

1 H. The fair market value of the 41.89 acres of Conservation Easement, pursuant to an appraisal obtained
2 by RCA and accepted by the City, is Four Hundred Ninety Thousand Four Hundred Ten and
3 81/100's Dollars (\$490,410.81).

4 I. RCA will allow for a fee credit in the amount of \$15,378.71 for the exchange, which is the difference
5 between the appraised value of the Conservation Easement minus the Disputed Fees ("Fee Credit").

6 J. The Parties desire to enter into this MOU to document the intent of the City to grant a Conservation
7 Easement to RCA in exchange for full satisfaction of the Disputed Fees and for a remaining Fee
8 Credit.

9 NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are
10 hereby acknowledged, the parties agree as follows:

11 **AGREEMENT**

12 **I. RECITALS.**

13 A. The Parties agree that the above Recitals are true and correct

14 **II. CITY'S DUTIES.**

15 A. On or before December 31, 2019, the City will grant the Conservation Easement to RCA,
16 in the form shown in Exhibit "B."

17 B. City will use its best efforts to collect the \$65,521.00 underpayment ("Lennar Payment")
18 for Tract No. 39534 identified on Exhibit A and remit the Lennar Payment to RCA.

19 **III. RCA'S DUTIES**

20 A. When the Conservation Easement has been granted to and accepted by the RCA, the City
21 will have satisfied RCA (or Plan) requirements for the fee collections as set forth in the Recitals,
22 above.

23 B. After the Conservation Easement has been recorded, the City may use the remaining Fee
24 Credit for future civic infrastructure projects, the local development mitigation fee, or both.

25 C. If City collects and remits the Lennar Payment to RCA, RCA will add the Lennar Payment
26 to the amount of the Fee Credit for future use by the City in accordance with this MOU.

27 **IV. USE OF FEE CREDIT AND CREDIT LEDGER**

1 A. The City and RCA acknowledge that the Fee Credit can be used for future civic infrastructure
2 projects, the local development mitigation fee, or both.

3 B. The Fee Credits may be used in the same way that cash could be used (with one (1) credit
4 being equal to one (1) U.S. Dollar) to satisfy payment of civic infrastructure fees or local
5 development mitigation fees at the rate then currently in effect. Nothing in this MOU shall limit the
6 power of the RCA Board of Directors or the City, in their sole discretion, to make adjustments to
7 the fee, in accordance with applicable law and MSHCP requirements.

8 C. The value of the Fee Credits remaining for use by City will be reduced on a credit-for-dollar
9 basis as City uses such Fee Credits.

10 D. Fee Credit balances will not earn interest and will not be redeemable for cash.

11 E. Fee Credits cannot be used to pay for the City's local administrative fees used to administer
12 the MSHCP Fee Ordinance or the MSHCP.

13 F. The City shall establish and maintain a database or ledger (herein "Ledger") that shows the
14 total dollar value of the initial Fee Credits and that tracks the use or transfer of such Fee Credits
15 including the project name for which the Fee Credits were used, and reasonable identify information
16 for that project. City agrees to share the Ledger with RCA upon request.

17 **V. COOPERATION.**

18 A. Within 30 days, staff of both Parties agree to meet to discuss ways in which to improve fee
19 collection efforts on the part of the City.

20 B. Each quarter, or more often if necessary, staff of both Parties agree to meet to continue
21 discussions regarding fee collection efforts until ongoing fee collection shortfalls from the City's
22 automated fee collection system have been resolved.

23 C. The Parties agree to cooperate with each other in the implementation of this MOU and
24 perform any and all acts necessary to carry out the intent of the MOU. Without limiting the
25 foregoing, the Parties agree to provide necessary approvals, and execute, acknowledge, and deliver
26 any and all additional papers, documents and other assurances as may be necessary to carry out the
27 intent of the MOU.

1 **VI. TERM.**

2 A. This MOU shall commence on the Effective Date and shall continue until the balance of the
3 Fee Credit is \$0. The term may be extended by an express written amendment to this MOU by the
4 Parties pursuant to Section VI below.

5 B. If either Party to this MOU believes that the other Party has failed to perform any obligation
6 of that Party in accordance with the terms of this MOU (“Default”), the Party alleging the Default
7 shall provide written notice (“Default Notice”) to the other Party, setting forth the nature of the
8 alleged Default. Unless otherwise provided by a specific term of this Agreement, the Party claimed
9 to be in Default shall have thirty (30) days from the receipt of the Default Notice to completely cure
10 such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to
11 commence the cure of such Default within the thirty (30) day period and diligently prosecute the
12 cure to completion thereafter. If the Party alleged to be in Default fails to cure, or to commence to
13 cure (if applicable), the Party alleging the Default may terminate this MOU.

