

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Rivers & Lands Conservancy  
c/o J. Matthew Wilcox, Esq.  
Gresham Savage Nolan & Tilden  
550 East Hospitality Lane, Suite 300  
San Bernardino, CA 92408

## CONSERVATION EASEMENT

This CONSERVATION EASEMENT (**Conservation Easement**) is made this \_\_\_\_ day of \_\_\_\_\_, 2019 by EASTERN MUNICIPAL WATER DISTRICT, a municipal water district (**Grantor**), in favor of the RIVERS & LANDS CONSERVANCY, a California non-profit corporation (**Grantee**).

### RECITALS

A. Grantor is the sole owner in fee simple of real property containing approximately 2.5 acres, located in the City of Murrieta, County of Riverside, State of California, designated Assessor's Parcel Number 948-210-007 (the **Property**). The Property is legally described on **Exhibit A** attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over a 2.2 acre portion of the Property (the **Easement Area**). The Easement Area is legally described on **Exhibit B** and depicted on **Exhibit B-1** attached hereto and incorporated by this reference.

B. The Easement Area provides, among other things, compensatory mitigation for unavoidable impacts associated with Grantor's Murrieta Area Sewer Improvement Project (**Project**) pursuant to requirements of the California Department of Fish and Wildlife (**Department**) Section 1602 Streambed Alteration Agreement No. 1600-2008-0115-R6 and any amendments thereto (the **Section 1602 Permit**).

C. This Conservation Easement is designed to satisfy and is granted in satisfaction of the Section 1602 Permit.

D. Consistent with the terms and conditions of this Conservation Easement, the Easement Area is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, **Conservation Values**). The Conservation Values protect riparian habitat in open space contributing to the scenic beauty of the City of Murrieta and providing for the preservation of natural resources. The drainage course within the site supports wetlands that provide floodwater storage, water filtration, groundwater recharge, sediment retention, wildlife habitat, retention and treatment of pollutants, and nutrient cycling. The wetlands

and adjacent upland buffer of the conservation easement area provide water quality protection for Murrieta Creek and other downstream water bodies.

E. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3 specifically, Grantee is a tax exempt non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California which has as its primary purpose the preservation of land in its natural, scenic, forested or open space condition or use.

F. The Department is the State agency charged with regulatory authority over conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species pursuant to the California Fish and Game Code, and is a third party beneficiary of this Conservation Easement.

### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee and its successors or assigns, as appropriate, a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth. This Conservation Easement shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purpose.

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

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

- (i) Activities described in Sections 4-6 herein; and
- (ii) Changes occurring over time not caused by a violation of this Conservation Easement.

(c) To the best of the Grantor's knowledge, Grantor represents and warrants

that there are no structures or improvements existing on the Easement Area at the time this grant is executed, except for the: (i) storm drain outlet, (ii) concrete fill in stream (to cover an existing utility line), (iii) existing road (as hereinafter defined), and (iv) chain link fence around the north side of the existing stream. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purpose of this Conservation Easement as evidenced by the Title Report(s) attached at **Exhibit C**. The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit D**, showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and to the Department consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

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

(e) The term “**Biological Monitor**” shall mean a qualified third party consultant with successful habitat restoration experience and knowledge of aquatic resources in the County in which the Property is located, and expertise in the field of biology or related field.

2. Grantee’s Rights. To accomplish the Purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee. These rights, without obligation, are also granted to the Department as a third party beneficiary of this Conservation Easement:

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

(b) To enter upon the Easement Area and Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement;

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any action or any use that is inconsistent with the Purpose of this Conservation Easement;

(d) All mineral, air, and water rights necessary to protect and to sustain the biological resources of the Easement Area, provided that any exercise of such rights by Grantee shall not result in conflict with such Conservation Values;

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished and such

present and future development rights may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise; and

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

3. **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the Purpose of this Conservation Easement and not reserved as a right of Grantor is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor, Grantee, and their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on the Easement Area except as otherwise provided herein or unless specifically provided for in the Section 1602 Permit and any easements and reservations of rights recorded in the chain of title to the Easement Area at the time of this conveyance (as set forth on **Exhibits C and D** hereto):

