

**COOPERATIVE AGREEMENT
BETWEEN
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
AND
THE CITY OF LAKE ELSINORE

FOR ACQUISITION OF CONSERVATION LANDS WITHIN THE EAST LAKE
SPECIFIC PLAN AREA**

This Cooperative Agreement (“Cooperative Agreement”) is made and entered into this _____ day of _____, 2022 (“Effective Date”) by and between the Western Riverside County Regional Conservation Authority (“RCA”) and the City of Lake Elsinore (the “City”). RCA and the City are sometimes referred to herein individually as (“Party”), and collectively as (“Parties”).

RECITALS

WHEREAS, RCA is a joint powers authority, formed in 2004 pursuant to the provisions of Government Code section 6500 et seq., to administer the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”).

WHEREAS, City is a California municipal corporation and a member agency of the RCA joint powers authority as well as a permittee of the MSHCP.

WHEREAS, in 1993, the City adopted the East Lake Specific Plan (“ELSP”) governing land use and development within approximately 3,063 acres comprising the “Back Basin” of Lake Elsinore and entered into various agreements relating to development within the ELSP boundaries. The ELSP and the various development agreements were amended from time to time prior to 2003.

WHEREAS, the ELSP MSHCP Consistency Analysis dated October 9, 2003 prepared by Vandermost Consulting Services, Inc. on behalf of Laing-CP Lake Elsinore and the City described approximately 770 acres of proposed conservation sites within the ELSP (the “770 Acre ELSP Conservation Proposal”) and described its consistency with the MSHCP conservation goals and objectives.

WHEREAS, the 770 Acre ELSP Conservation Proposal was approved by the County of Riverside in a letter from Richard Lashbrook dated February 3, 2004 as a “suitable framework for determining consistency with the MSHCP” for the ELSP within the Back Basin. In early 2004, the City approved Amendment No. 6 to the ELSP and on June 22, 2004, the MSHCP was adopted.

WHEREAS, in January 2005, CDFW issued Streambed Alteration Agreement No. 1600-2004-0130-R6 (“SAA”) pursuant to Section 1600 of the Fish and Game Code, for the Summerly Project within the Amendment No. 6 area of the ELSP. The SAA incorporated conservation and mitigation requirements based on the 770 Acre ELSP Conservation Proposal.

WHEREAS, the RCA and the City are working collaboratively on solutions to complete the 770 Acre ELSP Conservation Proposal.

WHEREAS, as of the Effective Date, the RCA is the beneficiary of certain grant funds from California Natural Resources Agency (CNRA) that can be used to acquire conservation land within the MSHCP boundary, including the ELSP boundary.

WHEREAS, the RCA has offered to the City to use a portion of the grant funds (\$3 million) to purchase conservation lands within the ELSP boundary to assist the City in furthering its efforts to accumulate the necessary acreage required to complete the 770 Acre ELSP Conservation Proposal (“Acquisitions”).

WHEREAS, it is the intent of the Parties to enter into this Cooperative Agreement to establish and coordinate the responsibilities of the Parties with respect to the Acquisitions, all as further set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by RCA and the City as follows:

TERMS

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Cooperative Agreement as though fully set forth herein.

2. Term. This Cooperative Agreement shall be effective as of the Effective Date, and shall continue in effect until the Acquisitions are complete, the grant funding is depleted, expired, or revoked, or the Parties mutually agree in a writing to terminate this Cooperative Agreement.

3. General Agreement to Cooperate. The Parties will cooperate to implement this Cooperative Agreement.

4. Obligations of RCA.

4.1 RCA will reach out to landowners of potential Acquisitions to gauge interests in selling land to the RCA.

4.2 While RCA has no obligation to spend this entire amount, RCA intends to earmark \$3 million of grant funds to pay for the Acquisitions (“Earmark”). The RCA Executive Director has the sole discretion to increase the level of the Earmark to an amount that may be needed to complete the Acquisitions, but limited to the unused funds RCA has remaining under this particular CNRA grant. Since CNRA requires RCA to spend grant funds before March 1, 2023, unless an amendment is approved, RCA may be required to proceed with other projects if Acquisitions are not successful or are taking longer than RCA’s ability to use the grant funds. RCA will make best efforts to secure extensions to the grant from CNRA.

