

**AGENDA MEETING OF BOARD OF DIRECTORS  
OF  
SAN BERNARDINO VALLEY CONSERVATION TRUST,  
a California Nonprofit Public Benefit Corporation**

**Friday, September 28, 2018 – 2:00 P.M.**

**Location--1630 West Redlands Boulevard, Suite A, Redlands, California**

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the San Bernardino Valley Water Conservation District office and are available for public review during normal District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request. The San Bernardino Valley Conservation Trust intends to follow California Open Meeting laws and the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the Board meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Monge at (909) 793-2503 at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

**CALL TO ORDER  
ROLL CALL**

**1. PUBLIC PARTICIPATION**

*Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.*

**2. APPROVAL OF MINUTES FROM MARCH 15, 2018.....3**

**3. *Presenter: Daniel Cozad***

***Recommendation:*** Review and approve minutes from March 15, 2018, as presented.

**4. REVIEW DRAFT AUDIT REPORT AND CONSIDER APPROVAL.....8**

***Presenter: Daniel Cozad/Scott Manno, RAMS***

***Action:*** Approve FY 2017/2018 audit report as presented.

**5. FINANCIAL STATUS UPDATE.....20**

***Presenter: Daniel Cozad***

***Recommendation:*** Receive and file the update.

**6. ENDOWMENT HOLDING REQUEST (NON-WASH PLAN) .....21**

***Presenter: Daniel Cozad/Mandy Parks***

***Recommendation:*** Review and consider endowment holdings for non-Wash Plan participants.

7. SBVMWD AND COMMUNITY MITIGATION REQUESTS.....23
- Presenter:** Daniel Cozad*  
***Recommendation:*** Review and consider SBVMWD and community mitigation requests
8. CONSERVATION EASEMENT REQUIREMENTS.....24
- Presenter:** Jeff Beehler*  
***Recommendation:*** Review and consider conservation easement requirements.
9. DEPOSIT AGREEMENT REVISION REQUEST.....40
- Presenter:** Daniel Cozad*  
***Recommendation:*** Consider requested revision to the deposit agreement for Woodbridge.

#### ADJOURN MEETING

The next regular scheduled Board of Directors Meeting will be on \_\_\_\_\_, 2018 at \_\_\_\_\_, at 1630 W. Redlands Blvd., Redlands, CA.

**MINUTES FOR MEETING OF BOARD OF DIRECTORS  
OF  
SAN BERNARDINO VALLEY CONSERVATION TRUST,**  
a California Nonprofit Public Benefit Corporation

**Thursday, March 15, 2018 – 1:30 p.m.**

CALL TO ORDER – 2:00 p.m.

ROLL CALL

David E. Raley, SBV Water Conservation District (District)  
Paul Williams, Inland Empire Resource Conservation District  
John Longville, SBV Water Conservation District  
Daniel Cozad, SBV Water Conservation District  
Athena Monge, SBV Water Conservation District  
Jeff Beehler, SBV Water Conservation District  
David Cosgrove, Rutan & Tucker, LLP  
Mandy Parkes, IERCD  
Ellen Clark, PFM Asset Management (via teleconference)

1. PUBLIC PARTICIPATION -None
2. DESIGNATION OF BOARD OF DIRECTORS

Daniel Cozad stated Staff recommends re-designating Director John Longville and Vice President Paul Williams to a subsequent two year term as Board Directors.

**Action:** Motion was made by Vice President Williams and seconded by Director Longville to reappoint Paul Williams and John Longville for another term on the Board of Directors. The motion carried 3-0 with all directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

3. APPOINTMENT OF OFFICERS

**Action:** Motion was made by Director Longville and seconded by Vice President Williams to reappoint current officers for a second term. The motion carried 3-0 with all directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

#### 4. APPROVAL OF MINUTES FROM OCTOBER 5, 2017

**Action:** Motion was made by Director Longville and seconded by Vice President Williams to approve the meeting minutes from October 5, 2017. The motion carried 3-0 with all directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

#### 5. FINANCIAL STATUS UPDATE

Mr. Cozad directed the Board to package page 22 which provides an update to the Trust's financial status as of March 15, 2018. He reviewed the covered parties which have paid their endowment in full. The Trust currently has just over \$2.7 million dollars in receipts. Based on the Trust's Investment Policy, there are adequate funds to make the first investments. This item was received and filed by the Board.

#### 6. AUDITOR PROCUREMENT AND SELECTION

This item was taken out of order.

Mr. Cozad presented this item. He reminded the Board they requested Staff at the last Board meeting to discuss with the District's current auditor, Rogers, Anderson, Malody & Scott (RAMS), about completing an audit for the Trust. After speaking with RAMS and conferring with others with like organizations, neither saw any conflict of interest in RAMS performing the audit. A proposal from RAMS in the amount of \$2,860 was provided. One other verbal quote was received in the amount of \$5,000.

**It was moved by Director Longville and seconded by Vice President Williams to approve the proposal from RAMS to complete the Trust's audit. The motion carried 3-0 with all Directors present voting in the affirmative.**

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

#### 7. INVESTMENT ADVISOR AGREEMENT/INITIAL INVESTMENTS

Ellen Clark with PFM Asset Management (PFM) joined the meeting via teleconference and presented a slide presentation, "Investing in Volatile Markets". Mr. Cozad provided a handout of PFM's presentation. Ms. Clark discussed updates on current capital markets, previous decisions the Board has made on their investment policy, and what PFM is thinking about investing in today. Ms. Clark reviewed the presentation in detail. She stated slightly riskier investments have been paying off. PFM does diversify the portfolio in order to provide the greatest return without taking too much additional risk. The Board originally set asset allocation targets for the Trust at 70% stocks, 30% fixed income. Based on current investment data, PFM suggests underweighting fixed income at this time: diversification is

key making slight adjustments as needed. Ms. Clark explained once the Board approves transferring funds to the custodian, PFM would likely invest 50% in US stocks, 25% in International stocks, and 25% in fixed income dividing the investments amongst the managers/sub-advisors listed on page 16 of the presentation. Discussion ensued. Mr. Cozad proposes the Board approve investing up to \$2.5 million of the Trust's current assets allocated as PFM recommends, leaving remaining funds as cash to cover upcoming expenses.

**It was moved by Director Longville and seconded by Vice President Williams to approve investing up to \$2.5 million pursuant to the investment strategy provided by PFM on page 16, open a brokerage account, and allow PFM to make investments in accordance with the Trust's Investment Policy. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

#### **8. DIRECTORS AND OFFICERS INSURANCE**

Mr. Cozad presented this item stating the Board previously requested Staff to look into obtaining Directors and Officers Insurance. Two quotes were received and are provided as handouts. A general description from Non-Profit Insurance Alliance (NPIA) is also provided on package page 36 & 37. IQ Risk, a brokerage firm, obtained three quotes and provided their best quote in the amount of \$5,585.00. NPIA only insures 501c (3) organizations and requires the inclusion of General Liability with Directors and Officers Insurance. Their quote came in significantly lower in the amount of \$1,260. Staff recommends NPIA.

