AGREEMENT BETWEEN
THE AGUA CALIENTE BAND OF CAHUILLA INDIANS,
TRIBAL HCP CONSERVATION FUND PARTICIPANT AND
THE CENTER FOR NATURAL LANDS MANAGEMENT

This Agreement is entered into this ______ day of ______________________, 20___, by and between the Agua Caliente Band of Cahuilla Indians (the "Tribe"), the Center for Natural Lands Management (the "CNLM") and ________ Tribal HCP Conservation Fund Participant (Participant), hereinafter referred to collectively as the "Parties."

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Biological Opinion (File No. __________) dated ________________________, on the proposed ____________________________, between the U.S. Fish and Wildlife Service and ____________________________, issued pursuant to section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1533 et seq. (ESA), evaluates the impacts of the Participant's activities on threatened or endangered species and their habitats on the Reservation and specifies alternative conservation measures available to the Participant to minimize the take/adverse effects on said species incidental to the Participant's activities. In accordance with the biological opinion, the Participant elects and hereby agrees to deposit, through CNLM, a Tribal Interim Habitat Conservation and Management Plan (Interim Plan) Conservation Fee established by the Tribe in the amount of ____________________ dollars ($__________) (the "Tribal Interim Conservation Fee") into one or more Tribal Interim Conservation Fund Accounts at a reputable financial institution reasonably acceptable to the CNLM and the Tribe in such investments as are approved by the Tribe, as a means of minimizing the incidental take and adverse effects to threatened or endangered species or their habitats resulting from the Participant's activities and otherwise reducing the impacts of the Participant's activities on these species and their habitats.

2. The Parties agree that the total amount of the Tribal HCP Conservation Fee (including any interest accrued thereon) deposited by the Participant in the Tribal HCP Conservation Fund Account, with the exception of the management fee identified in paragraph 6 of this Agreement shall be used, at the direction of the U.S. Fish & Wildlife Service, consistent with the Interim Plan, for the purchase of land, development rights or conservation easements established to permanently protect and manage Coachella Valley threatened or endangered species or their habitats.

3. The Parties jointly acknowledge and agree that the Tribal HCP Conservation Fee shall be managed and disbursed in accordance with the "AGREEMENT BETWEEN THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AND THE CENTER FOR NATURAL LANDS MANAGEMENT" dated June 6, 2005 (Tribal-CNLM Agreement), attached hereto as Exhibit A. If for any reason the Tribal-CNLM Agreement is terminated, the Tribe shall ensure to the extent practicable that the Tribal HCP Conservation Fee deposited by the Participant into the Tribal HCP Conservation Fund Account will be used in accordance with this Agreement to satisfy the Participant's obligations under the biological opinion referenced above in paragraph one, and the CNLM shall have no further liabilities or obligations hereunder.
4. The Participant acknowledges and agrees that it has voluntarily elected to deposit the Tribal HCP Conservation Fee into the Tribal HCP Conservation Fund Account in satisfaction of their obligations under the biological opinion and in lieu of carrying out other alternative conservation measures identified by the Tribe as available to the Participant to minimize the impacts of the Participant's activities on listed species and their habitats.

5. The Participant further acknowledges that the CNLM's fee for administering the Tribal HCP Conservation Fund Account (Administration Fee) is two point five percent (2.5%) of the Tribal HCP Conservation Fee specified above in paragraph one, and agrees to the deduction of said Administration Fee from the total Tribal HCP Conservation Fee deposited.

6. Participant's check made payable to CNLM - Tribal HCP Conservation Fund Account shall be forwarded together with a fully executed copy of this Agreement and the Payment Receipt form to The Center for Natural Lands Management at 215 West Ash Street, Fallbrook, California 92028-2960.

7. Participant acknowledges and agrees that the CNLM's sole obligation pursuant to the terms and conditions of the Tribal-CNLM Agreement and this Agreement, hereinafter referred to collectively as "the Agreements," is to accept the Tribal HCP Conservation Fee, deposit the Tribal HCP Conservation Fee into the Tribal HCP Conservation Fund Account and to disburse the Tribal HCP Conservation Fee solely at the direction of the Tribe, subject to the terms and conditions of the Agreements. The CNLM is accepting the Tribal HCP Conservation Fee solely as an accommodation to the Tribe and the Participant. Participant acknowledges and agrees that acceptance, deposit and disbursement of the Tribal HCP Conservation Fee by the CNLM does not create any liability or duty to Participant and Participant hereby releases the CNLM from any and all liability or claims due to the existence of these Agreements, the Tribal HCP Conservation Fund Account, Participants development and/or the ESA.

