

25) **Conservation Easement for Approximately 33.8 Acres and Restrictive Covenant for Approximately 66 Acres of City Property in the Back Basin**

Approve and authorize the City Manager to execute and record a Conservation Easement for approximately 33.8 acres of City property in the Back Basin in substantially the form attached and in such final form as approved by the City Attorney. Approve and authorize the City Manager to execute and record a Declaration of Restrictive Covenants for approximately 66 acres of City property in the Back Basin in in substantially the form attached and in such final form as approved by the City Attorney.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor or Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Barbara Leibold, City Attorney

**Date:** December 13, 2022

**Subject:** **Conservation Easement for Approximately 33.8 Acres and Restrictive Covenant for Approximately 66 Acres of City Property in the Back Basin**

### **Recommendation**

1. Approve and authorize the City Manager to execute and record a Conservation Easement for approximately 33.8 acres of City property in the Back Basin in substantially the form attached and in such final form as approved by the City Attorney; and
2. Approve and authorize the City Manager to execute and record a Declaration of Restrictive Covenants for approximately 66 acres of City property in the Back Basin in in substantially the form attached and in such final form as approved by the City Attorney.

### **Background**

In 1989, the U.S. Army Corps of Engineers (ACOE) issued a Section 404 Permit for the Lake Elsinore Management Project. The Permit included special conditions, including Special Condition D to record a Conservation Easement for the areas generally described as the 71-acre buffer, the 25-acre San Jacinto River, the 33-acre preservation area, and the 10-acre River/Lake Corridor subject to ACOE review and approval. ACOE has approved several modifications to the Section 404 Permit revising certain of the special conditions and adding others.

In 2005, ACOE approved a modification to the Section 404 Permit in connection with the Summerly Project. As a result, the Summerly Project developer became a co-permittee with certain obligations under the Section 404 Permit. The Summerly Project developer, McMillin Summerly LLC, has completed its initial mitigation obligations and has assigned to Rivers and Land Conservancy (RLC) its long-term obligations under Special Condition U to implement a long-term management plan. In accordance with Special Condition V, McMillin Summerly LLC must establish and fund an endowment for the sole purpose of funding the long-term management obligations.

## Back Basin Conservation Easement

In addition to the ACOE 404 Permit, the Lake Elsinore Management Project and the Summerly Project were subject to the requirements of a Section 1602 Streambed Alteration Agreement (SAA) issued by the California Department of Fish and Wildlife (CDFW). The SAA also included requirements to record Conservation Easements over the same properties.

The ACOE and CDFW have removed the requirement to record a Conservation Easement over the 71-acre buffer area. Instead, a Declaration of Restrictive Covenants is required. The 10-acre and 25-acre easement areas have been combined into one Conservation Easement covering the combined approximately 33.8 acres in the form attached.

The 33-acre Conservation Easement is required and will be presented to the City Council at a future date.

### **Discussion**

The City owns the properties described for conservation in the Section 404 Permit and the SAA. Consequently, the City is the Grantor/Declarant that must approve these documents for recordation to ensure that the property is preserved in its natural open condition to maintain ecological, historic, visual and educational values. The Conservation Easement is made in favor of the Western Riverside County Regional Conservation Authority (RCA) with rights afforded to ACOE and CDFW to preserve and protect the conservation values of the property.

As the Grantor of the Conservation Easement, the City is responsible for (a) taking reasonable actions to prevent the unlawful entry and trespass that may degrade or harm the conservation values, (b) cooperating with RCA to protect the conservation values; (c) repair and restore damage to the Property directly caused by the City or its agents or third parties within the City's control, and (d) performing long-term maintenance of signage and chain link fencing (along the 71-acre area) installed by McMillin Summerly as required by the 404 Permit and SAA.

In addition to satisfying the conditions of these ACOE and CDFW regulatory permits, the properties are described for conservation in the 2003 MSHCP Consistency Analysis approved in connection with the East Lake Specific Plan. Consequently, the recordation of the Conservation Easements and Declaration of Restrictive Covenants will contribute to the 770 Acre East Lake Specific Plan Conservation Proposal.

A map depicting the Conservation Areas in the Back Basin, including the 10-acre, 25-acre and 77-acre sites is attached.

### **Fiscal Impact**

The costs associated with long-term maintenance responsibilities are limited to maintenance of signage and fencing and will be estimated on a 5-year schedule and included in the City's Annual Operating Budget. Costs associated with repair or damage to property are not anticipated but could arise within the City's obligations under the Conservation Easement.

**Attachments**

Attachment 1 - Conservation Easement

Attachment 2 - Declaration of Restrictive Covenants

Attachment 3 - Back Basin Conservation Area Map



RECORDING REQUESTED BY: )  
AND WHEN RECORDED MAIL TO: )  
 )  
Western Riverside County )  
Regional Conservation Authority )  
3403 Tenth Street, Suite 320 )  
P.O. Box 1667 )  
Riverside CA 92502-1667 )  
Attn: Executive Director )

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This document is exempt from recording fees  
pursuant to Government Code Section 27383.

## CONSERVATION EASEMENT

*THIS CONSERVATION EASEMENT* is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by the City of Lake Elsinore, a California municipal corporation (“**Grantor**”) in favor of the Western Riverside County Regional Conservation Authority, a public agency and a joint powers authority (“**Grantee**”), with reference to the facts set forth in the Recitals herein below. Grantor, and Grantee are sometimes referred to individually herein as “**Party**” and collectively as “**Parties.**”

## RECITALS

A. Grantor is the is the local agency with land use jurisdiction over real property located within what is commonly referred to as the Lake Elsinore Back Basin in the city of Lake Elsinore, county of Riverside, state of California, (the “**Plan Area**”).

B. Grantor is the sole owner in fee simple of approximately 33.848 acres of the Plan Area, designated Assessor Parcel Number 371-040-021 and portions of Assessor Parcel Numbers 371-030-024, 371-030-040, 371-030-051, 371-030-054 and 371-030-042(the “**Property**”). The Property includes two separate conservation areas commonly referred to as the “**10-acre Site**” and the “**25-acre Site.**” The Property is legally described in **Exhibit “A”** and depicted on **Exhibit “B.”** Grantor intends to grant a conservation easement over the Property.