(a) Unseasonable or supplemental watering except for habitat enhancement activities described in Section 6(b);

(b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except pursuant to Section 16;

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

(d) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

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

(f) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;

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

(h) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(i) Construction, reconstruction or placement of any building, road, wireless communication cell towers, or any other structure or improvement, except as provided for in Section 6, or any billboard or sign except those signs saying “Natural Area Open Space,” “Protected Natural Area,” or similar descriptions that inform persons of the nature and restrictions on the Property;

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

(k) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extraction of minerals, loam, gravel, soil, rock, sand, or other material on or below the surface of the Easement Area;

(m) Altering the general topography of the Easement Area, including but not limited to building of roads, trails, and flood control work; except as permitted by the Section 1602 Permit, or as necessary to implement any right reserved in Section 6, or Section 16;

(n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials as set forth in Section 6(e), (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, or (4) activities described in Section 4, Section 6, or Section 16;

(o) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as provided for in Section 6, the Section 1602 Permit;

(p) Causing a change in the hydrology of the Easement Area that is detrimental to the Conservation Values of the Easement Area;

(q) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones except as provided for in Section 6;

(r) Transferring, encumbering, selling, leasing, or otherwise separating the mineral rights 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;

(s) Creation of any encumbrance superior to this Conservation Easement, other than those encumbrances set forth in **Exhibit C** hereto, or the recording of any involuntary lien (which is not released within thirty calendar days), or the granting of any lease, license or similar possessory interest in the Easement Area which will affect the Conservation Values of the Easement Area;

(t) Transferring, encumbering, selling, leasing, or otherwise separating the portion of mineral rights or water rights that sustain the biological resources of 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 necessary to sustain, the biological resources of the Easement Area; and

(u) Any and all other activities and uses which may adversely affect the purpose of this Conservation Easement.

No use shall be made of the Easement Area, and no activity thereon shall be permitted that is or is likely to become inconsistent with the Purpose of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose of this Conservation Easement. Grantee, in consultation with the Department may determine whether (i) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement, or (ii) alterations in existing uses or structures, are consistent with the Purpose of this Conservation Easement.

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

(a) Undertake all obligations pursuant to the Section 1602 Permit; this obligation is continuing and nontransferable, and shall be a joint and several obligation of Grantor and any owner of the Property, from time to time. Grantor shall provide Grantee with copies of all its reports to the Agencies including, without limitation, annual reports, and requests for Agency sign-off (whether partial or final). Grantor shall provide written notice to Grantee at such time as Grantor has obtained final approvals from Agencies confirming that it has completed all obligations of the Agency Approvals (**Agency Sign Off Notice**). Such Agency Sign Off Notice shall be sent to Grantee via certified mail, and shall include indicate in bold conspicuous type "Agency Sign off Notice". The Agency Sign Off Notice shall not be given until all Agencies have provided final sign off and approval for all Agency Approvals;

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

(c) Cooperate with Grantee, its successors or assigns in the protection of the Conservation Values;

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

(e) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in

accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements;

(f) Within 180 days of the recordation of this Conservation Easement, erect signs saying “Natural Area Open Space”, “Protected Natural Area”, or similar description. Prior to erection of such signage, Grantor shall submit detailed plans showing the location and language of such signs to Grantee for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements;

(h) Maintain the Existing Road (as hereinafter defined), together with the sidewalk, parkway landscaping, fences, gates, gravel access road, and storm drain outlets within the Easement Area;

(j) Remove all hazardous materials, trash, or man-made debris; and

(k) Undertake and perform all responsibilities and obligations associated with property ownership, excepting only those specific obligations assumed by Grantee pursuant to Section 5 below.

