

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

THIS AMENDED AND RESTATED AGREEMENT is made and entered into this 8th day of MARCH, 2016 by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe acting through its duly constituted Tribal Council ("**Tribe**") and the Center for Natural Lands Management, a California public benefit nonprofit corporation ("**CNLM**"). Tribe and CNLM are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. The Tribe is a federally-recognized Indian tribe governing itself according to a Constitution and By-Laws and exercising sovereign authority over the lands of the Agua Caliente Indian Reservation.

B. The Tribal Council, among other things, has the authority to administer the affairs and manage the business of the Tribe and to regulate the uses and disposition of Tribal property, including wildlife and natural resources pursuant to Article V(a) of the Constitution.

C. Pursuant to its constitutional authority, the Tribal Council adopted the Interim Management and Conservation Plan (the "**Interim Tribal HCP**") in 1985 and the Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan in November 2010 (the "**Final Tribal HCP**"). The Interim and Final Tribal HCP enable 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 ACIR (defined below) 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 United States Department of the Interior in Joint Secretarial Order 3206 and the USFWS Native American Policy.

D. CNLM is a tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in the State of California.

E. The Tribe and CNLM entered into that certain agreement dated June 6, 2005 (the "**Tribal HCP Fund Agreement**") for the purpose of facilitating the Tribe's acquisition, preservation, restoration, and enhancement of identified habitat by providing a means for third parties to expedite their compliance with the Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*) (the "**ESA**") when the Tribe, allottees and/or private individuals (hereafter collectively referred to as the "**Applicants**") develop projects that may impact sensitive species found in the Agua Caliente Indian Reservation ("**ACIR**"), which includes all lands within the exterior boundaries of the ACIR, as originally established by Executive Order, federal patent, purchase, or otherwise, including Tribal trust land and allotted trust land.

F. The Tribal HCP Fund Agreement constituted a vehicle by which the Tribe intended to collect and distribute mitigation fees that were required by the Interim Tribal HCP.

G. The Tribal HCP Fund Agreement required, among other things, that the Tribe, at its direction, collect from third parties mitigation fees and cause CNLM to deposit said mitigation fees into one or more interest-bearing accounts at a reputable financial institution acceptable to the Tribe.

H. The Tribal HCP Fund Agreement also required, among other things, that CNLM cause the disbursement of funds held in the account(s) to be used in support of the acquisition and management of conservation lands pursuant to the Interim Tribal HCP.

I. The Tribal HCP Fund Agreement expired on December 31, 2008 but the Parties wish to maintain a collection and distribution mechanism for all THCP Mitigation Fees (defined below) that are required by the Final Tribal HCP and now desire to enter into this Agreement for that purpose.

NOW, THEREFORE, 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:

TERMS

1. Obligations of the Parties.

a. Tribe.

i. The Tribe shall, pursuant to the Final Tribal HCP, require the collection from Applicants of a THCP Mitigation Fee, the amount of which is established by and periodically adjusted pursuant to the Final Tribal HCP. For purposes of this Agreement, the term **"THCP Mitigation Fee"** shall have the meaning ascribed to it in the Final Tribal HCP. The Tribe shall notify Applicants of the THCP Mitigation Fee obligation and the amount of the obligation. The Tribe shall also notify Applicants that the payment of the THCP Mitigation Fee will satisfy, in whole or in part, the Applicant's responsibilities under the ESA and other laws to address project impacts on sensitive species found in the ACIR.

ii. The Tribe shall provide each Applicant with a copy of this Agreement prior to the Applicant's payment of the THCP Mitigation Fee. The Tribe shall ensure that an additional agreement, attached hereto and in the form thereof, as **Exhibit A**, shall be executed by the Tribe, CNLM, and the Applicant for each THCP Mitigation Fee deposited into the Conservation Fund Account (defined below).

iii. The Tribe, consistent with the Final Tribal HCP, shall direct that all THCP Mitigation Fees, and all interest and earnings thereon, be deposited into the Conservation Fund Account in accordance with this Agreement. The Tribe shall also ensure that all disbursements from the Account, with the exception of the Management Fee identified under Paragraph 1.b.ii below, be used to finance the acquisition and management of lands within "Habitat Preserve," as that term is defined in the Final Tribal HCP.

b. CNLM.

i. CNLM shall deposit all THCP Mitigation Fees into one or more interest-bearing accounts at a reputable financial institution acceptable to the Tribe (the **"Conservation Fund Account"**). Any interest or earnings accrued shall remain with the Conservation Fund Account.

ii. Upon deposit by CNLM of the THCP Mitigation Fee into the Conservation Fund Account, CNLM may 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 CNLM under this Agreement.

iii. 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.

iv. Consistent with the Final Tribal HCP, CNLM shall continue to disburse funds according to policies established by the Tribe.