C. The Property provides, among other things, compensatory mitigation for certain unavoidable impacts associated with the Summerly project and Lake Elsinore Management Project located in the city of Lake Elsinore, county of Riverside, state of California, pursuant to the requirements of the following state and federal approvals (collectively, “**Agency Approvals**”): (1) the United States Army Corps of Engineers (“**ACOE**”) Section 404 Permit No. 200501427-RRS and 2004-00748-RRS, respectively, and any amendments thereto (the “**Section 404 Permits**”) and, (2) the California Department of Fish and Wildlife (“**CDFW**”) Section 1602 Streambed Alteration Agreement No. 1600-2004 -0130-R6, the CDFW Streambed Alteration Master Agreement No. 1600-2012-0175-R6 and any revision thereto (“**Section 1600 Agreements**”).

D. The Property contributes to the 770-acre mitigation requirement for the Western Riverside County Multiple Species Habitat Conservation Plan (“**MSHCP**”) within the Plan Area.

E. Compensatory mitigation measures, including implementation, maintenance, and monitoring activities (collectively, “**Compensatory Mitigation**”) required by the Agency Approvals and as described in the Final Habitat Mitigation and Monitoring Plan dated July 30, 2004, revised June 2005, and the December 2020 Addendum (collectively the “**Mitigation Plan**”), copies of which are attached hereto as **Exhibit “C,”** has been successfully completed by McMillin Summerly LLC as Permittee under the Agency Approvals.

F. This Conservation Easement is designed to satisfy and is granted in partial satisfaction of the Agency Approvals. This Conservation Easement shall not be construed so as to limit the use of the land adjacent to the Property as a golf course or public park or residential development and supporting infrastructure.

G. By that certain agreement entitled Assignment and Assumption of Permit Obligations (“**Assignment Agreement**”) dated as of \_\_\_\_\_, 2022, McMillin Summerly LLC assigned and Rivers & Lands Conservancy (“**RLC**”), a California nonprofit mutual benefit corporation, assumed certain obligations under the Section 404 Permits and the 1600 Agreements to perform certain long-term management and adaptive management measures on the Property.

H. Consistent with the terms and conditions of this Conservation Easement, the Property is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, “**Conservation Values**”). The Conservation Values are of importance to the people of the County of Riverside and the people of the State of California and United States.

I. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property.

J. Grantee agrees by accepting this Conservation Easement to preserve and protect in perpetuity the Conservation Values of the Property in accordance with the terms of this Conservation Easement.

K. The ACOE is the federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act and is a third-party beneficiary of this Conservation Easement.

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and state of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Property or any portion of it.

1. Purpose.

(a) The purposes of this Conservation Easement are to (i) ensure the Property will be managed and preserved in a Natural Condition, as defined herein, in perpetuity and (ii) prevent any use of the Property that will impair or interfere with the Conservation Values of the Property (the “**Purpose**”). Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with the Purpose, including, without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Property, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Property that occur directly as a result of the following activities:

(1) Activities described in Sections 4-6 herein;

(2) In-perpetuity maintenance and management (“**Long-Term Maintenance and Management**”) that occurs on the Property as described in Section 16 herein.

(c) Grantor represents and warrants that the only structures or improvements existing on the Property at the time this grant is executed consist of the following:

(1) 10-Acre Site - no structures or improvements existing beyond those shown in the Summerly project and Lake Elsinore Management Project plans and shown in **Exhibit “B.”** Grantor further represents and warrants, to the best of Grantor’s knowledge, there are no other previously granted easements existing on the 10-Acre Site that materially interfere or conflict with the Purpose of this Conservation Easement, as evidenced by the Title Report attached as **Exhibit “D.”**

(2) 25-Acre Site - no structures or improvements existing on the 25-Acre Site beyond those shown in the Summerly project and Lake Elsinore Management Project plans and shown in **Exhibit “B.”** Grantor further represents and warrants, to the best of Grantor’s knowledge, there are no other previously granted easements existing on the 25-Acre Site that materially interfere or conflict with the Purpose of this Conservation Easement, as evidenced by the Title Report attached as **Exhibit “D.”**

(e) The present Natural Condition is evidenced in part by the depiction of the Property attached as **Exhibit “B,”** and **Exhibit “E”** showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and ACOE consisting of (1) a color aerial photograph of the Property at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Property boundaries on such aerial photograph; and (3) the on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Property.

(f) If a controversy arises with respect to the present Natural Condition of the Property, Grantor, Grantee, and ACOE or any designees or agents of Grantor, Grantee, or ACOE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(g) The term “**Biological Monitor**” shall mean either an employee of the Grantee or an independent third-party consultant with knowledge of aquatic resources in the Riverside County area and expertise in the field of biology or related field.

2. Grantee’s Rights. To accomplish the Purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee or its designees. These rights, without obligation, are also granted to the ACOE or its designees as third-party beneficiaries of this Conservation Easement.

(a) To preserve and protect the Conservation Values of the Property; and

(b) To enter upon the Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, and for scientific research, species monitoring and interpretive purposes by Grantee or its designees and ACOE, or its designees, provided that neither Grantee nor ACOE shall unreasonably interfere with Grantor’s authorized use and quiet enjoyment of the Property; and

(c) To prevent any activity on, or use of, the Property that is inconsistent with the Purpose of this Conservation Easement and, subject to the limitations set forth in Section 16(b), to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement; and

(d) To require that all mineral, air, and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the Purpose of this Conservation Easement; and

(e) All present and future development rights allocated, implied, or inherent in the Property and not otherwise reserved herein; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property nor any other project adjacent thereto; and

(f) To enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement; and

(g) The right to enhance native plant communities, including the removal of non-native species and the right to plant native trees and shrubs of the same type as currently existing on the Property, or other appropriate native species. Habitat enhancement activities shall not conflict with the preservation of the Natural Condition of the Property or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, permitting requirements (including those permits issued by ACOE acting in its regulatory capacity).



