

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.13
(ID # 3166)

MEETING DATE:

Tuesday, February 7, 2017

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA):

SUBJECT: ECONOMIC DEVELOPMENT AGENCY (EDA): Exclusive Negotiation Agreement between the County of Riverside and Kohl Ranch II, LLC, District 4, CEQA Exempt [\$82,000] General Fund Sub-Fund 11183

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3), common sense, general rule;
2. Approve the attached Exclusive Negotiation Agreement (ENA) between the County of Riverside and Kohl Ranch II, LLC, a California limited liability company, in connection with the Jacqueline Cochran Regional Airport Runway Extension and Detention Basin, 1 year term, with 1 year option to extend, and authorize the Chairman of the Board to execute the same on behalf of the County;
3. Authorize the Assistant County Executive Officer of the Economic Development Agency, or his designee, to take all necessary steps to implement the attached ENA, including but not limited to, signing subsequent necessary and relevant documents, subject to County Counsel approval;

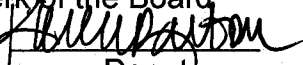
ACTION: Policy

Robert Field, Assistant County Executive Officer/EDA 1/25/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: None
Date: February 7, 2017
xc: EDA, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 82,000	\$ 0	\$ 82,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: General Fund Sub-Fund 11183			Budget Adjustment: No	
			For Fiscal Year: 2016/17	

C.E.O. RECOMMENDATION: Approve

RECOMMENDED MOTION Continued:

4. Direct the Clerk of the Board to file the Notice of exemption; and
5. Ratify and authorize a reimbursement to EDA/Real Estate Division in an amount not to exceed \$82,000 from General Fund Sub-Fund 11183.

BACKGROUND:

Summary

The County of Riverside (County) owns and operates that certain real property comprised of approximately 1743.5 acres known as the Jacqueline Cochran Airport, in the unincorporated area of Thermal, California (Airport Property). As contemplated in the Jacqueline Cochran Master Drainage Plan of 2008, the construction of a detention basin to store excess storm water runoff (Detention Basin) is necessary on about 65 acres of the Airport Property (Detention Basin Property) to prevent localized flooding and reduce downstream erosion. The location of the proposed Detention Basin is identified on the attached aerial image. In addition, pursuant to the Jacqueline Cochran Regional Airport Layout Plan, approved by the Federal Aviation Administration (FAA) on July 29, 2005, and revalidated June 22, 2009, and the JCRA Master Plan dated on or about May 2004, an extension of the existing JCRA runway located within the Runway Protection Zone, identified in Exhibit A attached hereto, was contemplated as future development on the Airport Property (Proposed Runway). The Airport Property currently does not contain sufficient acreage in the designated area to develop the Proposed Runway. An analysis of the neighboring properties was performed, and it was determined that an adjacent parcel owned by Kohl Ranch II, LLC (Kohl Ranch) was well suited for the fulfillment of the Proposed Runway. The Kohl Ranch property consists of roughly 109.8 acres, and is located in the unincorporated area of Thermal, California, identified by APN: 759-190-008 (KR Property).

To facilitate construction of the proposed Detention Basin and the Proposed Runway, Kohl Ranch proposes to convey the KR Property to the County for use as the Proposed Runway, in exchange for Kohl Ranch's extraction and use of approximately 422,223 cubic yards of fill dirt (Fill Dirt) from the Detention Basin Property resulting in the creation of a Detention Basin and the acquisition of approximately 58 acres of vacant real property (SA Land) located in the unincorporated area of Thermal, California, currently owned by the Successor Agency to the

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Redevelopment Agency for the County of Riverside (Successor Agency), as more particularly identified on Exhibit B attached hereto. On December 18, 2015 the California Department of Finance (DOF) approved the Successor Agency's Amended Long Range Property Management Plan which allows for the disposition of properties owned by the former Redevelopment Agency for the County of Riverside, including, but not limited to the SA Land, making the potential exchange of the SA Land for the KR Property and Fill Dirt possible. The proposed exchange of the SA Land is subject to approval by the DOF, the Board of Supervisors and the Oversight Board for the Successor Agency to the Redevelopment Agency for the County of Riverside (OB).

To enable the aforementioned transaction which will provide necessary infrastructure and help promote important economic development, the County and Kohl Ranch desire to enter into the attached proposed Exclusive Negotiation Agreement (ENA) for the purpose of establishing the procedures and standards of negotiating a potential Land Exchange Agreement, or such other agreements that may be deemed necessary, for the disposition and removal of the Fill Dirt, construction of the Detention Basin, and disposition of the SA Land, and KR Property, as more specifically set forth in the ENA. The proposed ENA in itself does not grant Kohl Ranch or any successor or affiliated entity the right to acquire the Fill Dirt or the SA Land, and/or obligate the County to acquire or give the County the right to acquire the KR Property and the construction of the Detention Basin. Any resulting Land Exchange Agreement, or other agreement, will be subject to the prior approval of the Board of Supervisors. Any agreement relating to the conveyance of the SA Land will be subject to approval by the DOF, Board of Supervisors and OB. As memorialized in the attached ENA, the negotiation period shall be for a term of one year, commencing on the date that both parties have executed the agreement. Additionally, the term of these negotiations may be extended by one year by written mutual consent of the parties.

Pursuant to the California Environmental Quality Act (CEQA), the ENA was reviewed and determined to be categorically exempt from CEQA under State CEQA Guidelines Section 15061 (b)(3), common sense, general rule exemption, as it will not result in direct impacts to the physical environment or reasonably foreseeable indirect effects since the ENA is just an agreement to conduct further negotiations.

Staff recommends approval of the attached ENA. County Counsel has approved the attached ENA as to form.

Impact on Citizens and Businesses

The attached ENA can lead to the potential completion of the Proposed Runway and Detention Basin, which will facilitate the necessary drainage infrastructure at the Jacqueline Cochran Regional Airport, and result in the extension of the runway. Citizens and businesses will benefit from the increased runway capacity, and improved protection zone and the added infrastructure could lead to economic development and investment in this region of the County.

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SUPPLEMENTAL:

The Real Estate Division of the Economic Development Agency will seek to be reimbursed for any and all costs associated with this transaction, as forecasted and itemized below, through the General Fund Sub-Fund 11183.

MAI Appraisal Costs	\$	10,000
Preliminary Title Report Costs	\$	2,000
Title and Escrow Costs	\$	10,000
Total County Staff Costs	\$	60,000
Total Estimated Net Costs	\$	82,000

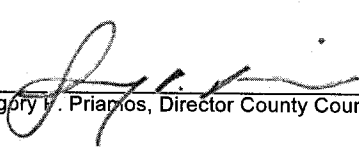
Attachments:

Aerial Image

Exclusive Negotiation Agreement

CEQA Notice of Exemption

RF:JVW:VC:VY:JR:ra 232FM 18.296 13292
MinuteTrak #3166



Gregory V. Priamos, Director County Counsel 1/25/2017

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into as of February 7, 2017 by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, by and through its Economic Development Agency/Aviation Division ("County"), and KOHL RANCH II, LLC, a California limited liability company ("Kohl Ranch"), on the terms and provisions set forth below:

RECITALS

A. The County owns that certain real property comprised of approximately 1,743.5 acres known as the Jacqueline Cochran Regional Airport, in the Unincorporated Area of Thermal, known as Assessor Parcel Numbers 759100013, 759050004, 759070005, 759070007, 759040013, 759060019, 759060018, 759060017, 763310021, and 763310019, as further depicted on the Site Map attached hereto as Exhibit "A" and incorporated herein by this reference ("County Airport Property"). Since the County Airport Property is a public airport it is subject to Federal Aviation Administration (FAA) oversight and the Grant Assurances associated with any applicable FAA grants or other agreements;

B. Construction on a portion of the County Airport Property of a detention basin to store excess storm water runoff ("Detention Basin") is contemplated in that certain Jacqueline Cochran Regional Master Drainage Plan dated June 2008;