8. Participant acknowledges and agrees that the CNLM has made no representations or warranties to the Participant whatsoever and Participant assumes all risks related to its proceeding with development activities, in reliance on the CVFTLHCP and/or Section 7 authorization issued to the Participant through the ______________________. Participant does hereby agree to indemnify the CNLM, defend and hold the CNLM harmless from and against any and all claims, damages, and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees arising out of or in any way connected with or related to the Agreements, the Tribal HCP Conservation Fund Account, Participant's development and/or any action related to Section 10(a)(1)(B) of the ESA.

9. Participant acknowledges and agrees that the Tribe has made no representations or warranties to the Participant whatsoever and Participant assumes all risks related to its proceeding with development activities, in reliance on the CVFTLHCP and/or Section 7 authorization issued to the Participant through the ______________________. Participant does hereby agree to indemnify the Tribe, defend and hold the Tribe harmless from and against any and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees arising out of or in any way connected with or related to the Agreements, the Tribal HCP Conservation Fund Account, Participant's development and/or any action related to Sections 7 or 10(a)(1)(B) of the ESA. In addition, Participant agrees to indemnify the Tribe, defend and hold the Tribe harmless from and against any and all claims, damages, losses, liabilities, costs and expenses, including without limitation, attorneys' fees in the event that any claim is brought against the Tribe for any act or omission arising out of or any acts it takes pursuant to
the Agreements, the Tribal HCP Conservation Fund Account, Participant’s development and/or Sections 7 or 10(a)(1)(B) of the ESA.

10. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby. This Agreement represents the entire agreement of the parties and may not be amended, except in writing signed by each party hereto. Each party to this Agreement warrants to the other that it is duly organized, validly existing and, if a corporation, qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

In witness whereof, this Agreement is executed as of the date and year first above written, at __________________________, California.

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: ________________________________
Signature

Name: ________________________________

Title: ________________________________

THE CENTER FOR NATURAL LANDS MANAGEMENT

By: ________________________________
Signature

Name: ________________________________

Title: ________________________________

THCP CONSERVATION FUND PARTICIPANT

By: ________________________________
Signature

Name: ________________________________

Title: ________________________________
AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL HCP CONSERVATION FUND ACCOUNT
PAYMENT RECEIPT

PROJECT PARTICIPANT INFORMATION
Name: ____________________________________________
Address: ____________________________________________
Telephone: ____________________________________________
Contact: ____________________________________________

PROJECT INFORMATION
Project Name: ____________________________________________
Project Location: ____________________________________________
County: ____________________________________________
Project Description: ____________________________________________
Tribal File ___________________ Corps/Other File #:________________________
Total Acres Impacted: __________ Acres of Listed Species Impacted: __________

FEE INFORMATION
Total Payment Amount: ____________________________________________

PAYMENT INFORMATION
Payee: CNLM - Tribal HCP Conservation Fund Account
Payer: ____________________________________________
Amount: ____________________________________________ ($_________)
Method of Payment
Check No. __________ Money Order No. __________ Wire Transaction__________
Received by CNLM: ____________________________________________
Name: ____________________________________________
Title: ____________________________________________
(Signature) ___________________________ Date: __________


AGREEMENT BETWEEN THE
AGUA CALIENTE BAND OF CAHUILLA INDIANS
AND
THE CENTER FOR NATURAL LANDS MANAGEMENT

This Agreement is made this day of , 2005, by and between the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe with offices at 600 E. Tahquitz Canyon Way, Palm Springs, CA 92262 (“Tribe”) and the Center for Natural Lands Management, a California non-profit corporation with offices at 425 E. Alvarado Street, Suite H Fallbrook, CA 92028-2960 (“CNLM”), hereinafter referred to collectively as the “Parties” and establishes the Tribal HCP Conservation Fund (hereafter referred to as the “Conservation Fund”).