14 **VII. CHANGES OR MODIFICATIONS.**

15 No part of this MOU may be modified, altered, amended, waived, or changed without the express
16 written consent of the Parties hereto. The Parties recognize that the potential for similar projects
17 may arise in the future and will negotiate in good faith to enter into another memorandum of
18 understanding to address those projects at an appropriate time.

19 **VIII. NOTICE.**

20 As used in this MOU, notice includes but is not limited to, the communication of any notice, request,
21 demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must
22 be in writing. Notice is given either (i) when delivered in person to the person or company intended
23 named below, (ii) when delivered via facsimile with confirmation from the receiving party via return
24 fax; or (iii) when sent via reputable overnight courier (such as Federal Express), addressed by name
25 and addressed to the party or persons intended, as follows, until such time as a party gives notice of
26 a change of address in accordance with the terms of this section:
27
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CITY

Attn: City Manager
3900 Main Street
Riverside, CA 92522
Phone: (951) 826-5771
Fax: (951) 826-5470

RCA

Attn: Executive Director
3403 10th Street, Suite 320
Riverside, CA 92501
Phone: (951) 955-9700
Fax: (951) 955-8873

With a copy to:

With a copy to:

CITY ATTORNEY

Attn: City Attorney
City Attorney's Office
3900 Main Street, 5th Floor
Riverside, CA 92522
Phone: (951) 826-5567
Fax: (951) 826-5540

RCA GENERAL COUNSEL

Attn: Michelle Ouellette
Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside CA 92501
Phone: (951) 686-1450
Fax: (951) 686-3083

IX. CONFLICT OF INTEREST.

No member, official or employee of the City or RCA shall have any personal interest, direct or indirect, in this MOU nor shall any such member, official or employee participate in any decision relating to this MOU which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

X. NO THIRD PARTY BENEFICIARIES.

This MOU is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action based upon the provisions of this MOU.

XI. SEVERABILITY.

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

XII. ASSIGNMENT.

This MOU shall not be assigned by either Party, either in whole or in part, without the prior written consent of the non-assigning Party. Any assignment or purported assignment of this MOU without the prior written consent of the non-assigning Party will be deemed void and of no force or effect.

XIII. GOVERNING LAW AND JURISDICTION.

The Parties agree that in the exercise of this MOU, the Parties shall comply with all applicable federal, state, county and local laws, and regulations. Without limiting the generality of the foregoing, the City, at its sole cost and expense, shall obtain any and all permits which may be

1 required by any law, regulation or ordinance for any activities the City desires to conduct or have
2 conducted pursuant to this MOU. The existence, validity, construction, operation and effect of this
3 MOU and all of its terms and provisions shall be determined in accordance with the laws of the State
4 of California. Any action at law or in equity brought by either of the Parties hereto for the purpose
5 of enforcing a right or rights provided for by this MOU shall be tried in the superior court of County
6 of Riverside, California, and the Parties hereby waive all provisions of law providing for a change
7 of venue in such proceedings to any other county.

8 **XIV. PARAGRAPH TITLES.**

9 The paragraph titles of this MOU are (i) inserted only for the convenience of the Parties, (ii) are
10 not intended to describe, define, limit, or otherwise affect the provisions in the portions of the MOU
11 to which they pertain, and (iii) in no way describe, define, limit, or otherwise affect the scope or
12 intent of this MOU or in any way affect the agreement of the Parties set out in this MOU.

13 **XV. INTERPRETATION.**

14 The parties hereto have negotiated this MOU at arm's length and have been advised by their
15 respective attorneys, or if not represented by an attorney, represent that they had an opportunity to
16 be so represented and no provision contained herein shall be construed against the RCA solely
17 because it prepared this MOU in its executed form.

18 **XVI. ENTIRE AGREEMENT.**

19 This MOU embodies the entire agreement between the Parties hereto in relation to the subject matter
20 hereof, and no other agreement or understanding, verbal or otherwise, relative to this subject matter
21 exists between the Parties at the time of execution of this MOU.

22 **XVII. AUTHORITY TO EXECUTE.**

23 The individuals executing this MOU and the instruments referenced herein each represent and
24 warrant that they have the legal power, right and actual authority to bind their respective Parties to
25 the terms and conditions hereof and thereof.
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1 **XVIII. COUNTERPARTS.**

2 The Parties may execute duplicate originals of the MOU or any other documents that they are
3 required to sign or furnish pursuant to the MOU.

4 **IN WITNESS WHEREOF**, the Parties have caused this MOU to be signed as of the date first above
5 written.