**It was moved by Director Longville and seconded by Vice President Williams to obtain General Liability, Directors and Officers Insurance from Non-Profit Insurance Alliance. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

#### **9. COMMUNITY MITIGATION POLICY**

Mr. Cozad recommended the Board adopt a Community Mitigation Policy. A draft policy is provided on package page 38. No action was taken.

#### **10. COMMUNITY MITIGATION DEPOSIT AGREEMENTS**

Mr. Cozad directed the Board to the list on package page 44 of entities/owners who have discussed with Staff about providing a Deposit Agreement and a Deposit for Community Mitigation. Mr. Cozad explained the District, in their most recent Strategic Plan, discussed working with entities outside of regular water districts who would like mitigation on land that is not required for the District or recharge on land not owned by the District. A map of the

projects was provided. The majority of requests so far are located in the City of Highland along Greenspot Road, directly adjacent to the Wash Plan. They are good candidates because either USFWS or CDFW recommended them. Mr. Cozad provided a brief description of each entity's request and pointed out their location on the map. The District has identified about 200 acres of land that was not required for the Wash Plan that could be made available for community mitigation. Mr. Cozad reviewed the Community Mitigation Deposit Agreement in detail on package page 41-43 that was put together by District Council. This information is provided to the Board as status and to let the Board know what Staff is doing on the Board's behalf. Discussion ensued. Mandy Parkes provided two companies that can provide appraisals for mitigation lands: Riggs & Riggs and Mason & Mason. No action was taken.

## 11. EASEMENT REQUIREMENTS

David Cosgrove presented this item. He stated he is working through what the form of our easement would be for purposes both inside and outside the Wash Plan. Mr. Cosgrove is conceptually looking to have the District as the grantor with both USFWS and the Trust as the grantee. Mr. Cozad stated he believes USFWS is in agreement to have the Trust holding the easement in its entirety as long as the Board pledges to enforce the easement to the maximum extent possible. Mr. Cosgrove explained the District would remain the licensee and would be responsible for any lapse in enforcement so additional language may need to be included in the Easement. In the District's agreement with the Trust, the District has the authority to make changes if the Trust isn't doing its job per Mr. Cozad which may be sufficient. Mr. Beehler added the USFWS is on the Preserve Management Committee which also helps enforce the Trust is following through with its obligations. Regarding Phase 1 environmental assessments, Mr. Cosgrove believes there should be a baseline set up and due diligence completed prior to accepting a conservation easement. Mr. Cozad asked the Board to determine, both from a legal and policy standpoint, whether or not the Trust will need or have interest in a Phase 1 where the District is the fee title owner and the Trust is holding the conservation easement since the liability will continue to rest with the District. This situation may be different for land coming from other entities to the District. Ms. Parkes stated IERCD always requires a Phase 1 when purchasing property and passes the cost along to the mitigating party as part of their due diligence. Discussion ensued.

Mr. Cozad stated some property coming from the City of Redlands and BLM through the Wash Plan will have homeless/dumping issues in which the homeless are impacting the habitat values that the Trust will be entrusted, through the conservation easement, to protect. The District and the Trust will need to work together with them and determine which entity is best suited to deal with the homeless situation in the most effective way. Ms. Parkes suggested adding an additional fee to easement agreements that is set up in a separate fund to address homeless issues. Vice President Raley recommends looking into adding this fee. Mr. Cosgrove added title review for land should also be completed prior to acceptance. No action was taken.

## 12. WASH PLAN AND PRESERVE MANAGEMENT COMMITTEE

Jeff Beehler provided a handout on the Preserve Management Committee (PMC). He explained any HCP done through Section 10 in the USFWS has a PMC. It is defined in the Act. He noted the members of the PMC and their functions: USFWS and CDFW (the regulatory component), the District (permittee/ Preserve Manager), San Bernardino County

Flood Control District (managers of the WISPA, a large inholding within the HCP) and Bureau of Land Management (BLM). Some mitigation is being done on BLM land. BLM is providing the land and we are providing the lift and getting mitigation credit for managing that land. Flood Control will have a separate Implementing Agreement with the District and may or may not use the Trust and all of its amenities for management. The Santa Ana Regional Water Quality Control Board has requested to participate on the PMC possibly in an advisory capacity. The function of the PMC is to review HCP progress and compliance, to develop an annual work plan, and to prepare a draft budget for the permittee and Trust consideration. This is limited to the resources available. The PMC will help the Trust Board determine allocation of available funds to most essential tasks. No action was taken.

### 13. WHISTLEBLOWER POLICY

Mr. Cozad directed the Board to package page 45-46. Staff prepared a Whistleblower Policy coordinated with the Trust's Bylaws and Ethic Statement. Legal council recommended the Board approve the presented policy.

**It was moved by Director Longville and seconded by Vice President Williams to approve the San Bernardino Valley Conservation Trust-Whistleblower Policy as presented. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Longville**

**Noes:**

**Absent:**

**Abstain:**

### 14. ADJOURN MEETING – 3:35 P.M.

**Action:** Motion was made by Director Longville and seconded by Vice President Williams to adjourn meeting. The next regular Board of Directors Meeting will be determined at a later date. The motion carried 3-0 with all Directors present voting in the affirmative.

Ayes: Raley, Williams, Longville

Noes:

Absent:

Abstain:

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Daniel B. Cozad  
Secretary/CFO

**San Bernardino Valley Conservation Trust**

**Financial Statements and  
Independent Auditor's Report**

**Year ended June 30, 2018**



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*Independent Auditor's Report*

To the Board of Directors of  
San Bernardino Valley Conservation Trust  
Redlands, California

We have audited the accompanying financial statements of San Bernardino Valley Conservation Trust (a nonprofit organization), which comprise the statement of financial position as of June 30, 2018, and the related statements of activities, and cash flows for the year then ended, and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion.

