

COOPERATIVE AGREEMENT

This Cooperative Agreement ("**AGREEMENT**") is made and entered as of _____, 20____, ("**Effective Date**") by between the Orange County Flood Control District ("**DISTRICT**"), a body corporate and politic, and the City of Corona ("**CITY**"), a municipal corporation, which are at times referred to herein individually as a "**PARTY**" and collectively as the "**PARTIES.**"

RECITALS

This AGREEMENT is made with respect to the following facts:

A. DISTRICT and the U.S. Army Corps of Engineers ("**CORPS**") entered into a Project Cooperation Agreement dated February 11, 2003 and a Second Modification to the Local Cooperation Agreement dated February 24, 2003. These agreements set forth terms for the CORPS and DISTRICT to cooperate in the construction of Santa Ana River, Prado Dam and other flood control and protection improvements, in and around the Prado Basin, commonly known as the Santa Ana River Mainstem Project ("**SARP Project**"). The SARP Project is necessary to protect the safety, health and welfare of residents and properties in Orange County from the devastating effects of major storm events, including a 190-year storm event. DISTRICT serves as the Local Sponsor, responsible for performing necessary relocations and acquisitions of property rights for the SARP Project.

B. The CORPS determined as part of the SARP Project to construct a portion of the Alcoa Dike Feature ("**Dike**"), an earthen dike roughly 7,500 feet in length and over 34 feet high, designed to reduce flood risk and thereby protect the lives and properties of public and privately owned development within Prado Basin, including heavily used roadways such as Rincon Street and Auburndale Street in the City of Corona.

C. DISTRICT wishes to acquire certain vacant land for the Dike referenced as Parcel No. E01PD-10-009, along the southeast corner of Rincon Street and Smith Street which is owned by CITY ("**CITY Property**"), as depicted in Exhibit A ("**Map**") attached hereto and made a part hereof. DISTRICT desires to acquire the CITY Property for construction of the Dike.

D. The PARTIES acknowledge the CITY Property is encumbered by CITY-owned water and sewer utility lines (collectively, "**Utility Lines**"), referenced on the Map as Items A and B. DISTRICT shall acquire the CITY Property subject to the Utility Lines and CITY easement rights related thereto. The PARTIES agree should the SARP Project require realignment of said lines, the DISTRICT shall provide subsequent instruments as needed for recordation to perfect CITY's easement rights over the realigned utilities.

E. California Department of Fish and Wildlife ("**CDFW**") approved the use of CITY Property as a compensatory mitigation site for enhancement or establishment of riparian plant communities, required due to impacts associated with the CITY's Foothill Parkway Extension Project ("**CITY Project**").

F. CITY is amenable to conveying the CITY Property to the DISTRICT for timely certification of said right-of-way for construction of the Dike, provided DISTRICT agrees to convey to the CITY a

Conservation Easement ("**Conservation Easement**"), with terms acceptable to CDFW, to satisfy CITY's compensatory mitigation requirements for the CITY Project.

G. The Conservation Easement shall apply over a portion of DISTRICT-owned property identified as Parcel E01PD-11-003 ("**REPLACEMENT Property**"), attached hereto as **Exhibit B** and made a part hereof. The PARTIES agree the Conservation Easement shall be DISTRICT'S full consideration for acquisition of fee interest in the CITY Property, satisfying its obligations under this AGREEMENT.

H. The REPLACEMENT Property is flanked by CORPS properties, available to be used as mitigation land for the SARP Project as determined by the CORPS. An analysis by the CITY's environmental consultant, ECORP Consulting, found the REPLACEMENT Property is similar in existing biological resources as that of the CITY Property. The CITY agrees the REPLACEMENT Property is a comparable replacement that will meet the CITY Project's needs, so long as such property is acceptable to CDFW as the same quality of compensatory mitigation for the City Project as the City Property would have been. CITY and DISTRICT acknowledge that the final description of the REPLACEMENT Property shall meet that portion of CITY's CDFW compensatory mitigation requirements for the CITY Project as the City Property would have met.

I. This AGREEMENT shall set forth the terms upon which DISTRICT's conveyance of the Conservation Easement would occur upon mutual approval of the REPLACEMENT Property's legal description and execution of a Conservation Easement Deed acceptable to CDFW and substantially in the form attached hereto as **Exhibit C** ("**Conservation Easement Deed**"). DISTRICT acknowledges CITY will seek concurrence of CDFW and other resource agencies (e.g. the CORPS, US Fish & Wildlife Service, etc.) prior to CITY'S acceptance of the REPLACEMENT Property. CITY and DISTRICT agree conveyance of the CITY Property to DISTRICT shall not be contingent upon, nor delayed by, obtaining CDFW concurrence of the REPLACEMENT Property transaction(s).

J. The PARTIES intend the transaction herein to result in an even exchange of real property interests with respect to the value, utility, resources, conservation and mitigation benefits of each property for each PARTY. The PARTIES are agreeable to enter into separate agreements as may be needed to carry out this AGREEMENT and an even exchange.

K. It is in the public's best interest that the PARTIES cooperate and coordinate with one another in all activities covered by the AGREEMENT to attain the objectives of both the SARP Project and CITY Project.

NOW, THEREFORE, in consideration of the promises, agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES mutually agree as follows:

1. Incorporation of Recitals. CITY and DISTRICT each agree the Recitals are accurate and are fully incorporated herein by this reference.
2. PARTY Representatives.
 - a) DISTRICT's OC Public Works Director, or an authorized designee, hereinafter referred to as "**DIRECTOR**," shall be DISTRICT's representative in all matters pertaining to this AGREEMENT.

- b) CITY designates the CITY Manager, or any subsequently authorized designee to represent CITY in all matters pertaining to this AGREEMENT.
- c) The DIRECTOR and CITY Manager hereinafter collectively referred to as the **"PARTIES REPRESENTATIVES."**

3. CITY

- a) Accepts DISTRICT's offer of a Conservation Easement over the REPLACEMENT Property in exchange for the CITY's conveyance of the CITY Property to the DISTRICT;
- b) Shall, by action of its CITY Council or its duly authorized representative, execute and acknowledge a deed substantially in the form attached hereto as **Exhibit D** ("**Grant Deed**") and by this reference incorporated herein, conveying to DISTRICT fee interest in the CITY Property;
- c) Shall deliver the executed Grant Deed to DIRECTOR within fifteen (15) business days of receipt of the Grant Deed substantially in the form of Exhibit D, with a legal description prepared by DISTRICT and approved by the CITY, whose acceptance shall not be unreasonably withheld;
- d) Shall provide to the DIRECTOR a CITY-executed and accepted Conservation Easement Deed for conveyance to the CITY, and review and approve the legal description of the REPLACEMENT Property;
- e) Shall record the fully executed Conservation Easement Deed in accordance with the terms herein, upon the PARTIES REPRESENTATIVES' mutual approval of the legal description of the REPLACEMENT Property;
- f) Shall deliver to DISTRICT a conformed copy of the recorded Conservation Easement deed; and,
- g) Agrees its acceptance of the Conservation Easement is CITY's total, just compensation for the CITY Property; and, CITY shall provide, upon request, written acknowledgement of this fact.

