



City Council Staff Report

Date: July 3, 2013

CONSENT CALENDAR

Subject: GRANT CONSERVATION EASEMENT AND APPROVE COMPLIANCE MONITORING AND FUNDING AGREEMENT WITH THE CENTER FOR NATURAL LANDS MANAGEMENT (CNLM) FOR THE BOGERT WASH PRESERVE AS A RESULT OF THE BOGERT TRAIL BRIDGE PROJECT TO MITIGATE FOR THE CASEY'S JUNE BEETLE, CITY PROJECT NO. 07-03

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Grant Conservation Easement and Approve Compliance Monitoring and Funding Agreement with the Center for Natural Lands Management (CNLM), in order to mitigate for Casey's June beetle as a result of the Bogert Trail Bridge Project, City Project No. 07-03

RECOMMENDATION

1. Grant a Conservation Easement to Center for Natural Lands Management,
2. Approve Compliance Monitoring and Funding Agreement for the Bogert Wash Preserve, and
3. Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Bogert Trail Bridge rehabilitation project's environmental findings identified the project area to be a critical habitat for Casey's June beetle, a federal endangered species. In order to mitigate for these findings, the City is dedicating a permanent easement, the Bogert Wash Preserve, adjacent to the project, to the Center for Natural Lands Management in order to preserve this critical habitat for Casey's June beetle and

ITEM NO. 28

possible habitat for other special-status species and allow the Bogert Trail Bridge rehabilitation project to move forward.

The Preserve will provide mitigation for certain impacts of the project pursuant to the requirements of the U.S. Army Corps of Engineers (ACOE) Clean Water Act, Section 404 Permit, and the Fish and Wildlife Services (FWS) Conference Opinion (CO) adopted as the Biological Opinion.

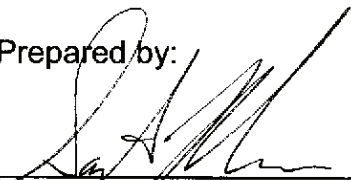
CNLM has as its primary purpose the management of land in an environmentally and biologically beneficial manner consistent with state and federal environmental laws. CNLM has been authorized by the California Department of Fish and Wildlife (CDFW), to hold both conservation easements and management endowments for properties subject to conservation easements. CNLM is qualified for and committed to the protection of wetlands, wildlife, and wildlife habitat.

FISCAL IMPACT:

In consideration of CNLM's agreement to assume the obligation to monitor the Preserve for compliance with the Conservation Easement, the City will pay \$132,113.00 for CNLM's administration and Conservation Easement compliance monitoring, enforcement, and defense. These funds have been secured through Caltrans per the Highway Bridge Program (HBP). Funds are available in account number 261-4491-50244. No Local Funds are required.

SUBMITTED:

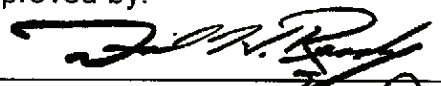
Prepared by:


Savat Khamphou
Assistant Director of Public Works

Recommended by:


David J. Barakian
Director of Public Works/City Engineer

Approved by:


David H. Ready, City Manager

ATTACHMENTS:

1. Conservation Easement, Bogert Wash Preserve
2. Compliance Funding and Monitoring Agreement

RECORDING REQUESTED BY)
First American Title Company)

AND WHEN RECORDED MAIL TO:)
Center for Natural Lands Management)
27258 Via Industria, Suite B)
Temecula, California 92590)

WITH CONFORMED COPY TO:)
City of Palm Springs)
3200 East Tahquitz Canyon Way)
Palm Springs, California 92262)

and)

United States Fish and Wildlife Service)
Palm Springs Fish and Wildlife Office)
777 East Tahquitz Canyon Way, Suite 208)
Palm Springs, CA 92262)

and)

U.S. Department of the Army)
Los Angeles District Corps of Engineers)
915 Wilshire Blvd.)
Los Angeles, CA 90017)
Attention: Regulatory Division)

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
Bogert Wash Preserve**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the ____ day of _____, 2013, by the City of Palm Springs, a California charter city and municipal corporation ("Grantor"), in favor of the Center for Natural Lands Management, a California public benefit nonprofit corporation ("Grantee"), with reference to the following facts:

Bogert Wash Preserve
CONSERVATION EASEMENT
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RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 4.29 acres, located in the County of Riverside, State of California being a portion of designated Assessor's Parcel Number ("APN") 512-190-027 ("Property"), and is further described in Exhibit A ("Legal Description") and depicted in Exhibit B ("Map"), both attached to this Conservation Easement and incorporated in it by this reference.

B. The Property possesses wildlife and habitat values (collectively, "Conservation Values") of great importance to Grantee, the people of the State of California, and the people of the United States, including, among other things, the specific Conservation Values identified in Recital C below.

C. Conservation Values of the Property include (currently occupied) habitat within 2011 designated critical habitat for the federal endangered Casey's June beetle (*Dinacoma caseyi*) and possible habitat for other special-status species including the burrowing owl (*Athene cunicularia*), the Palm Springs Round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), Le Conte's thrasher (*Toxostoma lecontei*), and crissal thrasher (*Toxostoma crissali*). Conservation values also include provision of suitable foraging habitat for raptors and service as a corridor to connect populations of these and additional mammal and bird species, in particular. Further, Conservation Values also include the habitat and services provided by the intermittent water feature of this desert wash habitat.