5. Grantee’s Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

(a) Prepare a baseline survey and report documenting the condition of the Easement Area (**Baseline Report**), which Baseline Report shall be prepared prior to the recordation of this Conservation Easement. Upon request, Grantee will send a copy of such Baseline Report to the Department. Such Baseline Report shall document the Conservation Values, public benefits, and conditions that relate to this Conservation Easement’s restrictions and reserved rights, including written descriptions along with related maps and photographs. Such Baseline Report shall also provide a full property description, including background information that relates to this Conservation Easement, the location of the Conservation Easement, easement maps that contain the Conservation Easement boundaries, and establish, map, and provide photo points with Grantee acknowledgements. Such Baseline Report shall be dated and signed by Grantee and submitted to Grantor for review and dated signature indicating that both Grantee and Grantor attest to the accuracy of the information contained in the Baseline Report;

(b) Perform at least a semi-annual compliance inspection of the Easement Area to document site conditions and to identify any activity or use that is inconsistent with the purpose of this Conservation Easement (**Field Survey**). During such semi-annual Field Survey, Grantee will document existing site conditions, document changes in site conditions and uses prohibited under the Conservation Easement (e.g. new roads, trails, access points, trash deposits, evidence of use, construction activities, etc.), visit photo points and take photos, and arrange for corrective actions, as necessary. Grantee shall also examine and document the condition of access control features (e.g. signage, fencing and gates), as well as habitat conditions and conditions that may compromise habitat values. Grantee shall retain relevant documents relating to such semi-annual

Field Surveys, notify Grantor within one week of any such Field Survey of any conditions that require corrective measures, and will arrange for follow-up surveys to be conducted, as needed, to review and address management issues. It is anticipated that any such follow-up surveys will be required once every three years;

(c) Prepare an annual report documenting the results of the semi-annual Field Survey (**Annual Report**). Such Annual Report will summarize activities undertaken during the preceding year, including the semi-annual Field Survey, and contacts with the fee owner of the Easement Area. Such Annual Report will describe the conditions of the Easement Area, describe changes in site conditions, and describe uses prohibited under the Conservation Easement. The Annual Report will identify any problems or management issues, and identify management action plans for the following year. It will include photos, maps and other relevant exhibits. Grantee will provide a copy of the Annual Report to Grantor, and to the Department, upon request. Grantee shall store materials including field notes, photos, photo location maps, and maps of site conditions;

(d) Grantee shall also undertake measures to: (i) control invasive plant species, using herbicide, mechanical removal, or other means appropriate to prevent infestations that would compromise habitat values, and (ii) to conduct habitat restoration as Grantee determines necessary, to maintain habitat values. Such work may be conducted by Grantee's staff, university researchers, qualified contractors, or other parties under Grantee's direct supervision. Such activities will be undertaken as needed, or if large areas require treatment, on up to one-half acres of the Easement Area, every three years; and

(e) Set aside, hold, invest and disburse the Endowment funds (described in Section 17) in trust solely for the purposes of preserving the Conservation Values of the Easement Area under this Conservation Easement in perpetuity.

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

(a) Access. Reasonable access through the Easement Area and Property to adjacent land over the existing road depicted on Exhibit B-2, attached hereto and incorporated herein by reference (**Existing Road**), as well as access to the Easement Area to perform obligations or other activities permitted by this Conservation Easement.

(b) Habitat Enhancement Activities. Creation and enhancement of native plant communities, including the right to plant native trees and shrubs, so long as such activities do not harm the habitat types identified in the Section 1602 Permit. For purposes of preventing erosion and reestablishing native vegetation, the Grantor shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 6, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Easement Area. Prior to any habitat enhancement activities, Grantor shall have a Biological Monitor submit detailed plans to

Grantee and to the Department for review and approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements.

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

(d) No Interference with Development of Adjoining Property. Notwithstanding anything set forth herein to the contrary, nothing in this Conservation Easement is intended nor shall be implied to in any way limit Grantor or any of Grantor's successors and assigns from (i) constructing, placing, installing, and/or erecting any improvements upon the portions of the Property not constituting the Easement Area and/or (ii) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (i) and (ii) neither such activity nor any effect resulting from such activity amounts to a use of the Easement Area, or has an impact upon the Easement Area, that is prohibited by Section 3 above.

