

**MEMORANDUM OF UNDERSTANDING
REGARDING UPPER SANTA ANA RIVER HABITAT CONSERVATION**

This Memorandum of Understanding ("MOU") dated _____, 2019 ("**Effective Date**"), is made and entered into by and between the **City of Riverside**, a California municipal corporation ("**Riverside**"), and the San Bernardino Valley Municipal Water District, a water district organized and existing under the California Municipal District Law of 1911 ("**Valley District**"). City and District are also sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The Parties produce and serve water in areas including the upper Santa Ana River basin (the "Upper SAR Basin"). The Parties have undertaken and will undertake various projects regarding production, service, and conservation of water in the Upper SAR Basin, which projects may have environmental impacts to the Santa Ana Sucker (*Catostomus santannae*) and other species or habitats.

B. Riverside owns several properties in the Upper SAR Basin as listed on Exhibit A-1, and described in Exhibit A-2, attached hereto and incorporated by reference (the "Riverside Parcels"). The Riverside parcels are useful to Riverside for future utility, municipal, or other projects but, as described below, also have high conservation values for the Santa Ana Sucker and other species.

C. Riverside also owns and operates its Regional Water Quality Control Plant, a 46-million gallons per day ("MGD") sewer treatment plant, which discharges high-quality recycled water into the Santa Ana River (as defined below, the "RWQCP").

D. The Parties, together with 9 other local agencies in the Upper Santa Ana Basin, are working cooperatively with the relevant state and federal resource agencies to develop a draft habitat conservation plan ("HCP") and supporting permits to mitigate impacts to the Santa Ana Sucker and other species, and related aquatic, riparian and upland habitat.

E. While development and environmental review of the HCP progresses, the Parties desire to move forward on certain river and tributary restoration projects to facilitate the establishment, restoration and enhancement of environmental values on the Upper SAR, its tributaries and associated riparian and upland habitat (the "Environmental Values"). These projects (collectively, as defined below, the "Restoration Project") will serve to mitigate the effects of activities proposed to be covered by the HCP, but have independent utility and will be of value should the HCP not be finalized and adopted.

F. As more fully described below, certain water supplies needed for the Restoration Project (the "Restoration Project Water") will be provided from the Riverside-Arlington groundwater basin, provided Riverside and other related parties are provided with in lieu or "exchange water", on a bucket-for-bucket basis, from the San Bernardino Basin Area (SBBA).

G. In addition to the Restoration Project, the Parties (as described below) are exploring the potential for modification of the water regime within the Upper SAR to provide additional Environmental Values, particularly for Santa Ana sucker, which may be supplied through improvements to Riverside's recycled water delivery system as further described below as the "Riverside Habitat, Parks, and Water Project" (the "RHPW Project"). It is anticipated that the RHPW Project may replace the need for Restoration Project Water to be delivered from the

Riverside-Arlington groundwater basin and may also be used to create environmental values associated with future restoration projects on the Upper Santa Ana River.

H. To facilitate planning, design and environmental review of the Restoration Project and its associated Riverside-Arlington Basin water supply, and the RHPW Project (the “Projects”), the Parties are entering into this MOU to establish certain preliminary understandings regarding the means by which these Projects will be accomplished.

NOW, THEREFORE, based upon the above Recitals and inconsideration of the mutual agreements contained herein, the Parties hereby agree and understand as follows:

1. USAR HCP. The Parties agree to work cooperatively towards completion and environmental review of the HCP for final consideration by the Parties. The HCP is anticipated to provide environmental mitigation for current and future projects and, if adopted is expected to be more effective than piecemeal efforts.

2. Restoration Project. Concurrently, and until the HCP is completed and adopted, the Parties agree to work cooperatively on completion and environmental review of the Restoration Project, including the provision of Restoration Project Water, as described briefly on Exhibit B, attached hereto and incorporated by reference, for final consideration by the Parties. The Parties intend and agree that the Restoration Project will provide environmental mitigation for Riverside, Valley District, and potentially other project partners. The Parties intend and agree that the Restoration Project will be useful for the HCP, but which also has independent utility and will be of use to the Parties should the HCP not be finalized and adopted.

3. Riverside Parcels.

(a) Valley District has requested Riverside to consider making the Riverside Parcels, as described in Exhibit A, available for the restoration and related activities anticipated as a part of the Restoration Project, or associated with future HCP restoration efforts, and to consider the recordation of a conservation easement or other perpetual site protection instrument on one or more of the Riverside Parcels. Riverside agrees to consider such request and, in furtherance thereof, the Parties agree to determine an appropriate value for the permanent protection of the Riverside Parcels, as described above, based on factors including conservation value, habitat value, and value for Riverside's other municipal purposes, including but not limited to development or sale, as appropriate with respect to each such Riverside Parcel. Such value may be expressed in dollars, mitigation credits or some other mutually agreeable basis.

(b) In furtherance of Valley District's efforts associated with the design and environmental review of the Restoration Project, upon request by Valley District, Riverside agrees to provide to Valley District (i) any information it has on the condition, use, title or other aspects of the Riverside Parcels; and (ii) using a mutually acceptable form, a license or other right of access on and over the Riverside Parcels to Valley District, and its employees, agents and contractors, to enter and inspect such properties. Riverside agrees not to sell, dispose of, develop, or otherwise make the Riverside Parcels unavailable to Valley District for the purposes of this MOU or the Restoration Project during the term of this MOU. Valley District agrees to share with Riverside any information, analysis, or other findings that may be developed by Valley District or its agents during its inspection and evaluation of the Riverside Parcels.