D. Grantee is authorized to hold easements pursuant to CA Civil Code §815.3. Specifically, Grantee is a tax-exempt nonprofit organization qualified under §501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California which has as its primary purpose the preservation of land in its natural, scenic, forested or open space condition or use.

E. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. §1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §742(f), *et seq.*, and other provisions of federal law. The USFWS is also referred to in this Conservation Easement as the "Signatory Agency."

F. This Conservation Easement provides mitigation for impacts of approved activities pursuant to the approved Conference Opinion (May 18, 2011) and adopted as Biological Opinion ("CO") (October 20, 2011), Grantor file number 08-RIV-0-BHLO 5282 (026) dated September 2010, USFWS file number FWS-ERIV-11B0021-11FC0344 as

adopted on October 20, 2011, and U.S. Army Corps of Engineers ("ACOE") File number SPL-2010-00138-SCH as approved in a letter dated May 23, 2011, as revised December 7, 2011, and re-verified on June 4, 2013. Grantor will act as the habitat manager; Grantee will act for compliance monitoring, enforcement, and defense purposes. The Grantor, Grantee, and the Signatory Agency agree that the Property will be managed in accordance with generally accepted best practices and adaptive management principles as may be updated and amended from time to time.

G. Grantor and Grantee have agreed that Grantor shall transfer to the Grantee upon recording of this Conservation Easement a certain sum agreed upon as noted in the Compliance Monitoring and Funding Agreement ("CMFA") for the purpose of fulfilling Grantee's obligation to monitor and enforce with the terms of this Conservation Easement and to defend the Conservation Easement in perpetuity.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code § 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes. The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property in its natural state. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and/or enhancement of native species and their habitats.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee and to the USFWS as a third-party beneficiary of this Conservation Easement:

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

(b) To enter the Property at reasonable times in order to monitor for compliance with the terms of this Conservation Easement and at Grantee's sole discretion, and without any obligation to do so, to (1) enforce the terms of this Conservation Easement and (2) implement best and or adaptive management activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

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

(e) Except as set forth herein all present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise.

3. Prohibited Uses. Any activity on or use of the Property that impairs or interferes with the Conservation Values or is otherwise inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, or other agricultural chemicals except to the extent specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency; weed abatement activities except to the extent specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement except to the extent specifically allowed after consultation between Grantor, Grantee, and Signatory Agency.

(b) Use of off-road vehicles and use of any motorized vehicles except on existing roadways except to the extent specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency.

(c) Agricultural activity of any kind except grazing for vegetation management as specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency.

(d) Recreational activities except such recreational activities permitted after consultation and agreement among Grantor, Grantee, and Signatory Agency and so long as such activities are consistent with the purpose of this Conservation Easement.

- (e) Commercial, residential, institutional, or industrial uses.
- (f) Any legal or de facto division, subdivision or partitioning of the Property.
- (g) Construction, reconstruction, erecting or placement of any sign, billboard, or improvement of any kind, except as otherwise specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency-provided that such uses does not impair or interfere with the Conservation Values.
- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
- (i) Planting, introduction or dispersal of non-native or exotic plant or animal species.
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.
- (k) Altering the surface or general topography of the Property, including building roads or trails paving or otherwise covering the Property with concrete, asphalt, or any other impervious material, except at as otherwise allowed after consultation between Grantor, Grantee, and the Signatory Agency.
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required (1) by law for fire breaks, (2) for maintenance of existing pedestrian/equestrian trails, (3) for prevention or treatment of disease as specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency, or (4) as otherwise specifically allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency provided that such uses does not impair or interfere with the Conservation Values.
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except as otherwise allowed after consultation between Grantor, Grantee, and the Signatory Agency.
- (n) Without the prior written consent of Grantee, which Grantee may withhold in its sole discretion; transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Property; changing the place or

purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property.

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

(p) If Grantee reasonably determines, based on credible evidence, that activities expressly allowed after consultation and agreement among Grantor, Grantee, and Signatory Agency are materially impairing the Conservation Values of the Property in ways not anticipated at the time of the consultation and agreement, Grantee, on thirty (30) days written notice to Grantor, may require that such activities be halted or reduced to levels that terminate such impairment or reduce it to levels anticipated by the consultation and agreement among Grantor, Grantee, and Signatory Agency.

4. Grantor's Duties.

(a) Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall, to the extent feasible, undertake all necessary actions to perfect and defend the rights of Grantee and third-party beneficiary Signatory Agency under Section 2 of this Conservation Easement.

(b) Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Property, or change the place or purpose of use of the water rights, without first obtaining the written consent of Grantee and Signatory Agency, which Grantee and/or Signatory Agency may not unreasonably withhold. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property including, without limitation: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; or (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(c) Grantor shall install and maintain markers to delineate the boundary of the Property to the reasonable satisfaction of Grantee.

(d) If Grantor is obligated to give notice to Signatory Agency or if Grantor is obligated to give notice to any other agency or local governmental entity about a use or activity on the Property, Grantor shall concurrently give the same notice to Grantee. Grantor shall provide Grantee a written notice of any and all decisions made by Signatory Agency, other agency, or local governmental entity with respect to said notifications.

