

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF RIVERSIDE AND
THE RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY**

This Memorandum of Understanding ("MOU") is entered into this _____ day of _____, 2016, by and between the City of Riverside, a California charter city and municipal corporate ("CITY") and the Riverside County Habitat Conservation Agency, a Joint Powers Authority formed by agreement pursuant to the provisions of Article I, Chapter 5, Division 7, Title 1 of the Government Code ("RCHCA").

RECITALS

WHEREAS, the City is a member of the Riverside County Habitat Conservation Agency, created on May 15, 1990, for the purpose of the acquisition, administration, operation, and maintenance of land and facilities for ecosystem conservation and habitat reserves for the Stephens' Kangaroo Rat and other species which have been listed as threatened or endangered or which are candidates for such listing pursuant to the laws of the United States or the State of California; and

WHEREAS, the City, as a member of the Riverside County Habitat Conservation Agency, executed the Implementation Agreement Riverside County Habitation Conservation Plan dated May, 10, 1996, creating a plan to mitigate impacts to the Stephens' Kangaroo Rat and its habitat due directly or indirectly to development of both private and public lands within Stephens' Kangaroo Rat Habitat Conservation Plan ("SKRHCP") area; and

WHEREAS, the City is responsible for the management of Sycamore Canyon Park; and

WHEREAS, RCHCA must enter Sycamore Canyon Park to set out equipment to perform biological monitoring on the Stephens' Kangaroo Rat; in accordance with the SKRHCP; and

WHEREAS, City desires to grant permission to RCHCA, its officers, employees and/or agents, to enter upon the Property to perform, at RCHCA's sole cost and expense, biological monitoring and surveying of Stephens' Kangaroo Rat.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Access.** City grants RCHCA, its officers, employees and/or agents, unrestricted access to Sycamore Canyon Park and depicted on Exhibit "A" attached hereto and incorporated herein, for the purpose of setting out equipment to perform biological monitoring and surveying of Stephens' Kangaroo Rat.

2. **Term.** This MOU is effective upon signature of both parties and shall remain in force for a period of ten (10) years. This MOU may be modified upon the mutual written consent of the parties.

3. **Mutual Hold Harmless.** The parties hereto, and each of them, do hereby mutually agree to indemnify, defend, save and hold harmless each other, and their respective officers, agents, servants and employees, of and from any and all liability, claims demands, debts, suits, actions and causes of action, including wrongful death and reasonable attorneys' fees for the defense thereof, arising out of or in any manner connected with the performance of any act or deed under or pursuant to the terms and provisions of this MOU by such indemnifying party, or its officers, agents, servants and employees.

4. **Insurance.**

Workers' Compensation Insurance. By executing this MOU, RCHCA certifies that it is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. RCHCA shall carry the insurance or provide for self-insurance required by California law to protect RCHCA from claims under the Workers' Compensation Act. Prior to City's execution of this MOU, RCHCA shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that they are self-insured for such coverage, or (2) a certified statement that they have no employees, and acknowledging that if they do employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days prior written notice before modification or cancellation thereof.

General Commercial Liability and Automobile Insurance. Prior to City's execution of this MOU, RCHCA shall obtain, and shall thereafter maintain during the term of this MOU, commercial general liability insurance and automobile liability insurance as required to insure RCHCA against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of RCHCA. The City, and its officers, employees and agents, shall be named as additional insureds under the Contractor's insurance policies.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

RCHCA's commercial general liability insurance policies shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000, unless otherwise approved or reduced by the City's Risk Manager ("Risk Manager"), or his designee.

RCHCA's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence unless otherwise approved or reduced by the Risk Manager, or his designee.

These minimum amounts of coverage shall not constitute any limitation or cap on RCHCA's indemnification obligations.

Prior to City's execution of this MOU, copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this MOU, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by RCHCA pursuant to this MOU are adequate to protect RCHCA. If RCHCA believes that any required insurance coverage is inadequate, they will obtain such additional insurance coverage as it deem adequate, at its sole expense.

5. Hazardous Substances Indemnity. RCHCA expressly agrees to and shall indemnify, defend, release and hold the City, its officers, officials, directors, agents, servants, employees, attorneys and contractors harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorneys' fees, expert fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Property by RCHCA, or its respective officers, directors, agents, servants, employees or contractors, or by any other third party acting under the control or request of RCHCA, other than the City and its respective officers, agents, servants, employees or contractors. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this MOU.

6. Hazardous Substances Defined. Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, et seq.; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; The Clean Water Act, 33 U.S.C. § 1251, et seq.; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, et seq.; the Hazardous Substance Account Act,

H. & S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, et seq.; Underground Storage of Hazardous Substances H. & S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H. & S.C. § 25300 et seq.); The Hazardous Waste Management Act, H. & S.C. §§ 25170.1, et seq.; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 et seq.; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

7. Notices. Service of any notices, or other documents required or permitted under this MOU shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows.

CITY

City of Riverside
Parks, Recreation and Community
Services Department
Attn: Park Superintendent
6927 Magnolia Ave.
Riverside, CA 92506

RCHCA

Riverside County Habitat Conservation Agency
Attn: Princess Hester/Admin. Services Officer
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

8. Venue. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by this MOU shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

9. Nondiscrimination. During RCHCA performance of this MOU, it shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, RCHCA agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this MOU.

10. Assignment. It is mutually understood and agreed that this MOU is personal to RCHCA and shall be binding upon RCHCA and its successors and may not be assigned or transferred in any way. Any transfer shall be void and of no effect.

11. Authority. The individuals executing this MOU each represent and warrant that they have the legal power, right and actual authority to bind their respective entities to the terms and conditions hereof and thereof.

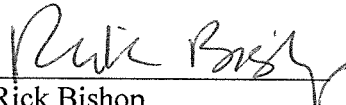
12. Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this MOU shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this MOU is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this MOU and shall not affect any other provision, term, condition, covenant, and/or restriction, of this MOU and the remainder of the MOU shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date and year first written above.

CITY OF RIVERSIDE, a
California charter city and
municipal corporation


RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY,
a Joint Powers Authority

By: _____
City Manager

By: 
Rick Bishop
RCHCA General Manager


APPROVED AS TO FORM:

Attest:

By:  2/4/16
General Counsel

By: _____
City Clerk

APPROVED AS TO FORM:


Deputy City Attorney