4. Restoration Project Water. As described above, the Restoration Project plans to develop its water supply by pumping groundwater from the Riverside-Arlington groundwater basin; provided, however, that an agreement is finalized between Riverside and other related parties that provides a "bucket-for-bucket" in-lieu water exchange program, whereby providing Riverside and other related parties increased production and export rights from the Bunker Hill groundwater basin in an amount equivalent to the amount of Riverside-Arlington Basin groundwater that may be used in connection with the Restoration Project or similar projects. The Parties anticipate that Western Municipal Water District may need to be a party to any such arrangement and that the agreement would need to be approved by the Western-San Bernardino Watermaster.

5. Riverside Habitat, Parks, and Water Project.

(a) As described above, Riverside is considering the development of a recycled water distribution project that may be used to generate or maintain Environmental Values associated with the Restoration Project or future similar projects that may be proposed by Valley District or associated with the USAR HCP. If approved by the Parties following completion of environmental review, the recycled water would be distributed by Riverside to points above and below Riverside's Regional Water Quality Control Plant ("RWQCP") as illustrated in the attached Exhibit C, attached hereto and incorporated herein by reference, and would also serve several Riverside parks and recycled water customers (collectively, the "Riverside Habitat, Parks, and Water Project" or "RHPW Project").

(b) Riverside is willing to consider delivery of water generated by the RHPW Project to the Restoration Project or similar future projects, provided the Parties are able to secure for Riverside's benefit in-lieu exchange water on a "bucket-for-bucket" basis, which in-lieu or

offset water would be provided (i) from the Bunker Hill groundwater basin through increased production and export rights approved by the basin Watermaster, in (ii) an amount equivalent to the amount of recycled water delivered by Riverside from the RHPW Project .

6. Other Provisions.

(a) The Parties agree that the full cost of the Restoration Project, its associated Riverside-Arlington Basin water supply, and the RHPW Project, and the value of the Riverside Parcels, the HCP, must be calculated (or a methodology for such calculation must be established) before the Parties' respective Board and City Council can determine whether or not to be a partner in the Restoration Project and/or to proceed with the proposed Restoration Project water supply or the RHPW Project.

(b) Valley District is responsible for evaluating the biological value of the Riverside Parcels with Riverside's review and comment, Valley District also agrees to evaluate how the Western-San Bernardino Watermaster will account for any "bucket-for-bucket" in lieu water of Riverside's recycled water or Riverside-Arlington groundwater for increased production and export rights for Riverside, Western, or related parties.

(c) Riverside agrees to prepare estimates to construct (design, specifications, construction bid package, and contract administration), and operate and maintain, the RHPW Project, subject to review and comment by Valley District. Riverside will prepare planning reports as appropriate. The Parties agree to determine criteria for equitably splitting the costs of the construction, operation, and maintenance of the facilities needed for the RHPW Project.

(d) If the Parties decide to use recycled water for the Restoration Project or similar projects, Riverside, with support from Valley District, will work to gain the Center for Biological Diversity's and regulatory agencies' support, and permission from the Regional Water Quality Control Board, to change the point of discharge and to remove 4,750 ac-ft of discharge for beneficial use from part of Riverside's 9,750 ac-ft environmental commitment discharge, from its current location at the RWQCP to selected tributaries along the main stem of the Santa Ana River, to create additional habitat for the Santa Ana Sucker and other species. The parties acknowledge that Riverside must continue to meet the requirements of the Western-San Bernardino Judgment with discharge from the RWQCP.

(e) The Parties agree to jointly pursue grant opportunities associated with the Projects.

(f) The Restoration Project and the RHPW Project have independent utility and each will require environmental review in accordance with CEQA. Valley District shall be the lead agency for the Restoration Project and Riverside shall be the Lead agency for the RHPW Project; provided, however, that because the environmental review of the Restoration Project is likely to precede the environmental review of the RHPW Project. Valley District will address the RHPW Project in the cumulative impacts analysis of the Restoration Project. Notwithstanding any other provision of this MOU, nothing herein shall commit or otherwise require either or both Parties, or be interpreted as committing or requiring either or both Parties, to approve the Projects, or any portions thereof, including any potential agreement defined herein. The Parties acknowledge and agree that each Party retains full discretionary authority with respect to approval

of its own Project, and may condition, deny, or approve its respective Project, or any portion thereof. Approval of either Project requires appropriate compliance with CEQA.

(g) The term of this MOU shall be two years from the date of full execution. Either Party may terminate this MOU for any reason upon 90-days' written notice to the other.

CITY OF RIVERSIDE

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

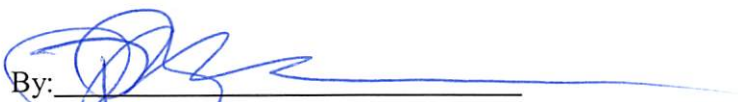
By: _____
City Manager

By: _____
Douglas Headrick, General Manager

ATTEST:

By: _____
City Clerk

Approved as to Form:

By:  _____
Deputy City Attorney