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

## 7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to the Department, and the State of California a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity (ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The Department and the State of California shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above, the rights of enforcement against Grantor, Grantee and their successors or assigns under the Section 1602 Permit, or any rights of the various documents created thereunder or referred to therein. The term "**Party**" means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this Conservation Easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that a Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter **Notice of Violation**) informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 14 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty days, the violating Party shall, within the thirty day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the Notice of Violation, it shall issue a written notice of such dispute (hereinafter **Notice of Dispute**) to the appropriate Party and/or third party beneficiary within thirty days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

(i) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, the Department shall be consulted.

(ii) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(iii) Obtain other 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. This remedy is expressly available notwithstanding the ability to claim damages as provided for in subdivision (i).

(e) Notice of Dispute.

(i) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by

the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(ii) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen days to cure the violation. If said cure reasonably requires more than fifteen days, the violating Party shall, within the fifteen day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(i) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter **Active Notice(s) of Violation**) such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter **Notice of Conflict**) to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(ii) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(iii) The failure of the violating Party to issue a valid Notice of Conflict within fifteen days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Easement Area, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least

twenty four hours' written notice before pursuing such remedies. So long as such twenty-four hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 14 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. In the event that Grantee exercises its right to enforce the terms of this Conservation Easement, Grantor shall reimburse Grantee for an amount equal to one hundred forty percent (140%) of the Grantee's staff time, based upon its standard hourly rate at such time, plus one hundred percent (100%) of all third party costs incurred by Grantee, including legal fees. In addition, any costs incurred by a Party in enforcing the terms of this Conservation Easement against another Party, including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by a Party's violation or negligence under the terms of this Conservation Easement shall be borne by the violating Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee, its successors or assigns to bring any action against Grantor, its successors or assigns for any injury to or change in the Easement Area resulting from:

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

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

(iii) Acts by Grantee, an Agency, or their employees, directors, officers, agents, contractors, or representatives; or

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

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

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor, its successors or assigns to bring any action against Grantee, its successors or assigns for any injury to or change in the Easement Area resulting from:

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

(ii) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes, provided that once the emergency has abated, Grantee, its successors or assigns promptly take all reasonable and necessary actions required to restore the Easement Area to the condition it was in immediately prior to the emergency;

(iii) Acts by Grantor, an Agency, or their employees, directors, officers, agents, contractors, or representatives; or

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

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

8. Access. This Conservation Easement does not convey a general right of access to

the public or a general right of access to the Easement Area.

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor any Agency shall have any duty or responsibility for the operation, upkeep, or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(i) Grantor, its successors and assigns shall hold harmless, protect, defend and indemnify each Agency and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (**Indemnified Party** and collectively, **Indemnified Parties**) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a **Claim** and, collectively, **Claims**), arising from or in any way connected with: injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties.

(ii) Grantor, and its successors and assigns shall hold harmless, protect, defend and indemnify Grantee and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (**Grantee Indemnified Party** and collectively **Grantee Indemnified Parties**) from and against any and all Claims arising from or in any way connected with: injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the area of the Property, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties.

10. Taxes, No Liens. Grantor and its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee, and the Department with satisfactory evidence of payment, if assessed, upon request. Grantor, Grantee, and their successors and assigns shall keep the Easement Area free from any liens. Should either Grantor's work or Grantee's work in or upon the Easement Area result in a lien on the Easement Area, Grantor or

Grantee, as the case may be, shall take all steps required to have said lien removed from the Easement Area.

11. Condemnation. The Purpose of the Conservation Easement is presumed to be the best and most necessary public use as defined in Civil Procedure Code Section 1240.680 notwithstanding of Civil Procedure Code Sections 1240.690 and 1240.700. Nevertheless, pursuant to California Government Code section 65966(j), if all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Conservation Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the respective interest in the Property so taken. The net proceeds from any condemnation of the Property interest set aside from mitigation purposes shall be used for the purchase of property that replaces the natural resource characteristics that were intended to be protected by this Conservation Easement. The Endowment shall be held for the long-term stewardship of the replacement property. Grantor intends that the current Grantee will continue to manage the replacement property, unless the Grantor determines at the time the Property is replaced that a new Grantee would be more appropriate under the circumstances including, but not limited to, the location of the replacement property, subject to approval by the Department.

12. Subsequent Transfers.

(a) By Grantee.