C. Kohl Ranch owns that certain real property comprised of approximately 109.8 acres located in the Unincorporated Area of Thermal, California known as APN 759-190-008 described in that certain legal description attached hereto as Exhibit "B" and incorporated herein by this reference ("KR Property");

D. The Successor Agency to the Redevelopment Agency for the County of Riverside ("SA") owns that certain real property comprised of approximately 687.78 acres located in the Unincorporated Area of Thermal, California known as APN's 759-050-003, 759-100-006, 759-100-007, 759-100-008, 759-100-009, 759-100-010, and 759-100-011 described in that certain legal description attached hereto as Exhibit C and incorporated herein by this reference ("SA Property"). The SA Property is listed on the SA's Long Range Property Management Plan and was approved by the California Department of Finance on December 18, 2015;

E. County has determined to be surplus and no longer needed for a County's use approximately 422,223 cubic yards of fill dirt ("Fill Dirt") located on the County Airport Property and Kohl Ranch desires to acquire such Fill Dirt and the SA Land For Exchange in consideration for the construction of the Detention Basin on the County Airport Property and transfer of the KR Property to County;

F. As used herein, the term "SA Land for Exchange" means the area comprised of approximately 58 acres shown on Exhibit "D" and incorporated herein by this reference. The SA

Exchange and the Fill Dirt are together equal in value to the KR Property and the construction of the Detention Basin by Kohl Ranch for purpose of the proposed exchange;

G. Pursuant to Government Code Section Government Code Section 25365, the County may exchange real property owned by the County, provided the procedures set forth in Sections 25365 are satisfied;

H. Facilitating the conveyance of the Fill Dirt and the SA Land For Exchange, subject to the conditions precedent set forth below, in exchange for the acquisition of the KR Property and the construction of the Detention Basin will assist the County by (i) allowing the County to extend the Jacqueline Cochran Airport runway and Runway Protection Zone improving the airports runway capacity and protection zone, and (ii) creating necessary drainage infrastructure on the County Airport Property; and

I. The purpose of this Agreement is to establish the procedures and standards for the negotiation by the County and Kohl Ranch (hereinafter the "Parties") of a Land Exchange Agreement or such other type of agreement as the Parties may deem appropriate for the disposition and removal of the Fill Dirt, construction of the Detention Basin, and disposition of the SA Land For Exchange, and KR Property as more specifically discussed below. This Agreement in itself does not grant Kohl Ranch or any successor or affiliated entity the right to acquire the Fill Dirt or any portion of the SA Property, including but not limited to the SA Land for Exchange, and/or obligate the County to acquire or give the County the right to acquire the KR Property and the construction of the Detention Basin.

NOW, THEREFORE, County and Kohl Ranch hereby mutually agree as follows:

I. Recitals

The aforementioned recitals are incorporated herein by this reference and made a part of this Agreement.

II. Negotiation

A. Good Faith Negotiations

The Parties agree for the Negotiating Period (defined below) to negotiate diligently and in good faith, pursuant to this Agreement, to prepare a Land Exchange Agreement, or such other type of agreement as the Parties may deem appropriate, to be entered into between the Parties with respect to Kohl Ranch's acquisition and removal of the Fill Dirt, and acquisition of the SA Land For Exchange, subject to the satisfaction of the conditions precedent set forth in Section II. C. below, in exchange for Kohl Ranch's construction of the Detention Basin and conveyance to County of the KR Property (collectively "Land Exchange"); provided, however, by entering into this Agreement, the Parties are not required to enter into a Land Exchange Agreement. County agrees for the Negotiating Period, and the Extension Period (defined below), if a County Board of Supervisor's approved Land Exchange Agreement is signed and submitted by Kohl Ranch to County during the Negotiating Period, not to negotiate with any other person or entity to enter into any agreement regarding the Land Exchange. "Good faith negotiations" as used herein shall mean

that the Parties shall use their best efforts to communicate frequently and follow reasonable negotiation procedures to develop a Land Exchange Agreement mutually acceptable to the Parties.

Each of the Parties will bear its own costs and expenses, including, but not limited to, attorneys' fees, incurred or to be incurred in connection with negotiating and preparing this Agreement and the Land Exchange Agreement and in carrying out the obligations under this Agreement ("Direct Costs").

Nothing in this Agreement shall be deemed a covenant, promise, or commitment by the County with respect to the disposition of the Fill Dirt or the SA Land for Exchange.

B. Period of Negotiations

The negotiating period shall commence on the Effective Date (defined below) and end one (1) year after the Effective Date ("Negotiating Period"), subject to extension. The Negotiating Period may be extended for an additional one-year period ("Extension Period") by the written mutual agreement of the Parties. The Assistant County Executive Officer/Economic Development Agency ("Assistant CEO"), or designee, has the authority, in his/her discretion, to consent to an extension of the Negotiating Period on behalf of the County. In determining whether or not to consent to an extension of the Negotiating Period, the Assistant CEO or designee may consider the following factors, (i) whether sufficient progress in accomplishing the tasks set forth herein has occurred, and (ii) whether the Parties are continuing to work toward a mutually acceptable Land Exchange Agreement.

If a Land Exchange Agreement has not been executed by the Parties by the expiration of the Negotiating Period, including any Extension Period, then this Agreement shall terminate, and neither party shall have any further rights or obligations under this Agreement except as set forth in Section IX of this Agreement, and the County shall be free to negotiate with any other persons or entities with regard to the Fill Dirt, construction of the Detention Basin, and SA Land For Exchange. If a Land Exchange Agreement is executed by the Parties, then, upon such execution, this Agreement shall terminate and all rights and obligations of the Parties shall be as set forth in the fully executed Land Exchange Agreement.

C. SA Land for Exchange

Kohl Ranch acknowledges and agrees that the fee title to the SA Land, including the SA Land for Exchange, is currently owned by the SA and not the County. Kohl Ranch further expressly acknowledges and agrees that the SA is not a party to this Agreement and that the County's obligation hereunder with respect to the SA Land for Exchange is subject to and conditioned upon (i) the County receiving separate written approval from the California Department of Finance ("DOF"), SA, and the Oversight Board for the Successor Agency to the Redevelopment Agency for the County of Riverside ("OB"), authorizing the conveyance of the SA Land for Exchange by the SA to the County and then from the County to Kohl Ranch, (ii) the County obtaining fee title to the SA Land for Exchange, from the SA, and (iii) compliance with applicable environmental laws including, but not limited to California Environmental Quality Act. Additionally, Kohl Ranch acknowledges and agrees that the proposed conveyance of the SA Land for Exchange is also subject to applicable state and federal laws, including but not limited to,

California Redevelopment Law (Health and Safety Code Section Health and Safety Code sections 33000 et seq.). Subject to the aforementioned, any conveyance of the SA Land for Exchange shall be stated in a separate written agreement subject to written approval by the Parties, the DOF, SA and OB.

C1. Detention Basin

As part of the consideration to be provided by Kohl Ranch to the County in connection with the Land Exchange discussed herein, Kohl Ranch shall construct, at its sole cost, a Detention Basin on the County Airport Property in the general vicinity where the Fill Dirt was excavated, the minimum dimensions of which shall be an average of 5 feet deep with the dimensions of 1800 feet by 1575 feet. The Detention Basin shall be used to capture and store storm water runoff. The engineering, design, plans, specifications and construction of the Detention Basin shall be first approved by the FAA, County and any other governmental agency with jurisdiction over the construction of the Detention Basin. In constructing the Detention Basin Kohl Ranch shall comply with all applicable local, state and federal laws.