6 **CITY OF RIVERSIDE**

7 **WESTERN RIVERSIDE COUNTY**
8 **REGIONAL CONSERVATION**
9 **AUTHORITY**

10 By: _____
11 City Manager

12 By: _____
13 Charles V. Landry, Executive Director

14 **ATTESTED TO:**

15 **ATTESTED TO:**

16 By: _____
17 City Clerk

18 By: _____
19 Honey Bernas
20 Clerk of the Board

21 **APPROVED AS TO FORM:**

22 **APPROVED AS TO FORM:**

23 By: 
24 City Attorney

25 By: _____
26 RCA General Counsel
27 Best Best & Krieger LLP

Exhibit "A"
[SPREADSHEET]

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MOUNT VERNON EXCHANGE
SUMMARY OF AMOUNT DUE AND COSTS
PROJECT NO. RC2100082
(Costs posted as of 7/31/19)

Value of Conservation Easement Property APN:

258-020-002, 258-020-005 & 258-020-009	\$ 550,000.00
Total Acres per GIS Records	46.98
Average Price per Acre	<u>\$ 11,707.11</u>
Subtract 5.09* \$11,707.11 Acres excluded from Conservation	\$ (59,589.19)
Area for Conservation 41.89 Acres * \$11,707.11	<u>\$ 490,410.81</u>

Amounts Due From City:

Balance Due from Agreed Upon Procedures through FY2012	\$ 111,832.27
Balance Due from Density Calculations: March 2011-May 2017	\$ 227,023.00
Tract no. 39534- Audit FY2018 plus interest	\$ 65,521.00
Shortage on fee increases FY2019	\$ 19,485.40
Interest as of 1/31/19 on Density shortage	\$ 6,072.61
Subtotal Audit Findings	<u>\$ 429,934.28</u>

<u>Costs Incurred by RCA:</u>	<u>Costs Not Reimbursable</u>	<u>Costs Reimbursable by City</u>	<u>Total Costs</u>
RCA Salaries and Benefits	\$ 10,025.41		\$ 10,025.41
Best, Best and Krieger - Legal Services	14,445.14	14,445.14	28,890.28
Payment to Riverside County EDA-Real Estate			
Legal Services-County Counsel	110.13	110.13	220.26
County EDA Real Estate Services Labor	6,092.55	6,092.55	12,185.10
<u>Professional Services</u>			
Inland Empire Consultants-1st Appraisal		3,400.00	3,400.00
Inland Empire Consultants-1st Appraisal Revised		600.00	600.00
Lawyer's Title Company - Preliminary Reports		450.00	450.00
EEI-Environmental Site Assessment		1,800.00	1,800.00
Inland Empire Consultants-2nd Appraisal	4,900.00		4,900.00
Inland Empire Consultants-Addendum 2nd	600.00		600.00
Hess Development - Survey		4,900.00	4,900.00
Lawyer's Title Company - Preliminary Reports		100.00	100.00
Kiley Company - 3rd Appraisal		3,500.00	3,500.00
<u>Future Estimated costs:</u>			
New Survey & Legal Description - Hess Development		7,200.00	7,200.00
County EDA Real Estate Services Labor	500.00	500.00	1,000.00
BBK Charges	2,000.00	2,000.00	4,000.00
	<u>38,673.23</u>	<u>45,097.82</u>	<u>83,771.05</u>

Total due from City \$ 475,032.10

Area for Conservation 41.89 Acres * \$11,707.11 \$ 490,410.81

Less Amount Due \$ (475,032.10)

Remaining Balance Due \$ 15,378.71

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Exhibit "B"

[LEGAL DESCRIPTION OF PROPERTY]

EXHIBIT "A"

APN: 258-020-002, 005 & 009
FEE SIMPLE INTEREST

That certain real property located in the City of Riverside, County of Riverside, State of California, as described in Deed to Cynthia A. Vanover and James A. Jimenez, Trustee of the James A. Jimenez Family Trust, by document recorded June 9, 2004, as Document No. 440706, Official Records of said County, described as follows:

Parcel 1

The West half of the Northeast quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to an Official Plat of said land filed in the District Land Office, June 9, 1880;

EXCEPTING THEREFROM that portion described as follows:

Beginning on the East line of the West half of the Northeast quarter of the Northwest quarter of said Section, 165.00 feet North 00°06'00" West of the Southeast corner thereof;

Thence North 89°53'00" West, 150.00 feet;

Thence North 00°06'00" West, 125.00 feet;

Thence South 89°53'00" East, 150.00 feet to a point on said East line;

Thence South 00°06'00" East, 125.00 feet on said East line to the point of beginning;

ALSO EXCEPTING THEREFROM that portion described as follows:

Beginning on the South line of the West half of the Northeast quarter of the Northwest quarter of said Section, 228.00 feet North 89°53'00" West of the Southeast corner thereof;

Thence continuing North 89°53'00" West, 150.00 feet on said South line;

Thence Northeast in a direct line to a point 275.00 feet North 89°53'00" West of a point on the East line of the West half of the Northeast quarter of the Northwest quarter of said Section, North 00°06'00" West, 165.00 feet from the Southeast corner thereof;

Thence South 89°53'00" East, 100.00 feet;

Thence Southwest in a direct line to the point of beginning;

ALSO EXCEPTING THEREFROM the Southerly rectangular 20.00 feet of the remainder of the West half of the West half of the Northeast quarter of the Northwest quarter of said Section.