4.3 Once an interested seller is identified, RCA and its consultants will work with the seller on all aspects of the conveyance of Acquisitions to the RCA including, without limitation, commissioning an appraisal, obtaining appropriate RCA Board of Directors approvals, entering

into a purchase and sale agreement, completing the Phase 1 environmental site assessment report, reviewing title, ensuring legal access, inspecting the property, completing installation of missing monuments, removing debris (if necessary), opening and closing escrow, seeking reimbursement from CNRA, and conducting any other relevant due diligence as RCA in its sole discretion deems necessary.

4.4 RCA will implement this Cooperative Agreement in accordance with the CNRA grant and applicable laws, regulations and policies. RCA will invoice the City within thirty (30) days of the completion of each appraisal (including review appraisal). RCA and the City will cooperate on the form of invoice and the level of detail required by the City's auditors to reimburse such appraisal costs to RCA.

4.5 RCA will own the Acquisitions in fee title and include as "Additional Reserve Lands" as part of the MSHCP.

4.6 Once escrow closes, RCA shall record its template restrictive covenant for MSHCP conservation lands over each one of the Acquisitions.

5. Obligations of the City

5.1 The City will promptly reimburse RCA for any and all appraisal (including review appraisal) costs related to implementing this Cooperative Agreement. The City agrees to remit payment to RCA's invoices within thirty (30) days of receipt of the invoice.

5.2 CNRA, which administers the grant RCA intends to use for Acquisitions, withholds 10% of the cost of acquisitions until every aspect of the acquisition is complete and documentation of the completion is provided to the satisfaction of the granting agency. The City agrees to cooperate with RCA regarding this documentation and will also agree to pay RCA the 10% withholding amount if for some reason the reimbursement of such amount is not approved by CNRA.

5.3 City may propose to donate properties consistent with the 770 Acre ELSP Conservation Proposal to satisfy all or a portion of its financial obligations under Section 5.1 and/or 5.2 of this Cooperative Agreement and RCA will consider accepting reimbursement from the City in the form of real property based on applicable rules and other considerations.

6. Mutual Obligations and Understandings.

6.1 The Parties will work together to identify potential Acquisitions, and acknowledge that neither Party will use the power of eminent domain to acquire potential Acquisitions. All Acquisitions will be purchased only from property owners willing to sell to the RCA, i.e., willing sellers.

6.2 The Parties acknowledge that both Parties shall use their best efforts to implement this Cooperative Agreement, while at the same time understand that RCA has no obligation to purchase any property, and certainly no obligation to buy any particular parcel.

6.3 The Parties also acknowledge that due to the number of uncontrollable variables involved, this Cooperative Agreement may not be successfully implemented.

6.4 The level of grant funding RCA commits to make the Acquisitions may fall short of completing the 770 Acre ELSP Conservation Proposal.

6.5 The Parties acknowledge that the grant funds are held and administered by CNRA and not RCA, and that RCA must comply with the requirements of CNRA.

6.6 The Parties acknowledge that RCA will not use Local Development Mitigation Fee (LDMF) revenue to pay for the purchase price of the Acquisitions in the ELSP boundaries.

7. Dispute Resolution. Unless otherwise specified herein, the Parties shall submit any unresolved dispute to RCA's Executive Director and the City Manager for negotiation. The Executive Director and the City Manager agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

8. Indemnification.

8.1 RCA shall indemnify, defend and hold the City, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of RCA, its officials, officers, employees, agents, consultants or contractors in the performance of RCA's obligations under this Cooperative Agreement, including the payment of all reasonable attorney's fees.

8.2 The City shall indemnify, defend and hold RCA, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the City, its officials, officers, employees, agents, consultants or contractors in the performance of the City's obligations under this Cooperative Agreement, including the payment of all reasonable attorney's fees.

8.3 The indemnification provisions set forth in this Section shall survive any expiration or termination of this Cooperative Agreement.

9. Amendments. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing.

10. Assignment of Cooperative Agreement. Neither Party may assign or transfer its respective rights or obligations under this Cooperative Agreement without the express written consent of the

other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

11. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

12. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Cooperative Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

13. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Cooperative Agreement, shall survive any such expiration or termination.

14. Third Party Beneficiaries. There are no third-party beneficiaries to this Cooperative Agreement.

15. Entire Agreement. This Cooperative Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first herein above written.

**WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY**

CITY OF LAKE ELSINORE

By: _____
Anne Mayer, Executive Director

By: _____
Jason Simpson, City Manager

ATTEST:

By: _____
City Clerk

Approved as to Form:

Approved as to Form:

By: _____
Best Best & Krieger LLP
General Counsel

By: _____
Barbara Leibold
City Attorney