D. Kohl Ranch Obligations During the Negotiating Period

Kohl Ranch shall, within the Negotiating Period (including any mutually agreed upon Extension Period) satisfy the following obligations (unless otherwise waived in writing by the Assistant CEO or designee):

1. Investigate the projected costs of completing the Land Exchange, including the removal of the Fill Dirt and the construction of the Detention Basin;
2. Refrain from further excavating dirt from the KR Property or altering the KR Property in any manner, other than to perform the grading necessary to create positive drainage into the existing drainage channel as first approved by County in County's discretion;
3. Complete the process for the necessary entitlements for the removal of the Fill Dirt and construction of the Detention Basin;
4. Pay all costs associated with surveying the SA Property and preparing a parcel map that identifies and establishes the SA Land For Exchange Property as a separate legal parcel; and
5. Prepare and submit to County for its review the following:
 - a. Copies of all completed reports, studies, analyses, and similar documents, but excluding confidential or proprietary information, prepared or commissioned by Kohl Ranch with respect to this Agreement and the Land Exchange, promptly upon their completion;
 - b. A parcel map of the subdivided SA Property; and
 - c. Preliminary plans, specifications and drawings relating to the construction of the Detention Basin, showing the layout and dimensions.

E. County's Obligations

County shall, within the Negotiating Period (including any mutually agreed upon Extension Period) satisfy the following obligations (unless otherwise waived in writing by Kohl Ranch):

1. Negotiate exclusively through its staff with Kohl Ranch for Kohl Ranch's acquisition and removal of the Fill Dirt and acquisition of the SA Land for Exchange, subject to the satisfaction of the conditions precedent set forth in Section II.C. above, in exchange for Kohl Ranch's conveyance to County of the KR Property and construction of the Detention Basin;
2. Identify and develop a plan to obtain FAA approval required for removal of the Fill Dirt and construction of the Detention Basin;
3. Determine and process any California Environmental Quality Act ("CEQA") documentation required in connection with the proposed Land Exchange and County's approval of a Land Exchange Agreement;
4. Upon County's successful acquisition of title to the SA Parcel from the SA evidenced by the recordation of a grant deed in the official records and Kohl Ranch's satisfaction of its obligations set forth in section II. D. 4. above, subdivide or cause the subdivision of the SA Parcel resulting in the SA Land For Exchange being a separate legal parcel;
5. Review preliminary plans, specifications drawings relating to the Detention Basin, and use best efforts, without cost to the County, to assist Kohl Ranch in securing any and all entitlements for the removal of the Fill Dirt and construction of the Detention Basin which may be required by the County or any other governmental authority; and
6. Arrange for and obtain, at County's expense, publication of notices of the public hearing for consideration of the Land Exchange Agreement.

III. Proposed Agreement

A. Land Exchange and Essential Terms and Conditions

The proposed Land Exchange to be negotiated hereunder shall include conveyance of the KR Property by Kohl Ranch to the County and construction of the Detention Basin by Kohl Ranch on the County Airport Property in consideration for the County's conveyance to Kohl Ranch of the following (i) approximately 422,223 cubic yards of fill dirt, which shall be removed by Kohl Ranch at Kohl Ranch's sole cost, and (ii) the SA Property, subject to the conditions precedent set forth in Section II.C. above (defined herein as the "Project").

The essential terms and conditions of any such Land Exchange Agreement entered into with Kohl Ranch shall be in conformance with the following requirements:

1. Kohl Ranch shall (i) acquire the Fill Dirt from County upon satisfaction of certain conditions precedent to be negotiated as part of the Land Exchange Agreement; (ii) thereafter remove the Fill Dirt from the County Airport Property, and (iii) construct a Detention Basin in the location where such Fill Dirt was excavated pursuant to County and FAA approved plans and specifications and any CEQA (defined below) and/or NEPA (defined below) requirements. The conveyance and removal of the Fill Dirt and construction of the Detention Basin shall occur after County has obtained the appropriate government approvals as contemplated by the Land Exchange Agreement;
2. Kohl Ranch shall provide, at its sole cost, all plans, specifications, and construction drawings necessary for the construction of the Detention Basin.
3. Kohl Ranch shall secure at its own cost and expense, as required, in accordance with the schedule set forth in the Land Exchange Agreement, any and all entitlements for the removal of the Fill Dirt on the County Airport Property and the construction of the Detention Basin, including grading approvals ("Entitlements"), which may be required by the County or any other governmental agency with jurisdiction over such removal and construction;
4. Kohl Ranch shall remove the Fill Dirt from the County Airport Property and design and construct the Detention Basin on the County Airport Property, at its own cost and expense, in accordance with a Schedule of Performance to be negotiated as part of the Land Exchange Agreement and in accordance with the plans and specifications prepared by Kohl Ranch and approved in writing by the County and the FAA;
5. Subject to the prior written approval of the County in its discretion, Kohl Ranch shall regrade that portion of the KR Property as determined by an Engineer paid for by Kohl Ranch, to provide positive drainage to the drainage channel within the KR Property. Any dirt required to perform the grading necessary to create the positive drainage shall be provided and paid for by Kohl Ranch. All of the work required in this Section III. A. 5. must be completed prior to the conveyance of the SA Land for Exchange by County to Kohl Ranch.
6. Kohl Ranch shall acquire the SA Land for Exchange from the County upon satisfaction of certain conditions precedent to be negotiated as part of the Land Exchange Agreement, including, but not limited to the conditions precedent set forth in Section II.C. above;
7. County shall secure any FAA approvals which may be required to allow the disposition and removal of the Fill Dirt from the County Airport Property and the construction thereon of the Detention Basin;

8. Subject to County obtaining fee title to the SA Land For Exchange as discussed herein, in the event County conveys the SA Land For Exchange to Kohl Ranch, County shall use best efforts to assist Kohl Ranch in receiving assurances from the Coachella Valley Water District ("CVWD") that CVWD shall continue to provide access to irrigation water, at Kohl Ranch's sole cost, to the SA Land For Exchange. Kohl Ranch hereby acknowledges and agrees that County is a separate legal entity from CVWD and has no control in the operation and/or decision making of the CVWD. Kohl Ranch shall have no obligation to convey the KR Property to County or participate in the exchange under the Land Exchange Agreement and County shall have no obligation to convey the SA Land For Exchange to Kohl Ranch or participate in the exchange under the Land Exchange Agreement if Kohl Ranch is not reasonably satisfied that the CVWD shall continue to provide access to irrigation water to the SA Land For Exchange on the same basis as such irrigation water is presently provided.
9. Other terms and conditions applicable to the Land Exchange Agreement are as follows:
 - a. It is understood by Kohl Ranch that in excavating the Fill Dirt, Kohl Ranch shall abide by all County Airport rules and regulations and coordinate with County the transportation and routing of such Fill Dirt to the proposed destination selected by Kohl Ranch.
 - b. It is understood by Kohl Ranch that the Land Exchange Agreement is subject to review and approval of the FAA, in its sole discretion.
 - c. It is understood by Kohl Ranch that design and engineering approval by the FAA and County will be required for the construction of the Detention Basin and that sketches, plans, working drawings, specifications and similar documents will be required to be submitted for written approval pursuant to the terms and provisions in the Land Exchange Agreement.

B. Kohl Ranch's Findings, Determinations, Studies, and Reports

From time-to-time, as reasonably requested by County, Kohl Ranch shall provide oral Project status, and on the 5th of every month Kohl Ranch shall provide written progress reports, advising County on all matters related to the Land Exchange, including due diligence matters. Should negotiations not result in a Land Exchange Agreement between County and Kohl Ranch, County may use the information provided by Kohl Ranch in any way deemed by County to be of benefit to County. All costs incurred by Kohl Ranch in the preparation and presentation of such findings, determinations, studies, reports or other requests by the County under this Agreement shall be at the sole expense of Kohl Ranch.

IV. Purchase Price and/or Other Consideration

The purchase price and/or other consideration for the Fill Dirt and the SA Land For Exchange to be paid to the County by Kohl Ranch and the purchase price and/or other consideration to be paid to Kohl Ranch for the construction of the Detention Basin and acquisition of the KR Property by the County will be established in the Land Exchange Agreement.