3. Prohibited Uses. Any activity on or use of the Property inconsistent with the Purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on the Property except as otherwise provided herein:

(a) Introduction of nuisance water onto the Property including, but not limited to, water from pools, aquariums, waterbeds and fountains, unseasonable or supplemental watering, except nuisance water associated with irrigation outside the Property by adjacent homeowners or others and the natural drainage of rainfall, ground and surface water, and water/irrigation related to habitat enhancement activities described in Section 2(g) or Section 6(b);

(b) Use of chemical fertilizers, herbicides, pesticides (except those required for vector control in accordance with Section 6(h)), biocides, rodenticides, fungicides, or other agents; or weed abatement activities, except as allowed in Section 6(c);

(c) Incompatible fire protection activities except fire prevention activities set forth in Section 6(d);

(d) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways (including the two golf cart crossings and access road within the 25-acre Site of the Property);

(e) Grazing or other agricultural activity of any kind;

(f) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except for the use of the golf cart crossings for their intended purposes for the golf course or use of the access road or trail crossing for their intended purpose;

(g) Residential, commercial, retail, institutional, or industrial structures or uses;

(h) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (Gov. Code section 66499.35);

(i) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, road, wireless communication cell towers, or any other structure or improvement of any kind, or any billboard, fence, boundary marker or sign, except as provided for in Section 6, or specifically allowed under Section 4(d);

(j) Dumping or depositing soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(k) Planting, gardening, introducing or dispersing non-native or exotic plant or animal species;

(l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any such purposes, except as permitted by the Agency Approvals or Section 16;

(m) Altering the surface or general topography of the Property, including, but not limited to, any alterations of habitat, building of roads or trails, flood control work, or paving or otherwise covering any portion of the Property, except as permitted by the Agency Approvals, or any right reserved in Section 6, or Section 16;

(n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials as set forth in Section 6(d), (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) activities described in Section 4, Section 6, or Section 16. In the event that activity on the Property is necessary to prevent or treat disease as listed herein, the first priority for action shall be chemical and biological methods. No invasive or non-native species shall be introduced to prevent or treat disease, unless chemical or biological methods have failed to resolve the problem and the County of Riverside Department of Environmental Health, or other agency with authority, determines that no other methods will address the problem. Removal of vegetation to prevent or treat disease shall only be allowed if chemical or biological methods have failed to resolve the problem or upon a showing that removal of vegetation is required on an emergency basis;

(o) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;

(p) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(q) All activities and uses that are otherwise inconsistent with the purposes of the MSHCP;

(r) Without the prior written consent of Grantee and ACOE, which Grantee and ACOE each may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air, or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (4) any water from wells that are in existence or may be constructed in the future on the Property;

(s) Creating any encumbrance superior to this Conservation Easement, other than those encumbrances set forth in Exhibit D hereto, or the recording of any involuntary lien

(which is not released within thirty calendar days), or the granting of any lease, license or similar possessory interest in the Property which will affect the Conservation Values of the Property;

(t) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question; and

(u) No use shall be made of the Property, and no activity thereon shall be permitted, that may adversely affect the Conservation Values of the Property or otherwise interfere with the Purpose of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose of this Conservation Easement. Grantee, in consultation with and written approval from ACOE, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or activities or structures, are consistent with the Purpose of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantor shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property; provided, however, that Grantor shall not be required to install or maintain additional fencing or other permanent barrier on or adjacent to the Property. In addition, Grantor shall undertake all necessary actions to perfect the rights of Grantee and ACOE under Section 2 of this Conservation Easement;

(b) Cooperate with Grantee in the protection of the Conservation Values;

(c) Pursuant to Section 16(b), below, repair and restore damage to the Property directly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work in the Property without first consulting with the Grantee and ACOE;

(d) Within 90 days of recordation of this Conservation Easement, erect signs or other notification features saying, "**Natural Area Open Space**," "**Protected Natural Area**," or similar descriptions. Prior to erection of such signage, the Grantor shall submit detailed plans showing the location and language of such signs to the Grantee and CDFW for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Property or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements; and

(e) Perform Long-Term Maintenance and Management of the Property as described in Section 16.

5. Grantee's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall perform at least annual compliance inspections of the Property, prepare an annual inspection report that documents the annual inspection results, and provide these reports to the ACOE on an annual basis. This report may be combined with the Grantee's MSHCP annual report.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement, including the following uses:

(a) Access. Reasonable access through the Property to adjacent land over existing roads, paths, and trails or to perform obligations or other activities permitted by this Conservation Easement. Additionally, a 10-foot temporary construction easement shall be granted as deemed necessary by Grantor to construct Malaga Road/Sylvester Street and/or Lucerne Street; provided such temporary construction easement shall include an affirmative obligation for Grantor or its agents to restore the temporary construction easements to pre-project conditions and further provided that a copy of each recorded temporary construction easement shall be provided to ACOE and CDFW. The reserved rights provided in this Section 6(a) for temporary construction easements does not obviate the requirement that Grantor or its agents comply with applicable land use approvals (including those permits issued by ACOE acting in its regulatory capacity).

(b) Habitat Enhancement Activities. The right, but not the obligation for the creation and enhancement of native plant communities, including the right to plant native trees and shrubs of the same type as currently existing on the Property, so long as such activities do not harm the habitat types identified in the Agency Approvals or Mitigation Plan. For purposes of preventing erosion and reestablishing native vegetation, Grantor shall have the right, but not the obligation, to revegetate areas that may be damaged by the permitted activities under this Section 6, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Property. Prior to any habitat enhancement activities, Grantor shall have a Biological Monitor submit detailed plans to the ACOE for review and written approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Property or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements.

(c) Vegetation, Debris, and Exotic Plant Species Removal. The right, but not the obligation for the removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant), and removal of non-native woody perennial plants listed as "high" or "moderate" on the CAL-IPC Invasive Plant Inventory excluding nonnative grasses. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Property or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(d) Fire Protection. The right, in an emergency situation only, to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire. All other brush management activities shall be limited to areas outside the Property.