Parcel 2

The East 84.00 feet of the South 300.00 feet of the Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to an Official Plat of said land filed in the District Land Office, June 9, 1880;

EXCEPTING THEREFROM the Southerly rectangular 20.00 feet;

ALSO EXCEPTING THEREFROM that portion of land lying Westerly of Easterly line of Parcel Map on file in Book 17 of Parcel Maps at Page 96 thereof, Records of Riverside County, California.

Parcel 3

The Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to the Official Plat thereof;

EXCEPTING THEREFROM the South 300.00 feet of the Southeast quarter of the Northwest quarter of the Northwest quarter of said Section 21;

ALSO EXCEPTING THEREFROM that portion deeded to the County of Riverside by right of way deed recorded December 29, 1942 in Book 564, Page 171, Official Records of Riverside County, California, described as follows:

A portion of the Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, and more particularly described as follows:

All the land in said Northwest quarter of the Northwest quarter of Section 21, which is within 30.00 feet of the following described centerline;

Beginning at the West quarter corner of said Section 21;

Thence North $00^{\circ}19'00''$ West, 788.58 feet along the Section line, to the beginning of a curve, concave to the Southeast, having a central angle of $42^{\circ}06'00''$ and a radius of 200.00 feet;

Thence along said curve, 146.95 feet;

Thence North $41^{\circ}47'00''$ East, 134.99 feet to the beginning of a curve, concave to the Northwest, having a central angle of $28^{\circ}15'00''$ and a radius of 250.00 feet;

Thence along said curve, 123.26 feet;

Thence North 13°32'00" East, 99.73 feet to the beginning of a curve concave to the Southeast, having a central angle of 20°30'00" and a radius of 200.00 feet;

Thence along said curve, 107.34 feet;

Thence North 34°02'00" East, 15.92 feet to the beginning of a curve concave to the West, having a central angle of 75°00'00" and a radius of 250.00 feet;

Thence along said curve, 327.25 feet;

Thence North 40°58'00" West, 387.16 feet to the beginning of a curve, concave to the Northeast, having a central angle of 40°39'30" and a radius of 300.00 feet;

Thence along said curve, 212.89 feet to a point on the Westerly line of said Section 21;

Thence North 00°19'00" West, 397.87 feet, along the Section line to the Northwest corner of said Section 21;

ALSO EXCEPTING THEREFROM that portion thereof lying Westerly of the West line of Mt. Vernon Avenue.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.



Mark S. Brown, L.S. 5655 Date 1/24/11 Prep. EV
License Expires 9/30/11



Exhibit "C"

[FORM OF CONSERVATION EASEMENT]

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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

Exempt from recording fee
(Gov. Code, §§ 6103 & 27383)

MSHCP APN 258-020-002, -005 & -009

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this ___ day of _____, 2019 by the CITY OF RIVERSIDE, a California charter city and municipal corporation, ("Grantor"), in favor of the WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY, a joint powers authority and a public agency, ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of real property legally described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated by this reference (the "**Easement Property**"), which consists of approximately 46.61 acres.

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

C. 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; and

D. Grantee agrees by accepting this grant to honor the intentions of Grantor to preserve and protect in perpetuity the Conservation Values of the Easement Property in accordance with the terms of this Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily CONTRIBUTES, GRANTS and CONVEYS to Grantee a conservation easement over and across the Easement Property of the nature and character and to the extent

hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall bind the Grantor unconditionally and in perpetuity. 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 Easement Property or any portion of it.

1. Definitions. Any capitalized term not otherwise defined herein shall carry the same meaning and definition as that term is used and defined in the MSHCP.

2. Purpose.

The purpose of this Conservation Easement is to ensure that the Easement Property will be retained in perpetuity in a natural condition and to prevent any use of the Easement Property that will impair or interfere with the Conservation Values of the Easement Property. (“Natural Condition”) Grantor intends that this Conservation Easement will confine the use of the Easement Property to those activities that are consistent with the requirements of the MSHCP. Grantor warrants that no easement presently encumbers the Easement Property which conflicts with the purposes of this Conservation Easement. Grantor and Grantee also understand and agree that this Conservation Easement will be recorded in Riverside County, California.