V. Environmental Requirements

Certain Federal, State and local environmental requirements under the National Environmental Policy Act (NEPA) and CEQA may be applicable to the proposed Project. County's Board of Supervisors will consider the Land Exchange Agreement upon submission of County's successful negotiations with Kohl Ranch on the terms and conditions of the Land Exchange Agreement. County will act as the "lead agency" under CEQA. County will take necessary actions to comply with NEPA as required by law. Accordingly, Kohl Ranch agrees to supply information and otherwise cooperate with County, as requested by County to determine the environmental impact of the proposed Project, and to allow County to prepare such environmental documents as County may determine to be necessary pursuant to CEQA and County's guidelines and procedures.

VI. Assignment

Kohl Ranch shall not assign all or any part of this Agreement without the prior written approval of the County Board of Supervisors. County, in its reasonable discretion, may approve an assignment to any other entity if, in the reasonable determination of County, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to Kohl Ranch. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments approved in writing as to form and content by the County's Assistant CEO, or designee, and County Counsel. Kohl Ranch shall promptly notify County of any and all changes whatsoever in the identity of the parties in control of Kohl Ranch or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

VII. Condition of Site

Kohl Ranch will assume the full and complete responsibility to make all investigations of surface and subsurface conditions as may be necessary or appropriate and to evaluate the suitability of the Fill Dirt located on the County Airport Property and the SA Property for Kohl Ranch's intended use. Neither County nor the SA shall make any representations or warranties concerning the SA Property and the County Airport Property, including the Fill Dirt, their respective suitability for the use intended by Kohl Ranch, or the surface or subsurface conditions of the SA Land For Exchange and/or the County Airport Property, including the Fill Dirt.

Upon successful negotiation, approval and execution of a Land Exchange Agreement, (i) the SA Land For Exchange and the Fill Dirt shall be conveyed to Kohl Ranch "AS IS," meaning that Kohl Ranch will be accepting the SA Land For Exchange and the Fill Dirt in their present condition, including, but not limited to, the physical condition of the SA Land For Exchange and the Fill Dirt and all laws, rules and regulations, whether federal, state or local, having or potentially

having any impact on ownership, use, subdivision, improvement or other aspects of the SA Land For Exchange and the Fill Dirt, and (ii) the KR Property shall be conveyed to County "AS IS," meaning that County will be accepting the KR Property in their present condition, including, but not limited to, the physical condition of the KR Property and all laws, rules and regulations, whether federal, state or local, having or potentially having any impact on ownership, use, subdivision, improvement or other aspects of the KR Property. If a Land Exchange Agreement is executed and approved by County, Kohl Ranch shall be responsible, at its own sole cost and expense, for the excavation of the Fill Dirt from the County Airport Property, the construction of the Detention Basin on the County Airport Property, and will do all things necessary to prepare the County Airport Property for the excavation of the Fill Dirt and construction of the Detention Basin in accordance with the Entitlements, therefore.

VIII. Right of Entry

A. County hereby grants to Kohl Ranch and its employees, agents and contractors (herein referred to collectively as "Kohl Ranch Designees") the nonexclusive right to enter upon the County Airport Property only at any time during the Negotiating Period to perform a survey and certain work, consisting of geotechnical investigation, soil testing, a Phase I Environmental Assessment prepared in compliance with the most recent published American Society for Testing and Materials Phase I Environmental Property Assessment Standard, a Phase II Environmental Investigation and Report, if required, and other due diligence related activities (collectively, "Work"), and for no other purposes without the prior written approval of Assistant CEO or designee. Kohl Ranch shall not have the right to enter upon the SA Land For Exchange at any time during the Negotiating Period, until and unless Kohl Ranch receives separate express written permission to do so from the County.

Prior to each entry onto the County Airport Property, Kohl Ranch shall provide three (3) working days advance written notice to County to arrange for access. Email communications shall constitute valid written notice provided such notice is (i) submitted three (3) days in advance, (ii) sent to Daryl Shippy, Airports Manager at dshippy@rivcoeda.org, and (iii) delivery of such email notice is confirmed with a documented reply and confirmation from Mr. Shippy.

Prior to any entry onto the County Airport Property for the taking of environmental samples or testing, Kohl Ranch shall provide County with a work plan for on-site activity, including but not limited to a copy of its sampling and testing procedures. Such work plan shall be provided not less than three (3) working days in advance of any environmental testing or sampling activity contemplated under this Agreement.

Kohl Ranch shall provide to County a copy of all results generated by the sampling and testing performed pursuant to this Agreement. Kohl Ranch acknowledges and agrees for itself and on the behalf of Kohl Ranch Designees as follows:

1. Kohl Ranch will not permit any dangerous condition to be created on the County Airport Property as a result of the activities of Kohl Ranch or Kohl Ranch Designees;
2. That all acts and things done by Kohl Ranch on the County Airport Property will be

done in a careful and reasonable manner, in accordance with all federal, state and local laws;

3. Kohl Ranch will enter the County Airport Property entirely at its own cost, risk and expense;
4. That prior to Kohl Ranch's entry upon the County Airport Property and during the term of this Agreement, Kohl Ranch shall procure and maintain, or cause to be maintained, at its sole cost and expense, the insurance coverages set forth in Section XVIII below. Kohl Ranch shall also require each and all of Kohl Ranch's contractors/consultants responsible for the Work under this Agreement with whom Kohl Ranch enters into a written contract for such Work to maintain, in full force and effect, the insurance coverages set forth in Section XVIII below.
5. Not less than three (3) working days prior to entry on the County Airport Property, Kohl Ranch shall cause Kohl Ranch's contractors/consultants with whom Kohl Ranch enters into a written contract for such Work to provide certificates evidencing such coverage and naming County, its Agencies, Districts, Special Districts and Departments, its respective directors, officer's, Board of Supervisors, elected and appointed officials, employees, agents and representatives as additionally insured, as its interests may appear;
6. Kohl Ranch shall not suffer or permit to be enforced against the County Airport Property, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any Work performed by Kohl Ranch or Kohl Ranch's Designee's use of and activities upon the County Airport Property pursuant to this Agreement. Kohl Ranch shall pay, or cause to be paid, all said liens, claims or demands before any action is brought to enforce the same against the County Airport Property.
7. Kohl Ranch shall not have any interest in the County Airport Property or be entitled to any reimbursement or repayment for any Work performed upon the County Airport Property pursuant to this Agreement;
8. Kohl Ranch shall take all necessary precautions to prevent the import and/or release into the environment of any hazardous materials which are imported to, in, on or under the County Airport Property during the performance of the Work. If hazardous materials are imported onto the County Airport Property as a result of the performance of the Work, Kohl Ranch shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. Kohl Ranch shall report to County, as soon as possible after each incident, any incidents with respect to the environmental condition of the County Airport Property;
9. Kohl Ranch shall obtain and maintain all governmental permits and approvals required for the Work conducted under this Agreement and shall comply with all statutes, ordinances, rules, regulations, orders and requirements now in effect or that become effective during the term of this Agreement applicable to its sampling and

other activities pursuant to the access granted by this Agreement; and

10. Kohl Ranch shall initiate and complete the process for necessary entitlements required for the removal of the Fill Dirt and the construction of the Detention Basin on the County Airport Property. This includes performing any necessary studies and/or plans required for the entitlement process.

B. Kohl Ranch hereby grants to County and its employees, agents and contractors (herein referred to collectively as "County Designees") the nonexclusive right to enter upon the KR Property at any time during the Negotiating Period to perform a survey and certain work, consisting of geotechnical investigation, soil testing, a Phase I Environmental Assessment prepared in compliance with the most recent published American Society for Testing and Materials Phase I Environmental Property Assessment Standard, a Phase II Environmental Investigation and Report, if required, NEPA related review, and other due diligence related activities (collectively, "Work"), and for no other purposes without the prior written approval of Kohl Ranch.

Prior to each entry onto the KR Property, County shall provide three (3) working days advance written notice to Kohl Ranch to arrange for access. Email communications shall constitute valid written notice.

Prior to any entry onto the KR Property for the taking of environmental samples or testing, County shall provide Kohl Ranch with a work plan for on-site activity, including but not limited to a copy of its sampling and testing procedures. Such work plan shall be provided not less than three (3) working days in advance of any environmental testing or sampling activity contemplated under this Agreement.