(e) Construction, Maintenance, Repair and/or Replacement of Pump Station-related Improvements and Structures. Subject to the supervision of Grantee and subject to any applicable land use approvals (including those permits issued by ACOE acting in its regulatory capacity), the right to enter the Property for the limited purpose of constructing a non-paved maintenance access road and a pump inlet structure and appurtenances within the 25-Acre Site portion of the Property in the locations depicted on **Exhibit "B,"** and the right to operate, maintain, repair, restore, or replace in-kind the road and/or pump inlet structure in accordance with the 404 Permits, including the 1992 Standard Operating Procedures for the Lake Elsinore Management Facility, and the Mitigation Plan.

(f) Operate a Temporary Water Pump. Subject to the supervision of Grantee and subject to any applicable land use approvals (including those permits issued by ACOE acting in its regulatory capacity), the right operate a temporary and portable water pump on the Property in accordance with the Mitigation Plan including during such times as the permanent pump is temporarily not functioning due to maintenance, repair, or replacement activity and/or as necessary to pump water in a significant storm event. .

(g) Maintenance, Repair, and/or Replacement of Storm Drain Outfall Structures, Storm Drain Culverts, Cart Path Crossings, and Access Road. Subject to the supervision of Grantee and subject to any applicable land use approvals (including those permits issued by ACOE acting in its regulatory capacity), the right to enter the Property for the limited purpose of maintaining, repairing, or replacing in-kind the storm drain outfall structures, storm drain culverts, waterlines, cart path crossings, and access road and sidewalk on the Property as shown in **Exhibit "B."**

(h) Vector Control. Subject to the supervision of Grantee, the application of pesticides in accordance with the applicable pest control programs of the local jurisdiction. Detailed plans describing the proposal, location and extent of work, including figures, for the implementation of pest control activities, shall be submitted to the ACOE for review and written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. provided, however, that such approval (i) shall be deemed to have been given by ACOE if it fails to respond to a request therefore on or prior to the date that is thirty (30) calendar days after receipt of request therefore, and (ii) shall be deemed to have been given by ACOE if a written notification or order by a city or county health officer necessitating such activities on an emergency or immediate basis is provided to ACOE in a commercially reasonable time period and manner and ACOE fails to respond on or prior to the date that is specified in such notice or order. Unless such activities are ordered or required by a county or city health officer it shall be reasonable for ACOE to withhold consent of such activities that are in direct or potential conflict with the preservation of the Natural Condition of the Property.

(i) Long-term Maintenance and Management. The right to, and subject to oversight by Grantee, inhabit, work upon, ingress to, pass over, and egress from the Property as necessary to perform Long-term Maintenance and Management pursuant to Sections 4 and 16.

7. Enforcement.

(a) Right to Enforce. Grantor grants to the ACOE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The ACOE, U.S. Department of Justice, and the State Attorney General shall have the same rights, remedies and limitations as the Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above, the rights of enforcement against Grantor under the Section 404 Permits, or any rights of the various documents created thereunder or referred to therein. Grantor, Grantee, and ACOE, when implementing any remedies under this Conservation Easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Subject to the limitations of Sections 7(g) and 16(b), if Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation (hereinafter “**Notice of Violation**”). At the time of giving any such notice, Grantee shall give a copy of the Notice of Violation to ACOE (or, if ACOE gives a Notice of Violation it shall also give a copy of the notice to Grantee). Notice shall be provided in accordance with Section 14 of this Conservation Easement.

(c) Subject to the limitations of Sections 7(g) and 16(b), if Grantor fails to cure the violation within fifteen (15) days after receipt of the Notice of Violation, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, ex parte as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(d) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee’s rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement.

(e) Grantor shall bear all costs incurred by Grantee or ACOE, where it is a prevailing party against Grantor. These costs include, but are not limited to, the following: costs of suit and attorneys' and experts' fees, and any costs for restoration necessitated by Grantor's negligence or breach of this Conservation Easement.

(f) Enforcement of the terms of this Conservation Easement by Grantee or ACOE shall be at the discretion of the enforcing party, and any forbearance by Grantee or ACOE to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or ACOE of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee or ACOE under this Conservation Easement. No delay or omission by Grantee or ACOE in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(g) Nothing contained in this Conservation Easement shall be construed to entitle Grantee, ACOE, the U.S. Department of Justice or the State Attorney General to bring any action against Grantor for any injury to or change in the Property resulting from:

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons and/or the Property resulting from such causes; provided that once the emergency has abated, Grantor, its successors or assigns promptly take all reasonable and necessary actions required to restore the damage to the Property caused by Grantor's prudent action to the condition it was in immediately prior to the emergency;

(3) Acts by Grantee, ACOE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing in this subsection, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public. Notwithstanding the foregoing, the golf course use of the golf cart crossings and the public use of the park access road, trail and sidewalk shall be permitted for their intended purpose.

9. Costs and Liabilities.

(a) Subject to Grantor's rights to enforce the terms and conditions of the Access Easement Agreement between Grantor and RLC and the obligations of RLC thereunder, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the

ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor ACOE shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Subject to Grantor's rights to enforce the terms and conditions of the Access Easement Agreement between Grantor and RLC and the obligations of RLC thereunder, Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including those required from ACOE acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, codes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its respective directors, officers, employees, agents, contractors, volunteers and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**Grantee's Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens, judgments, injury to or the death of any person, or physical damage to any property (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (i) any act, omission, condition, or other matter related to or occurring on or about the Property regardless of cause, (ii) the obligations specified in Sections 4, 9(a) and 10, and (iii) the existence or administration of this Conservation Easement; *provided, however*, that the indemnification in this Section 9(b)(1) shall be inapplicable to a Grantee Indemnified Party with respect to any Claim due to the negligence of any Grantee Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Grantee Indemnified Parties by reason of any Claim to which the indemnification in this Section 9(b)(1) applies, then at the election of and upon written notice from the Grantee Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonable acceptable to the applicable Grantee Indemnified Party or reimburse the Grantee Indemnified Party for all expenses (including, without limitation, reasonable attorneys' and experts' fees) incurred in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify ACOE and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**ACOE Indemnified Party**" and collectively, "**ACOE's Indemnified Parties**") from and against any and all Claims, arising from or in any way connected with: (i) any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to ACOE's Indemnified Parties with respect to any Claim due solely to the negligence of ACOE; (ii) the obligations specified in Sections 4, 9(a), and 10; and (iii) the existence or administration of this Conservation Easement.