5. Reserved Rights. Grantor reserves to itself and to its assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of this Conservation Easement.

6. Grantee's Remedies. Signatory Agency, as a third-party beneficiary under this Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the

necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code § 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes inconsistent with or in violation of this Conservation Easement then Signatory Agency, as the third-party beneficiary of this Conservation Easement, has standing as an interested party in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement shall be borne by Grantor. In such instances where there is no prevailing party as determined by the court, each Party shall bear its own costs.

6.2. Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee or Signatory Agency shall be at the discretion of Grantee or Signatory Agency, and any forbearance by Grantee or Signatory Agency to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee (or any rights of Signatory Agency, as a third-party beneficiary) under this Conservation Easement. No delay or omission by Grantee or Signatory Agency in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

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

6.4. INTENTIONALLY LEFT BLANK

6.5. Baseline Report. Grantor and Grantee acknowledge that a Baseline Report (the "Report") of the Property will be prepared and that the Report will

be approved in writing by the Grantee and the Grantor prior to recording this Conservation Easement. A copy of the Report will be kept on file with Grantor and Grantee at their respective addresses for notices set forth in Section 12. Grantor and Grantee agree that the Report will contain an accurate representation of the biological and physical condition of the Property. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the Property or the permitted uses of the Property, Grantor and Grantee shall not be restricted from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

7. Fence Installation and Maintenance. Grantor agrees to install and maintain a fence as described in Subsection 4(c), "Grantor's Duties."

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

9. Costs and Liabilities. Grantor retains all other responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, unless otherwise provided by this Conservation Easement. Grantor agrees that neither Grantee nor Signatory Agency shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including permits and approvals required from Grantee acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee or Signatory Agency with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens imposed upon Grantor, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

9.2 Indemnification. Grantor does hereby agree, to the maximum extent permitted by law, at its sole cost and expense, to protect, defend (by counsel approved by Grantee), indemnify, and hold harmless Grantee and Grantee's officers,

managers, directors, representatives, employees, contractors, agents, transferees, successors and assigns, from any and all liabilities, damages, losses, costs, expenses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees and expert fees, that are caused by or arise or are connected with: (a) the negligence, errors, omissions, recklessness or intentional misconduct of Grantor or the employees or agents of Grantor in the performance of this Conservation Easement; or (b) a default in the Grantor's performance or failure to perform its obligations under this Conservation Easement.

Grantee does hereby agree, to the maximum extent permitted by law, at its sole cost and expense, to protect, defend (by counsel approved by Grantor), indemnify, and hold harmless Grantor and Grantor's officers, managers, directors, representatives, employees, contractors, agents, transferees, successors and assigns, from any and all liabilities, damages, losses, costs, expenses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees and expert fees, that are caused by or arise or are connected with: (a) the negligence, errors, omissions, recklessness or intentional misconduct of Grantee or the employees or agents of Grantee in the performance of this Conservation Easement; or (b) a default in the Grantee's performance or failure to perform its obligations under this Conservation Easement.

Grantor and Grantee shall comply, at its sole cost and expense, with all laws and regulations applicable to each Party's obligation under this Conservation Easement.

9.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

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

10. Transfer of Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Grantor and the Signatory Agency, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agency at least thirty (30) days prior written notice of the transfer. Approval of any assignment or transfer may be withheld in the reasonable discretion of Signatory Agency if the transfer will result in a single owner holding both this Conservation Easement and fee title to the Property and, upon such transfer, the doctrine of merger would apply to extinguish the Conservation Easement

3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Telephone: (760) 323-8299

To Grantee: Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, CA 92590-3751
Telephone: (760) 731-7790

To USFWS: United States Fish and Wildlife Service
Palm Springs Fish and Wildlife Office
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262
Telephone: (760) 322-2070

To ACOE: U.S. Department of the Army
Los Angeles District Corps of Engineers
915 Wilshire Blvd.
Los Angeles, CA 90017
Attention: Regulatory Division
Telephone: (213) 452-3409

or to such other address a party or Signatory Agency shall designate by written notice to Grantor, Grantee, and Signatory Agency. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

13. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee, and written approval of Signatory Agency (which approval shall not be unreasonably withheld or delayed). Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and Signatory Agency.

14. Additional Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and applicable federal law, including the Endangered Species Act.

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code § 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement. This instrument (including its exhibits and any Conservation Bank Agreement, Management Plan, and endowment fund incorporated by reference in it) sets forth the entire agreement of the parties and the Signatory Agency with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 9.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 9.2) from and against any and all Claims (defined in Section 9.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

- (1) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or
- (2) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or
- (3) The obligations of a responsible person under any applicable Environmental Laws; or
- (4) The right to investigate and remediate any Hazardous Materials associated with the Property; or

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

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"; the Hazardous Materials Transportation Act (49 U.S.C. § 6901, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Property, there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

(k) Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish any water or water right associated with the Property, without first obtaining the written consent of Grantee and the USFWS. Grantee or USFWS may withhold such consent in its sole discretion if Grantee determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 11.

(l) Recording. Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

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

(n) Funding. Funding shall be held in trust for the perpetual monitoring, enforcement, and defense of this Conservation Easement.

(o) No Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and Signatory Agency otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Preserve.