**DRAFT**  
**Subject to Change**

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the San Bernardino Valley Conservation Trust as of June 30, 2018, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

San Bernardino, California  
August xx, 2018

**San Bernardino Valley Conservation Trust**  
**Statement of Financial Position**  
**June 30, 2018**

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**DRAFT**  
**Subject to Change**

**Assets**

Current Assets:

Cash and cash equivalents	\$ 322,186
Investments	2,380,836
Accounts receivable	<u>8,242,503</u>
Total current assets	<u>10,945,525</u>
Total assets	<u><u>\$ 10,945,525</u></u>

**Liabilities**

Current Liabilities:

Due to San Bernardino Valley Water Conservation District	\$ 577,004
Unearned revenue	<u>8,242,503</u>
Total current liabilities	<u>8,819,507</u>
Total liabilities	<u>8,819,507</u>

**Net assets**

Unrestricted	152,769
Temporarily Restricted	<u>1,973,249</u>
Total net assets	<u>2,126,018</u>
Total liabilities and net assets	<u><u>\$ 10,945,525</u></u>

*The accompanying notes are an integral part of these financial statements.*

**San Bernardino Valley Conservation Trust**  
**Statement of Activities**  
**For the year ended June 30, 2018**

**DRAFT**  
**Subject to Change**

	Unrestricted	Temporarily Restricted	Total
<b>Revenues</b>			
Contributions	\$ 721,114	\$ 1,693,090	\$ 2,414,204
Unrealized loss on investments	(5,292)	(14,307)	(19,599)
Interest and dividends, net	229	619	848
Total revenues	716,051	1,679,402	2,395,453
<b>Expenses</b>			
Wash Plan	158,465	-	158,465
Insurance	1,258	-	1,258
Bank fees	25	-	25
Total expenses	159,748	-	159,748
Change in net assets	556,303	1,679,402	2,235,705
Net assets - beginning of year	(403,534)	293,847	(109,687)
Net assets - end of year	\$ 152,769	\$ 1,973,249	\$ 2,126,018

*The accompanying notes are an integral part of these financial statements.*

**San Bernardino Valley Conservation Trust**  
**Statement of Cash Flows**  
**For the year ended June 30, 2018**

**DRAFT**  
**Subject to Change**

**Cash flows from operating activities**

Cash received from membership dues	\$ 2,414,204
Cash paid to suppliers for goods and services	(158,490)
Interest and dividends received, net of investment fees	<u>848</u>

Net cash provided by operating activities	<u>2,255,304</u>
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**Cash flows from investing activities**

Purchase of investments	<u>(2,400,435)</u>
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Net cash used for investing activities	<u>(2,400,435)</u>
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**Cash flows from financing activities**

Loan from San Bernardino Valley Water Conservation District	<u>158,464</u>
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Net cash provided by financing activities	<u>158,464</u>
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Net increase	13,333
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Cash and cash equivalents, beginning of year	<u>308,853</u>
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Cash and cash equivalents, end of year	<u><u>\$ 322,186</u></u>
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**Reconciliation of change in net assets to net cash provided by operating activities**

Change in net assets	\$ 2,235,705
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Adjustments to reconcile change in net assets to net cash provided by operating activities:

Net realized and unrealized gains on investments	19,599
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(Increase) decrease in assets:

Accounts receivable	2,404,204
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Increase (decrease) in liabilities:

Unearned revenue	<u>(2,404,204)</u>
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Net cash provided by operating activities	<u><u>\$ 2,255,304</u></u>
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**Schedule of non-cash operating, investing and financing activities:**

Unrealized losses	<u><u>\$ (19,599)</u></u>
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*The accompanying notes are an integral part of these financial statements.*

**Note 1: Nature of Activities and Significant Accounting Policies**

*Nature of Activities*

San Bernardino Valley Conservation Trust (the Trust) is a nonprofit 501(c)(3) charitable trust. The purpose of the Trust is the direct protection or stewardship of land, water and natural resources, including, but not limited to agricultural lands, wildlife habitat, wetlands endangered species habitat, open space areas and outdoor recreational areas. The Trust's revenue is derived from membership contributions, grant funds and other revenue related to its core mission.

Trust contributions are payments into either an endowment for the Habitat Conservation Plan management or issuance costs for completion of the Habitat Conservation Plan. The funds contributed to the endowment are restricted by agreement with other parties. Trust

*Basis of Accounting*

The Trust's policy is to prepare its financial statements on the accrual basis of accounting. Accordingly, contributions and other revenues are recognized when earned, and expenses are recognized when incurred.

*Basis of Presentation*

Under generally accepted accounting principles, the Trust is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

*Cash and Cash Equivalents*

For the purpose of the statement of cash flows, the Trust considers all highly liquid investments available for current use with an initial maturity of three months or less to be cash equivalents.

*Investments*

Investments in marketable securities with readily determinable fair values and all investments in debt securities are reported at their fair values in the statement of financial position. Marketable securities are valued at quoted market prices which represent the net asset values of shares held by the Trust at the end of the year. Unrealized gains and losses are included in the change in net assets. Investment income and gains that have donor-imposed restrictions that are met in the reporting period in which they are recognized are recorded as an increase to unrestricted net assets.

**Note 1: Nature of Activities and Significant Accounting Policies, (continued)**

*Financial Instruments*

The carrying amount of all financial instruments approximates fair value. The carrying amounts for cash and cash equivalents, investments, accounts receivable and accounts payable approximate fair value because of the short maturity of these instruments.

*Accounts Receivable*

Accounts receivable are stated at the amount management expects to collect from balances outstanding at year-end. Based on management's assessment of the credit history with entities having outstanding balances and current relationships with them, it has been estimated that the realization losses on outstanding balances at year-end will be immaterial.

*Contributions*

All contributions are considered to be available for the general programs of the Trust unless specifically restricted by the donor. The Trust reports gifts of cash as restricted support if they are received with donor stipulations that limit the use of the donation. When a donor restriction expires, that is, when a stipulated time restriction ends and/or the purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

*Income Tax Status*

The Trust is exempt from federal income taxes as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code. A comparable exemption has been granted by the State of California. From time to time, the Trust has allowed advertising to support the publication of certain documents. When revenue for such advertising exceeds related costs, then the Trust will be subject to income taxes on unrelated business income. During the current reporting period, there was no net taxable unrelated business income.

The Trust's Forms 990, *Return of Organization Exempt from Income Tax*, for the years ending June 30, 2017 is subject to examination by the IRS, generally for three years from the date of filing. The June 30, 2017 was the first tax return filed for the Trust.

*Use of Estimates*

Management uses estimates and assumptions in preparing financial statements. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates.



**Note 1: Nature of Activities and Significant Accounting Policies, (continued)**

*Restricted and Unrestricted Revenue*

Contributions received are recorded as increases in unrestricted or temporarily restricted net assets, depending on the existence and/or nature of any donor restrictions.

*Subsequent Events*

Management has evaluated subsequent events through **August xx, 2018**, which is the date the financial statements were available to be issued, and has determined that there are no transactions that will have a significant impact on the Trust.

**Note 2: Concentration of Credit Risk**

The Trust maintains cash balances at two local financial institutions. The standard insurance amount under the Federal Deposit Insurance Corporation (FDIC) is \$250,000 per depositor, per insured bank, for each account ownership category. These balances may at times exceed the insured limits. At June 30, 2018, the Trust had \$72,176 above the federally insured limits.