3. Grantee’s Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee or its designee:

a. To preserve and protect the Conservation Values of the Easement Property;

b. A permanent, non-exclusive access easement (“Access Easement”) over and across the surface of Assessor Parcel Numbers 258-020-002, 258-020-005 and 258-020-009 that are not encumbered by this Conservation Easement (the “Access Easement Area”). The separate Access Easement is granted for the purpose of ingress, egress and traversing by Grantee and its guests and invitees over the Access Easement Area to access the Easement Property. Grantor agrees to coordinate with Grantee to allow for an independent locking device or another security feature to allow passage through gates, if any.

c. To enter upon the Easement Property in order to monitor Grantor’s compliance with and to otherwise enforce the terms of this Conservation Easement, and for other purposes by Grantee or its designees, and

d. To enter upon the Easement Property to carry out activities consistent with the MSHCP, in excess of any management that is provided by the Grantor;

e. To restrict access to portions of the Easement Property as reasonably necessary to protect habitat which is used for sensitive activities such as breeding or nesting, provided, however, that Grantee shall limit such restrictions to those specific areas where use of the Easement Property would adversely affect such activities and only during such time periods or seasons when such activities occur.

f. To prevent any activity on, or use of, the Easement Property that is inconsistent with the purposes of this Conservation Easement or the MSHCP and to require the restoration of such areas or features of the Easement Property that may be damaged by any act,

failure to act, or any use that is inconsistent with the purposes of this Conservation Easement or the MSHCP;

g. All mineral, air and water rights necessary to protect and to sustain the biological resources of the Easement Property;

h. All present and future development rights;

i. The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

4. Prohibited Uses. Any activity on or use of the Easement Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited:

a. All activities and uses which may adversely affect the purposes of this Conservation Easement;

b. Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

c. Disking;

d. Depositing or accumulation of soil, trash, ashes, refuse, waste, bio solids or any other materials;

e. Planting, introduction or dispersal of non-native or exotic plant or animal species;

f. All activities and uses that are otherwise inconsistent with the purposes of the MSHCP; and

g. No use shall be made of the Easement Property, and no activity thereon shall be permitted that is or is likely to become inconsistent 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, therefore, in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Wildlife, will determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (b) alterations in existing uses or structures, are consistent with the Purposes of this Conservation Easement.

5. Grantor's Duties. To accomplish the purposes of this Conservation Easement as described in Section 2, Grantor, its successors and assigns shall:

a. Undertake all actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Property. In

addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;

b. Comply with the terms of this Conservation Easement and cooperate with Grantee in the protection of the Conservation Values;

c. Repair and restore damage to the Conservation Easement directly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties;

d. Perform Long-Term Maintenance of the Easement Property as described in Section 17.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Property, including the right to engage in or to permit or invite others to engage in only those uses of the Easement Property which are authorized or otherwise expressly permitted under this Conservation Easement.

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

7. Remedies. If either Party determines the other Party is in violation of the terms of this Conservation Easement or that a violation is threatened, the first Party shall give written notice to the other Party of such violation and provide with particularity the cure of such violation.

a. Dispute Resolution. After providing notice of a violation, the Parties will work collaboratively to resolve the inconsistencies as follows:

(i) The Parties will make every effort to expeditiously resolve any disagreements. If resolution cannot be accomplished promptly during regularly scheduled meetings and conference calls, a further attempt to reach resolution will be promptly attempted in a "meet and confer" meeting or conference call dedicated to the purpose of resolving the disagreement.

(ii) If the Parties cannot reach agreement after completing a "meet and confer" meeting or conference, all Parties agree to elevate the decision to successively higher levels within each organization until consensus is reached.

(iii) If the Parties are unable to reach consensus pursuant to sections (a) (i) and (ii) above within ninety (90) days of the notice of any dispute, then either Party may pursue its rights and remedies under law or equity, as provided herein.

b. Legal Action. After the ninety (90) day period provided in 7(a) above, either Party may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the other Party with the terms of this Conservation Easement, to recover any

damages to which a Party may be entitled for violation by the other Party of the terms of this Conservation Easement or for any injury to the conservation values of the Easement 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, or for other equitable relief, including, but not limited to, the restoration of the Easement Property to the condition in which it existed prior to any such violation or injury.

c. Acts Beyond a Party's Control. Nothing contained in this Conservation Easement shall be construed to entitle the first Party to bring any action against the second Party for any injury to or change in the Easement Property resulting from (i) any natural cause beyond the second Party's control, including, without limitation, fire not caused by the second Party, flood, storm, and earth movement; (ii) any prudent action taken by the second Party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes; (iii) acts by the first Party or its employees; or (iv) acts of third parties (including any governmental agencies) that are beyond the second Party's control.

8. Access. This Conservation Easement does not convey a general right of access to the public or any adjacent landowners or a general right of access to the Easement Property. Access to the Easement Property shall be limited, and shall be determined by the discretion of the Grantee in its implementation of the MSHCP, including, but not limited to, Section 7.4.2.

9. Costs and Liabilities. Grantor, its estates, successors, and assigns, remain solely responsible for obtaining and complying with any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local, and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantor, its invitees, agents, contractors, consultants, heirs, estates, successors, and assigns, retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Property except those specifically accepted by Grantee under this Conservation Easement. Grantee shall have no duty or responsibility for the operation or maintenance of the Easement 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 Easement Property, except as set forth with particularity herein.