10. Taxes, No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and ACOE with



satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement as provided in Section 18(n)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

11. Condemnation. Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, only as provided in Code of Civil Procedure section 1240.055. CDFW and ACOE are public entities that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Grantee shall provide notice to CDFW and ACOE and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j), and the location of the replacement property is subject to approval by ACOE. Within six (6) months of acquiring the replacement property, Grantor shall record a conservation easement over the replacement property, in a form approved by Grantee and ACOE prior to recordation.

12. Subsequent Transfers.

(a) By Grantee. This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and delegate obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65965-65968 (or any successor provision(s) then applicable) and only with the prior written approval of ACOE. Grantee shall give ACOE at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee shall record the assignment in the county of Riverside. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Unless otherwise agreed by Grantor, Grantee, and ACOE, along with such transfer of this Conservation Easement, Grantee shall demonstrate to the satisfaction of ACOE that the assignee/transferee expressly agrees to perform Grantee’s duties hereunder, including the annual compliance inspections and possesses the financial wherewithal to perform those duties. Any transfer under this Section is subject to the requirements of Section 21.

(b) Dissolution of Grantee. Grantee shall immediately transfer the Conservation Easement and deliver any Monitoring Endowment and Legal Enforcement and Defense Endowment funds it is then holding for purposes of this Conservation Easement, to an entity or other non-profit organization in accordance with Section 12(a), if any of the following occurs:

- (1) Grantee dissolves;

(2) Grantee is the subject of a voluntary or involuntary petition in bankruptcy; or

(3) Grantee is unable to carry out its obligations under this Conservation Easement.

(c) By Grantor.

(1) The covenants, conditions, and restrictions contained in this Conservation Easement are intended to and shall run with the land and bind all future owners of any interest in the Property. Grantor, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Conservation Easement in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Conservation Easement. Grantor, its successor and assign agrees to give written notice to Grantee and ACOE of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor, its successor or assign to perform any act provided in this Section 12 shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this Section is subject to the requirements of Section 21.

(2) From and after the date of any transfer of all or any portion of the Property by Grantor and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Grantor as to the portion transferred, as set forth in this Conservation Easement, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder except for any obligations pursuant to Section 18(h), and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

13. Additional Interests. Grantor shall not change any existing easements or other existing interests in the Property or grant additional easements, rights of way, or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement) or grant, transfer, abandon, or relinquish (each a “**Transfer**”) any mineral, air, or water right, or any water associated with the Property, without first obtaining the written consent of Grantee and ACOE. Grantee or ACOE may withhold such consent if it determines that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Property. This section shall not limit the provisions of Sections 2(d) or 3(r), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 12(c). Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to Grantee and ACOE.

14. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, and addressed as follows:

To Grantor: City of Lake Elsinore  
130 S Main Street  
Lake Elsinore, CA 92530  
Attn: City Manager

With a copy to: City of Lake Elsinore  
130 S Main Street  
Lake Elsinore, CA 92530  
Attn: City Attorney

To Grantee: Western Riverside County  
Regional Conservation Authority  
4080 Lemon Street, 3<sup>rd</sup> Floor  
P.O. Box 12008  
Riverside, CA 92502  
Attn: Executive Director

With a copy to: Best Best & Krieger LLP  
3390 University Avenue, Fifth Floor  
P.O. Box 1028  
Riverside, CA 92502-1028  
Attn: RCA General Counsel

With a copy to: District Counsel  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Room 1535  
Los Angeles, CA 90017-3401

or to such other address as Grantor, Grantee or ACOE shall designate by written notice to the other parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

If the Conservation Easement is assigned, the assignment document shall update the Notices provisions.

When the underlying fee for the Property is conveyed, the successor shall record a document entitled Conservation Easement/Change of Notices Provisions.

15. Amendment. Grantor and Grantee may amend this Conservation Easement only by mutual written agreement and with the written consent of the ACOE. Any such amendment shall be consistent with the Purpose of this Conservation Easement and shall not affect its perpetual duration. Grantor or its successors and assigns shall record any amendments to this Conservation Easement approved by the Grantee and ACOE in the official records of Riverside County, California and shall provide a copy of the recorded document to the Grantee and ACOE.

16. Long-Term Maintenance and Management.

(a) Grantor's Responsibility for Long-Term Maintenance and Management.

Grantor shall be responsible for the following long-term maintenance and management of the Property:

(1) annual maintenance of any signage and other notification features pursuant to Section and the existing chain link fence located on the southern end of the 25-Acre Site, as depicted in Exhibit B.

(b) Restoration Responsibilities. Grantor and its successors and assigns shall be obligated to repair, remediate, or restore the damage to the Property caused by any activities prohibited by Section 3 herein for which it or its guests, representatives, employees or agents, and third parties within its control is responsible.

(c) Annual Reporting. Grantor shall prepare an annual report documenting activities performed under Section 16(a) above, and shall make such report available to the Grantee and ACOE upon request.

(d) Grantor Restoration. When activities are performed pursuant to Section 16(b), Grantor shall retain, at its own expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities for which it is responsible. Grantor shall have a Biological Monitor submit a draft Restoration Plan to Grantee and ACOE for review and for ACOE written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantor shall have a Biological Monitor prepare a detailed monitoring report, and Grantor shall make the report available to Grantee and ACOE within thirty (30) days of completion of restoration activities. Grantor and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantor or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

17. Recordation. Grantor shall promptly record this Conservation Easement in the official records of Riverside County, California and immediately notify the Grantee and ACOE through the mailing of a conformed copy of the recorded Conservation Easement, and Grantee may re-record it at any time it deems necessary to preserve its rights in this Conservation Easement.