**Note 3: Investments**

Investments at June 30, 2018 consisted of the following:

Mutual funds	<u>\$ 2,380,836</u>
Total investments	<u><u>\$ 2,380,836</u></u>

Investment gain (loss) for the year ended December 31, 2017 consisted of the following:

Interest and dividends	\$ 848
Investment fees	<u>-</u>
Interest and dividends, net	848
Unrealized loss	(19,599)
Realized loss	<u>-</u>
Total investment loss, net	<u><u>\$ (18,751)</u></u>

**Note 4: Fair Value Measurements**

Generally accepted accounting principles define fair value, establish a framework for measuring fair value, and establish a fair value hierarchy that prioritizes the inputs to valuation techniques. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value measurement assumes that the transaction to sell the asset or transfer the liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market. Valuation techniques that are consistent with the market, income or cost approach are used to measure fair value.

The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities the Trust has the ability to access.
- Level 2 inputs are inputs (other than quoted prices included within level 1) that are observable for the asset or liability, either directly or indirectly.
- Level 3 are unobservable inputs for the asset or liability and rely on management's own assumptions about the assumptions that market participants would use in pricing the asset or liability. The unobservable inputs should be developed based on the best information available in the circumstances and may include the Trust's own data.

The following tables present the Trust's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of June 30, 2018.

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Mutual funds	<u>\$ 2,380,836</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 2,380,836</u>
Total investments	<u><u>\$ 2,380,836</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 2,380,836</u></u>

**Note 5: Related Parties**

The Trust shares common Executive Director/CEO and other office personnel with following entities:

San Bernardino Valley Water Conservation District

These entities share common expenses which are reimbursed as needed from the related party. As of June 30, 2018, the Trust owes the San Bernardino Valley Water Conservation District \$577,004.

**Note 6:        Unearned Revenue**

Unearned revenue at June 30, 2018 consisted of the following:

Land and habitat	\$ 7,843,563
Land buy-in	<u>398,940</u>
Total	<u><u>\$ 8,242,503</u></u>

# San Bernardino Valley Conservation Trust

Financial Status as of August 31, 2018

## Wash Plan MOU-Exhibit D (Approved July 22, 2016) Expected Income

Covered Party (Participant)	Total			Paid
	Estimated Land and Species Total	Issuance Cost /Land Buy-In	Total	
San Bernardino Valley Water Conservation District	\$ 51,427	\$ 2,616	\$ 54,042	\$ 54,042
East Valley Water District	\$ 49,286	\$ 2,507	\$ 51,792	\$ 51,792
City of Highland	\$ 193,134	\$ 9,823	\$ 202,957	\$ 202,957
Robertson's and Cemex	\$ 7,843,563	\$ 398,940	\$ 8,242,503	\$ -
City of Redlands	\$ 28,063	\$ 1,427	\$ 29,490	\$ 29,490
San Bernardino Valley Municipal Water District	\$ 1,665,027	\$ 709,687	\$ 2,374,714	\$ 2,374,714
<b>Expected Total:</b>	<b>\$ 9,830,500</b>	<b>\$ 1,125,000</b>	<b>\$ 10,995,500</b>	<b>\$ 2,712,995</b>
<b>Current Total Received:</b>	<b>\$ 1,986,935</b>	<b>\$ 726,060</b>	<b>\$ 2,712,995</b>	

Total Independent Contributions	\$ 20.00
Total Deposits For Mitigation Credit	\$ 20,000.00

## California Credit Union Account Balance (Account Opened July 21, 2016)

As of:	Deposits	Interest Earned	Fees	Expenses	Withdrawals /Transfers	Balance
7/31/2018	\$ 10,000.00	\$ 13.71	\$ -	\$ -	\$ -	\$ 332,200.16
8/31/2018	\$ -	\$ 14.11	\$ -	\$ -	\$ -	\$ 332,214.27
<b>YTD TOTALS</b>	<b>\$ 10,000.00</b>	<b>\$ 27.82</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 332,214.27</b>

## US Bank Investments Balance (Account Opened April 25, 2018)

As of:	Deposits	Accrued Income & Interest	Fees	Unrealized Gain/Loss	Withdrawals /Transfers	Market Value
7/31/2018	\$ -	\$ 1,370.77	\$ (307.69)	\$ 48,797.67	\$ -	\$ 2,430,696.68
8/31/2018	\$ -	\$ 1,840.23	\$ (794.26)	\$ 26,695.50	\$ -	\$ 2,458,438.15
<b>YTD TOTALS</b>	<b>\$ -</b>	<b>\$ 3,211.00</b>	<b>\$ (1,101.95)</b>	<b>\$ 75,493.17</b>	<b>\$ -</b>	<b>\$2,458,438.15</b>

## Liability to SBWCD

As of:	Expenses	Balance
7/31/2018	\$ 7,535.49	\$ 584,539.20
8/31/2018	\$ 11,137.58	\$ 595,676.78

#### **Four Seasons Beaumont HOA: Management of Site Maintenance Funds**

- Four Seasons Beaumont is a large 55+ community south of the 10 Freeway off of Highland Springs Rd in Beaumont.
- It is managed by First Service Residential, who provide general maintenance and resident support services.
- A conservation easement (CE) is required to be recorded in exchange for development impacts.
- To cut down on long-term endowment size, the Grantor (HOA) is taking on some of the more benign responsibilities – light trash removal in non-sensitive areas, maintenance of non-sensitive buffer zone, etc. This list of duties is significant and California Department of Fish and Wildlife is requiring the HOA to set aside an endowment fund to serve as a guarantee of long-term availability of funding for completion of annual duties on the property. CDFW has said they will not allow use of ongoing HOA dues as a source of funding for easement maintenance.
- The fund will likely be in the \$500K range, which at a 4% long-term ROR would generate \$20K/year for maintenance activities.
- The HOA is looking for a qualified entity to hold the general maintenance endowment, with anticipated annual requirements for this entity likely consisting of:
  - Tracking account performance and providing annual reports to the Grantor
  - Providing interest payments at amounts and frequencies determined by endowment agreement to be executed between the Grantor and endowment management entity
  - Periodic administrative tasks associated with managing funding on behalf of a third party, to potentially include periodic attendance at HOA Budget and Finance Committee and/or Board Meetings, and providing updates/answering questions regarding account performance and projections.

#### **Pros/Cons**

- Pros
  - Supports local community needs
  - Added endowment funds spreads the investment management costs across larger deposits
  - Supports a partner organization
  - Minimal offset to overhead costs
- Cons
  - Some additional management and reporting effort
  - Agreement development and approval

### **Policy Questions**

1. Is the Conservation Trust an appropriate holder of these funds?
2. Should an MOU be developed for Trust consideration?
3. Are there any limitations or constraints to this type of deposit?