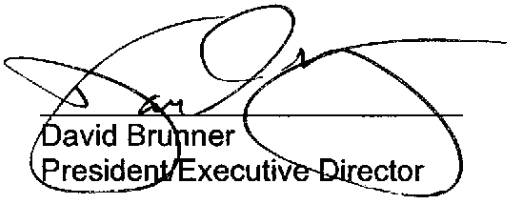
IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

******SIGNATURES ON FOLLOWING PAGES******


CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Conservation Easement Deed from the City of Palm Springs to the Center for Natural Lands Management, is hereby accepted on the terms and conditions set forth in the Conservation Easement by the undersigned officer on behalf of the Center for Natural Lands Management.

GRANTEE: CENTER FOR NATURAL LANDS MANAGEMENT

By: 
Name : David Brunner
Title: President/Executive Director

Date: 12 JUNE 2013

APPROVED BY COUNSEL
D.A. Monroe 
David A. Monroe
General Counsel

STATE OF CALIFORNIA)
) ss.
COUNTY OF Sonoma)

On June 12, 2013 before me,

Justin Lacy, a Notary Public, personally appeared DAVID R. BRUNNER who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public



(Notary Seal)

EXHIBIT "A"
LEGAL DESCRIPTION
CONSERVATION EASEMENT
R11-011

IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, THAT PORTION OF LOT AA (OPEN SPACE) OF AMENDED MAP OF TRACT NO. 18087, AS SHOWN BY MAP ON FILE IN BOOK 216 AT PAGES 32 THROUGH 40, INCLUSIVE, OF MAPS, RIVERSIDE COUNTY RECORDS, BEING IN THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 35, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID LOT AA;

THENCE SOUTH 81°58'05" WEST, A DISTANCE OF 192.23 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 26°49'14" EAST, A DISTANCE OF 116.84 FEET;

THENCE SOUTH 01°50'32" WEST, A DISTANCE OF 84.34 FEET;

THENCE SOUTH 26°37'05" WEST, A DISTANCE OF 465.09 FEET;

THENCE SOUTH 55°52'22" WEST, A DISTANCE OF 81.16 FEET;

THENCE SOUTH 37°12'57" WEST, A DISTANCE OF 222.62 FEET;

THENCE SOUTH 65°04'33" WEST, A DISTANCE OF 198.84 FEET;

THENCE SOUTH 42°55'08" WEST, A DISTANCE OF 88.67 FEET;

THENCE SOUTH 63°49'28" WEST, A DISTANCE OF 186.08 FEET;

THENCE NORTH 55°09'46" WEST, A DISTANCE OF 19.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 2896.28 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 63°00'22" WEST, SAID POINT ALSO BEING ON THE NORTHWESTERLY LINE OF SAID LOT AA;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID NORTHWESTERLY LINE, THROUGH A CENTRAL ANGLE OF 05°09'24", AN ARC DISTANCE OF 260.67 FEET TO A POINT, A RADIAL LINE TO SAID POINT BEARS NORTH 57°50'58" WEST;

THENCE LEAVING SAID NORTHWESTERLY LINE AND NON-TANGENT TO SAID CURVE, NORTH 44°56'06" EAST, A DISTANCE OF 150.63 FEET;

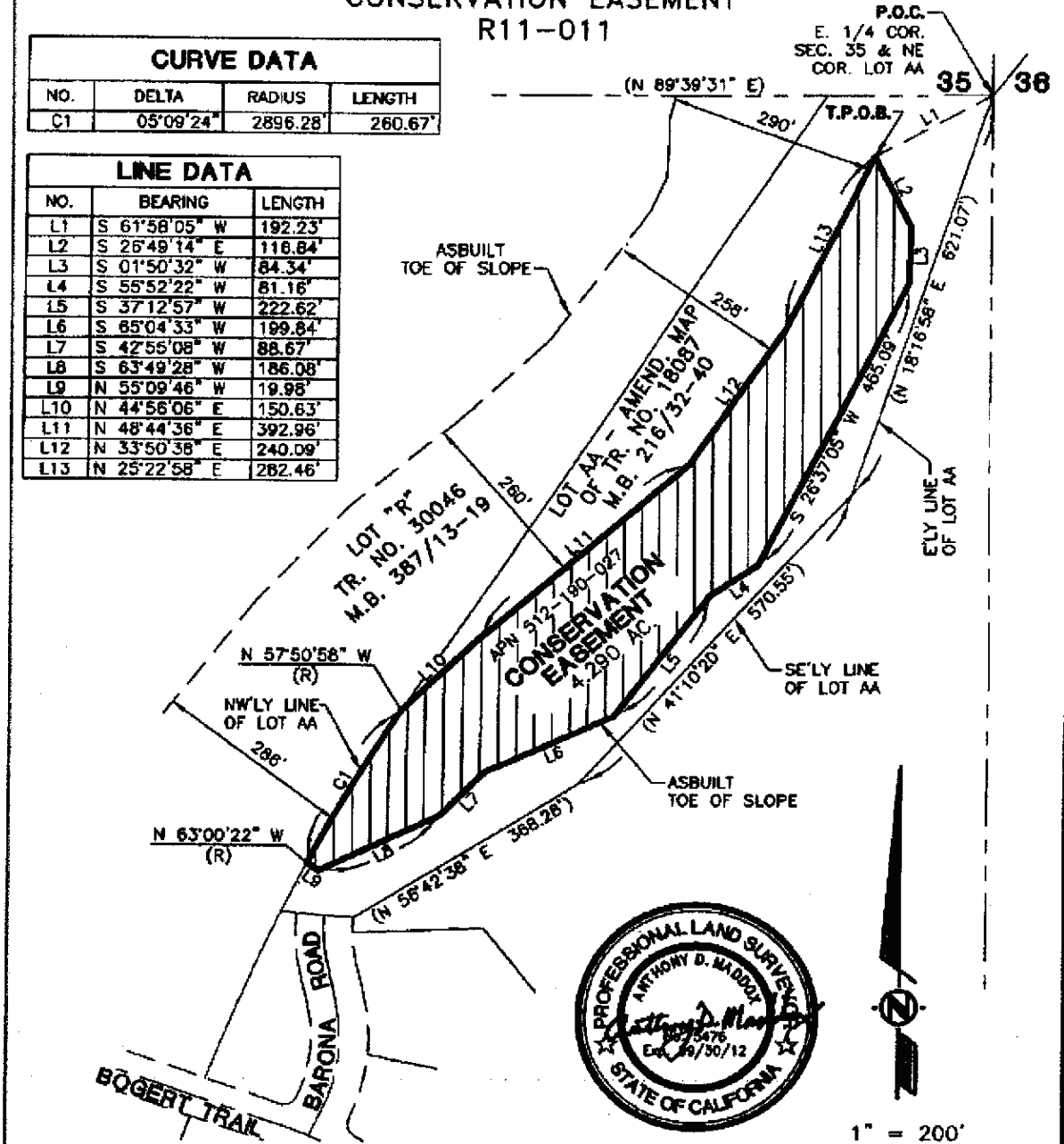
EXHIBIT 'B'

