("Purchaser")

Signature

Name & Title (please print)

(The above signature must be notarized)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____