County shall provide to Kohl Ranch a copy of all results generated by the sampling and testing performed pursuant to this Agreement. County acknowledges and agrees for itself and on the behalf of County Designees as follows:

1. County will not permit any dangerous condition to be created on the KR Property as a result of the activities of County or County Designees;
2. That all acts and things done by County on the KR Property will be done in a careful and reasonable manner, in accordance with all federal, state and local laws;
3. County will enter the KR Property entirely at its own cost, risk and expense;
4. That prior to County's entry upon the KR Property and during the term of this Agreement, County shall procure and maintain, or cause to be maintained, at its sole cost and expense, adequate insurance coverages;
5. County shall not suffer or permit to be enforced against the KR Property, or any thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any Work performed by County or County's designee's use of and activities upon the KR Property pursuant to this Agreement. County shall pay, or cause to be paid, all said liens, claims or demands before any

action is brought to enforce the same against the KR Property;

6. County shall not have any interest in the KR Property or be entitled to any reimbursement or repayment for any Work performed upon the KR Property pursuant to this Agreement;
7. County shall take all necessary precautions to prevent the import and/or release into the environment of any hazardous materials which are imported to, in, on or under the KR Property during the performance of the Work. If hazardous materials are imported onto the KR Property as a result of the performance of the Work, County shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. County shall report to KR, as soon as possible after each incident, any material incidents with respect to the environmental condition of the KR Property; and
8. County shall obtain and maintain all governmental permits and approvals required for the Work conducted under this Agreement and shall comply with all statutes, ordinances, rules, regulations, orders and requirements now in effect or that become effective during the term of this Agreement applicable to its sampling and other activities pursuant to the access granted by this Agreement.

IX. Indemnity; Hold Harmless

A. Kohl Ranch shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, its respective directors, officer's, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "County Indemnitees") from any liability whatsoever, based or asserted upon any services of Kohl Ranch, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of Kohl Ranch, its officers, agents, employees, subcontractors, agents or representatives under this Agreement. Kohl Ranch shall pay, at its sole expense, all costs and fees including, but not limited, to attorneys' fees, cost of investigation, defense and settlements or awards, of the County Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Kohl Ranch, Kohl Ranch shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Kohl Ranch's indemnification to the County Indemnitees as set forth herein.

Kohl Ranch's obligation hereunder shall be satisfied when Kohl Ranch has provided to County the appropriate form of dismissal relieving County and/or the County Indemnitees from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe Kohl Ranch's obligations to indemnify and hold harmless the County Indemnitees herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve Kohl Ranch from indemnifying the County Indemnitees to the fullest extent allowed by law.

The foregoing indemnity shall continue to remain in effect after the expiration of the Negotiating Period including any extensions thereto.

B. County shall indemnify and hold harmless Kohl Ranch, its direct owners, officers, employees, agents and representatives (individually and collectively hereinafter referred to as "KR Indemnitees") from any liability whatsoever, based or asserted upon any services of County, its officers, employees, subcontractors, agents or representatives relating to the Work performed pursuant to Section VIII, B., including but not limited to property damage, bodily injury, or arising from the performance of County, its officers, agents, employees, subcontractors, agents or representatives relating to the Work performed pursuant to Section VIII, B. County shall pay, at its sole expense, all costs and fees including, but not limited, to attorneys' fees, cost of investigation, defense and settlements or awards, of the KR Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by County, County shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes County's indemnification to the KR Indemnitees as set forth herein.

County's obligation hereunder shall be satisfied when County has provided to Kohl Ranch the appropriate form of dismissal relieving Kohl Ranch and/or the KR Indemnitees from any liability for the action or claim involved.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve County from indemnifying the KR Indemnitees to the fullest extent allowed by law.

X. Default and Remedies; Termination

(a) Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b) below.

(b) Remedies.

(1) County Default. In the event of an uncured default by County under this Agreement, Kohl Ranch shall be entitled to terminate this Agreement in which case following such termination, neither party shall have any further right, remedy or obligation under this Agreement.

(2) Kohl Ranch Default. In the event of an uncured default by Kohl Ranch under this Agreement, County shall be entitled to terminate this Agreement. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the indemnification obligations pursuant to Section IX shall survive such termination.

Kohl Ranch and the County hereby waive the right to specific performance as a remedy under this Agreement.

(c) Waiver of Default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of said default or of any rights or remedies in connection therewith or of any subsequent default or any rights or remedies in connection therewith, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(d) Termination.

During the Negotiating Period, including any extensions thereto, either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party pursuant to the noticing procedures set forth in Section XX below.

XI. Kohl Ranch Employees and Liabilities

It is understood that persons engaged or employed by Kohl Ranch as employees, agents, or independent contractors shall be engaged or employed by Kohl Ranch and not by County. Kohl Ranch alone is responsible for their work, direction, compensation and personal conduct. Nothing included in any provision of this Agreement shall impose any liability or duty upon County to persons, firms, or corporations employed or engaged by Kohl Ranch in any capacity whatsoever, or make County liable to any such persons, firms, or corporations, or to any government, for the acts, omissions, liabilities, obligations, and taxes, of whatsoever nature, of Kohl Ranch or of its employees, agents, or independent contractors.

XII. Kohl Ranch's Obligation to Refrain from Discrimination; Kohl Ranch's Obligation Toward Equal Opportunity

Kohl Ranch covenants and agrees for itself, its successors, its assigns and every successor in interest to the SA Land For Exchange or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, medical condition, or marital

status, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the SA Land For Exchange nor shall Kohl Ranch itself or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases, or vendors of the SA land For Exchange.

Kohl Ranch will not discriminate against any employees or applicants for employment because of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, medical condition, or marital status.

XIII. Nonliability of Officials, Officers, Members, and Employees

No member, official, officer, or employee of the County shall be personally liable to Kohl Ranch, or any successor in interest, in the event of any default or breach by the County or for any amount which may become due to Kohl Ranch or to its successor, or on any obligations under the term of this Agreement. No direct or indirect owner, officer, or employee of Kohl Ranch shall be personally liable to County, or any successor in interest, in the event of any default or breach by Kohl Ranch or for any amount which may become due to County or to its successor, or on any obligations under the term of this Agreement.

XIV. Waivers; Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the County and Kohl Ranch.

XV. Actions By County

The Assistant CEO or designee(s) are authorized to take such ministerial actions as may be necessary or appropriate to implement and/or administer the terms, provisions, and conditions of this Agreement as it may be amended from time to time by County.

XVI. Real Estate Commissions

County shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. County and Kohl Ranch each represents that it has engaged no broker, agent or finder in connection with this transaction, and Kohl Ranch agrees to hold the County harmless from any claim by any broker, agent or finder which it has retained.

XVII. Acknowledgments and Reservations

If the negotiations hereunder culminate into a Land Exchange Agreement, such Land Exchange Agreement will become effective only after and if it has been considered and approved by County's Board of Supervisors, the FAA, and any other governmental agency with jurisdiction over the Project, as required by law.

a. Not Binding

The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to negotiate a Land Exchange Agreement. The Parties have not reached agreement on the matters to be set forth in a Land Exchange Agreement, and do not intend to be bound to the Project until such time as a final written Land Exchange Agreement is executed by both Parties.