## Community Mitigation Request

### Preliminary Discussions and Deposit Agreements

Entity/Owner	Project	Deposit Agreement Date	Preliminary Acres
SP Deerfield LLC	<b>Blossom Trails Residential</b>	<b>3/1/2018</b>	30
San Bernardino County Trans Authority	Rail to Redlands	<b>Active</b>	0.15
Highland -Fifth-Orange Partners LLC	<b>Woodbridge Residential</b>	<b>7/20/2018</b>	36
SBVMWD/River HCP	<b>Partnership Agreement</b>	<b>MOU</b>	295
Redlands and Highland	Orange Street Bike Trail	Wash Plan	0.5
TREH Partners - Ed Horovitz	Highland Triangle Comm.	??	25
Greenspot Partners	Heather Glenn	??	25
Total			<b>381.65</b>

87%

District CE	Endowment	Trust OH
\$ 130,000	\$ 23,000	\$ 5,000
\$ 3,900,000	\$ 690,000	\$ 150,000
\$ 60,000	\$ 30,000	\$ 5,000
\$ 4,680,000	\$ 828,000	\$ 180,000
\$ 36,875,000	\$ 6,785,000	\$ 1,475,000
\$ 62,500	\$ 11,500	\$ 2,500
\$ 3,250,000	\$ 575,000	\$ 125,000
\$ 3,250,000	\$ 575,000	\$ 125,000
\$ 49,614,500	\$ 8,777,950	\$ 1,908,250
<b>\$ 12,739,500</b>	<b>Unobligated</b>	

**-DRAFT-**

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

San Bernardino Valley Conservation Trust  
1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
Attn: Corporate Secretary

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Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED  
(Including Third-Party Beneficiary)**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the San Bernardino Valley Water Conservation District ("Grantor" or "SBVWCD"), in favor of the San Bernardino Valley Conservation Trust ("Grantee" or "Trust"), with reference to the following facts:

**RECITALS**

A. Grantor is the owner of certain real property containing approximately \_\_\_\_\_ acres, located in San Bernardino County, State of California ("Property"). " in **Exhibits A and B** attached to this Conservation Easement and incorporated in it by this reference.

B. The Property is located within the "Wash Plan Conservation Areas" as designated and directed under the Upper Santa Ana River Wash Plan Habitat Conservation Plan ("Wash Plan HCP"). The Property 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 Property will provide or contribute to high quality natural, restored and/or enhanced habitat for one or more the following species: Slender-horned spineflower, Santa Ana River Woolly-Star, Cactus wren, Coastal California gnatcatcher, and San Bernardino kangaroo rat (collectively "Covered Species"). Preserving habitat for the Covered Species comprises the "Conservation Values" of the Property.

C. 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.



D. Grantor prepared and submitted an Incidental Take Permit (“ITP”) application to USFWS and prepared the Wash Plan HCP, as part of the ITP application. The Wash Plan HCP was prepared in accordance with USFWS guidance provided in the 1996 Habitat Conservation Planning Handbook (“HCP Handbook”), the 2000 Addendum to the HCP Handbook and the revised 2016 HCP Handbook. The Wash Plan HCP includes avoidance, minimization, and mitigation measures for each of the Covered Species and accomplishes the following:

Provides for the conservation of the Covered Species and their habitat within the Plan Area as mitigation for the effects of “Covered Activities” listed in the Wash Plan HCP.

Fulfills the requirements for an ITP as specified in Section 10(a)(1)(B) of the Federal Endangered Species Act (“FESA”) and FESA implementing regulations (Code of Federal Regulations, Title 50, Sections 17.22(b)(2)(i) and 17.32(b)(2)(i).

Supports Grantor’s request to California Department of Fish and Wildlife (“CDFW”) for an ITP pursuant to Section 2081(b) of the California Endangered Species Act (“CESA”).

Informs a FESA Section 7 consultation between USFWS and the U.S. Bureau of Land Management regarding effects on listed species on federal lands in connection with activities covered by the Wash Plan HCP.

Fulfills the requirements of the 2008 Upper Santa Ana River HCP Wash Land Management and Habitat Conservation Plan Document and its certified Environmental Impact Report regarding compliance with FESA and CESA and the identification of measures to avoid, minimize, mitigate, and monitor effects on the Covered Species.

E. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

F. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

## 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 United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

### 1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in a natural condition as contemplated in the Wash Plan HCP, and to prevent

any use of the Property that will impair or interfere with the Conservation Values of the Property.

Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of Covered Species and their habitats in accordance with the Wash Plan HCP.

2. Grantee's Rights.

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

(a) To preserve and protect the Conservation Values of the Property in perpetuity.

(b) To access and enter the Property at all reasonable times, in order to (1) monitor compliance with and otherwise implement and enforce the terms of this Conservation Easement and the Wash Plan HCP, (2) inspect the Property, and (3) exercise and enforce the rights which are granted to Grantee herein; it being understood that such access and entry will be made in a manner that will not interfere unreasonably with the permitted use(s) or quiet enjoyment of the Property by Grantor, its successors in interest, or any legally recognized user(s) of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to restore such areas or features of the Property 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.

(d) To implement the Wash Plan HCP, including habitat modifications, maintenance, monitoring, and reporting.

(e) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

(f) Provided Grantee gives Grantor prior written notice, the right to conduct habitat studies, research, and monitoring on the Property; it being understood and agreed that (1) such studies, research, and monitoring will be made in a manner that will not interfere unreasonably with the permitted use(s) or enjoyment of the Property and (2) Grantee shall carry out such studies, research, and monitoring in a manner which minimizes as much as reasonably possible harm to the Conservation Values of the Property.

(g) The right to enjoin any activity on the Property or other use of the Property that is inconsistent with the Conservation Values of the Property and/or the Wash Plan HCP.

(h) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

3. Prohibited Uses.

Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and/or the Wash Plan HCP is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and third parties are expressly prohibited:

(a) Any and all activities and uses which may impair or interfere with the purposes of this Conservation Easement, including unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; and incompatible fire protection activities.

(b) Any activity conducted by a third party that interferes with the Conservation Values, unless specifically permitted as part of a Covered Activity in the Wash Plan HCP. For example, utility construction and maintenance, such as electric transmission lines, gas pipelines, petroleum pipelines, telecommunications lines, or cellular telephone stations and associated access roads.

(c) Routine freeway operation and maintenance activities that occur within the 210 Freeway right-of-way or other dedicated public roadways and rights of way existing on the Property as of the date of this Conservation Easement.

(d) Collection and handling of the Wash Plan HCP Covered Species unless specifically required as a component of the biological monitoring and adaptive management. Separate authorization from USFWS or CDFW as appropriate is required for unrelated collection and handling of any Covered Species.

(e) Take of Wash Plan HCP Covered Species, species proposed for federal listing, state-listed species, or state candidate species as a result of the use of herbicides or other pesticides, or other chemical agents.

(f) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways and except as necessary to implement the Conservation Values.

(g) Agricultural activity of any kind except as specifically provided in the Wash Plan HCP.