4. DISTRICT

- a) Shall prepare any legal descriptions required for the implementation of this AGREEMENT;
- b) Shall deliver to CITY a Grant Deed for CITY to execute as grantor in conveyance of the CITY Property to DISTRICT, substantially in the form attached hereto as **Exhibit D**;
- c) Upon receipt of the CITY-executed Grant Deed, the DIRECTOR shall execute the certificate of acceptance on behalf of DISTRICT and record the Grant

Deed in the official records of Riverside County in accordance with the terms herein;

- d) Shall deliver to the CITY Manager a conformed copy of the recorded Grant Deed;
- e) Shall prepare a legal description for the REPLACEMENT Property acceptable to the PARTIES REPRESENTATIVES;
- f) Upon DIRECTOR's receipt of a written request by the CITY, deliver an executed and acknowledged deed consistent with the Conservation Easement attached hereto as Exhibit C, for DISTRICT's conveyance of easement rights upon the REPLACEMENT Property to the CITY with the approved legal description and depiction attached; and,
- g) Agrees acceptance of the CITY Property in accordance with the terms herein is to be DISTRICT's total, just compensation for the conveyance of the Conservation Easement; and, DISTRICT shall provide, upon request, written acknowledgement of this fact.

5. Representations and Warranties. As to their respective real property, conveyances for the land swap exchange contemplated in this AGREEMENT, each PARTY:

- a) Shall provide the other Party with any documents, reports, investigations, and an executed Real Estate Transfer Disclosure Statement, upon request;
- b) Shall obtain the other PARTY's prior approval of any public notice for any conveyance proposed herein, if applicable;
- c) Makes no warranties or representations whatsoever with regard to fitness of the property being conveyed for a particular purpose;
- d) Shall accept the property to be acquired by virtue of this AGREEMENT "as is";
- e) Shall remain liable for payment of any taxes allocable to a period prior to the time title is vested in other PARTY;
- f) Shall not enter into any agreements or undertake any new obligations which will in any way burden, encumber or otherwise affect its interests in the property being conveyed, without the prior written consent of the other PARTY; and warrants that there are not unrecorded encumbrances on the property;
- g) Represents that entering into this AGREEMENT and performance hereunder and transactions contemplated hereby will not constitute a violation of any order or decree;
- h) Represents that no litigation nor governmental, administrative or regulatory act or proceeding is being proposed regarding the environmental, health, and safety aspects of the property which is being conveyed;

- i) Shall provide for their own title insurance, if desired, at their cost;
- j) Agrees the other PARTY shall not assume liability of ownership in a property until title vests in that PARTY;
- k) Shall comply with any and all regulatory requirements and/or order that apply to their respective activities and/or use of properties as contemplated by this AGREEMENT.

6. Mitigation Regional Planning Efforts. The PARTIES agree to collaborate on regional mitigation plans that encompass their respective properties and the adjacent CORPS mitigation properties, in order to implement compatible conservation strategies. CITY agrees to obtain the DIRECTOR's prior written approval for any plan affecting the REPLACEMENT Property and to accommodate DISTRICT's retained rights thereon, integrate adaptive management measures allowing PARTIES to perform vegetation management, grading and erosion control to maintain flood protection and control features.

The Conservation Easement shall include terms that will enable the CITY, upon the prior written consent of the DIRECTOR, to assign their rights to a public agency, or any other eligible entity to whom the CDFW requires the City to assign the Conservation Easement, for establishment of a mitigation or conservation bank. Upon mutual agreement of the PARTIES REPRESENTATIVES, the PARTIES may enter into an agreement enabling the creation and operation of a qualified mitigation or conservation bank with terms that provide DISTRICT and CITY equal shares in credits or offsets banked in addition to that required for the CITY Project and SARP Project, to allow the PARTIES to trade or sell their credits or offsets to others under certain conditions.

7. Hazardous Material. Each PARTY shall promptly report to the other PARTY and the PARTY REPRESENTATIVES in writing reporting any spills, fires, revocation of permits, receipts of notices of violation, reports, or other incidents involving any hazardous or toxic substance, material, or waste as defined by statute, ordinance, case law, governmental regulation or other provision of the law or which is or shall become regulated by any governmental entity or agency ("**HAZARDOUS MATERIALS**") which is, or becomes, located upon, within or under the subject parcels (including in the soil and/or in the groundwater within the area) due to operations, including, but not limited to: (i) all required reports of spills, storage, use or existence of HAZARDOUS MATERIALS, including notices of any release of HAZARDOUS MATERIALS required by Superfund, EPCRA, California Health & Safety Code Section 25359.7, or any other applicable law or regulation; (ii) all spills and other releases of HAZARDOUS MATERIALS; (iii) all fires; (iv) all notices of suspension or revocation of any permits, (v) all notices of violation from Federal, state or local authorities; (vi) all orders under the Hazardous Waste Control Act and the Hazardous Substance and Account Act, and the corresponding Federal statutes concerning investigations, compliance schedules, cleanup or other remedial action; (vii) all orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, or cleanup and abatement orders; (viii) all notices of violation from OSHA or Cal-OSHA concerning employees' exposure to HAZARDOUS MATERIALS; and (ix) all complaints and other pleadings filed related to the use, storage, disposal or release of HAZARDOUS MATERIALS on or from any of the PARTY's respective property or their activities thereon.

8. Non-waiver of Rights or Remedies. The failure of a PARTY to exercise any one or more of its rights or remedies under this AGREEMENT shall not constitute a waiver of that

PARTY's right to enforce that right or seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any PARTY to this AGREEMENT shall preclude that PARTY from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this AGREEMENT.