10. No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Easement Property.

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 to Grantee any of the following:

a. 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

- b. The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- c. The obligations of a responsible person under any applicable Environmental Laws; or
- d. The right to investigate and remediate any Hazardous Materials associated with the Easement Property; or
- e. Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Property.

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.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, 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 that Grantor's activities upon and use of the Easement Property will comply with all Environmental Laws.

11. Grantor Hold Harmless. Grantor, its successors and assigns shall hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, contractors, and representatives (collectively "**Grantee 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 or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with:

- a. Injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause; provided however, that the indemnification in this Section 11(a) shall be inapplicable to a Grantee Indemnified Party with respect to any Claim due solely to the negligence of that Grantee Indemnified Party or any of its employees.

- b. The obligations specified in this Conservation Easement.

- c. The existence or administration of this Conservation Easement.

- d. Any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents.

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 Grantee, defend such action or proceeding by counsel reasonably acceptable to Grantee or reimburse the Grantee for attorney's fees.

12. Grantee Hold Harmless. Grantee, its successors and assigns shall hold harmless, indemnify, and defend Grantor and its directors, officers, employees, agents, contractors, and representatives (collectively "**Grantor Indemnified Parties**") from and against any and all Claims, arising from or in any way connected with:

a. Injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause; provided however, that the indemnification in this Section 12(a) shall be inapplicable to a Grantor Indemnified Party with respect to any Claim due solely to the negligence of that Grantor Indemnified Party or any of its employees.

b. The obligations specified in this Conservation Easement.

c. The existence or administration of this Conservation Easement.

d. Any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantor, its employees or agents.

If any action or proceeding is brought against any of the Grantor Indemnified Parties by reason of any such Claim, Grantee shall, at the election of and upon written notice from Grantor, defend such action or proceeding by counsel reasonably acceptable to Grantor or reimburse the Grantor for attorney's fees.

13. Condemnation. The purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. Nevertheless, if the Easement Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

14. 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 Civil Code Section 815.3 (or any successor provision then applicable) and only with the prior written approval of the Grantor. Grantee shall require the assignee to record the assignment in the county where the Easement Property is located.

b. By Grantor.

(i) 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 Easement 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 Easement 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 of the intent to transfer any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor, its successor or assign to perform any act provided in this Section 14 shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

(ii) From and after the date of any transfer of all or any portion of the Easement 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, and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

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

To Grantor: City of Riverside
3900 Main Street
Riverside, CA 92522
Phone: (951) 826-5771
Fax: (951) 826-5470
Attention: City Manager

With copy to: City of Riverside
3900 Main Street
Riverside, CA 92522
Phone: (951) 826-5567
Fax: (951) 826-5540
Attention: City Attorney

To Grantee: Western Riverside County Regional Conservation
Authority
3403 Tenth Street, Suite 320
P.O. Box 1667
Riverside, California 92502-1667
Attn: Executive Director
Phone: (951) 955-9700
Fax: (951) 955-8873

With a Copy to: Best Best & Krieger LLP
3390 University Ave., Fifth Floor
P.O. Box 1028
Riverside, CA 92502-1028

Attn: Michelle Ouellette
Phone: (951) 686-1450
Fax: (951) 686-3083

or to such other address as either party shall designate by written notice to the other. 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, five (5) days after deposit into the United States mail.

16. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Riverside County, State of California.

17. Long-Term Maintenance. In addition to the other terms contained herein, Grantor shall be responsible for the ongoing maintenance, repair, or both, of the Easement Property. Such long-term maintenance shall consist of the following activities:

a. Semi-annual removal of trash or man-made debris or as needed by the direction of the Grantee;

b. Annual restoration of the Easement Property damaged by any activities prohibited by Section 4 herein.

18. Recordation. Grantee shall promptly record this instrument in the official records of Riverside County, California and immediately notify the Grantor through the mailing of a conformed copy of the recorded easement.

19. General Provisions.

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

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the purposes 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 purposes 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 together with the attached exhibits and any documents referred to herein sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements 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 16.

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

g. Successors. 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 Easement Property.

h. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Easement 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. Exhibits. All Exhibits referred to in this Easement are attached and incorporated herein by reference.

k. Additional Easements. Grantor has reviewed and accepted encumbrances shown on the title report of the Easement Property. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Property (other than a security interest that is subordinate to this Conservation Easement), or grant or otherwise abandon or relinquish any water agreement relating to the Easement Property, without first obtaining the written consent of Grantee. Grantee may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Property. This Section (k) shall not prohibit transfer of a fee or leasehold interest in the Easement Property that is subject to this Conservation Easement and complies with Section 14.

l. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both 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.