(h) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, unless such activities are consistent with the purposes of this Conservation Easement and specifically permitted in the Wash Plan HCP.

(i) Commercial, industrial, residential, or institutional uses.

(j) Any legal or de facto division, subdivision or partitioning of the Property.

(k) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind.

(l) Depositing, stockpiling, or accumulating any soil, sand, gravel, trash, ashes, refuse, waste, bio-solids or any other materials.

(m) Planting, introduction or dispersal of non-native or exotic plant or animal species, except as specifically permitted in the Wash Plan HCP.

(n) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes, except as expressly permitted in the Wash Plan HCP.

(o) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material, except for those habitat management activities specified in the Wash Plan HCP.

(p) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except for activities as specifically provided in the Wash Plan HCP.

(q) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, 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 expressly permitted in the Wash Plan HCP.

(r) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; 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 Property, 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 Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(s) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

#### 4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in

Section 1 are being accomplished, Grantee and its successors and assigns shall perform compliance monitoring and reporting to USFWS as described in the Wash Plan HCP, including the following:

(1) Annual accounting of the acreage, type, and location of vegetation communities and species habitat conserved and impacted by permitted land uses and other Covered Activities of the Wash Plan HCP within their respective portions of the Plan Area.

(2) At the end of each annual reporting period, tabulate and summarize all impacts that have occurred by vegetation community and species habitat type.

(3) Develop and maintain a conservation tracking and reporting system to ensure that conservation activities are implemented in advance of planned impacts identified in the Wash Plan HCP.

(4) Ensure that conservation stays ahead of ground-disturbing impacts by a minimum of five (5) percent pursuant to the Wash Plan HCP.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Wash Plan HCP. Grantor, as the Permittee of USFWS and CDFW for the Property, shall be ultimately responsible for HCP implementation and reporting to USFWS and CDFW and shall ensure that all actions required by USFWS and CDFW are undertaken.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Grantor specifically reserves the right to obtain and/or modify any and all permits on the Property so long as Grantor's permitting activities are consistent with this Conservation Easement and so long as Grantor gives Grantee reasonable notice of any new or modified permits.

7. Grantor's Remedies.

If Grantor determines that a violation of this Conservation Easement has occurred or is threatened, or if Grantor determines that a violation of the Wash Plan HCP has occurred or is threatened, Grantor shall give written notice to Grantee of such violation and demand in writing the cure of such violation ("Notice of Violation"). At the time of giving any such notice, Grantor shall give a copy of the notice to USFWS. If Grantee 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 Grantee fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantor reserves the right to carry out such

activity on the Property itself subject to the following conditions: (1) Grantor shall first give Grantee notice of the proposed activity in writing; (2) Grantor shall carry out such activity in a manner which is consistent with the Conservation Values of this Conservation Easement.

If Grantee 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 Grantee fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantor also reserves the right to 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 Grantor may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; 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 Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantee, Grantor may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantor, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantor may pursue its remedies under this Conservation Easement without prior notice to Grantee or without waiting for the period provided for cure to expire. Grantor shall provide USFWS with reasonable notice of any such action. Grantor's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantee agrees that Grantor's remedies at law for any violation of this Conservation Easement are inadequate and that Grantor shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantor 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. Grantor'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, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantor to discover a violation or to take immediate legal action shall not bar Grantor from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Conservation Easement against Grantee, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantee.

(b) Grantor's Discretion.

Enforcement of the terms of this Conservation Easement by Grantor shall be at the discretion of Grantor, and any forbearance by Grantor to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement



shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantor under this Conservation Easement. No delay or omission by Grantor in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantee's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Property resulting from (i) any natural cause beyond Grantee's control, including, without limitation, fire not caused by Grantee, flood, storm, and earth movement, or any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantor or its employees.

(d) Mediation. Except in cases where injunctive relief is being sought, or where emergency action is necessary and authorized under the terms of this Conservation Easement, Grantor and Grantee hereby agree to try first in good faith to settle any dispute by non-binding mediation if a dispute arises from or relates to the terms and provisions of this Conservation Easement or any other matter referred to herein.

(e) Enforcement; Standing.

All enforcement rights and remedies conveyed to Grantor under this Conservation Easement shall extend to and are enforceable by USFWS as a Third Party Beneficiary of this Conservation Easement. These enforcement rights are in addition to, and do not limit, USFWS's permitting and enforcement rights under the Wash Plan HCP and the Incidental Take Permit application submitted by Grantor to USFWS. If at any time in the future Grantor or Grantee uses, allows the use, or threatens to use or allow use of, the Property 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 Third-Party Beneficiary has standing as an interested party in any proceeding affecting this Conservation Easement.

(f) Notice of Conflict.

If Grantor receives a Notice of Violation from USFWS with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the USFWS. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a 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. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revise Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

8. Access.

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

9. Grantee Costs and Liabilities.

Grantee retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property and its management consistent with the Wash Plan HCP. Grantee agrees that neither Grantor nor USFWS shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantee, the public or any third parties from risks relating to conditions on the Property, except as specifically identified in this Conservation Easement.

10. Grantor Costs and Liabilities.

Grantor remains solely responsible for obtaining and complying with 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 laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantee shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantor with satisfactory evidence of payment upon request. Grantee shall keep the Property free from any liens, including those arising out of any obligations incurred by Grantee for any labor or materials furnished or alleged to have been furnished to or for Grantee at or for use on the Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's 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: (i) 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 that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party.



(2) Grantor shall hold harmless, protect and indemnify USFWS and its respective directors, officers, employees, agents, contractors (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) 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 and (ii) the existence or administration of this Conservation Easement. *Provided, however*, that the indemnification in this Section 10(b)(2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 19(b)(2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, including wetland functions and values, or other purposes 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.

(d) Condemnation.

The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

11. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of Grantor, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and USFWS at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in San Bernardino County. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

(b) Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Wash Plan HCP, and any amendment(s) to the Wash Plan HCP. Grantor further agrees to give written notice to Grantee and USFWS of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee and USFWS shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it) and the Wash Plan HCP. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and USFWS otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

13. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to USFWS, and 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 Grantor: San Bernardino Valley Water Conservation District  
1630 West Redlands Boulevard, Suite A  
Redlands, California 92373  
Attn: Daniel Cozad

With Copy To: David B. Cosgrove  
Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626

To Grantee: San Bernardino Valley Conservation Trust  
1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
Attn: Corporate Secretary

With a copy to: United States Fish and Wildlife Service

Field Office Name  
FIELD OFFICE ADDRESS  
Attn: Field Supervisor

or to such other address a party or USFWS shall designate by written notice to Grantor, Grantee and USFWS. 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.

14. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of USFWS, which approval shall not be unreasonably withheld or delayed. Grantor and Grantee shall provide USFWS with 60-days advance notification before any action is taken to amend this Conservation Easement. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Bernardino County, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and USFWS.

15. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes 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 any other persons or circumstances.

(d) Entire Agreement.

This document, including the Wash Plan HCP which is hereby incorporated by reference in this document, including as it may be hereinafter amended, sets forth the entire agreement of the parties and USFWS with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the 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 Section 14.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) 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 Property.

(g) 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 Property, except that liability for acts, omissions or breaches 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) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any 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.

(2) Without limiting the obligations of Grantor under this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 10(b)) from and against any and all Claims (defined in Section 10(b)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. 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 violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Without limiting the obligations of Grantor under this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless USFWS from and against any and all Claims arising from or connected with any

Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. 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 violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) 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 to Grantee or USFWS any of the following:

(A) The obligations or liability 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. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 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; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) 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.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other 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 represents, warrants and covenants to Grantee and USFWS that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the owner of the Property. Grantor also represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Property, without first notifying Grantee and USFWS 60-days in advance of such Transfer and obtaining the written consent of Grantee and USFWS. Such consent may be withheld if Grantee or USFWS determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 15(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to and in compliance with this Conservation Easement. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and USFWS.

(l) Recording.

Grantee shall record this Conservation Easement in San Bernardino County, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the USFWS (the "Third-Party Beneficiary") is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the rights and obligations of Grantor and Grantee under this Conservation Easement.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

**GRANTOR:**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**GRANTEE:**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**U.S. FISH AND WILDLIFE SERVICE (THIRD PARTY BENEFICIARY)**

General Counsel  
U.S. Fish and Wildlife Service

BY: \_\_\_\_\_



## SAN BERNARDINO VALLEY CONSERVATION TRUST – COMMUNITY MITIGATION DEPOSIT AGREEMENT

This Community Mitigation Deposit Agreement ("Deposit Agreement") is entered into between the San Bernardino Valley Conservation Trust (Conservation Trust), a 501(c) 3 Public Benefit Nonprofit Corporation, and Highland Fifth-Orange Partners, LLC, a California Limited Liability Company ("Developer") as of the date set forth below. Conservation Trust and the Developer may hereinafter be referred to as the "Parties."

### 1. Conservation Trust

The Conservation Trust is a 501(c) 3 Public Benefit Nonprofit Corporation originally formed to support the Upper Santa Ana River Wash Plan Habitat Conservation Plan ("HCP"). On March 1, 2017 the Conservation Trust was approved by the California Department of Fish and Wildlife ("CDFW") to hold and manage endowments and conservation easements and implement the land management requirements of such easements including those arising from or connected with the HCP. The Conservation Trust accepts grants of money, land, and conservation easements to carry out its purposes, and may establish and charge fees for services provided. The Conservation Trust performs habitat restoration, conservation and/or management activities ("conservation") for project proponents seeking permits from or with regulatory agencies in the area in and around the Santa Ana River Wash Area of Redlands, Highland and County of San Bernardino.

### 2. Developer

Developer is Highland Fifth-Orange Partners, LLC, a California Limited Liability Company, with its principal place of business in Santa Ana, California. Developer is attempting to secure or has secured development entitlements, other discretionary use permits from State of California, its agencies, or federal agencies or to complete certain regulatory requirements or agreements (collectively "Land Use Permits") in connection with property located in the City of Highland, County of San Bernardino, and State of California included in Woodbridge Tentative Tract Map #18583 (the "Project"). The activities authorized or to be authorized by such entitlements or required by such regulations or agreements may adversely impact a species, habitat, riparian areas, or other sensitive environmental resources to wit: the need to replace, restore, or otherwise mitigate for the potential taking of approximately 36 acres of habitat for the following threatened or endangered species: San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*).

### 3. Purpose.

As a condition to issuing ~~or of~~ Land Use Permits for such Project, a regulatory resource agency may require mitigation for the impact of the Project in the form of dedication of preserved land, restoration, or other habitat management activities. Regulatory resource agencies may approve the Developer's retention of Conservation Trust to provide such preserved lands and perform or ~~supply provide~~ Conservation Easements, Endowment and Habitat Management as potential compensatory mitigation including active habitat restoration for Project impacts. In so doing, the Conservation Trust may, among other matters, prepare restoration and mitigation plans, review associated documentation, or any other mitigation-related contracts, ~~easements~~, agreements, or other documents ("Mitigation Planning Activities"). In so doing, the Conservation Trust incurs expenses including, but not limited to, legal expenses, biological staff and administrative staff expenses, materials, labor, etc. ("Expenses") ~~The performed by those~~ categories of persons and hourly rates included in the Conservation Trust's Expenses are described in in and at the hourly rates set forth in the schedule attached as Exhibit 1 hereto ("Pre Mitigation Expenses"). If the proposed Project, or any component of its habitat or species mitigation fails to go forward, or if it is

**Comment [DBC1]:** As I read your changes I want to be clear about what is provided. The determination of mitigation is an resource agency decision

**Comment [DBC2]:** Mitigation activities could be confused with the Mitigation Management Activities so I revised all incidences.

**Comment [DBC3]:** We can provide hourly rates for staff, but not legal or other costs

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cancelled, abandoned, modified, disapproved or otherwise does not proceed for any reason, then the Conservation Trust will have expended monies, resources and/or materials to pay the Expenses.

#### 4. Deposit

By this Deposit Agreement, Developer agrees to provide funds to cover and defray Conservation Trust Expenses in ~~pursuing and~~ performing the ~~Mitigation Activities~~ Mitigation Planning Activities on the terms and conditions set forth in this paragraph ("Deposit"):