The County's acknowledgment of this Agreement is merely an agreement to enter into a period of negotiations according to the concepts presented herein, reserving final discretion and approval by the County's Board of Supervisors, the FAA, and any other governmental agency with jurisdiction over the Project, as required by law.

b. No Further Obligations

The County and Kohl Ranch agree that neither the County nor Kohl Ranch shall be under any further obligation to each other regarding the Project if this Agreement expires, is terminated for any reason, or a Land Exchange Agreement is not executed by both the County and Kohl Ranch.

c. No Agreement

Kohl Ranch acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the County, nor an acceptance by the County of any offer or proposal from Kohl Ranch, for the County to convey to Kohl Ranch any interest in all or a portion of (i) the SA Property, including, but not limited to the SA Land For Exchange, or (ii) the Fill Dirt located on the County Airport Property, or for the County to provide any financial or other assistance to Kohl Ranch in connection with the Land Exchange.

d. No Acquisition

Kohl Ranch acknowledges and agrees that it has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in the SA Land for Exchange, County Airport Property, including the Fill Dirt located thereon, or any other real or personal property of the County. Similarly, County acknowledges and agrees that it has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in the KR Property or any other real or personal property of Kohl Ranch, or the right to construction of the Detention Basin.

e. Limitations of this Agreement

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the County (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of the County's regulatory capacity or function. The final form of any proposed Land Exchange Agreement to be negotiated may contain matters not contemplated by this Agreement, including, but not limited to, matters necessary to accommodate compliance with law, including without limitation CEQA and NEPA.

XVIII. Insurance

Concurrently with the execution of this Agreement by Kohl Ranch, Kohl Ranch shall procure and keep in full force and effect during the term of this Agreement, including any extensions thereto, the following insurance policies:

- a. Worker's Compensation Insurance. If Kohl Ranch has employees as defined by the State of California, Kohl Ranch shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.
- b. Comprehensive General Liability Insurance. Comprehensive General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Kohl Ranch's performance of its obligations hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.
- c. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Kohl Ranch shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured or provide similar evidence of coverage approved by County's Risk Manager.
- d. General Insurance Provisions – All Lines.
 - 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by County's Risk Manager. If County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
 - 2) Kohl Ranch's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of County's Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to County, and at the election of County's Risk Manager, Kohl Ranch's carriers shall either: (a) reduce or eliminate such self-insured retention as respects this Agreement with County, or (b) procure a bond which guarantees

payment of losses and related investigations, claims administration, and defense costs and expenses.

- 3) Kohl Ranch shall cause Kohl Ranch's insurance carrier(s) to furnish County with copies of the Certificate(s) of Insurance and Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by County's Risk Manager, provide copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County receives, prior to such effective date, another Certificate of Insurance and copies of endorsements, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Kohl Ranch shall not commence operations until County has been furnished Certificate(s) of Insurance and copies of endorsements and if requested, copies of policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so, on its behalf, shall sign the original endorsements for each policy and the Certificate of Insurance.
- 4) It is understood and agreed to by the parties hereto that Kohl Ranch's insurance shall be construed as primary insurance, and County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof, exceeds five (5) years County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in County's Risk Manager's reasonable judgment, the amount or type of insurance carried by Kohl Ranch has become inadequate.
- 6) Kohl Ranch shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to County.
- 8) Kohl Ranch agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

XIX. Authority to Execute

The persons executing this Agreement or exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they have the authority to execute this Agreement and warrant and represent that they have the authority to bind the respective parties to this Agreement to the performance of its obligations hereunder.

XX. Notices

Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other addresses as the Parties may designate in writing from time to time:

County:

County of Riverside
3403 10th Street, Suite 300
Riverside, California 92501
Attention: Robert Field, Assistant County
Executive Officer/EDA

Kohl Ranch:

Kohl Ranch II, LLC
11990 San Vicente Boulevard, Suite 200
Los Angeles, California 90049
Attention: David Kohl and Chief Operating
Officer

With Copy to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, CA 90067
Attention: Real Estate Notices (JLB)

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

XXI. Effective Date

The "Effective Date" of this Agreement is the date the Parties execute this Agreement. If the Parties execute this Agreement on more than one date, then the last date this Agreement is executed by a party shall be the Effective Date.

XXII. Entire Agreement

This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the Property.

XXIII. Conflict of Interest

No member, official, or employee of the County shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

XXIV. No Third Party Beneficiaries.

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the County and Kohl Ranch, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

XXV. Further Assurances.

Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all necessary acts and things in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties.

XXVI. Severability

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

XXVII. Jurisdiction and Venue

Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Superior Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

XXVIII. Interpretation and Governing Law

This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the internal laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved

against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

XXIX. Counterparts

This Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original but all of which together shall constitute one and the same agreement.

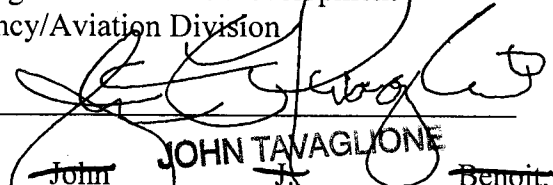
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[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written below.

COUNTY:

COUNTY OF RIVERSIDE, a political subdivision of the State of California, by and through its Economic Development Agency/Aviation Division

By: 
~~John~~ JOHN TAVAGLIONE ~~Benoit,~~
Chairman

Date: 2-7-17

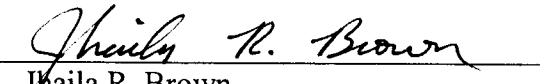
ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:

GREGORY PRIAMOS
COUNTY COUNSEL

By: 
Jhaila R. Brown,
Deputy County Counsel

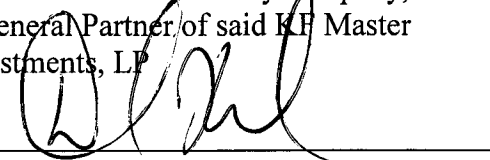
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KOHL RANCH:

KOHL RANCH II, LLC, a California limited liability company

By: KF MASTER INVESTMENTS, LP, a California limited partnership, as Member of said Kohl Ranch II, LLC

By: KFO CAPITAL MANAGEMENT, LLC, a California limited liability company, as General Partner of said KF Master Investments, LP

By: 
David Kohl
President of said KFO Capital Management, LLC

Date: 11/8/16

Exhibit A

SITE MAP OF COUNTY AIRPORT PROPERTY



Exhibit B

LEGAL DESCRIPTION OF KR PROPERTY

All that real property located in the County of Riverside legally described as follows:

All that certain real property situated in the County of Riverside, State of California, described as follows:

Parcel 5 of Parcel Map No. 36315, in the County of Riverside, State of California, as per map on file in Book 232, Pages 89 through 96, inclusive of Parcel Maps, Records of said County.

Assessor's Parcel No: 759-190-008

Exhibit C

LEGAL DESCRIPTION OF SA PROPERTY

All that certain real property situated in the County of Riverside, State of California, described as follows:

BEING A PORTION OF SECTION 20, 28 AND 29, TOWNSHIP 6 SOUTH, RANGE 8 EAST, S.B.B. & M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the southwest section corner of said Section 20;
Thence South $89^{\circ} 52' 48''$ East, along the south line of said Section 20, a distance of 30.00 feet to the True Point of Beginning, said point also being the easterly right-of-way line of Harrison Street (60.00 feet wide) per document recorded on April 17, 1959 in Book 2454, Page 65, of Official Records of Riverside County, California;
Thence North $00^{\circ} 02' 00''$ West, parallel with said easterly right-of-way line of Harrison Street, a distance of 661.22 feet;
Thence South $89^{\circ} 52' 48''$ East, parallel with said south line of Section 20, a distance of 2340.28 feet;
Thence South $46^{\circ} 05' 29''$ East, a distance of 388.22 feet;
Thence South $01^{\circ} 03' 37''$ East, a distance of 392.66 feet to a point on said south line of Section 20;
Thence continuing South $01^{\circ} 03' 37''$ East, a distance of 813.84 feet;
Thence North $89^{\circ} 56' 42''$ East, a distance of 122.89 feet;
Thence South $00^{\circ} 01' 38''$ East, a distance of 2924.24 feet;
Thence North $89^{\circ} 58' 22''$ East, a distance of 680.00 feet;
Thence North $00^{\circ} 01' 38''$ West, a distance of 2924.57 feet;
Thence North $89^{\circ} 56' 42''$ East, a distance of 523.48 feet;
Thence South $45^{\circ} 01' 51''$ East, a distance of 3946.17 feet;
Thence South $00^{\circ} 24' 25''$ West, a distance of 1676.27 feet to a point on said northerly right-of-way line of 60th Avenue per said document recorded April 17, 1959 in Book 2454, Page 65 of Official Records; Thence North $89^{\circ} 45' 04''$ West, along said northerly right-of-way line, a distance of 1497.14 feet to a point on the west line of said Section 28; Thence continuing along said northerly right-of-way line of 60th Avenue, South $89^{\circ} 42' 39''$ West, a distance of 2642.99 feet;
Thence continuing along said northerly right-of-way line of 60th Avenue, South $89^{\circ} 51' 53''$ West, a distance of 1322.68 feet to a point on the east line of the southwest quarter of the southwest quarter of said Section 29;
Thence North $00^{\circ} 04' 48''$ East, along the east line of said southwest quarter of the southwest quarter, a distance of 1301.15 feet to the northeast corner of said southwest quarter of the southwest quarter;
Thence South $89^{\circ} 52' 15''$ West, along the north line of said southwest quarter of the southwest quarter, distance of 1292.59 feet to a point on