SIGNATURE PAGE FOR THE CONSERVATION EASEMENT GRANTED BY THE CITY OF RIVERSIDE IN FAVOR OF THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

IN WITNESS WHEREOF Grantor has 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 RIVERSIDE

By: _____
Al Zelinka
City Manager

ATTESTED TO:

By: _____
Collen J. Nicol
City Clerk

APPROVED AS TO FORM:

By: _____
Kristi J. Smith
Chief Assistant City Attorney

[ATTACH NOTARY ACKNOWLEDGEMENT]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the City of Riverside, a California charter city and municipal corporation on the Conservation Easement dated _____ 2019, 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 Ordinance No. 08-01, as adopted by the Board of Directors on July 7, 2008, and the Grantee consents to recordation thereof by its duly authorized officer.

GRANTEE:

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

Date: _____

By: _____
Charles V. Landry, Executive Director

Approved as to Form

By: _____
Best, Best & Krieger LLP
General Counsel

Exhibit A

Legal Description of Easement Property

EXHIBIT "A"

APN: 258-020-002, 005 & 009
FEE SIMPLE INTEREST

That certain real property located in the City of Riverside, County of Riverside, State of California, as described in Deed to Cynthia A. Vanover and James A. Jimenez, Trustee of the James A. Jimenez Family Trust, by document recorded June 9, 2004, as Document No. 440706, Official Records of said County, described as follows:

Parcel 1

The West half of the Northeast quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to an Official Plat of said land filed in the District Land Office, June 9, 1880;

EXCEPTING THEREFROM that portion described as follows:

Beginning on the East line of the West half of the Northeast quarter of the Northwest quarter of said Section, 165.00 feet North 00°06'00" West of the Southeast corner thereof;

Thence North 89°53'00" West, 150.00 feet;

Thence North 00°06'00" West, 125.00 feet;

Thence South 89°53'00" East, 150.00 feet to a point on said East line;

Thence South 00°06'00" East, 125.00 feet on said East line to the point of beginning;

ALSO EXCEPTING THEREFROM that portion described as follows:

Beginning on the South line of the West half of the Northeast quarter of the Northwest quarter of said Section, 228.00 feet North 89°53'00" West of the Southeast corner thereof;

Thence continuing North 89°53'00" West, 150.00 feet on said South line;

Thence Northeast in a direct line to a point 275.00 feet North 89°53'00" West of a point on the East line of the West half of the Northeast quarter of the Northwest quarter of said Section, North 00°06'00" West, 165.00 feet from the Southeast corner thereof;

Thence South 89°53'00" East, 100.00 feet;

Thence Southwest in a direct line to the point of beginning;

ALSO EXCEPTING THEREFROM the Southerly rectangular 20.00 feet of the remainder of the West half of the West half of the Northeast quarter of the Northwest quarter of said Section.

Parcel 2

The East 84.00 feet of the South 300.00 feet of the Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to an Official Plat of said land filed in the District Land Office, June 9, 1880;

EXCEPTING THEREFROM the Southerly rectangular 20.00 feet;

ALSO EXCEPTING THEREFROM that portion of land lying Westerly of Easterly line of Parcel Map on file in Book 17 of Parcel Maps at Page 96 thereof, Records of Riverside County, California.

Parcel 3

The Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, according to the Official Plat thereof;

EXCEPTING THEREFROM the South 300.00 feet of the Southeast quarter of the Northwest quarter of the Northwest quarter of said Section 21;

ALSO EXCEPTING THEREFROM that portion deeded to the County of Riverside by right of way deed recorded December 29, 1942 in Book 564, Page 171, Official Records of Riverside County, California, described as follows:

A portion of the Northwest quarter of the Northwest quarter of Section 21, Township 2 South, Range 4 West, San Bernardino Meridian, and more particularly described as follows:

All the land in said Northwest quarter of the Northwest quarter of Section 21, which is within 30.00 feet of the following described centerline;

Beginning at the West quarter corner of said Section 21;

Thence North $00^{\circ}19'00''$ West, 788.58 feet along the Section line, to the beginning of a curve, concave to the Southeast, having a central angle of $42^{\circ}06'00''$ and a radius of 200.00 feet;

Thence along said curve, 146.95 feet;

Thence North $41^{\circ}47'00''$ East, 134.99 feet to the beginning of a curve, concave to the Northwest, having a central angle of $28^{\circ}15'00''$ and a radius of 250.00 feet;

Thence along said curve, 123.26 feet;

Thence North 13°32'00" East, 99.73 feet to the beginning of a curve concave to the Southeast, having a central angle of 20°30'00" and a radius of 200.00 feet;

Thence along said curve, 107.34 feet;

Thence North 34°02'00" East, 15.92 feet to the beginning of a curve concave to the West, having a central angle of 75°00'00" and a radius of 250.00 feet;

Thence along said curve, 327.25 feet;

Thence North 40°58'00" West, 387.16 feet to the beginning of a curve, concave to the Northeast, having a central angle of 40°39'30" and a radius of 300.00 feet;

Thence along said curve, 212.89 feet to a point on the Westerly line of said Section 21;

Thence North 00°19'00" West, 397.87 feet, along the Section line to the Northwest corner of said Section 21;

ALSO EXCEPTING THEREFROM that portion thereof lying Westerly of the West line of Mt. Vernon Avenue.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.