- (a) The Parties agree **\$10,000.00** is an appropriate Deposit ("Initial Deposit) to cover Expenses anticipated to be incurred by Conservation Trust prior to the possible entry into and execution of a mitigation agreement by the Conservation Trust with Developer with respect to the Project.
- (b) Any funds provided in this paragraph as a Deposit shall be deposited by the Conservation Trust into a separate account specifically designated to pay only Expenses ~~for Mitigation Activities~~ Mitigation Planning Activities undertaken arising from or in connection with the Project.
- (c) On the or about the 15<sup>th</sup> business day of each month when significant activities are undertaken until this Deposit Agreement is terminated, the Conservation Trust shall provide Developer a written monthly accounting of the Expenses in the form of Exhibit 2.
- (d) If Conservation Trust reasonably determines its incurred Expenses will exceed the Initial Deposit, Conservation Trust shall notify Developer in writing, explaining the basis for its determination and requesting further Deposit ("Further Deposit) before proceeding with further ~~Mitigation Activities~~ Mitigation Planning Activities. Unless within ten (10) business days from receipt of such notice, the Developer objects in writing and initiates the meet and confer provided in paragraph 4(e), Developer shall make the Further Deposit as requested by Conservation Trust.
- (e) Should the Developer object to the Further Deposit, within five (5) business days of the receipt of such objection, the parties agree to meet and confer in good faith to resolve Developer's objections.
- (f) In the event Developer's objections cannot be resolved or Developer refuses make a Further Deposit, Conservation Trust may terminate all ~~Mitigation Activities~~ Mitigation Planning Activities on the Project, and refund any then-unexpended amounts of the Deposit back to Developer, without interest. If at any time additional Deposit is owed to Conservation Trust and delinquent, Conservation Trust may refuse to execute any further Project-related documentations or agreements until such Deposit is made or otherwise disbursed to Conservation Trust by Developer.
- (g) In the event the Parties ultimately enter into a mitigation agreement with respect to the Project, Conservation Trust shall retain from the Deposit all Expenses relating to the ~~Mitigation Activities~~ Mitigation Planning Activities, but the total of such Expenses shall be considered a credit against any and all fees, costs, or other financial requirements imposed or agreed pursuant to any such mitigation agreement.
- (h) In the event the Parties do not enter into a mitigation agreement with respect to the Project, Conservation Trust shall retain from the Deposit its Expenses incurred and return any unused portion of such Deposit to Developer, without interest.
- (i) Either party may terminate this Agreement at any time for any reason. Should Developer terminate this Agreement, and as a prerequisite to claiming any refund owing from the Deposit to

**Comment [DBC4]:** We have a standard process to report expenses against Deposit agreements. We can provide an out of cycle special report but that would use more of your deposit. Likewise, some months have little or no activity and sending a report will incur additional cost.

**Comment [DBC5]:** This revision will be discussed with the Conservation Trust Board and Water Conservation District Board

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Developer, Developer shall send to Conservation Trust a written notice of cancellation, requesting a final accounting and a refund of any remaining Deposit monies. Conservation Trust shall perform such accounting and refund any remaining Deposit monies to Developer within 30 days of receipt of the cancellation notice and request. Any costs incurred by the Conservation Trust in preparing and delivering such accounting shall be recoverable as part of the Expenses.

#### 5. Nature of Rights Granted

Developer hereby acknowledges and agrees this Deposit Agreement only provides a deposit to cover or defray Expenses Conservation Trust will incur in pursuing and undertaking Mitigation Activities Mitigation Planning Activities relating to the Project and any related agreement requested by Developer. By this Deposit Agreement, Conservation Trust provides no representation, warranty, or guarantee that the parties will ultimately reach agreement on the terms of a mitigation agreement, nor that any resource, regulatory, or other agency will issue any development entitlements or other discretionary approvals with respect to the Project.

#### 6. Mitigation Responsibility/Cooperation

The Parties explicitly agree that this Deposit Agreement does not commit Conservation Trust to perform any mitigation, mitigation-related conservation, or related activity. In the absence of a separate mitigation agreement between the parties, no responsibility or liability therefore shall accrue to Conservation Trust. The parties agree to work cooperatively with each other during the process of attempting to negotiate a mitigation agreement for the Project. In particular, the parties agree to provide any appropriate documentation or information reasonably requested by any party, and both parties shall allow staff and consultants to access the Project site or proposed conservation areas, as may be necessary.

#### 7. Miscellaneous

- (a) Each Party has full right, power, and authority to enter into this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement herein on behalf of the Conservation Trust has the legal power, right, and actual authority to bind the Conservation Trust to the terms hereof. The individual executing this Agreement herein on behalf of Developer has the legal power, right, and actual authority to bind Developer to the terms hereof.
- (b) Neither Party may assign its rights or obligations under this Deposit Agreement without the express written consent of the other, and both Parties agree not to unreasonably withhold such consent. In the event of an authorized assignment, this Deposit Agreement shall be binding upon and inure to the benefit of those permitted assigns.
- (c) The rights and obligations set forth herein are intended exclusively for the benefit of the Parties or its permitted assigns and shall not be construed to convey any rights or remedies to any third party.
- (d) This Deposit Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Deposit Agreement cannot be amended except in writing signed by both Parties.
- (e) This Deposit Agreement and all documents executed and delivered in connection herewith shall be governed by, and construed in accordance with, the laws of the State of California.

- (f) If any legal action or other proceeding is brought for the enforcement of this Deposit Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses, and other costs incurred in that action or proceeding in addition to any other relief to which such party may be entitled.
- (g) All notices, requests, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally, by registered or certified mail, by electronic mail, by courier, or by Federal Express (or other reputable overnight delivery service) for overnight delivery, as follows:

To Conservation Trust:

San Bernardino Valley Conservation  
Trust  
1630 W. Redlands Blvd. Suite A  
Redlands, CA 923734  
Attention Daniel Cozad  
(909) 793-2503  
dcozad@sbvwcd.org  
@.com/org

To Developer:

Highland Fifth-Orange Partners, LLC  
3500 West Lake Center Drive, Suite B  
Santa Ana, CA 92704  
Attention: Donna Denny  
Telephone: (714) 437-0800 ext. 814  
E-mail: ddenny@centerstone.com

or to such other address or such other person as the addressee Party shall have last designated by Notice to the other Party and Escrow Agent. All Notices shall be deemed to have been given three (3) calendar days following deposit in the United States Postal Service (postage prepaid) or, upon receipt, if sent by overnight delivery service, courier, electronic mail (so long as receipt is acknowledged or otherwise confirmed), or personally delivered. The inability to deliver a Notice because of a changed address of which no Notice was given, or any rejection or other refusal to accept any Notice, shall be deemed to be the receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept. Any Notice to be given by any Party hereto may be given by legal counsel for such Party. Telephone numbers are provided herein for convenience only and shall not alter the manner of giving Notice set forth in this paragraph

//remainder of this page intentionally left blank

IN WITNESS WHEREOF, the Parties have executed this Deposit Agreement as of the last date set forth below.

**San Bernardino Valley Conservation Trust**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

**Highland Fifth-Orange Partners, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

Exhibit 1

Description of Person	Hourly Rate

**SBV Conservation Trust Standard Rates**

<u>Position</u>	<u>Hourly Rate</u>
<u>General Manager</u>	<u>\$249.14</u>
<u>Land Resources Manager</u>	<u>\$176.12</u>
<u>Admin Services Spec. II</u>	<u>\$79.26</u>
<u>Field Supervisor</u>	<u>\$81.06</u>
<u>Field Operations Spec. I</u>	<u>\$46.99</u>
<u>Assistant Engineer</u>	<u>\$62.66</u>
<u>Land Planning/GIS Intern</u>	<u>\$33.08</u>
<u>Legal</u>	<u>\$400.00</u>
<u>Rates are subject to change and rates for equipment and subcontracts are total cost plus 15% pass-through</u>	

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Exhibit 2

<del>Person</del> <a href="#">Position</a>	Hourly Rate	Time	Description of Activity	Amount