18. General Provisions.

(a) Controlling Law. The laws of the United States and the State of California, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to accomplish the Purpose of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be

ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Change of Conditions. If one or more of the Purposes of this Conservation Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Conservation Easement as long as any other purpose of the Conservation Easement may be accomplished. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. Grantor and Grantee agree that global warming and climate change-caused effects shall not be a basis for termination of this Conservation Easement.

(d) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(e) Entire Agreement. This instrument and the Agency Approvals set forth the entire agreement of the Parties with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements of the Parties relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 15.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property. The covenants hereunder benefiting Grantee shall also benefit the ACOE as a third-party beneficiary.

(h) Termination of Rights and Obligations. Provided the transfer was consistent with the terms of this Conservation Easement, a Party's rights and obligations under this Conservation Easement shall terminate upon transfer of the Party's interest in the Conservation Easement or Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(j) Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Exhibits. The following Exhibit(s) referenced in this Conservation Easement are attached to and incorporated by reference in this Conservation Easement:

EXHIBIT A – Legal Description Property

EXHIBIT B – Depiction of the Property and Existing and Proposed Structures on the Property

EXHIBIT C –Mitigation Plan

EXHIBIT D – Preliminary Title Reports

EXHIBIT E – Map showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States on the Property

(l) No Hazardous Materials Liability.

(1) Grantor represents and warrants to Grantee and ACOE that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor under Section 9(b)(1) of this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties (defined in Section 9(b)(1)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to the Grantee Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party or Parties, defend such action or proceeding by counsel reasonably acceptable to the applicable Grantee Indemnified Party or Parties or reimburse the applicable Grantee Indemnified Party or Parties for all charges incurred in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 9(b)(2) of this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9(b)(2)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Property at any time, except that this indemnification shall be inapplicable to the ACOE's Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by ACOE. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(4) Despite any contrary provision of this Conservation Easement, the Parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and ACOE any of the following:

(i) The obligations or liabilities of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.; hereinafter, “**CERCLA**”); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a) (3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right or duty to investigate and remediate any Hazardous Materials associated with the Property; or

(v) Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) The term “**Hazardous Materials**” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.; hereinafter “**RCRA**”); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.; hereinafter “**HTA**”); the Hazardous Waste Control Law (California Health & Safety Code Section 25100, et seq.; hereinafter “**HCL**”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300, et seq.; hereinafter “**HSA**”), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term “**Environmental Laws**” includes, without limitation, CERCLA, RCRA, HTA, HCL, HAS, and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents warrants and covenants to Grantee and ACOE that Grantor’s activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(m) Extinguishment. If circumstances arise in the future that render the Purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(n) Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property; that the Property is not subject to any other conservation easement; and there are no outstanding mortgages, liens, encumbrances or other interests in the

Property (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written, recorded Subordination Agreement approved by Grantee and ACOE.

20. Third-Party Beneficiary. Grantor and Grantee acknowledge that the ACOE is a third-party beneficiary of this Conservation Easement with a right of access to the Property, and the right to enforce all of its provisions and all other rights and remedies of Grantee under this Conservation Easement.

21. No Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and ACOE otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

*IN WITNESS WHEREOF* Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

**GRANTOR:**

CITY OF LAKE ELSINORE, a municipal corporation

*Attest:*

\_\_\_\_\_  
Name:

Title: City Clerk

By: \_\_\_\_\_

Name: Jason Simpson

Title: City Manager

*Approved as to Form*

Leibold McClendon & Mann, PC

By: \_\_\_\_\_

Barbara Zeid Leibold,  
City Attorney

Dated: \_\_\_\_\_, 2022



**GRANTEE:**

WESTERN RIVERSIDE COUNTY  
REGIONAL CONSERVATION  
AUTHORITY, a joint powers authority and a  
public agency

By: \_\_\_\_\_  
Anne Mayer, Executive Director

*Approved as to Form*

By: \_\_\_\_\_  
Best Best & Krieger LLP  
General Counsel

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

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the CITY OF LAKE ELSINORE, a California municipal corporation, on the Conservation Easement dated \_\_\_\_\_, to the Western Riverside County Regional Conservation Authority (“**Grantee**”), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to authority conferred by Resolution 2022-001, as adopted by the Board of Directors on January 10, 2022.

**GRANTEE:**

WESTERN RIVERSIDE COUNTY  
REGIONAL CONSERVATION  
AUTHORITY, a joint powers authority and a  
public agency

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

By: \_\_\_\_\_  
Anne Mayer, Executive Director

**Exhibit “A”**

Legal Description of Property

[See attached]

Exhibit A

**Exhibit “B”**

Legal Depiction of Property and Existing and Proposed Structures on the Property

[See Attached]

Exhibit B

## **Exhibit “C”**

### Mitigation Plan

Exhibit C

**Exhibit “D”**

Preliminary Title Reports

[See Attached]

Exhibit D

## **Exhibit “E”**

Map showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States on the Property

[See Attached]

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of Lake Elsinore  
130 S Main Street  
Lake Elsinore, CA 92530  
Attention: City Clerk

---

(Space Above Line for Recorder's Use)

**DECLARATION OF RESTRICTIVE COVENANTS**

This DECLARATION OF RESTRICTIVE COVENANTS ("**Restrictive Covenant**") is made this \_\_\_\_ day of December, 2022 by the City of Lake Elsinore, a municipal corporation (hereinafter "**Declarant**").

**RECITALS**

A. Declarant is the local agency and owner of real property located in City of Lake Elsinore, County of Riverside, State of California, commonly referred to as the Summerly 71-acre Mitigation Site (the "**Restricted Property**");

B. Declarant is the sole owner in fee simple of those portions of the Restricted Property legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto and incorporated by this reference, which consists of approximately 66 acres;

C. The Restricted Property possesses wildlife and habitat values (collectively, "**Conservation Values**") of importance to the people of the State of California which are consistent with the habitat conservation purposes of the Multiple Species Habitat Conservation Plan ("**MSHCP**");

D. Declarant is authorized to hold restrictive covenants pursuant to Civil Code Section 815.3. Specifically, Declarant is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property; and

E. It is the intention of the Declarant to preserve and protect in perpetuity the Conservation Values of the Restricted Property in accordance with the terms of this Restrictive Covenant.

**COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and state of California, including Civil Code Section 815, *et seq.*, Declarant hereby declares the Restricted Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of, and used subject to the following restrictive covenants (and incorporating the above recitals herein by this reference), which shall run with the land, and be binding on Declarant's heirs, successors in

interest, administrators, assigns, lessees, or other occupiers and users of the Restricted Property, or any portion of it.

1. Purpose.

(a) The purpose of this Restrictive Covenant is to ensure the Restricted Property will be preserved in a Natural Condition, as defined herein, in perpetuity and to prevent any use of the Restricted Property that will impair or interfere with the Conservation Values of the Restricted Property (the “**Purpose**”). Declarant intends that this Restrictive Covenant will confine the use of the Restricted Property to such activities that are consistent with this Purpose, including without limitation, those involving the preservation, restoration, water quality treatment, and enhancement of native species and their habitats.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Restrictive Covenant, shall mean the condition of the Restricted Property as it exists at the time this Restrictive Covenant is executed, as well as future enhancements or changes to the Restricted Property consistent with the existing requirements on the land, including construction of Cereal Street and Lucerne Street, construction and maintenance of Elsinore Valley Municipal Water District pump station and pumping appurtenances, implementing the April 2019 Water Quality Plan (“**WQP**”) attached hereto and incorporated herein as **Exhibit “C”** and allowing the Rivers and Lands Conservancy (“**RLC**”) invasive species removal as outlined in the January 12, 2021 Adaptive Management Plan (“**AMP**”) and October 29, 2021 Long-term Management Plan (“**LTMP**”) attached hereto and incorporated herein as **Exhibit “D-1”** and **Exhibit “D-2”**, respectively, as may be amended from time to time.

2. Rights Granted to the Western Riverside County Regional Conservation Authority (“RCA”) and the California Department of Fish and Wildlife (“CDFW”). To accomplish the purposes of this Restrictive Covenant, Declarant hereby grants and conveys to the RCA and CDFW, or their designee:

(a) a non-exclusive easement on and over the Restricted Property to preserve and protect the Conservation Values of the Restricted Property; and

(b) all present and future development rights allocated, implied, reserved or inherent in the Restricted Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Restricted Property, nor any other property adjacent or otherwise.

3. Prohibited Uses. Any activity on or use of the Restricted Property inconsistent with the purposes of this Restrictive Covenant is prohibited. Without limiting the generality of the foregoing, the following uses by Declarant, Declarant’s agents, and third parties, are expressly prohibited:

(a) All activities and uses which may adversely affect the purposes of this Restrictive Covenant;

(b) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio solids or any other materials;



- (c) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (d) All activities and uses that are otherwise inconsistent with the purposes of the MSHCP; and

(e) No use shall be made of the Restricted Property, and no activity thereon shall be permitted that is or is likely to become inconsistent with the Purpose of this Restrictive Covenant.

4. Reserved Rights. Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Restricted Property, including the right to engage in or to permit or invite others to engage in all uses of the Restricted Property that are not expressly prohibited or limited by, and are consistent with, the Purpose of this Restrictive Covenant, including, but not limited to, the following uses:

(a) Access. Reasonable access through the Restricted Property to adjacent land or to perform obligations or other activities permitted by this Restrictive Covenant. In addition, police and other public safety organizations and their personnel may enter the Restricted Property to address any legitimate public health or safety matter.

(b) Habitat Enhancement Activities. Enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Restricted Property. For purposes of preventing erosion and reestablishing native vegetation, the Declarant shall have the right but not the obligation to revegetate areas that may be damaged by the permitted activities, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Restricted Property. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(c) Vegetation, Debris, and Exotic Species Removal. Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and removal of non-native or exotic plant or animal species. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(d) No Interference with Development of Adjoining Property. Notwithstanding anything set forth herein to the contrary, nothing in this Restrictive Covenant is intended nor shall be applied to in any way limit Declarant or any of Declarant's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Restricted Property, (2) installing and/or maintaining the subsurface infrastructure improvements, utility lines, landscaping (including irrigation and runoff), landscape mitigation, and/or similar non-structural improvements within the Restricted Property, and/or (3) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (1), (2), and (3) neither such activity nor any effect resulting from such activity amounts to a use of the Restricted Property, or has an impact upon the Restricted Property.

(e) Fire Protection. Allow for a 50-foot wide fuel modification zone composed of native vegetation (including the provision of permanent irrigation to this zone and the right to install, maintain and repair a 50-foot wide manufactured slope within this zone). The right, in an emergency situation, to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire.

5. No General Public Access. This Restrictive Covenant does not convey a general right of access to the public to the Restricted Property.

6. Condemnation. Pursuant to Code of Civil Procedure section 1240.055, this Restrictive Covenant is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the California Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Restricted Property, if at all, only as provided in Code of Civil Procedure section 1240.055.

7. Assignment. This Restrictive Covenant is transferable by Declarant, but Declarant may assign its rights and obligations under this Restrictive Covenant only to an entity or organization authorized to acquire and hold restrictive covenants pursuant to Civil Code Section 815.3. Declarant shall require the assignee to record the assignment in the county where the Restricted Property is located.

8. Subsequent Transfers.

(a) The covenants, conditions, and restrictions contained in this Restrictive Covenant are intended to and shall run with the land and bind all future owners of any interest in the Restricted Property. Declarant, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Restrictive Covenant in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Restricted Property, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Restrictive Covenant.

(b) From and after the date of any transfer of all or any portion of the Restricted Property by Declarant and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Declarant as to the portion transferred, as set forth in this Restrictive Covenant, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder, and (iv) all references to Declarant in this Restrictive Covenant shall thereafter be deemed to refer to such transferee.

9. Amendment. Any such amendment shall be consistent with the Purpose of this Restrictive Covenant and shall not affect its perpetual duration. Declarant shall record any amendments to this Restrictive Covenant in the official records of Riverside County, California.

10. Recordation. Declarant, its successor or assign shall promptly record this instrument in the official records of Riverside County, California.