CONSERVATION EASEMENT

R11-011

CURVE DATA			
NO.	DELTA	RADIUS	LENGTH
C1	05°09'24"	2896.28'	260.67'

LINE DATA		
NO.	BEARING	LENGTH
L1	S 61°58'05" W	192.23'
L2	S 26°49'14" E	116.84'
L3	S 01°50'32" W	84.34'
L4	S 55°52'22" W	81.16'
L5	S 37°12'57" W	222.62'
L6	S 65°04'33" W	199.84'
L7	S 42°55'08" W	88.67'
L8	S 63°49'28" W	186.08'
L9	N 55°09'46" W	19.98'
L10	N 44°56'06" E	150.63'
L11	N 48°44'36" E	392.96'
L12	N 33°50'38" E	240.09'
L13	N 25°22'58" E	282.46'



1" = 200'

(XXX) = BEARING PER
AMEND. TRACT 18087
M.B. 216/32-40

IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PORTIONS OF THE SE 1/4 OF SEC. 35, T.4S., R.4E., S.B.M.



MSA CONSULTING, INC.
PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING
34200 BOB HOPE DRIVE ■ RANCHO MIRAJE ■ CA 92270
TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

J.N. 1634 10/27/2011 SHEET 1 OF 1

**BOGERT WASH PRESERVE
COMPLIANCE MONITORING AND FUNDING AGREEMENT**

This **BOGERT WASH PRESERVE COMPLIANCE MONITORING AND FUNDING AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2013 ("Effective Date") by and between City of Palm Springs, a California charter city and municipal corporation ("City") and Center for Natural Lands Management, a California nonprofit corporation ("CNLM"), each a "Party" or together, the "Parties", as set forth below.

RECITALS

A. City is the sole owner of approximately 4.29 acres ("Property"), being a portion of designated APN 512-190-027, in the County of Riverside ("County"), State of California ("State"), as further described in **Exhibit A (Legal Description)** and as depicted on **Exhibit B (Map)**, both attached hereto. The City will grant to CNLM a conservation easement ("**Conservation Easement**") over Property to offset impacts from the Bogert Bridge Trail Rehabilitation Project ("**Project**"). The Project is within the Casey's June beetle (*Dinacoma caseyi*) 2011 Critical Habitat ("**Critical Habitat**"), and will impact approximately 0.93 acre of Critical Habitat. Critical Habitat was proposed in 2009 with the final designation made in 2011. It is the intention of the Parties that the Property become the Bogert Wash Preserve ("**Preserve**").

B. CNLM is a tax-exempt non-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in the State of California. CNLM has as its primary purpose the management of land in an environmentally and biologically beneficial manner consistent with state and federal environmental laws. CNLM is authorized to hold conservation easements pursuant to California Civil Code Section 815.3. CNLM has been authorized by the California Department of Fish and Wildlife ("**CDFW**"), based upon the information provided pursuant to Government Code Section 65965, to hold both conservation easements pursuant to Civil Code Section 815.3 and Government Code section 65967 and management endowments for properties subject to conservation easements. CNLM is qualified for and committed to the protection of wetlands, wildlife, and wildlife habitat.

C. The United States Fish and Wildlife Service ("**FWS**"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. §§1531, *et seq.* ("**ESA**"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §§742(f), *et seq.*, and other provisions of federal law.