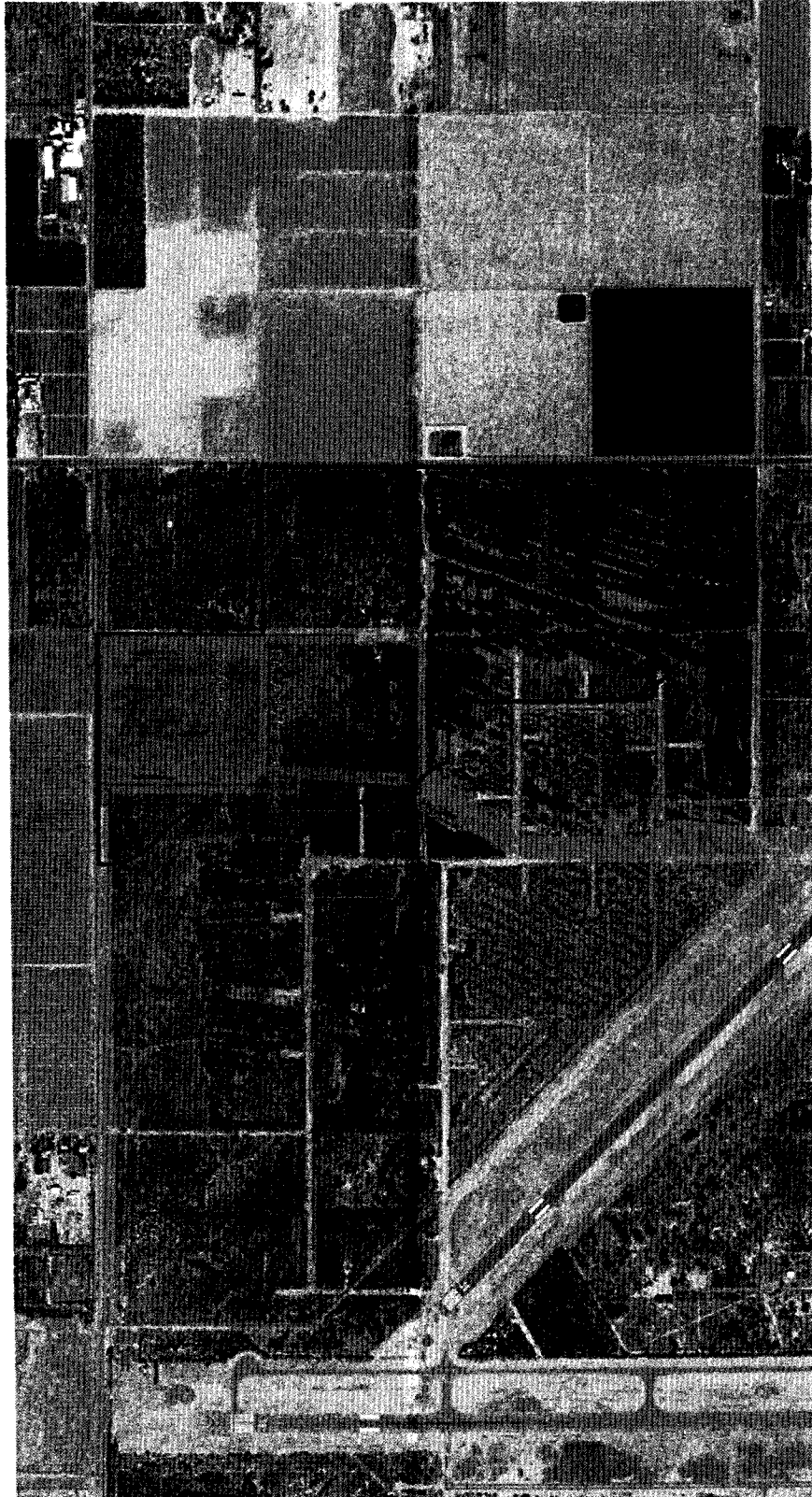
the easterly right-of-way line of Harrison Street (60.00 feet wide) per said document recorded April 17, 1959 in Book 2454, Page 65 of Official Records;

Thence North $00^{\circ} 04' 47''$ East, along said easterly right-of-way line of Harrison Street, a distance of 3993.74 feet to the True Point of Beginning.

Assessor's Parcel No's: 759-050-003; 759-100-006 through 011

Exhibit D

DEPICTION OF SA LAND FOR EXCHANGE





Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.

2/14/17
Date

kb
Initial

NOTICE OF EXEMPTION

January 19, 2017

Project Name: County of Riverside, Riverside County Exclusive Negotiation Agreement with Kohl Ranch II, LLC (Kohl Ranch) in connection with the Jacqueline Cochran Regional Airport Runway Extension and Detention Basin, unincorporated area of Thermal, Riverside County

Project Number: FM0417200232

Project Location: Kohl Ranch (KR) Property-South Adjacent to Jacqueline Cochran Airport, west of Polk, north of 62nd Street, Assessor's Parcel Number (APN): 759-190-008; Successor Agency (SA) Property- Western boundary of Jacqueline Cochran Airport, east of Harrison Street, North of 60th Street, APNs: 759-050-003; 759-100-006 through 759-100-011 (See attached exhibit)

Description of Project: The County of Riverside (County) owns and operates that certain real property comprised of approximately 1743.5 acres known as the Jaqueline Cochran Airport, in the unincorporated area of Thermal, California (Airport Property). As contemplated in the Jacqueline Cochran Master Drainage Plan of 2008, the construction of a detention basin to store excess storm water runoff (Detention Basin) is necessary on about 65 acres of the Airport Property (Detention Basin Property) to prevent localized flooding and reduce downstream erosion. In addition, pursuant to the Jacqueline Cochran Regional Airport Layout Plan, approved by the Federal Aviation Administration (FAA) on July 29, 2005, and revalidated June 22, 2009, and the JCRA Master Plan dated on or about May 2004, an extension of the existing JCRA runway located within the Runway Protection Zone was contemplated as future development on the Airport Property (Proposed Runway). The Airport Property currently does not contain sufficient acreage in the designated area to develop the Proposed Runway. An analysis of the neighboring properties was performed, and it was determined that an adjacent parcel owned by Kohl Ranch (south of the existing Airport Runway 17/35) was well suited for the fulfillment of the Proposed Runway. The KR property consists of roughly 109.8 acres, and is located in the unincorporated area of Thermal, California, identified by APN: 759-190-008.

To facilitate construction of the proposed Detention Basin and the Proposed Runway, Kohl Ranch proposes to convey the KR Property to the County for use as the Proposed Runway, in exchange for Kohl Ranch's extraction and use of approximately 422,223 cubic yards of fill dirt from the Detention Basin Property resulting in the creation of a Detention Basin and the acquisition of approximately 58 acres of vacant real property (SA Land) located in the unincorporated area of Thermal, California. On December 18, 2015 the California Department of Finance (DOF) approved the Successor Agency's Amended Long Range Property Management Plan which allows for the disposition of properties owned by the former Redevelopment Agency for the County of Riverside, including, but not limited to the SA Land, making the potential exchange of the SA Land for the KR Property and fill dirt possible. To enable the aforementioned transaction which will provide necessary infrastructure and help promote important economic development, the County and Kohl Ranch desire to enter into the attached proposed Exclusive Negotiation Agreement (ENA) for the purpose of establishing the procedures and standards of negotiating a potential Land Exchange Agreement, or such other agreements that may be deemed necessary, for the disposition and removal of the fill dirt, construction of the Detention Basin, and disposition of the SA Land, and KR Property, as more specifically set forth in the ENA.