(i) This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and delegate obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 and Government Code Section 65966 (or any successor provision(s) then applicable) and only with the prior written approval of Grantor and the Department;

(ii) Grantee shall record the assignment in the Official Records of the County in which the Property is located; and

(iii) Unless otherwise agreed by Grantor, Grantee, and the Department along with such transfer of this Conservation Easement, Grantee shall transfer any funds remaining in the Endowment established under this Conservation Easement, after deducting reasonable costs of transfer and the cost of satisfying all outstanding contracts and obligations related to this Conservation Easement.

(b) By Grantor.

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

such transferee or lessee of the existence of this Conservation Easement. Grantor, its successor and assign agrees to give written notice to Grantee and each Agency of the intent to transfer any interest at least sixty days prior to the date of such transfer. In the event Grantor elects to transfer the Easement Area, Grantor shall transfer all of the Easement Area (in no event shall Grantor transfer only a portion of the Easement Area, which includes the underlying fee property). The failure of Grantor, its successor or assign to perform any act provided in this Section 12 shall not impair the validity of this Conservation Easement or limit its enforceability in any way, and Grantor, its successors or assigns assume any liability relating to transfer(s) or assignment(s) to bona fide purchasers without notice of the existence or terms of this Conservation Easement.

Concurrently with the execution and recordation of this Conservation Easement, Grantor and Grantee shall execute a record a separate Memorandum of Agreement, memorializing the obligation that the Property be maintained under common ownership.

(ii) From and after the date of any transfer of all or any portion of the Easement Area by Grantor and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Grantor as to the portion transferred, as set forth in this Conservation Easement, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder except for any obligations pursuant to Section 20(g), and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

(c) By Agency. In the event that the Department reasonably determine that the Conservation Easement is not being held, monitored or that stewardship is insufficient as required herein, the Department may cause the Conservation Easement to revert to one of the Department.

13. Additional Interests. Grantor, its successors and assigns shall not grant additional easements or other interests in the surface or subsurface of the Easement Area (other than a security interest that is subordinate to this Conservation Easement) without the prior written authorization of Grantee and the Department. It shall be reasonable for Grantee and the Department to withhold consent for the grant of additional easements or other interest in the Easement Area that are in direct or potential conflict with the Section 1602 Permit and the preservation of the Purpose and the Natural Condition of the Easement Area as defined in Section 1 of this Conservation Easement or will impair or otherwise interfere with the Conservation Values of the Easement Area. Grantor or its successors and assigns shall record any additional easements or other interests in the Easement Area approved by Grantee or ACOE in the official records of the County in which the Property is located, and shall provide a copy of the recorded document to Grantee and the Department.

14. Notices. All notices, demands, requests, consents, approvals, or communications from one party to another shall be: (i) personally delivered, or (ii) sent by United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing:

To Grantor: Eastern Municipal Water District  
Attn: Al Javier  
2270 Trumble Road  
Perris, CA 92572-8300

To Grantee: Rivers & Lands Conservancy  
Attn: Executive Director  
4075 Mission Inn Avenue  
Riverside, CA 92501

With a copy to: Department of Fish and Wildlife  
Inland Deserts Region  
1602 Inland Empire Blvd., Suite C-220  
Ontario, CA 91764

Notices shall be deemed effective upon receipt or rejection only. Any party may change its address for purposes of giving notice by providing notice to the other party as required herein.

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

16. Restoration.

(a) Restoration Responsibilities. Grantor, Grantee, their successors and assigns shall each individually be obligated to repair, remediate, or restore the Easement Area damaged by any activities herein for which it is responsible.

(b) Grantor Restoration. When activities are performed pursuant to Section 16(b), for which Grantor is responsible, Grantee, its successors and assigns, shall retain, at Grantor's expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee / monitor such restoration activities. Grantee shall have its Biological Monitor submit a draft Restoration Plan to Grantor and the Department for review, and for the Department approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to Grantor and the Department within thirty days of completion of restoration activities. Grantee and the Biological Monitor shall sign the monitoring report. The monitoring report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on site, activities observed and their location, Biological Monitor's

observations regarding the adequacy of restoration performance in accordance with the approved Restoration Plan, and corrections recommended and implemented. Grantor shall be responsible for compensating and/or reimbursing Biological Monitor and Grantee for all reasonable and ordinary expenses incurred by them in discharging their respective responsibilities under this subsection within thirty days of invoice.