D. The U.S. Army Corps of Engineers (“**ACOE**”) is the federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to §404 of the Clean Water Act, 33 U.S.C. §1251 et seq.

E. INTENTIONALLY LEFT BLANK

F. Preserve will provide mitigation for certain impacts of the Project pursuant to requirements of:

1. ACOE Clean Water Act Section 404 Permit SPL-2010-00138-SCH (May 18, 2011, as revised on December 7, 2011, and as re-verified on June 4, 2013) (“**404 Permit**”), attached as **Exhibit C-1 (404 Permit)**.

2. FWS Conference Opinion No. FWS-ERIV-11B0021-11FC0344 (May 18, 2011) and adopted as the Biological Opinion (October 20, 2011) (“**CO**”), both attached as **Exhibit C-2 (Conference Opinion)**.

Collectively, Recitals F.1 and F.2 and the referenced attachments are referred to as the “**Agency Approvals**.”

G. The Preserve provides habitat for Casey's June beetle (*Dinacoma caseyi*)—an endangered species under the ESA—and is located within the 2011 Critical Habitat. The Preserve is intended to be perpetually conserved, managed, and preserved for the protection of its “Conservation Values,” as that term is defined in the Conservation Easement, to wit:

“Conservation Values of the Preserve include (currently occupied) habitat within 2011 designated critical habitat for the federal endangered Casey's June beetle (*Dinacoma caseyi*) and possible habitat for other special-status species including the burrowing owl (*Athene cunicularia*), the Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), Le Conte's thrasher (*Toxostoma lecontei*), and crissal thrasher (*Toxostoma crissali*). Conservation values also include provision of suitable foraging habitat for raptors and service as a corridor to connect populations of these and additional mammal and bird species, in particular. Further, Conservation Values also include the habitat and services provided by the intermittent water feature of this desert wash habitat.”

H. City intends to grant to CNLM concurrently with this Agreement, and CNLM intends to accept, the Conservation Easement (with third-party beneficiary enforcement rights to FWS and ACOE) over the Property, to be the Preserve as referenced above. The Conservation Easement requires that CNLM monitor for

compliance and enforce and defend only and does not obligate CNLM to conduct any biological monitoring, management, or maintenance activities on the Preserve.

I. CNLM complies with accounting practices established by the Financial Accounting Standard Board ("FASB") which through Accounting Standards Codification Section 958-210-45-15 "Reporting Endowment Funds - Net Assets of an Endowment" establishes principles for the classification of assets based on donor-imposed restrictions. In conformance with this Standard, the principal in the CE Endowment Fund created and managed under the terms of this Agreement will be classified as "permanently restricted" and income derived from it will be classified as "temporarily restricted."

J. City and CNLM desire to enter into this Agreement to (1) establish CNLM's obligation to conduct compliance monitoring, enforcement, and defense of the Conservation Easement, and (2) establish an endowment to financially support CNLM's compliance monitoring, enforcement, and defense of the Conservation Easement in perpetuity.

K. This Agreement does not govern or address any matters relating to conserved habitat management, operations, stewardship expenses, or conservation policies; mitigation compliance; the application for or use of grants; the creation, recording, or implementation of conservation easements; biological monitoring; property management; and stewardship, or any similar undertaking.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Conditions Precedent. CNLM's obligations under this Agreement shall become absolute with respect to Preserve only upon transfers or documentation of the following to CNLM:

a. Recordation of the Conservation Easement in a form acceptable to CNLM over the Preserve; and

b. Non-refundable Payment as described and defined below in Section 3.

2. Site Visit and Baseline Documentation. Prior to the Effective Date, representatives of the Parties have conducted walk-through inspections of Preserve. CNLM shall document site conditions pursuant to a Land Trust Alliance-compliant baseline report, with attachments, documenting Preserve conditions ("**Conservation**

Easement Baseline Documentation") contemporaneous with the recording of the Conservation Easement, and shall provide the City and escrow copies of such documents.

3. **Payment.** In consideration of CNLM's agreement to assume the obligation to monitor Preserve for compliance with the Conservation Easement in perpetuity, City shall deliver to CNLM One Hundred Thirty-two Thousand One Hundred and Thirteen Dollars (\$132,113.00), of which Twenty-one Thousand Fifty Three Dollars (\$21,053.00) shall be the temporarily restricted "**Initial and Capital Fund**" and the remainder, One Hundred and Eleven Thousand Sixty Dollars (\$111,060.00) shall be the permanently restricted "**Endowment Fund**" or "**Endowment**" for the CNLM's administration and Conservation Easement compliance monitoring, enforcement, and defense. The Initial and Capital Fund and Endowment collectively are referred to as the "**Payment.**" City shall have no obligation to provide additional funding to CNLM, except to the extent otherwise expressly provided in this Agreement. The Payment amount was established utilizing CNLM's Property Analysis Record® ("**PAR**") attached as **Exhibit D-1 (PAR and PAR Letter)** and as modified pursuant to the Adjustment Letter attached as **Exhibit D-2 (Final Funding Amounts Letter)**