2.7.17 3.13

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|-----------------------|------------------------|-------------------------------|-----------------------|
| Administration | Housing | Economic Development | Parking |
| Aviation | Housing Authority | Edward-Dean Museum | Project Management |
| Business Intelligence | Information Technology | Environmental Planning | Purchasing Group |
| Cultural Services | Maintenance | Fair & National Date Festival | Real Property |
| Community Services | Marketing | Foreign Trade | Redevelopment Agency |
| Custodial | | Graffiti Abatement | Workforce Development |

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The proposed ENA in itself does not grant Kohl Ranch or any successor or affiliated entity the right to acquire the fill dirt or the SA Land, and/or obligate the County to acquire or give the County the right to acquire the KR Property and the construction of the Detention Basin. Any resulting Land Exchange Agreement, or other agreement, will be subject to prior approval of the Board of Supervisors and any agreement relating to the conveyance of the SA Land will be subject to approval by the DOF, Board of Supervisors and the Oversight Board for the Successor Agency to the Redevelopment Agency for the County of Riverside. As memorialized in the ENA, the negotiation period shall be for a term of one year, commencing on the date that both parties have executed the agreement. Additionally, the term of these negotiations may be extended by one year by written mutual consent of the parties. The execution of the ENA is identified as the proposed Project under the California Environmental Quality Act (CEQA). The proposed Project would involve the creation of an agreement to develop a potential land exchange agreement or other agreement for the disposition and removal of the fill dirt, construction of the Detention Basin, and disposition of the SA Land and KR property. The ENA would not result in physical changes or an expansion of capacity. No additional direct or indirect physical environmental impacts are anticipated.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency;

Exempt Status: Not a project as defined in California Environmental Quality Act (CEQA) Section 21065 and State CEQA Guidelines Section 15061(b) (3), General Rule or "Common Sense" Exemption, and Section 15378. Codified under Public Resources Code Division 13, Chapter 2.5, Section 21065, and California Code of Regulations Title 14, Articles 5 and 20, Sections 15061, and 15378.

Reasons Why Project is Exempt: The discretionary action to enter into an Exclusive Negotiations Agreement to exchange property is exempt from the requirements of CEQA as it would not result in direct impacts to the physical environment or reasonably foreseeable indirect effects. The entering into an Exclusive Negotiations Agreement to exchange the property is the initial discretionary action for a series of discretionary actions that defines a broader project. The broader project represents the whole of the action and can be defined by the following sequence of discretionary approvals: negotiations for the purchase, and sale of property; approval for design of the detention basin, award of construction of the detention basin and disposition of fill dirt; approval of design for the Proposed Runway; and award of construction of the Proposed Runway.

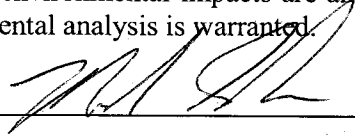
At this time, there are many unknowns associated with the disposition of the KR and SA properties, and future construction of the Proposed Runway and Detention Basin; the resulting indirect effects from these unknown project details are not reasonably foreseeable. In addition, the limited availability of public funds makes it economically infeasible to develop the entire design of the project in one phase. However, the identification of future known additional discretionary actions provide a mechanism to address these indirect effects resulting from the acquisition and sale of property through evaluation at a future time when more details are known and more meaningful disclosure can be provided to the public.

Section 15378 (c) defines a project as the collection of discretionary actions that defines the whole of the action. This process allows for the completion of environmental review when all the conditions and details are known or reasonably foreseeable. At this point in the process, the design of the project does not exist and is not substantive enough to provide a meaningful analysis of environmental effects. The completion of the level of design required to complete the analysis is not economically viable based on the availability of funding and the County's project development and fiscal policies. The County EDA process for project development requires multiple discretionary actions through project development, which is beneficial to the CEQA process as it allows for any necessary incorporation of public input to occur at appropriate times. The process allows for the appropriate level of environmental review to occur at the most relevant timeframe during the sequence of County discretionary actions when engineering and project information is refined and developed, and public input can be incorporated to address any potential significant impacts or assist in any necessary development of project alternatives or mitigation measures.

Development of the Proposed Runway and Detention Basin would occur under terms of separate agreements, and would be required to undergo additional CEQA review. The entering into an Exclusive Negotiations Agreement to purchase the property by the County does in no way guarantee the disposition of the KR or SA properties, nor the completion of the Proposed Runway and Detention Basin; there are many actions and processes that must be completed, all which necessitate discretionary actions by the County, and which may or may not be approved, based on public input and more refined project-related information. A separate agreement between the County and the developer will contain the appropriate legal requirements and indemnification to ensure that a proper level of environmental review is conducted, prior to approval by the Board of Supervisors. Therefore, the entering into an Exclusive Negotiations Agreement to purchase the property, on its own, is not a project under CEQA and a Notice of Exemption is the appropriate CEQA determination until a meaningful environmental review can be conducted on reasonably foreseeable information with the appropriate level of public input.

- **Section 15061 (b) (3) – “Common Sense” Exemption:** Even if a determination is made that the ENA is defined as a Project under CEQA, the agreement is exempt pursuant to State CEQA Guidelines Section 15061(b)(3). In accordance with CEQA, the use of the Common Sense Exemption is based on the “general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” *Ibid*. This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the Exclusive Negotiations Agreement to purchase the property itself may have a significant physical effect on the environment. The Agreement would be limited to the negotiations for the purchase or exchange of property and transfer of ownership which would not result in any physical direct or reasonably foreseeable indirect impacts to the environment. The potential indirect effects from this Agreement would be analyzed as part of separate discretionary action taken by the County to develop and approve a design for construction of the Proposed Runway and Detention Basin. It is at this stage of development, that enough reasonably foreseeable information could be established to define a description and address the potential environmental impacts of these actions. At this point, a contractual obligation to provide an appropriate level of environmental review under CEQA would be incorporated into the terms of a design development agreement to the satisfaction of the County, acting as the Lead Agency with final permitting approval. Therefore, in no way, would the Project as proposed have the potential to cause a significant environmental impact, and the Project is exempt from further CEQA analysis.

Based upon the identified exemption above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed:  Date: 11/19/17

Mike Sullivan, Senior Environmental Planner
County of Riverside, Economic Development Agency

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Project Name: Exclusive Negotiation Agreement with Kohl Ranch, unincorporated area of Thermal, Riverside County

Accounting String: 524830-47220-7200400000- FM0417200232

DATE: January 19, 2017

AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Mike Sullivan, Senior Environmental Planner, Economic Development Agency

Signature: 

PRESENTED BY: Jose Ruiz, Real Property Agent, Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: -

DATE: -

RECEIPT # (S) -



Date: January 19, 2017

To: Mary Ann Meyer, Office of the County Clerk

From: Mike Sullivan, Senior Environmental Planner, Project Management Office

Subject: **County of Riverside Economic Development Agency Project # FM0417200232**
Exclusive Negotiation Agreement with Kohl Ranch, unincorporated area of Thermal, Riverside County, Riverside County

The Riverside County's Economic Development Agency's Project Management Office is requesting that you post the attached Notice of Exemption. Attached you will find an authorization to bill by journal voucher for your posting fee.

After posting, please return the document to:

Mail Stop #1330

Attention: Mike Sullivan, Senior Environmental Planner,

Economic Development Agency,

3403 10th Street, Suite 400, Riverside, CA 92501

If you have any questions, please contact Mike Sullivan at 955-8009.

Attachment

cc: file