2. Special Terms and Conditions.

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

b. Nothing in this Agreement shall prohibit the disbursement of THCP Mitigation 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, CNLM shall have no obligation pursuant to this Agreement other than to deposit and disburse the THCP Mitigation Fees in accordance with this Agreement, subject to the terms and conditions hereof.

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

4. Term of Agreement. Except as otherwise provided herein, this Agreement shall be in effect until December 31, 2025.

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

6. 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, CNLM shall provide the Tribe with an accounting for the Conservation Fund Account in accordance with the procedure set forth in Paragraph 1.b.ii of this Agreement. All funds remaining in the Account shall be transferred to an entity designated by the Tribe to receive such funds. Within 30 days following final disbursement of funds, CNLM shall provide the Tribe 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.

7. Miscellaneous Provisions.

a. **Entire Agreement.** This Agreement and its related Exhibit(s) 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.

To Tribe: Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264
Attn: Director of Planning & Natural Resources
Telephone: (760) 699-6800

To CNLM: Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, CA 92590
Attention: Director of Administration
Telephone: (760) 731-7790

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.

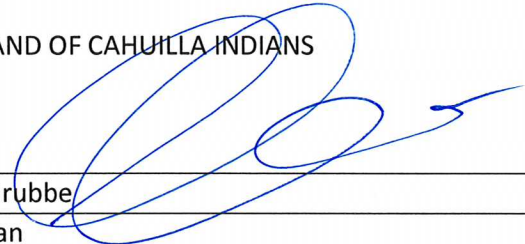
d. **Successors and Assigns.** This Agreement, and the rights and obligations thereunder shall not be transferred or otherwise assigned by CNLM without the prior written approval of the proposed transferee/assignee by the Tribe.

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. 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: 
Name: Jeff L. Grubbe
Title: Chairman

CENTER FOR NATURAL LANDS MANAGEMENT

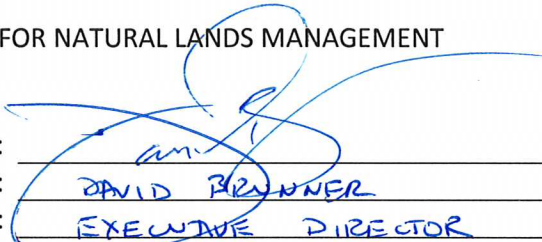
By: 
Name: DAVID BRYNNER
Title: EXECUTIVE DIRECTOR

EXHIBIT A

FORM AGREEMENT
(To Be Inserted)

EXHIBIT A

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

This **Three Party Agreement** is entered into this ____ day of _____, 20____, by and among the Agua Caliente Band of Cahuilla Indians ("Tribe" or "ACBCI"), the Center for Natural Lands Management ("CNLM") and _____, a Tribal HCP Mitigation Fee Applicant ("Applicant"), collectively as the "Parties."

PROJECT NAME:

JURISDICTION:

CASE NO. OR TRACT/PARCEL MAP NO.:

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

1. Applicant elects and hereby agrees to deposit, through CNLM, a Tribal Habitat Conservation and Management Plan (Final Tribal HCP) Mitigation Fee established by the Tribe in the amount of _____ Dollars (\$ _____) ("THCP Mitigation Fee") into one or more Tribal Conservation Fund Accounts at a reputable financial institution reasonably acceptable to 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 Applicant's activities and otherwise reducing the impacts of the Applicant's activities on these species and their habitats.