9. Assignability. This document may not be assigned by either PARTY without the express written consent of the other PARTY, which consent shall not be unreasonably withheld or delayed. Any attempted assignment of this AGREEMENT not in compliance with the terms of this AGREEMENT shall be null and void and shall confer no rights or benefits upon the assignee.

10. Complete Agreement/No Oral Modifications. This AGREEMENT constitutes the complete statement of the terms and conditions of this AGREEMENT and understanding between the CITY and DISTRICT and it supersedes all other prior or contemporaneous written or oral agreements, representations or understandings pertaining to the subject matter of this AGREEMENT. This AGREEMENT may be modified, but only by written amendment signed by both CITY and DISTRICT.

11. Binding Upon Successors. This AGREEMENT and each of its terms shall be binding upon CITY, DISTRICT and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Indemnification. CITY acknowledges the REPLACEMENT Property may be subject to all hazards associated with flood conditions. As to CITY's activities under this AGREEMENT within or about the REPLACEMENT Property or the Dike, CITY agrees to assume all risks, financial or otherwise, associated with such flood conditions. District acknowledges the City Property may be subject to all hazards associated with flood conditions. As to District's activities under this agreement within or about the City Property, District agrees to assume all risks, financial or otherwise, associated with such flood conditions.

To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to DISTRICT), indemnify, protect, and hold harmless DISTRICT, the County of Orange and the CORPS, their elected and appointed officials, officers, employees, agents, and those special districts and agencies which DISTRICT's Board of Supervisors acts as the governing Board (collectively and individually the "**DISTRICT INDEMNIFIED PARTIES**"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, tortious, contractual, condemnation, inverse condemnation, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "**CLAIMS**"), including but not limited to CLAIMS arising from injuries to or death of persons (CITY's officers, directors, employees, contractors, invitees and agents included), for damage to property or from any violation of any federal, state, or local law or ordinance, alleged to be proximately caused by the negligent acts, omissions or willful misconduct of CITY, or any of the CITY INDEMNIFIED PARTIES, as defined below, and their invitees in connection with or arising out of the transactions contemplated herein, or the CITY's breach of this AGREEMENT.

To the fullest extent permitted by law, DISTRICT shall defend (at DISTRICT's sole cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold harmless CITY, and its elected and appointed officials, officers, employees and agents (collectively and

individually the “**CITY INDEMNIFIED PARTIES**”), from and against any and all CLAIMS, including but not limited to CLAIMS arising from injuries to or death of persons (DISTRICT’s officers, directors, employees, and agents included), for damage to property or from any violation of any federal, state, or local law or ordinance, alleged to be proximately caused by the negligent acts, omissions, or willful misconduct of DISTRICT or any of the DISTRICT INDEMNIFIED PARTIES, as defined above, and their invitees in connection with or arising out of the transactions contemplated herein, or DISTRICT’s breach of this AGREEMENT.

Provided, however, that neither PARTY shall have an obligation to defend, indemnify and hold harmless the other PARTY if the CLAIMS and suits brought against that PARTY are the result of the sole negligence, actions or omissions of that PARTY.

If judgment is entered against CITY and DISTRICT by a court of competent jurisdiction because of the concurrent active negligence of CITY and DISTRICT, the PARTIES agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment. CITY agrees DISTRICT and/or CORPS shall not be deemed negligent if operating in substantial conformance with standard practices for similar DISTRICT and/or CORPS’ flood protection features or facilities.

13. Attorneys’ Fees. In the event that any legal or equitable action or proceeding, including arbitration, is commenced by either CITY or the DISTRICT against the other to enforce or interpret this AGREEMENT, each PARTY shall bear its own attorneys’ fees, litigation and collection expenses, witness fees, court costs, filing fees, service fees, deposition costs, and arbitration costs; unless specifically authorized by statute

14. Jurisdiction and Venue. This AGREEMENT is executed and is to be performed in the City of Corona, Riverside County, California, and any action or proceeding brought relative to this AGREEMENT shall be heard in the appropriate court in the County of Riverside, California. CITY and DISTRICT each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Time is of the Essence. Except as otherwise expressly stated, time is of the essence in the performance of every act required pursuant to this AGREEMENT.

16. Covenant of Further Assurances. CITY and DISTRICT shall take all other actions and execute all other documents, which are reasonably necessary to effectuate this AGREEMENT.

17. Interpretation. CITY and DISTRICT agree that this AGREEMENT is the product of mutual negotiations and is an arms-length transaction. Each PARTY has negotiated this AGREEMENT with the advice and assistance of legal counsel of its own choosing.

It is further agreed that this document is a product of mutual drafting efforts by both the CITY and DISTRICT and, accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this AGREEMENT. In construing and interpreting this AGREEMENT, the finder of fact shall give effect to the mutual intention of the CITY and DISTRICT, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this AGREEMENT is made and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the CITY and DISTRICT.

18. Severability. If any term or provision of this AGREEMENT is found to be invalid or unenforceable, CITY and DISTRICT both agree that they would have executed this AGREEMENT notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the AGREEMENT and the remainder of the AGREEMENT may be enforced in its entirety.

19. Headings. The headings of each Section are for the purpose of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

20. Representations and Authority. Each individual party signing this AGREEMENT on behalf of a PARTY hereby represents and warrants to the other PARTY that all necessary legal prerequisites to that party's execution of this AGREEMENT have been satisfied and that he or she has been authorized to sign this AGREEMENT and bind the PARTY on whose behalf he or she signs.

21. Notices. Notices required under this AGREEMENT shall be sent to the following:

If to CITY: Nelson D. Nelson, P.E.
Public Works Department
City of Corona
400 S. Vicentia Avenue, Ste. 215
Corona, CA 92882
Facsimile No. (951) 279-3627

If to DISTRICT: Shane L. Silsby
Director, OC Public Works
County of Orange
P. O. Box 4048
Santa Ana, CA 92702-4048
Facsimile No. (714) 967-0876

Notices given pursuant to this AGREEMENT shall be deemed received as follows:

- a) United States Mail: Five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- b) Facsimile: Upon transmission and actual receipt by the receiving party.
- c) Express courier service or hand delivery: On date of receipt by receiving party.

The addresses for notices set forth in this Section 21 may be changed upon written notice of such change to either CITY or DISTRICT, as appropriate.

22. Days. Unless otherwise specified to the contrary, "days" in this AGREEMENT shall mean calendar days, and shall not mean business days.