11. General Provisions.

(a) Controlling Law. The interpretation and performance of this Restrictive Covenant shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Restrictive Covenant, such action shall not affect the remainder of this Restrictive Covenant. If a court of competent jurisdiction voids or invalidates the application of any provision of this Restrictive Covenant to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(c) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Declarant's title in any respect.

(d) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Restrictive Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Restricted Property.

(e) Termination of Rights and Obligations. A party's rights and obligations under this Restrictive Covenant shall terminate upon transfer of the party's interest in the Restrictive Covenant or Restricted Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(g) Exhibits. All Exhibits referred to in this Restrictive Covenant are attached and incorporated herein by reference.

[Signatures on next page]

IN WITNESS WHEREOF Declarant has executed this Restrictive Covenant the day and year first above written and agrees to be bound by the terms and provisions hereof.

**DECLARANT:**

CITY OF LAKE ELSINORE, a municipal corporation

By: \_\_\_\_\_  
Jason Simpson, City Manager

Attest:

\_\_\_\_\_  
Candice Alvarez, CMC  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Barbara Zeid Leibold  
City Attorney

EXHIBIT “A”

Legal Description

EXHIBIT “B”

Legal Depiction

EXHIBIT “C”

Natural Condition

EXHIBIT “D-1”

January 12, 2021 Adaptive Management Plan (“AMP”)

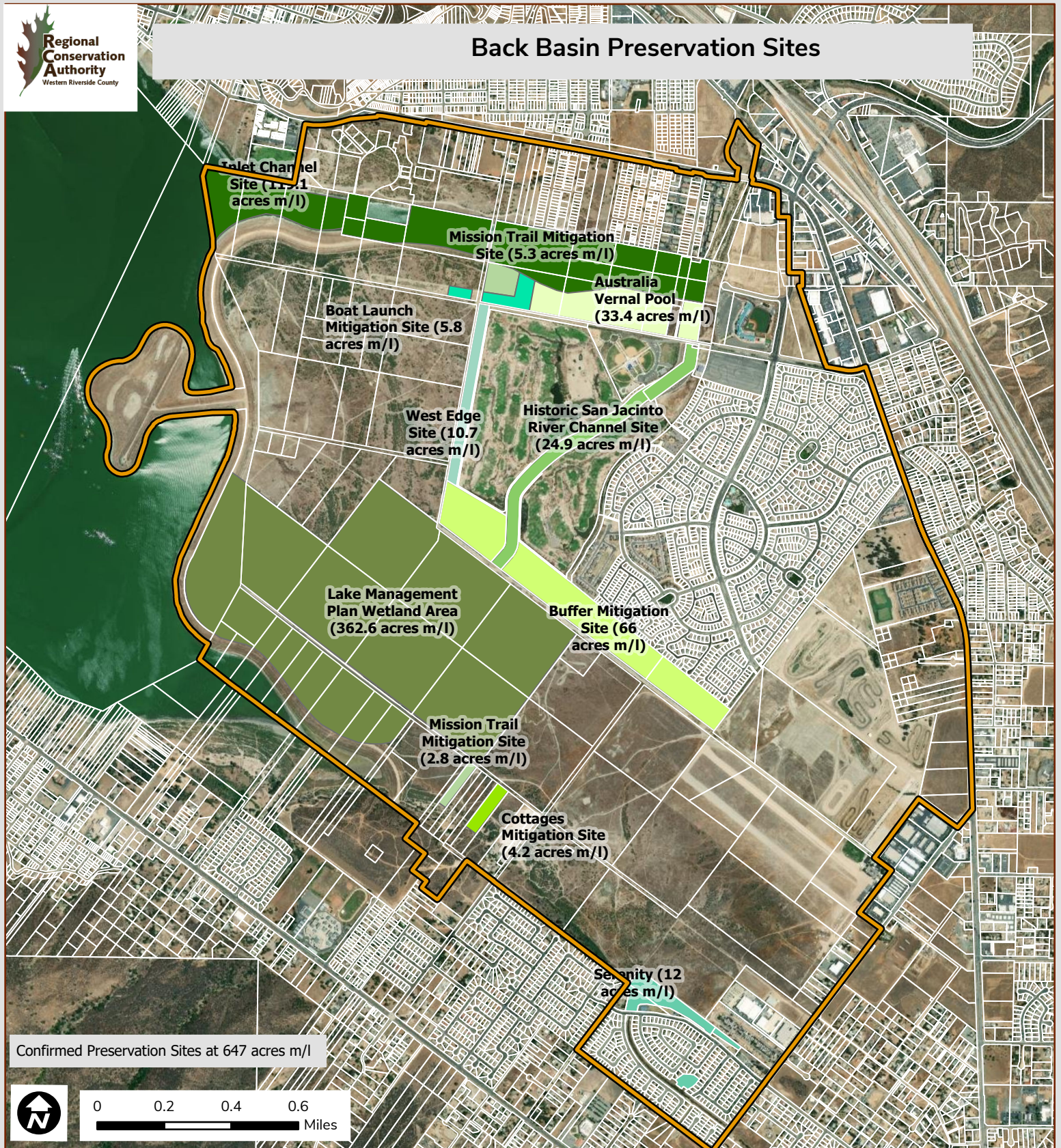


EXHIBIT “D-2”

October 29, 2021 Long-term Management Plan (“LTMP”)



## Back Basin Preservation Sites



### Confirmed Preservation Sites

- Australia Vernal Pool (33.4 ac)\*
- Boat Launch Mitigation Site (5.8 ac)\*
- Buffer Mitigation Site (66.0 ac)\*
- Cottages Mitigation Site (4.2 ac)
- Historic San Jacinto River Channel Site (24.9 ac)\*
- Inlet Channel Site (119.1 ac)
- Lake Management Plan Wetland Area (362.6 ac)

- Mission Trail Mitigation Site (8.1 ac)
- Serenity Site (12.0 ac)
- West Edge Site (10.7 ac)\*
- Parcels
- East Lake Specific Plan Boundary

\*Legal acreage provided by  
City of Lake Elsinore

**Draft**