17. Funding.

(a) Endowment and Initial Financial Requirement. Concurrently with the recordation of this Conservation Easement, Grantor shall pay to Grantee:

- (1) Initial Financial Requirement. Initial and capital costs in the amount of Forty-Six Thousand Nine Hundred Fifty-Nine and No/100 Dollars (\$46,959.00) for the administrative costs of accepting this Conservation Easement and for fulfilling certain of Grantee's obligations hereunder for up to the first three years following the date of this Conservation Easement; and
- (2) Endowment. A non-wasting Endowment in the amount of One Hundred Eighty-Five Thousand Six Hundred Fifty and No/100 Dollars (\$185,650.00) for the perpetual management, maintenance, and monitoring of the Easement Area, as required under this Conservation Easement (**Endowment**).

(b) Management of Endowment. Grantee shall set aside, hold, invest and disburse the Endowment funds in trust solely for the purposes of preserving the Conservation Values of the Easement Area under the terms of this Conservation Easement, in perpetuity.

(c) Fiduciary Duty. Grantee shall have a fiduciary duty to ensure that the Endowment funds held in trust are properly managed. In this regard:

- (1) There shall be no commingling of the Endowment funds with other funds. Funds may be pooled for investment purposes, however;
- (2) Grantee shall have a duty of loyalty and shall not use the Endowment funds for its own personal benefit;
- (3) Grantee shall act as a prudent investor of the Endowment funds; and
- (4) Grantee shall not delegate the responsibility for managing the funds to a third party, but may delegate authority to invest the funds with Grantee's oversight. Grantee shall act with prudence when delegating authority and in the selection of agents.

(d) Limitation on Grantee's Obligations. Notwithstanding anything to the contrary contained herein, Grantee shall have no obligation to expend any monies other than the

interest, gains, or other earnings, additions and appreciation thereon, accrued on the Endowment funds, to satisfy its obligations under this Conservation Easement. Grantee shall not be liable to Grantor or to any other person for losses arising from the investment of the Endowment.

(e) Extinguishment of Conservation Easement. Should the Conservation Easement be extinguished by operation of law, or should Grantee cease to exist (including if Grantee is dissolved, becomes bankrupt, or insolvent), the Endowment shall be conveyed to the Department or, upon approval of all of the Department, to a successor of Grantee for conservation purposes. Upon such termination, Grantee shall have no further obligations under this Conservation Easement.

(c) Annual Report and Audit. Grantee will, either together with the annual report described in Section 17(c) above, or in a separate report, prepare an annual report on the status of the Endowment (**Annual Endowment Report**), which Annual Endowment Report shall include: (i) the current Endowment balance, (ii) the balance of the Endowment at the beginning of the reporting period, (iii) the balance of the Endowment at the end of the reporting period, (iv) the amount of contribution to the Endowment during the reporting period including, but not limited to, gifts and grants, (v) the net amount of investments earnings (i.e. gains and losses) during the reporting period, including both realized and unrealized amounts, (vi) the amounts distributed during the reporting period that accomplish the purpose for which the Endowment was established, (vii) the administrative expenses charged to the Endowment from internal or third party sources during the reporting period, (viii) the asset allocation percentages including cash, fixed income, equities and alternative investments, and (ix) the most recent financial statements for Grantee audited by an independent auditor who is, at a minimum, a certified public accountant. Grantee shall submit the Annual Endowment Report to the Department, and to Grantor, upon request.

(d) Use of Endowment After Violation. If a court of competent jurisdiction determines that there has been a violation of any term of this Conservation Easement:

- (1) Funds from the Endowment which was created to manage the Easement Area cannot be used to pay damages awarded as part of the judgment;
- (2) Funds from the Endowment which was created to manage the Easement Area cannot be used to restore the Easement Area to the condition in which it existed prior to the violation; and
- (3) In lieu of recovering monetary damages against Grantee from any source, an Agency may direct the role of Grantee and related management responsibility to a new entity, which shall be a public agency or non-profit concerned with conservation.