23. Execution in Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall

constitute one agreement. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile counterparts of the signature pages.

24. Exhibits: This AGREEMENT incorporates by this reference, the following which are attached hereto:

- a) Exhibit A - MAP - City Property
- b) Exhibit B - MAP - REPLACEMENT Property
- c) Exhibit C - Conservation Easement Deed
- d) Exhibit D - Grant Deed for CITY Property

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives as of the date set forth below.

CITY OF CORONA,
a municipal corporation

Date: _____

By: _____
City Manager

Attest:

**APPROVED AS TO FORM
CITY ATTORNEY
CORONA, CALIFORNIA**

By: _____
City Clerk Date

By: Janie Raymond
City Attorney Date 7/20/18

**ORANGE COUNTY FLOOD
CONTROL DISTRICT,**
a body corporate and politic

Date: _____

By: _____
Chair, Board of Supervisors

**Signed and certified that a
copy of this document has been
delivered to the Chair of the Board
per G.C. Sec 25103, Reso 79-1535**

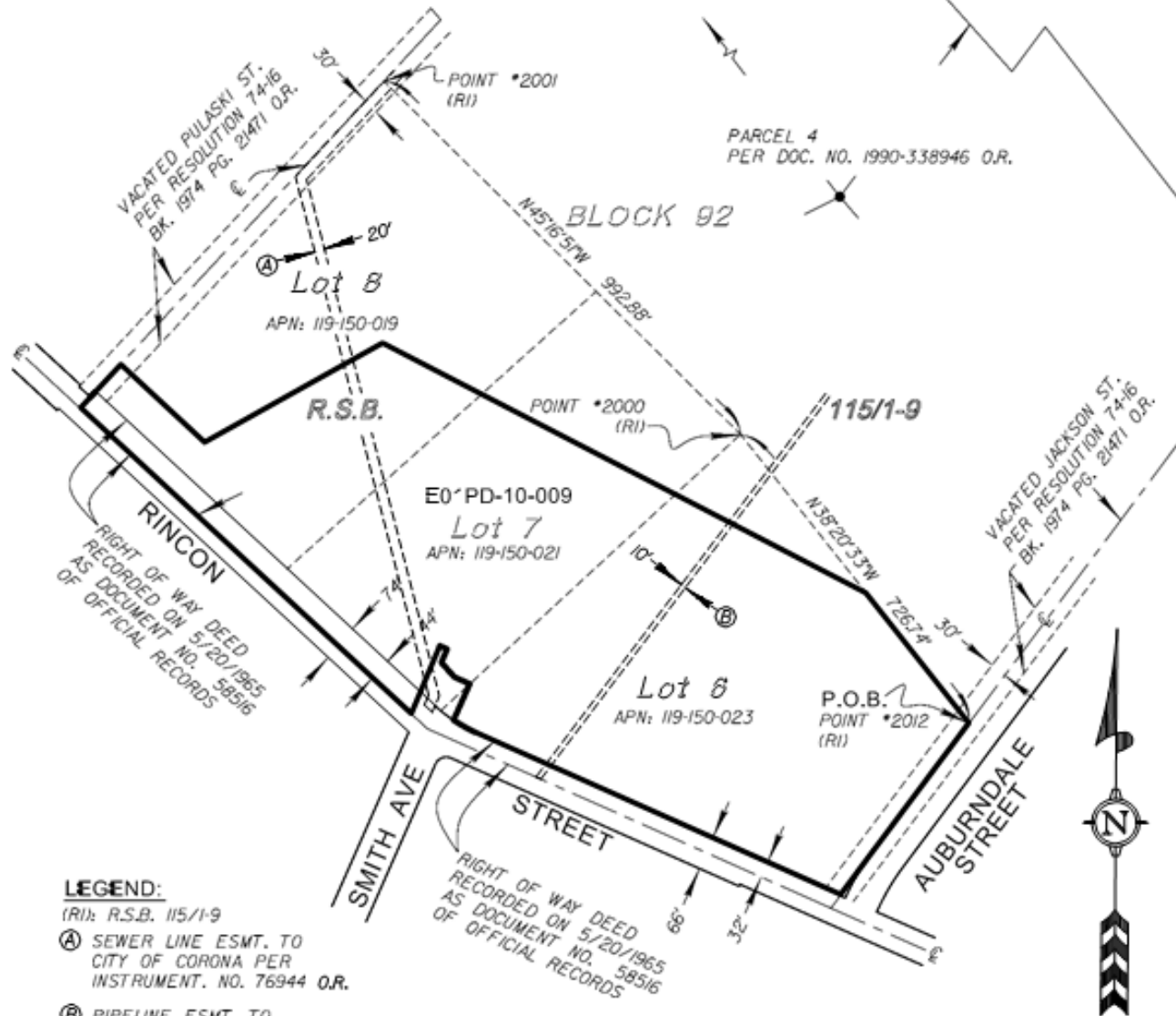
Attest:

By: _____
ROBIN STIELER
Clerk of the Board of Supervisors of the
Orange County Flood Control District,
Orange County, California

**APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA**

By: _____
Deputy Date

CITY OF CORONA
AUBURDALE COLONY AND TOWNSITE
BOOK 6, PAGE 20 OF MAPS



COUNTY OF RIVERSIDE



OC PUBLIC WORKS
OC SURVEY
RIGHT-OF-WAY SERVICES

ROW ID NO. 2009-060

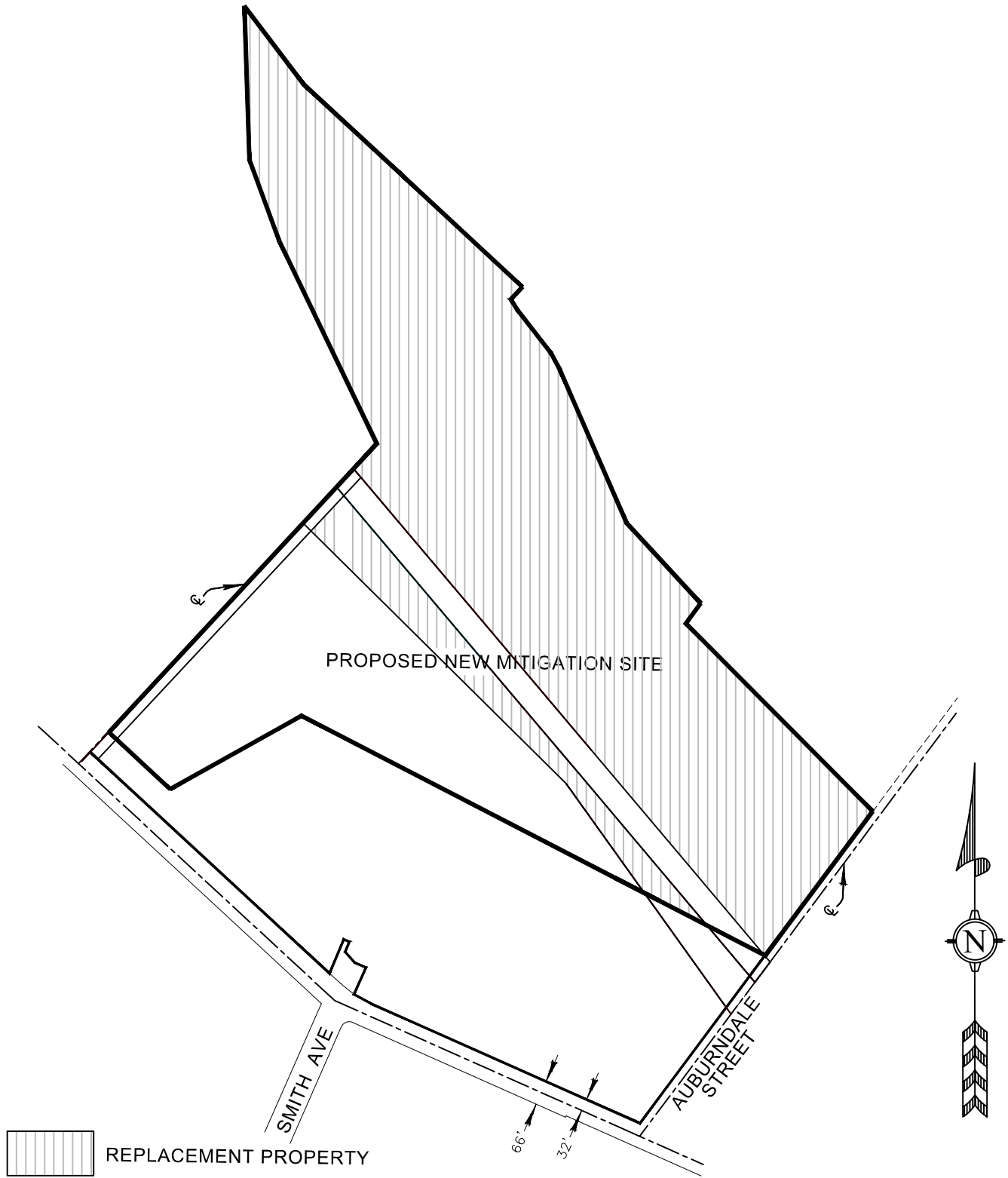
SCALE: 1" = 300'

EXHIBIT A

E01PD-10-009

PROJECT: SARP ALCOA DIKE - CITY OF CORONA PARCEL

PREPARED BY:
J. VILLALOBOS



REPLACEMENT PROPERTY EXHIBIT B

SCALE: NONE

Exhibit C – Conservation Easement

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

City of Corona
400 S. Vicentia Avenue, Ste. 215
Corona, CA 92882
Attn: Public Works Department

MAIL TAX STATEMENTS TO: (Same as above)
A. P. Nos:

This is to certify that this document is exempt from recording fees per Govt. Code Sec. 27383 and is exempt from Document Transfer Tax per Rev. & Taxation Code Section 11922.

Parcel No: E01PD-11-003
Project Name: Santa Ana River - Prado Dam (Alcoa Dike)

CONSERVATION EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt and adequacy of which is hereby acknowledged,

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic, hereinafter referred to as “**DISTRICT**”

does hereby voluntarily convey to the

CITY OF CORONA
a municipal corporation, hereinafter referred to as “**GRANTEE**”,

a Conservation Easement for open space, wildlife habitat and passive access purposes, in, on and over that certain real property (“Easement Area”) in the County of Riverside, State of California, legally described in **Exhibit A** and illustrated in **Exhibit B**, which Exhibits are attached hereto and made a part hereof. DISTRICT and GRANTEE are at times referred to herein individually as a “**PARTY**” and collectively as the “**PARTIES**.”

This CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of _____, 20____, by the PARTIES with reference to the following facts:

RECITALS

- A. DISTRICT is the sole owner in fee simple of certain real property containing the Easement Area and designated Assessor’s Parcel Number(s) _____.
- B. The Easement Area possesses wildlife and habitat values of great importance to GRANTEE, the people of the State of California and the people of the United States. The Easement Area provides, or will provide high quality natural, established, restored and/or enhanced habitat for riparian plant communities and contains, or will contain, _____. Individually and

collectively, these wildlife and habitat values comprise the “Conservation Values” of the Easement Area.

- C. The Easement Area is situated immediately adjacent to portions of an earthen feature, the Alcoa Dike (“Dike”) on DISTRICT Parcel No. E01PD-11-003, constructed by the U.S. Army Corps of Engineers (“CORPS”) to augment existing perimeter dikes around the Prado Basin in order to increase the reservoir storage capacity of Prado Dam and its ability to release of 30,000 cfs flows into the downstream channels. The Dike is intended to function as a buffer, protecting lives and properties of public and privately owned development in City of Corona, from potential effects of inundation and flooding due to the increased volume and elevation of water behind the Prado Dam.
- D. The Parties acknowledge the Easement Area is subject to occasional overflow, flooding, inundation and submersion in connection with the Dike, Prado Dam and CORPS Santa Ana River Mainstem Project operation and maintenance.
- E. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802.
- F. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.
- G. This Conservation Easement is granted pursuant to the Cooperative Agreement entered into by and between DISTRICT and Grantee on _____, 2018.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815, *et seq.*, DISTRICT hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Easement Area will be retained forever in its natural, restored, or enhanced condition as contemplated by the herein, and as may be specifically provided in a plan signed by DISTRICT and GRANTEE to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. DISTRICT and GRANTEE intend that this Conservation Easement will confine the use of the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with this Conservation Easement as may be specifically provided in a plan signed by DISTRICT’S Director of OC Public Works or designee (“Director”) and GRANTEE’S City Manager or designee (“Manager”).

Grantee's Rights.

To accomplish the purposes of this Conservation Easement, DISTRICT hereby grants and conveys the following rights to Grantee:

To preserve and protect the Conservation Values of the Easement Area.