4. **Management of Funds by CNLM.** CNLM has a fiduciary duty to ensure that the Endowment held by it is properly managed. CNLM shall deposit investment income from the Endowment into the Endowment Fund to be held as temporarily restricted assets unless reclassified as permanently restricted assets. The following principles of fiduciary duty shall apply:

a. **Accounting.** CNLM shall maintain an accurate accounting of funds in the Endowment Fund including at minimum an annual balance sheet and income statement and such accounting will be separate from all other accounting of funds held by or managed by CNLM. Funds in the Endowment Fund may be pooled with other funds held by or managed by CNLM for investment purposes.

b. **Duty of loyalty.** CNLM shall have a duty of loyalty and shall not use funds in the Endowment Fund for its own benefit (except for those administrative fees due CNLM as provided by this Agreement).

c. **Prudent investor.** CNLM shall act as a prudent investor of the Endowment Fund subject to the Uniform Prudent Management of Institutional Funds Act (California Probate Code Sections 18500 *et seq.*), and shall account for Endowment Funds under General Accepted Accounting Principles ("GAAP").

d. **Auditing.** CNLM shall have an annual audit of the Endowment Fund using GAAP performed by a qualified, independent accounting organization. CNLM shall submit the auditor's written report to City, FWS, and/or ACOE upon request. The results of such audits will include, at a minimum, a record of the beginning

and ending fund balance, all deposits and withdrawals, and a record of the income and expense of the Endowment Fund.

5. Access to Preserve. CNLM shall have the right of access to the Preserve as provided by the Conservation Easement.

6. Preserve Management.

a. *Management Responsibilities.* City, its successors and assigns will own and manage the Preserve in accordance with the Conservation Easement and the CO. CNLM shall have no responsibilities for biological monitoring, management, or maintenance of the Preserve. Specifically, the City is responsible for the CO requirement of weeding the Preserve (alien plants removed with native plants retained) for ecological enhancement twice annually for five years from the date of recordation of the Conservation Easement. City is also responsible for posting signs, within three months of recordation of the Conservation Easement, to identify the Preserve as protected. CNLM's obligation to provide compliance monitoring of the Preserve shall be in accordance with the Conservation Easement.

b. *Cooperation.* City and CNLM, and their respective successors and assigns, will use reasonable efforts to coordinate their work and the discharge of their respective responsibilities under the Conservation Easement and this Agreement, and as otherwise required by law, such that the activities of one party (or its contractors, consultants, agents, representatives and assigns) do not impede the obligations or activities of the other.

c. *City's Responsibilities and Obligations.* City, its successors and assigns, contractors, and subcontractors shall, with respect to its obligations under this Agreement:

(1) Cooperate with CNLM in good faith in its discharge of CNLM's Conservation Easement compliance monitoring obligations under this Agreement;

(2) Reasonably ensure that CNLM has unimpeded and adequate pedestrian and vehicular access in perpetuity to the Preserve through public rights of way or property owned or controlled by City or its successors and assigns, to the extent provided for and pursuant to the terms and conditions contained in the Conservation Easement;

(3) Promptly provide CNLM with any and all revisions to Agency Approvals or any other habitat management/stewardship plan required by FWS, ACOE, or other government agency; and

(4) Survey and mark legal boundaries of Preserve in a manner acceptable to CNLM;

(5) Provide notice to CNLM a minimum of ninety (90) days prior to the initiation of any restoration and/or enhancement activities by the City at the Preserve.

(6) If required by Agency Approvals, FWS, and/or ACOE, and in consultation with CNLM, maintain in perpetuity and in good and effective condition all fencing and conservation signage on Preserve.

7. CNLM Rights and Obligations Relating to the Preserve. With respect to Preserve, CNLM shall:

a. Conduct general inspections and otherwise monitor Preserve for compliance with the Conservation Easement and as set forth in this Agreement.

b. Submit annual reports to City, FWS, and ACOE regarding the Conservation Easement compliance status of Preserve.

c. Cooperate in good faith and as necessary with City, and its successors and assigns, and FWS to ensure that the Preserve's Conservation Values are maintained.

8. Interpretation and Headings.

a. 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 any party. Headings of the paragraphs of this Agreement are for the purposes 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.

b. In the event of any direct contradiction or conflict among the terms of this Agreement and the Conservation Easement, the terms of the Conservation Easement shall control. In all other cases, the terms of this Agreement and the terms of the Conservation Easement shall be interpreted to be supplementary to each other.

9. Modification. This Agreement is not subject to modification except in a writing signed by both parties, and any attempted modification not in compliance with this requirement shall be void.

10. Notices. All notices, demands, or requests from one organization to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the persons

set forth below or shall be deemed given five days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any organization may from time to time specify to the other organizations in writing, and shall be effective at the time of personal delivery, facsimile transmission, or mailing.

CNLM Center for Natural Lands Management
 Attention: President/ Executive Director
 27258 Via Industria, Suite B
 Temecula, CA 92590
 Telephone: 760-731-7790

City City of Palm Springs
 Attn: Director of Public Works
 3200 East Tahquitz Canyon Way
 Palm Springs, CA 92262
 Telephone: 760-323-8299

With a copy to: U.S. Fish and Wildlife Service
 Palm Springs Fish and Wildlife Office
 777 East Tahquitz Canyon Way, Suite 208
 Palm Springs, CA 92262
 Telephone: 760-322-2070

 U.S. Department of the Army
 Los Angeles District Corps of Engineers
 Attention: Regulatory Division
 915 Wilshire Blvd.
 Los Angeles, CA 90017
 Telephone: 213-452-3409

Any of the above-listed agencies or organizations may change the address to which such notices, payments, or other communications may be sent by giving the other organizations written notice of such change. Facsimile transmitted signed documents are acceptable, as if such documents 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.

11. Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on, and shall inure to, the benefit of the Parties and their respective successors and assigns. CNLM shall not assign this Agreement to another party without the prior written consent of City, which consent shall not be unreasonably withheld. CNLM agrees that it shall be reasonable for City to withhold consent if such assignment is to an entity that is not a recognized non-profit conservation organization, or to an entity that has not assumed all of the rights and obligations of CNLM, as

Grantee, under the Conservation Easement. A Party's rights and obligations under this Agreement terminate on the transfer of the Party's interest in Preserve, except for liability for acts or omissions occurring prior to transfer, which shall survive transfer. Notwithstanding the foregoing, City shall have the right to transfer its interest in Preserve in accordance with the Conservation Easement, and in connection therewith City shall have the right to assign its rights and obligations under this Agreement to City's successor without obtaining the consent of Grantee so long as such transfer is made in accordance with the Conservation Easement.

12. Exhibits. All exhibits referred to in this Agreement are attached to this Agreement and are incorporated herein by this reference.

13. Counterparts. This Agreement may be executed by the Parties in counterparts, both of which shall be deemed to be an original executed document.

14. Indemnification. Each Party (the "first Party") does hereby agree to the maximum extent permitted by law, at its sole cost and expense, to protect, defend (by counsel approved by the first Party), indemnify, and hold harmless the other Party (the "second Party") and any of the second Party's parent corporations, subsidiaries, and affiliates, and their respective officers, managers, directors, representatives, employees, contractors, agents, transferees, successors and assigns, from any and all liabilities, damages (both actual and consequential), losses, costs, expenses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees and expert fees, that are caused by or arise or are connected with: (a) the negligence, errors, omissions, recklessness or intentional misconduct of the first Party or the employees or agents of the first Party in the performance of this Agreement or (b) a default in the first Party's performance or failure to perform its obligations under this Agreement. Each Party shall comply, at its sole cost and expense, with all laws and regulations applicable to the Party's obligation under this Agreement.

15. No Partnerships. This Agreement shall not make, or be deemed to make, either Party to this Agreement an agent for or the partner of the other Party.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. Any litigation or arbitration regarding this Agreement will be brought in Riverside County Superior Court or conducted in County of Riverside.

17. Severability. If any provision of this Agreement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to person or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

18. Termination. This Agreement may be terminated only upon (a) default by CNLM of any provisions under this Agreement or the Conservation Easement, where such default is not cured within the time periods set forth in this Agreement or the Conservation Easement, (b) extinguishment of the Conservation Easements, or (c) the Parties enter into a replacement agreement, i.e., a compliance monitoring and funding agreement ("CMFA") whereby City funds a Preserve stewardship endowment and CNLM assumes perpetual stewardship responsibilities for the Preserve. In the event of termination by reason of CNLM default, any and all monies remaining in the Initial Capital Fund and the Endowment Fund established pursuant to Section 3 of this Agreement shall be transferred by CNLM to the replacement Conservation Easement compliance monitor of Preserve designated and approved by FWS, ACOE, and the City, except for committed expenses (which shall be paid by CNLM) and costs of the transfer. In the event of termination by reason of Conservation Easement extinguishment, any and all monies remaining in the Initial Capital Fund and the Endowment Fund established pursuant to Section 3 of this Agreement shall be transferred by CNLM as determined by a court of competent jurisdiction, except for committed expenses (which shall be paid by CNLM) and costs of the transfer. In the event of termination by reason of the Parties entering into a replacement agreement, any and all monies remaining in the Initial Capital Fund (temporarily restricted funds) and the permanently restricted Endowment Fund established pursuant to Section 3 of this Agreement shall be transferred within CNLM, with FWS, and ACOE concurrence, into a stewardship endowment to be held by CNLM in perpetuity.


19. Insurance.

CNLM shall maintain, at its sole cost and expense, the insurance coverages covering activities performed under, and obligations undertaken in, this Agreement as described and defined in Exhibit E (Insurance), attached hereto and incorporated herein by reference.

EXECUTED this ___ day of _____ 2013.


SIGNATURES ON FOLLOWING PAGE

CENTER FOR NATURAL LANDS MANAGEMENT

By: 
David R. Brunner
President/ Executive Director

Date: 12 JUNE 2013

APPROVED BY COUNSEL


David A. Monroe
General Counsel

CITY OF PALM SPRINGS

By: _____
Name: _____
Title: _____
Date: _____

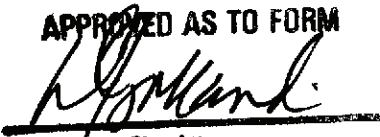
APPROVED AS TO FORM

City Attorney
Date 06.24.2013

TABLE OF EXHIBITS

Exhibits A: Legal Description

Exhibits B: Map

Exhibit C-1: ACOE 404 permit

Exhibit C-2: FWS Conference Opinion

Exhibit D-1: PAR and PAR Letter, dated December 16, 2011

Exhibit D-2: Final Funding Amounts Letter, dated May 2, 2013

Exhibit E: Insurance