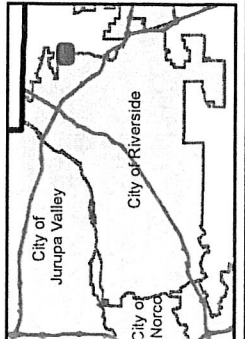
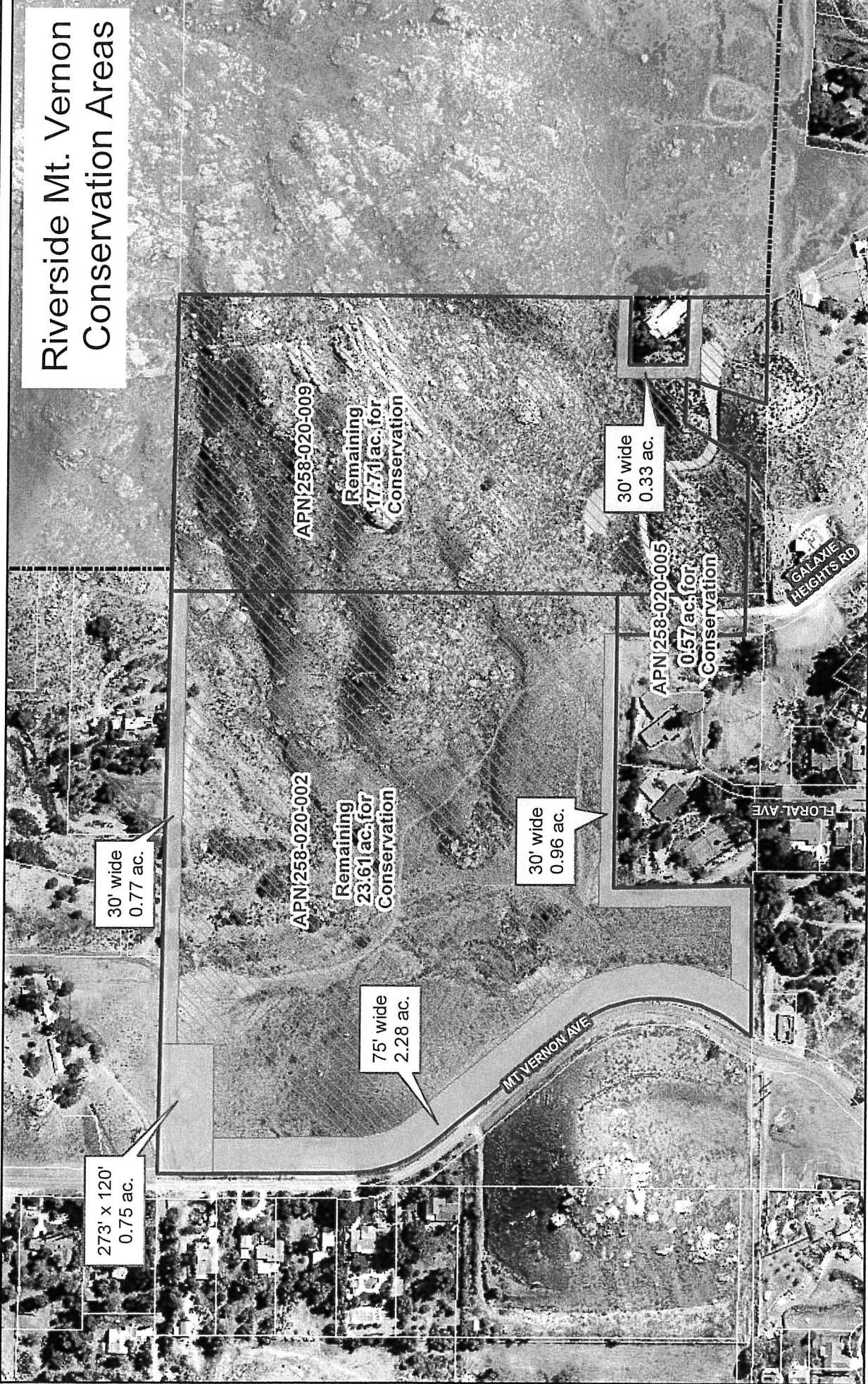

Mark S. Brown, L.S. 5655 Date 1/24/11 Prep. EV
License Expires 9/30/11



Exhibit B
Map of Easement Property
[See Attached]

Riverside Mt. Vernon Conservation Areas



- Project Site
- Conservation Area
- Area Excluded from Conservation
- Public/Quasi-Public Conserved Land
- City Boundary
- Centerline

Total Areas for Conservation: 41.89 acres
 Total Areas Excluded from Conservation: 5.09 acres