I. RECITALS

This Agreement is based on the following facts, intentions and expectations:

A. The Tribe and the CNLM wish to cooperate in the acquisition and development of reserves for the Coachella Valley Fringe-toed Lizard within the Coachella Valley as identified in the Interim Agua Caliente Tribal Habitat Conservation and Management Plan (“Interim Plan”). A major goal of this program is to provide an effective, efficient means by which the Tribe, allottees and/or private individuals (hereafter collectively referred to as the “Applicants”), can, in accordance with the Endangered Species Act of 1973, as amended (ESA), minimize certain impacts of their projects on sensitive species found in the Agua Caliente Indian Reservation, (“ACIR”), including all lands within the exterior boundaries of the ACIR, as originally established by Executive Order, federal patent, purchase, or otherwise, including Tribal trust land, allotted trust land, and fee land, and to carry out their obligations in a manner that allows the Tribe to maximize conservation measures for the species and the ecosystems upon which they depend. This agreement is the vehicle by which the Tribe intends to collect and distribute mitigation fees for the Interim Tribal Habitat Conservation Plan as explained in the Tribe’s letter to the Service dated May 26, 2004. Pursuant to this Agreement, third parties will, at the direction of the Tribe, deposit fees into one or more accounts as defined in Paragraph II.A.2(a). The CNLM will cause the disbursement of the funds held in these accounts to approved transactions in support of the acquisition and development of Fringe-toed Lizard reserves.

B. The Tribe, a sovereign nation has jurisdiction over the conservation, protection, enhancement and management of wildlife, native plants and ecosystems necessary for biologically sustainable populations of species on the Reservation.

C. The CNLM is a non-profit corporation of the State of California that was created
in 1990 to preserve native plants and animals in their natural environments and protect the diversity of species with consideration for their complicated interrelationships.

D. The purpose of this Agreement is to facilitate the preservation, restoration, and enhancement of identified Fringe-toed Lizard reserve areas by providing a means for third parties to expedite their compliance with the ESA through payment of Conservation Fees to be used to conserve those identified reserves. The Interim Plan enables the Tribe to continue to exercise its long-standing tradition as a land use manager and steward of the natural resources in and around the Reservation by assuming a role as the primary manager of such resources and the land uses that impact them – a role that is recognized as appropriate by the U.S. Department of the Interior in Joint Secretarial Order 3206 and the USFWS Native American Policy.

E. This agreement is intended to be consistent with the conservation objectives in the original CVFTL HCP, as reflected in the Tribe’s May 26, 2004 letter to the Service.

II. AGREEMENT

In consideration of the recitals set forth above, the covenants herein and other consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

A. Obligations of the Parties

1. Tribe

(a) The Tribe shall make available a program for Applicants to provide Conservation Fees in order to minimize the effects of projects resulting in impacts to listed species occurring within the ACIR. The Tribe shall notify Applicants of the availability of the Conservation Fee option, the payment of which will satisfy, in whole or in part, the Applicant’s responsibilities under the ESA and other laws to address project impacts on these species and their habitats.

(b) The Tribe shall inform each Applicant in writing that payment of Conservation Fees into the Conservation Fund Account (as defined herein below) is mandatory to satisfy the Applicant’s obligation under the ESA to address the impacts of its project on these species and their habitat. The Tribe shall provide each Applicant with a copy of this Agreement prior to the Applicant’s payment of the Conservation Fee and advise the Applicant
that the CNLM's Fee for administering the Conservation Fund shall be the amount set forth below in Paragraph II.A.2(b) of this Agreement. An additional agreement, attached hereto and in the form thereof, as Exhibit A, shall be executed by the Service, the CNLM and the Applicant for each fee deposited to the Conservation Fund Account.

c) The Tribe and the U.S. Fish & Wildlife Service ("Service"), consistent with the Interim Plan, will direct all Conservation Fees deposited in the Conservation Fund Account in accordance with this Agreement, and interest and earnings thereon, and all disbursements from the Account, with the exception of the Management Fee identified under Paragraph II.A.2(b) below, to finance the acquisition and management of lands as provided in Paragraphs II.A.1(a) and (b) above.

2. CNLM

(a) Conservation Fees will be deposited into one or more interest-bearing accounts ("Conservation Fund Account") at a reputable financial institution acceptable to the Tribe. Any interest or earnings accrued shall remain with the account.