To enter the Easement Area at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement and to implement activities that have not been implemented per this Conservation Easement as specified by a plan signed by DISTRICT and GRANTEE, provided that Grantee shall not unreasonably interfere with DISTRICT's authorized use and quiet enjoyment of the Easement Area.

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

To require that all mineral, air and water rights held by Grantee which are necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area, shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement.

All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished and may not be used on or transferred to any portion of the Easement Area, nor any other property adjacent or otherwise.

Third-Party Beneficiaries.

DISTRICT and Grantee acknowledge that the CDFW and USFWS (hereinafter individually referred to a "Third-Party Beneficiary" and collectively as the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of its provisions and all other rights and remedies of the Grantee under this Conservation Easement. Upon mutual written agreement by the PARTIES, other parties may be acknowledged as Third-Party Beneficiaries and authorized to implement this Conservation Easement as set forth herein.

3. Prohibited Uses.

Any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by DISTRICT and Grantee, their respective agents, and third parties are expressly prohibited:

- a) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values or otherwise interfere with the purposes of this Conservation Easement, except for vegetation management, grading and erosion control to maintain flood protection and control features as may be specifically provided in a plan signed by the PARTIES.
- b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except as may be specifically provided in a plan signed by DISTRICT and GRANTEE.

- c) Agricultural activity of any kind except for vegetation management activities as may be specifically provided in a plan signed by the PARTIES.
- d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except such activities as are consistent with the purposes of this Conservation Easement as may be specifically provided in the a plan signed by the PARTIES.
- e) Commercial, industrial, residential, or institutional structures or uses.
- f) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, billboard or sign, or any other structure or improvement of any kind, except as may be specifically provided in a plan signed by the PARTIES.
- g) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
- h) Planting, introduction or dispersion of non-native or exotic plant or animal species.
- i) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Easement Area, or granting or authorizing surface entry for any of these purposes.
- j) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, or paving or otherwise covering any portion of the Easement Area except as may be specifically provided in the a plan signed by the PARTIES.
- k) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in accordance with a plan approved in writing by the Signatory Agencies for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except as may be specifically provided in a plan signed by DISTRICT and GRANTEE.
- l) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as may be specifically provided in a plan signed by the PARTIES.

Without the prior written consent of the PARTIES, which neither may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; 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 Easement Area, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement.

Notwithstanding, DISTRICT hereby reserves a perpetual and assignable right, power, privilege and easement to occasionally overflow, flood and/or submerge, the Easement Area in connection with

operation and maintenance of the Prado Dam-Alcoa Dike Project, as authorized by the Act of Congress, including the right to cause, without limitation, erosion and/or deposition and associated damages to said real property and any and all structures and improvements situated thereon, in connection with the operation, maintenance, repair, rehabilitation, restoration and improvement of the Prado Dam and basin and the Alcoa Dike when completed, together with all right, title and interest in and to the structures and improvements now situated on said real property excepting, if any, provided that no structures for human habitation shall be constructed or maintained on said real property, except as may be approved in writing by the authorized representative of the DISTRICT, and that no excavation, drilling or mining shall be conducted and no landfill, and/or manure pile or urine pond be placed on said real property without such approval as to the location and method of excavation, drilling, mining, and/or placement of landfill and/or manure pile, urine pond, etc.; provided further, however, that this easement is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the GRANTEE, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of said real property shall be subject to all applicable laws including, but not limited, to laws regarding the environment and pollution.

Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to DISTRICT, the Easement Area, or the use or activity in question. The Easement Area shall be subject to Federal and State laws with respect to pollution.

4. Grantee's Duties.

To ensure the purposes of this Conservation Easement as described herein are being accomplished, Grantee and its successors and assigns shall:

a) Perform any compliance monitoring inspections and prepare written reports on the results of the compliance monitoring inspections if required of the Easement Area for any third party or regulatory compliance purpose; and

b) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area or that are otherwise inconsistent with this Conservation Easement. In addition, Grantee shall undertake all necessary actions to perfect and defend Grantee's rights under this Conservation Easement, and to observe and carry out the obligations of Grantee under any plan signed by the PARTIES for the Easement Area.

5. Reserved Rights.

DISTRICT further reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the underlying property, including the right to engage in or permit or invite others to engage in all uses of the Easement Area, that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

6. Grantee's Remedies.

(a) Grantee, and authorized Third-Party Beneficiaries, may give written notices to parties if any violation of this Conservation Easement has occurred or is threatened and demand in writing the cure of such violation ("Notice of Violation").

(b) If a party fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and that party fails

to begin the cure within the thirty (30)-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 Easement Area; 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 Easement Area to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

(c) If Grantee, in its Manager's sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Easement Area, Grantee may pursue its remedies under this Conservation Easement without prior notice to DISTRICT 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 this Conservation Easement. Grantee shall notify the DISTRICT within 30 days of such an occurrence.

(d) If Grantee's remedies at law for any violation of this Conservation Easement are inadequate, Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(e) If a PARTY receives a Notice of Violation with which it is impossible, unattainable, unachievable or unfeasible to comply consistent with any prior uncured Notice(s) of Violation, that PARTY shall give written notice of the conflict ("Notice of Conflict") to the entity or entities that gave said Notice of Violation within thirty (30) days of receipt of the conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible or is otherwise unattainable, unachievable or unfeasible. Upon giving a valid Notice of Conflict, a PARTY shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities that gave said conflicting Notices of Violation give revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, a PARTY shall comply with such notice within the time period(s) described herein.

7. Costs of Enforcement.

Grantee shall bear all costs incurred by DISTRICT or an authorized Third Party Beneficiary, where DISTRICT or that authorized Third Party Beneficiary is the prevailing party, in enforcing the terms of this Conservation Easement. 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 Grantee's negligence or breach of this Conservation Easement.

8. Waiver of Rights.

The failure of a PARTY to insist upon strict performance of any of the terms, covenants, or conditions of this Conservation Easement shall not be deemed a waiver of any right or remedy that PARTY may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Conservation Easement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Conservation Easement.

No delay or omission by a PARTY in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

9. Acts Beyond DISTRICT's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee, the Third Party Beneficiaries or any third party to bring any action against DISTRICT for any injury to or change in the Easement Area resulting from (a) any natural cause beyond DISTRICT's control, including, without limitation, fire not caused by DISTRICT, flood, storm, and earth movement, or any prudent action taken by DISTRICT under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes; or (b) acts by Grantee, Third Party Beneficiaries or their respective employees or agents.

10. Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by authorized Third-Party Beneficiaries, provided DISTRICT has prior written notice of that Third-Party Beneficiary's authorization. These enforcement rights are in addition to, and do not limit, the rights of enforcement under ancillary instruments and plans as may be entered into by the PARTIES. If at any time in the future DISTRICT, Grantee or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Easement Area for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General, the other Party, and authorized Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

11. Access.

This Conservation Easement does not convey a general right of access to the public.

12. Costs and Liabilities.

Grantee shall bear all responsibilities, costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area for the purposes of this Conservation Easement. Grantee agrees that DISTRICT shall not have any duty or responsibility for the operation, upkeep or maintenance of the Easement Area, or the protection of the public or any third parties from risks relating to conditions on the Easement Area. Grantee shall be solely responsible for obtaining any applicable governmental permits and approvals required 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, codes, ordinances, rules, regulations, orders and requirements.

13. Taxes; No Liens.

Should this Conservation Easement create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Easement Area or upon fixtures, equipment, or other property installed, constructed or used by Grantee thereon in connection with this Conservation Easement, shall be the full responsibility of Grantee, and Grantee shall cause said taxes and assessments to be paid promptly when due.

The Parties shall keep the Easement Area free from any liens, including those arising out of any obligations for any labor or materials furnished or alleged to have been furnished to or for a Party at or for use on the Easement Area.

14. Hold Harmless.

Grantee acknowledges that the Easement Area lies in, on or about the Dike and may be subject to all hazards associated with flood conditions and operations, and Grantee agrees to assume all risks, financial or otherwise, associated therewith.

Grantee hereby releases and waives all claims and recourse against DISTRICT and the County of Orange ("County"), in any way connected with or related to this Easement Deed including any damage to or interruption of use of the Easement Area or Grantee's improvements, installations, mitigation efforts, or planting caused by erosion, overflow, inundation, submersion or flood conditions of the Dike or Santa Ana River, or by DISTRICT and/or CORPS operations, except claims arising from the active or sole negligence of DISTRICT, County and/or CORPS, and their respective officers, agents, employees and contractors.

Grantee hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and County, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the use or activities conducted in, on, or over the Easement Area by Grantee, its agents, officers, employees, invitees or licensees, except for liability arising out of the concurrent active or sole negligence of DISTRICT, and/or County, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is/are named as co-defendant(s) in a lawsuit, Grantee shall notify DISTRICT of such fact and shall represent DISTRICT/County in such legal action unless DISTRICT/County undertake(s) to represent itself/themselves as co-defendant(s) in such legal action, in which event, Grantee shall pay to DISTRICT/County its/their litigation costs, expenses, and attorneys' fees. Payment shall not be a condition precedent to recovery under the foregoing indemnity. If judgment is entered against DISTRICT/County and Grantee by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/County and Grantee, DISTRICT and Grantee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Grantee acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.

Grantee, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this section.

15. Transfer of Conservation Easement or Easement Area.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the DISTRICT or successor of the DISTRICT, which approval shall not be unreasonably withheld or delayed, but Grantee shall give DISTRICT at least sixty (60) days prior written notice of the proposed assignment or transfer.

16. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the

Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless DISTRICT and Grantee, otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

17. Notices.

Any notice, demand, request, consent, approval, or other communication that DISTRICT or Grantee 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 United States mail, postage fully prepaid, addressed as follows:

To DISTRICT: Shane L. Silsby
Director, OC Public Works
County of Orange
P. O. Box 4048
Santa Ana, CA 92702-4048
Facsimile No. (714) 967-0876

To GRANTEE: Nelson D. Nelson, P.E.
Public Works Department
City of Corona
400 S. Vicentia Avenue, Ste. 215
Corona, CA 92882
Facsimile No. (951) 279-3627

or to such other address as a party shall designate by written notice to DISTRICT and Grantee. 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.

18. Amendment.

This Conservation Easement may be amended by DISTRICT and GRANTEE only by mutual written agreement and written approval which approval shall not be unreasonably withheld or delayed. The Director may execute on behalf of DISTRICT amendments for non-monetary changes.

19. Additional Provisions.

a) Interpretation.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement. The Parties agree that this Conservation Easement is the product of mutual negotiations and is an arms-length transaction. Each Party has negotiated this Conservation Easement with the advice and assistance of legal counsel of its own choosing.

It is further agreed that this document is a product of mutual drafting efforts by both the Grantee and DISTRICT, accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Conservation Easement. In construing and interpreting this Conservation Easement, the finder of fact shall give effect to the mutual intention of DISTRICT and Grantee, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this Conservation Easement is made and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the Parties.

b) Severability.

If any term or provision of this Conservation Easement is found to be invalid or unenforceable, the Parties both agree that they would have executed this Conservation Easement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Conservation Easement and the remainder of the Conservation Easement may be enforced in its entirety.

c) Entire Agreement.

This instrument (including its exhibits and Plans or permits approved or issued by the Parties to implement this easement) together set forth the entire agreement of DISTRICT and Grantee with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements of such parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with the terms herein.

d) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Easement Area.

e) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Easement Area, except that liability for acts, omissions or breaches 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) Hazardous Material.

Each Party shall promptly report to the other Party in writing reporting any spills, fires, revocation of permits, receipts of notices of violation, reports, or other incidents involving any hazardous or toxic substance, material, or waste as defined by statute, ordinance, case law, governmental regulation or other provision of the law or which is or shall become regulated by any governmental entity or agency ("Hazardous Material" as more specifically defined below) which is, or becomes, located upon, within or under the Conservation Easement (including in the soil and/or in the groundwater within the area) due to operations, including, but not limited to: (i) all required reports of spills, storage, use or existence of Hazardous Materials, including notices of any release of Hazardous Materials required by Superfund, EPCRA, California Health & Safety Code Section 25359.7, or any other applicable law or regulation; (ii) all spills and other releases of Hazardous Materials; (iii) all fires; (iv) all notices of suspension or revocation of any permits, (v) all notices of violation from Federal, state or local authorities; (vi) all orders under the Hazardous Waste Control Act and the Hazardous Substance and Account Act, and the corresponding Federal statutes concerning investigations, compliance schedules, cleanup or other remedial action; (vii) all orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, or cleanup and abatement orders; (viii) all notices of violation from OSHA or Cal-OSHA concerning employees' exposure to Hazardous Material; and (ix) all complaints and other pleadings filed related to the use, storage, disposal or release of Hazardous Materials on or from any of the FACILITIES.