(h) Grantee's Qualifications. Grantee certifies that:

- (1) It has the capacity to effectively manage the Endowment funds;

- (2) It has the capacity to achieve a reasonable rate of return on the investment of the Endowment funds;
- (3) That it utilizes generally accepted accounting practices promulgated by either the Financial Accounting Standards Boards (or its successor) or the Governmental Accounting Standards Board (or its successor); and
- (4) It will be able to ensure that funds are accounted for, and tied to, the specific Easement Area.

18. Recordation. Grantee shall promptly record this instrument in the official records of the County in which the Property is located and immediately notify the Grantor and the Department through the mailing of a conformed copy of the recorded easement.

19. Estoppel Certificate. Upon request, Grantee shall within fifteen days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

20. General Provisions.

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

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to affect the Purpose of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

(d) Entire Agreement. This instrument together with the attached exhibits and any documents referred to herein sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 15.

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

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

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

(h) 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.

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

(j) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(k) No Hazardous Materials Liability.

(i) Grantor represents it is unaware of any release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

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

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

- a. The obligations or liabilities of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, **CERCLA**); or
- b. The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- c. The obligations of a responsible person under any applicable Environmental Laws; or
- d. The right to investigate and remediate any Hazardous Materials associated with the Property unless said investigation or remediation is related to the investigation or remediation of the Easement Area; or
- e. Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property unless said investigation or remediation by Grantor is related to the Easement Area.

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

The term “**Environmental Laws**” includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor and Grantee represents, warrants and covenants to each other and to the Department that Grantor and Grantee’s activities upon and use of the Easement Area will comply with all Environmental Laws.

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

(m) Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, deeds of trust, encumbrances or other interests in the Easement Area (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Easement Area is not subject to any other conservation easement.

(n) No Merger. Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest subject to this Conservation Easement, there shall be no express or implied merger by operation of law or otherwise. If any party should claim such a merger, the parties agree that any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Easement Area, which, shall run with the land according to California and/or other applicable law and otherwise exist in perpetuity.

[REMAINDER LEFT INTENTIONALLY BLANK]

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

**“GRANTOR”**

EASTERN MUNICIPAL WATER DISTRICT,  
a municipal water district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the Conservation Easement granted hereby is accepted by Rivers & Lands Conservancy.

**“GRANTEE”**

RIVERS & LANDS CONSERVANCY,  
a California non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

This Notary Acknowledgement is attached to a document entitled “*Conservation Easement*”.

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.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Insert name and title of the officer)

personally 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 \_\_\_\_\_ (Seal)

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.

This Notary Acknowledgement is attached to a document entitled “*Conservation Easement*”.

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.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Insert name and title of the officer)

personally 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 \_\_\_\_\_ (Seal)

DRAFT - In Review with Attorney

This Notary Acknowledgement is attached to a document entitled “*Conservation Easement*”.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Insert name and title of the officer)

personally 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 \_\_\_\_\_ (Seal)

DRAFT - In Review w/ Attorney

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that certain real property located in the City of Murrieta, County of Riverside, State of California, as more particularly described as follows:

PARCEL 2 OF PARCEL MAP 9126, IN THE CITY OF MURRIETA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 41, PAGE 13, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, TOGETHER WITH THAT PORTION OF LOT "B" OF SAID PARCEL MAP 9126 VACATED BY THAT CERTAIN RESOLUTION NO. 88-142, RECORDED MARCH 29, 1988 AS INSTRUMENT NO. 81676 OF OFFICIAL RECORDS, OF SAID COUNTY, ADJACENT TO SAID PARCEL 2.

CONTAINING 2.27 ACRES, MORE OR LESS.

APN: 948-210-007

**EXHIBIT B**

LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT B

**EXHIBIT B-1**

DEPICTION OF EASEMENT AREA



**EXHIBIT B-2**

DEPICTION OF EXISTING ROAD

**EXHIBIT C**  
**TITLE REPORT**

**EXHIBIT D**

**CURRENT NATURAL CONDITION OF THE EASEMENT AREA**

EXHIBIT D