2. The Parties agree that the total amount of the THCP Mitigation Fee (including any interest accrued thereon) deposited by the Applicant in the Tribal HCP Conservation Fund Account, with the exception of the management fee identified in Paragraph 5 of this Agreement, shall be used, in consultation with the U.S. Fish & Wildlife Service, consistent with the Final Plan, for the purchase of land, development rights or conservation easements established to permanently protect and manage Coachella Valley's threatened or endangered species or their habitats.

3. The Parties jointly acknowledge and agree that the Tribal HCP Mitigation Fee shall be managed and disbursed in accordance with the "AMENDED AND RESTATED AGREEMENT BETWEEN THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AND THE CENTER FOR NATURAL LANDS MANAGEMENT" dated _____, 2016 ("Tribe-CNLM Agreement"), attached hereto as Exhibit A. If for any reason the Tribe-CNLM Agreement is terminated, the Tribe shall ensure, to the extent practicable, that the Tribal HCP Mitigation Fee deposited by the Applicant into the Tribal HCP Conservation Fund Account will be used in accordance with this Agreement to satisfy the Applicant's obligations referenced above in Paragraph 1, and CNLM shall have no further liabilities or obligations hereunder.

4. Applicant acknowledges and agrees that it has voluntarily elected to deposit the Tribal HCP Mitigation Fee into the Tribal HCP Conservation Fund Account in satisfaction of their obligations in lieu of carrying out other alternative conservation measures identified by the Tribe as available to the Applicant to minimize the impacts of the Applicant's activities on listed species and their habitats.

5. Applicant further acknowledges that CNLM's fee for administering the Tribal HCP Conservation Fund Account ("Administration Fee") is two point five percent (2.5%) of the Tribal HCP Mitigation Fee specified above in Paragraph 1, and agrees to the deduction of said Administration Fee from the total Tribal HCP Mitigation Fee deposited.

6. Applicant's check shall be made payable to 'Center for Natural Lands Management' referencing 'ACBCI Tribal HCP Conservation Fund' and shall be forwarded together with an executed copy of this Agreement and filled out Payment Receipt form to:

Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264
Attn: Director of Planning & Natural Resources

ACBCI shall review, approve, and execute the Agreement and forward it together with the Payment Receipt, and Applicant's check to:

Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, CA 92590
Attn: Director of Administration

CNLM shall review and execute the Agreement, fill-out and sign the Payment Information section of the Payment Receipt, provide the Applicant with originals and ACBCI with copies of the documents.

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

8. Applicant acknowledges and agrees that CNLM has made no representations or warranties to the Applicant whatsoever and Applicant assumes all risks related to its proceeding with development activities. Applicant does hereby agree to indemnify CNLM, defend and hold CNLM 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, Applicant's development, and/or any action related to ESA.

9. Applicant acknowledges and agrees that the Tribe has made no representations or warranties to the Applicant whatsoever and Applicant assumes all risks related to its proceeding with development activities. Applicant 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, Applicant's development and/or any action and/or any action related to ESA. In addition, Applicant 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 Fund Account, Applicant's development, and/or ESA.

10. This Three Party 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 a 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 Three Party 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 Three Party 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 Three Party Agreement is executed as of the date and year first above written.

SIGNATURES ON THE FOLLOWING PAGE

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: _____
Name: _____
Title: _____

CENTER FOR NATURAL LANDS MANAGEMENT

By: _____
Name: _____
Title: _____

TRIBAL HCP FUND APPLICANT

By: _____
Name: _____
Title: _____
Company: _____

**AGUA CALIENTE BAND OF CAHUILLA INDIANS
 TRIBAL HCP CONSERVATION FUND ACCOUNT
PAYMENT RECEIPT**

PROJECT APPLICANT INFORMATION

Company:	
Address:	
Phone:	
Contact:	

PROJECT INFORMATION

Project Name:			
Project Location:			
County:			
Project Description:			
Tribal File No.:			
Agency / File No.			
Total Acres Impacted:		Acres of Listed Species Impacted:	

FEE INFORMATION

Total Payment Amount:	\$
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PAYMENT INFORMATION

Payee:	Center for Natural Lands Management		
Account:	ACBCI Tribal HCP Conservation Fund		
Payer:			
Amount:	\$		
Payment Method:	Check No.	Wire Transfer:	
Received by CNLM:			
	(Signature)		
Name:			
Title:			
Date:			