(b) Upon deposit by the CNLM of the Conservation Fee in the Conservation Fund Account, the CNLM shall deduct from the Conservation Fund Account, a Management Fee, set at the rate of two point five percent (2.5%) of each deposit in the Conservation Fund Account to defray the costs associated with administration of the Account. This Management Fee will be the sole monetary compensation due to the CNLM under this Agreement.

(c) The CNLM shall provide to the Tribe on or before December 31st of each year, an annual accounting showing the deposits, interest and earnings received, disbursements of all sums made pursuant to this Agreement, and the associated Tribe file numbers related to each transaction, during the preceding fiscal year period beginning October 1st and ending on September 30th.

(d) Consistent with the Interim Plan, the CNLM shall continue to disburse funds according to policies established by the Service and the Interim Plan. The Service is to be solely responsible for identifying and approving appropriate lands to be acquired and managed with the Conservation Fees consistent with the Interim Plan and shall direct the CNLM to disburse funds from the Conservation Fund Account for such acquisition and
management including restoration when appropriate.

III. SPECIAL TERMS AND CONDITIONS

A. This Agreement does not impose upon the CNLM any obligations to maintain an accounting of the biological values associated with Conservation Fees deposited or disbursed pursuant to this Agreement or to match Conservation Fees deposited with specific habitat acquisitions.

B. Nothing in this Agreement shall prohibit the disbursement of Conservation Fees to enable the purchase of a land parcel otherwise appropriate for use as a conservation bank or other conservation purpose, because a portion of the parcel is not suitable for habitat conservation. Because habitat may occur within a larger land parcel that is only available as a single unit, disbursements from the Conservation Fund Account may be made to acquire an entire parcel.

C. Notwithstanding anything contained herein to the contrary, the CNLM shall have no obligation pursuant to this Agreement other than to deposit and disburse the Conservation Fees in accordance with this Agreement, subject to the terms and conditions hereof.

IV. EFFECTIVE DATE

This Agreement shall take effect immediately upon execution by the Tribe and the CNLM.

V. TERM OF AGREEMENT

Except as otherwise provided herein, this Agreement shall be in effect until a 10(a) Permit is issued to the Tribe and an Implementing Agreement is signed establishing the Final Tribal Habitat Conservation Plan, but in no case longer than December 31, 2008.

VI. AMENDMENTS

Amendments to this Agreement may be proposed by either Party and shall become effective upon the written agreement of both Parties.
VII. TERMINATION

This Agreement may be terminated by either Party without cause at any time upon thirty (30) days written notice to the other Party and Service. Upon termination, the CNLM shall provide the Tribe and Service with an accounting for the Conservation Fund Account in accordance with the procedure set forth in Paragraph II.A.2.c) of this Agreement. All funds remaining in the account shall be transferred to an entity designated by the Tribe and approved by the Service to receive such funds. Within 30 days following final disbursal of funds, the CNLM shall provide the Tribe and Service a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement, from the date of the last annual accounting through the date of final disbursement.

VIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement

This Agreement and its related Exhibits contain the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by either Party, or to any employee, officer, or agent of either Party, which is not contained in this Agreement shall be binding or valid.

B. Interpretation and Headings

The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against either Party. Headings of the paragraphs of this Agreement are for the purpose of convenience only and the words contained in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

C. Notices

All notices, demands, or requests from one Party to the other Party may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile, transmission, or mailing.

The Tribe: 650 Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: Thomas J. Davis, Chief Planning Officer
Telephone: (760) 325-3400 x1322
Facsimile: (760) 325-6952
Either Party may change the address to which such notices, demands, requests or other communications may be sent by giving the other Party written notice of such change. The Parties agree to accept facsimile transmitted signed documents and agree to rely on such documents as if they bore original signatures. Each Party agrees to provide to the other Party, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

D. Successors and Assigns

This Agreement, and the rights and obligations thereunder shall not be transferred or otherwise assigned by the CNLM without the prior written approval of the proposed transferee/assignee by the Tribe.

E. Execution

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby. This Agreement represents the entire agreement of the parties and may not be amended, except in writing signed by each party hereto. Each party to this Agreement warrants to the other that it is duly organized, validly existing and, if a corporation, qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above:

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: [Signature]

Name: THOMAS J. DAVIS

Title: CHIEF PLANNING OFFICER

Date: 5/10/05

CENTER FOR NATURAL LANDS MANAGEMENT

By: [Signature]

Name: SHERRI VERESIA

Title: Executive Director

Date: June 6, 2005