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, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 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. The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, 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.

IN WITNESS WHEREOF, DISTRICT has executed this Conservation Easement Deed as of the day and year first above written.

DISTRICT:

ORANGE COUNTY FLOOD CONTROL DISTRICT, a
body corporate and politic

Dated: _____

By: _____
Shane L. Silsby, Director
OC Public Works
Per Minute Order dated _____

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____
Deputy Date

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20 ____ before me, _____, personally
(insert name/title of officer)

appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

CERTIFICATE OF ACCEPTANCE

[CITY TO INSERT ITS CERTIFICATE OF ACCEPTANCE FORM]

Exhibit A – Legal Description Placeholder

Placeholder for Exhibit B – Depiction of Legal Description for Conservation Easement Deed

Exhibit D – Grant Deed

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF CORONA

a municipal corporation hereinafter referred to as "**GRANTOR**",

does hereby GRANT to the

ORANGE COUNTY FLOOD CONTROL DISTRICT,

a body corporate and politic, hereinafter referred to as "**DISTRICT**",

the fee interest, including but not limited to the existing water well and well pump equipment located on the property, in the real property situated in the County of Riverside, State of California, described in **Exhibit "A"** and illustrated in **Exhibit "B"**, which exhibits are attached hereto and by reference made a part hereof.

Nothing in this Deed is intended nor shall anything in this Deed be construed to transfer to DISTRICT or its successors or assigns or to relieve GRANTOR or its successors or assigns or predecessors in title of any responsibility or liability GRANTOR or its successors or assigns or predecessors in title now has, has had or comes to have with respect to human health or the environment, including but not limited to responsibility or liability relating to hazardous or toxic substances or materials (as such terms as those used in this sentence are defined by statute, ordinance, case law, governmental regulation or other provision of the law). Furthermore, DISTRICT may exercise its rights under law to bring action, if necessary, to recover clean-up costs and penalties paid, if any, from GRANTOR or any others who are ultimately determined by a court of competent jurisdiction and/or a federal, state or local regulatory or administrative governmental agency or body having jurisdiction, to have responsibility for said hazardous toxic substances or materials upon, within, or under the real property interests transferred pursuant to this Deed. Notwithstanding the foregoing, DISTRICT shall be and remain liable for any hazardous or toxic substances or materials which become located, because of DISTRICT's operations, upon, within, or under the real property interests transferred pursuant to this Deed.

GRANTOR:

City of Corona, a municipal corporation

Dated: _____

By: _____

**APPROVED AS TO FORM
CITY ATTORNEY
CORONA, CALIFORNIA**

By: _____
City Attorney Date

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20 ____ before me, _____, personally
(insert name/title of officer)
appeared_____.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, is hereby accepted by order of the Board of Supervisors of the County of Orange, California, acting as the governing board of the ORANGE COUNTY FLOOD CONTROL DISTRICT, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

ORANGE COUNTY FLOOD CONTROL
DISTRICT,
a body corporate and politic

Dated: _____

By: _____
Shane L. Silsby, Director
OC Public Works
Per Minute Order dated _____

Approved as to Form
Office of the County Counsel
Orange County, California

By: _____
Deputy Date

EXHIBIT A

LEGAL DESCRIPTION

Santa Ana River – Prado Dam

Facility No.: E01PD

Parcel No.: 10-009

That certain portion land in the City of Corona, County of Riverside, State of California, over Parcel 4 as described in grant deed to the City of Corona, recorded September 12, 1990 as Document No. 1990-338946 of Official Records in the office of the County Recorder of said county, described as follows:

Beginning at the southeasterly prolongation of the northeasterly line of Lot 6, Block 92, of map of Auburndale Colony and Townsite, filed in Book 6, Page 20 of Maps in the office of the County Recorder of San Bernardino county, to its intersection with the centerline of Jackson Street (vacated); said intersection shown as Point # 2012 on map filed in Book 115, Pages 1 through 9 of Records of Survey, in said office of the County Recorder of Riverside County;

thence along said prolongation and northeasterly line North 38°20'33" West, 328.37 feet;

thence leaving said northeasterly line North 62°39'09" West, 1075.22 feet;

thence South 60°50'54" West, 403.11 feet;

thence North 47°06'35" West, 225.97 feet to the centerline of Pulaski Street (vacated) as shown on said Record of Survey;

thence along the centerline of Pulaski Street South 42°53'39" West, 116.78 feet to its intersection with the centerline of Rincon Street as shown on said Record of Survey;

thence along said centerline South 47°13'46" East, 890.59 feet to its intersection with the southwesterly prolongation of the northwesterly line of Parcel "A" as described in a grant of easement to Southern California Edison Company, recorded April 13, 2007 as Document No. 2007-0252540 of Official Records in last said office of the County Recorder;

thence along last said prolongation and northwesterly line North 22°46'32" East, 145.40 feet;

thence continuing along the boundary line of said Parcel "A" the following two courses:

- 1) South 67°13'28" East, 16.00 feet; and
- 2) South 22°46'32" West, 29.09 feet to the most northerly corner of Parcel "B" as described in said grant of easement;

thence continuing along the generally easterly line of last said parcel the following three courses:

- 1) South 41°28'35" East, 38.41 feet;
- 2) South 66°13'27" East, 33.21 feet; and

3) South $24^{\circ}01'47''$ West, 78.38 feet to its intersection with the northeasterly line of Rincon Street as described in the right of way deed to the City of Corona, recorded May 20, 1965 as Document No. 58516 of Official Records in said office of the County Recorder, said intersection being the beginning of a non-tangent curve concave northeasterly and having a radius of 300.00 feet, a radial line to said intersection bears South $33^{\circ}59'46''$ West;

thence southeasterly along said curve a distance of 52.45 feet through a central angle of $10^{\circ}01'03''$;

thence continuing along said northeasterly line of Rincon Street South $66^{\circ}01'17''$ East, 787.15 feet to its intersection with the centerline of Jackson Street as shown on said Record of Survey;


thence along said centerline North $36^{\circ}44'27''$ East, 423.53 feet to the Point of Beginning.

Containing 19.485 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

Kevin Hills, County Surveyor, L.S. 6617


By: Raymond J. Rivera, L.S. 8324

Date:





