

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD STE C-220
ONTARIO, CA 91764



STREAMBED ALTERATION AGREEMENT
EPIMS-SBR-35736-R6
Tributary to the Mojave River
San Bernardino County Public Works CATABA ROAD PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and San Bernardino County Public Works (Permittee) or as represented by Anthony Pham.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on April 19, 2023, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at an unnamed tributary to the Mojave River, in the County of San Bernardino, State of California; Latitude 34.383124, Longitude -117.385886; Assessor's Parcel Number 3039-511-04-000.

PROJECT DESCRIPTION

The project is limited to the realignment of Cataba Rd at the intersection of Rancho Rd. This realignment includes removing asphalt on portions of Cataba Rd and Rancho Rd, applying new mill and overlay concrete asphalt, installing a new curb, gutter, sidewalk, ac dike, constructing new or replacing ADA ramps, installing a new traffic signal, and applying new traffic paint stripes and markings. Temporary impact will occur where grading will occur adjacent to an unnamed drainage.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect:

Species of Special Concern. These species include: Coast horned lizard (*Phrynosoma blainvillii*), Two-striped gartersnake (*Thamnophis hammondi*), Long-eared owl (*Asio otus*), Burrowing owl (*Athene cunicularia*), Loggerhead Shrike (*Lanis ludovicianus*), Gray vireo (*Vireo vicinior*), Le Conte's thrasher (*Toxostoma lecontei*), Pallid bat (*Antrozous pallidus*).

Endangered Species. These species include: Desert tortoise (*Gopherus agassizii*).

CDFW Watch List. These species include: Cooper's Hawk (*Accipiter cooperii*).

Plants. These species include: Booth's evening-primrose (*Eremothera boothii*), Short-joint beavertail (*Opuntia basilaris* var. *brachyclada*), White pygmy-poppy (*Canbya candida*).

The adverse effects the project could have on the wildlife resources identified above include: disturbance to, alteration of, and/or loss of nesting, roosting, and foraging habitat; the reduction or loss of habitat coverage, composition, and distribution; direct mortality; partial removal and soil disturbance; temporary impact or changes to the bed, bank, or channel. This agreement authorizes 0.07 acres of temporary impacts to an unnamed drainage.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1 Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.

- 1.5 Additional Project Impacts. Permittee shall submit to CDFW a request to amend this Agreement if any additional impacts to Fish and Game code section 1602 resources not identified in this Agreement are anticipated. No additional impacts to Fish and Game code section 1602 resources are authorized unless the impacts and/or activities are expressly authorized by CDFW by amendment to this Agreement.
- 1.6 Take of Listed Species. The issuance of this Agreement does not authorize the take of any State or Federally listed threatened, endangered, or fully protected species. Take of any California Endangered Species Act (CESA) listed species is prohibited except as authorized by state law (Fish and Game Code Section 2080 & 2085). Consequently, if a Project, including Project construction or any Project related activity during the life of this Project, results in the take of CESA-listed species, CDFW recommends that the Permittee seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code Section 2080.1 and 2081).
- 1.7 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.
- 1.8 Reporting of Violations. Permittee shall report any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, to the CDFW contact identified below within 48 hours of the violation occurring.

2 Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Designated Representative. Before initiating ground- or vegetation- disturbing project activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this Agreement. The Permittee shall notify CDFW in writing at least thirty (30) calendar days prior to commencement of ground- or vegetation- disturbing activities of the Designated Representative's name, business address, and contact information. Permittee shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this Agreement.

- 2.2 Designated Biologist. At least thirty (30) calendar days before initiating ground- or vegetation- disturbing activities, Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for a biological monitor (Designated Biologist). Permittee shall obtain CDFW's written approval of the Designated Biologist prior to commencement of ground- or vegetation-disturbing activities. The Designated Biologist shall be knowledgeable and experienced in the biology and natural history of local wildlife and plant resources present at the project site. The Designated Biologist shall be responsible for monitoring all project activities, including construction and any ground- or vegetation- disturbing activities in areas subject to this Agreement.
- 2.3 Designated Biologist Authority. The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid or minimize impacts to wildlife resources. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred as a result of compliance with this measure. This includes cease-work orders issued by CDFW. If any sensitive State listed Species of Special Concern, or threatened or endangered species, are found or observed within the project site the Designated Biologist shall immediately issue a stop work order and notify CDFW via email to Marlee Poff, Environmental Scientist at marlee.poff@wildlife.ca.gov.
- 2.4 Bat Roosting Habitat Suitability Assessment. Prior to commencement of Project activities, a Designated Biologist shall conduct a bat roosting habitat suitability assessment of the structures and trees that may be removed, altered, or indirectly affected by the Project. If bat roosting habitat is detected during the pre-construction surveys, nighttime surveys shall be performed by the Designated Biologist.
- 2.5 Bat Nighttime Pre-Project Survey. Any locations identified as suitable bat roosting habitat by the Designated Biologist shall be subject to additional nighttime surveys during the summer months (i.e. June-August) to determine the numbers and bat species using the roost(s). As bats may utilize dense tree canopies, snags, rock crevices, or built structures over creeks/water, these habitat types shall be surveyed. Foraging areas and specific flight routes to those foraging areas shall also be documented. The surveys shall be conducted by the Designated biologist using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. If bats are found using any structures or trees within the Project area, the Designated Biologist shall identify the bats to the species level and evaluate the colony to determine its size and significance. The bat survey should include 1) recordation of the exact location of all roosting sites (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) the names of each species of bat present (including how the species was identified); and 4) the type of roost, i.e., a night roost (resting at night without feeding) versus a day roost (resting during the day), clearly stated. If bats are found and could be adversely impacted by the Project,

the Designated Biologist shall use and include the information collected during the surveys to develop species-specific measures to minimize impacts on roosting bats within a Bat Avoidance, Monitoring, and Protection Plan (BAMPP, refer to Measure 4.1 below). If the presence of a maternity colony is confirmed, direct impacts shall be avoided and Project related activities involve combustion engines and/or night lighting, avoidance, and minimization measures (i.e., designation buffers) shall be included in the BAMPP.

2.6 Nesting Birds. Permittee shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures

2.6.1 Permittee shall designate a biologist experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology nesting surveys, techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

2.6.2 Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities addressed by this Agreement. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed or until the location can be inferred based on observations. The Designated Biologist shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of survey/monitoring efforts (i.e., limited number of surveyors, limited time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for 1 hour (4 hours for raptors during the non-breeding season) prior to approaching the nest to determine the status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate. Results of pre-construction surveys shall be

provided to CDFW per Measure 3.2.

- 2.6.3 When an active nest is confirmed, the Designated Biologist shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that attracts predators. Once the buffer is established, the Designated Biologist shall document baseline behavior, stage of reproduction, and existing site conditions, including the vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist may choose to make adjustments to the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist shall monitor the nest at the onset of Project activities (i.e., increase in the number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that Project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly.
- 2.6.4 Permittee, under the direction of the Designated Biologist, may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering material with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist shall ensure that none of the materials used pose an entanglement risk to birds or other species.
- 2.6.5 The Designated Biologist shall be responsible for providing summary reports, as specified in Measure 3.3 to CDFW no less than once weekly during clearing, grading, excavation, and/or ground clearing activities regarding the nesting species identified onsite, discovery of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to establish buffers. If the Project results in the abandonment of, or damage to a nest, Permittee shall notify CDFW within 24 hours.
- 2.7 Burrowing Owl. Permittee shall ensure that impacts to burrowing owls are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization and mitigation measures.
- 2.7.1 Prior to the initiation of Project activities addressed by this Agreement, Permittee shall conduct a burrowing owl habitat assessment. Surveys shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species and burrowing owl sign at the appropriate time of day/dawn, during appropriate weather conditions, at least thirty (30) calendar days prior to the initiation of Project activities addressed by this Agreement. Burrowing owl habitat includes but is not limited to: short or sparse vegetation, presence of burrows, burrow surrogates or presence of fossorial mammal dens, well-drained soils, and abundant and available prey. Vegetation may include

native and non-native grassland, interstitial grassland with shrub lands, shrub lands with low diversity shrub cover, golf courses, drainage ditches, earthen berms, unpaved airfields, pasturelands, dairies, fallow fields, and agricultural use areas. Burrowing owls typically use burrows made from fossorial mammals such as ground squirrels or badgers, and often manmade structures such as earthen berms, cement culverts, cement, asphalt, rock, or wood debris piles, or openings beneath cement or asphalt pavement. Survey duration shall take into consideration the size of the property, density and complexity of habitat, number of survey participants, survey techniques employed, and shall be sufficient to ensure data is collected and accurate. A report summarizing the results of the habitat assessment shall be submitted to CDFW, as described in Measure 4.4.

- 2.7.2 If the burrowing owl habitat assessment identifies burrowing owl habitat on site, Permittee shall have a qualified wildlife biologist pre-approved by CDFW perform a survey for burrowing owls within sixty (60) days and at least thirty (30) days prior to clearing any area.
- 2.7.3 If suitable burrowing owl habitat is found on site, Permittee shall have a qualified biologist, preapproved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity (such as owls themselves, burrows, and owl sign at burrow entrances, including pellets, feces, or other “ornamentation”, feathers, prey remains, whitewash, etc.) no sooner than three (3) days prior to any site preparation activities. If it is evident that the burrows are actively being used, Permittee shall not commence activities until no sign is present that the burrows are being used by adults or juvenile owls. CDFW shall be notified in writing of detection of active burrows within three (3) days.
- 2.7.4 Permittee shall submit the survey methodology and results within seven (7) days of completion and at least twenty-one (21) days prior to commencement of Project activities addressed by this Agreement.
- 2.7.5 If burrowing owls are observed within the Project site during Project implementation and construction, Permittee shall notify CDFW immediately in writing. Further, Permittee shall be responsible for implementing appropriate avoidance and mitigation measures, including habitat avoidance, passive or active relocation, or other appropriate mitigation measures.
- 2.7.6 If burrowing owls are detected on the Project site, a Burrowing Owl Mitigation and Monitoring Plan (BOMMP) shall be submitted to CDFW for review and approval prior to relocation of owls. The BOMMP shall describe the proposed relocation, monitoring, minimization, and mitigation actions. The BOMMP shall include the number and location of occupied burrow sites and details on adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation of artificial burrows (numbers, location, and types of burrows) shall also be included in the BOMMP. As compensation for the scenario loss of burrowing owl nesting and foraging

habitat, the BOMMP shall identify mitigation including acquisition and funding of the permanent protection for the loss of burrowing owl habitat. Permittee shall implement the BOMMP following CDFW review and approval.

- 2.8 Pre-Activity Surveys. The Designated Biologist shall conduct pre-activity surveys within the Project area and a 500-foot buffer surrounding these areas 14-21 days prior to initiating Project activities. The surveys shall be conducted to identify and map for avoidance of nesting birds and special-status species with the potential to occur on the site, including those identified in the Project impacts section of this Agreement, and any habitat, dens, burrows, nests, standing water, etc. capable of supporting a special-status species. The Designated Biologist shall ensure that the methods used to locate, identify, map, avoid, and buffer individuals or habitat are appropriate and effective, including the assurance that the surveyor has attained 100% visual coverage of the entirety of the potential impact areas, and an appropriate buffer surrounding those areas. If any special-status species (or sign of presence) is identified within or adjacent to the Project area, Permittee shall immediately (within 24 hours) notify CDFW and submit, no less than one week prior to initiation of Project activities, species-specific avoidance measures that when implemented, will fully avoid impacts to the special-status species. If full avoidance cannot be avoided, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.
- 2.9 Pre-activity Sweep. The Designated Biologist shall conduct pre-activity sweeps within the Project areas (including access routes), any habitat, dens, burrows, nests, standing water etc. capable of supporting special-status species within a 500-foot buffer surrounding the Project areas, immediately prior to (no more than 12 hours prior to Project activities starting) to initiate Project activities. The pre-activity sweeps shall confirm and mark/map for avoidance the location of any known special-status species and shall verify that no additional/new special-status species have occupied the Project area or habitats. If any additional/new special-status species (or sign of presence) are identified within or adjacent to the Project areas during the pre-activity sweep, Permittee shall determine whether the proposed avoidance measures will be effective in fully avoiding impacts of the Project on the identified resource(s) prior to initiating Project activities. If full avoidance cannot be accomplished, Permittee shall postpone the Project, and contact CDFW to discuss an appropriate path forward.
- 2.10 Worker Environmental Awareness Training. The Designated Biologist shall provide a Worker Environmental Awareness Training (WEAT) to all employees, representatives, agents, contractors, and subcontractors on the terms and conditions of this Agreement. The WEAT will include but not be limited to protected species and species of special concern that have potential to occur within the Project footprint. Permittee shall provide a copy of the WEAT presentation materials and a trainee sign in sheet to CDFW within 24 hours of construction start.

2.11 Best Management Practices. Permittee shall actively implement Best Management Practices (BMPs) to prevent erosion and discharge of sediment and pollutants into streams during project activities. BMPs shall be monitored and repaired if necessary to ensure maximum control of erosion, sediment, and pollution. Permittee shall prohibit the use of erosion control materials potentially harmful to wildlife species, such as welded-weave microfilament netting (erosion control matting) or similar material, within and adjacent to Fish and Game Code section 1602 resources. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be certified free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersection of the weaves, such as jute, coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

2.12 Work Period in Dry Weather Only: Work within ephemeral desert washes shall be restricted to periods of no stream flow and dry weather. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Construction activities shall cease, and all necessary erosion control measures shall be implemented prior to the onset of precipitation. Construction activities halted due to precipitation may resume when precipitation ceases, and the National Weather Service 72-hour weather forecast indicates a 20% or less chance of precipitation, provided no work occurs in the stream bed if water is flowing. If a construction phase may cause the introduction of sediments into the stream, no phase of the Project shall commence unless all equipment and materials are removed from the channel at least 12 hours prior to the onset of precipitation and all associated erosion control measures are in place prior to the onset of precipitation. No work shall occur during a dry-out period of 24 hours after the above referenced wet weather. Weather forecasts shall be documented upon request by CDFW.

2.12.1 Post Storm Event Inspection. After any storm event, Designated Biologist(s) shall inspect all sites scheduled to begin or continue construction within the next 72 hours. Corrective action for erosion and sedimentation shall be taken as needed. National Weather Service 72-hour weather forecasts shall be reviewed prior to the start of any phase of the project that may result in sediment runoff to the stream, and construction plans adjusted to meet this requirement. The National Weather Service forecast can be found at: <http://www.nws.noaa.gov>.

2.12.2 Demarcate Work Area Boundary. The Designated Biologist(s) shall be present during demarcating of the outer perimeter of the work area to prevent damage to adjacent habitat and to provide visual orientation to its limits. Markings shall be in place during all periods of operation. All persons employed or otherwise working on the project site shall be instructed about the restrictions that the marking represents. The markings used (flagging, etc.) may be further specified, as well as

marking intervals.

2.12.3 Demarcate Work Area and Vegetation. Demarcation of the work area shall consider and avoid vegetation to the greater extent possible. Vegetation shall not be removed or damaged beyond the work area. If vegetation bordering the demarcated area proves to be an obstruction to project operations as described in the Project notification, then the Permittee shall request approval from CDFW prior to trimming vegetation.

2.13 Equipment and Vehicles. Permittee shall comply with the following:

2.13.1 Any equipment or vehicles driven and/or operated while conducting a Project activity shall be checked daily and maintained as needed to prevent leaks or materials that can be deleterious to aquatic and terrestrial life or riparian habitat. Prior to working within or on the stream bed, bank, or channel, all equipment shall be closely examined for oil and fuel discharges. Any contaminants shall be cleaned prior to any work within a streambed and all equipment shall be maintained daily.

2.13.2 All heavy equipment that will conduct a Project activity shall be cleaned by Permittee at a staging or maintenance area prior to the entry into CDFW jurisdictional habitat to prevent discharge of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil, and other debris.

2.13.3 No equipment maintenance or fueling shall be done within 150 feet of Fish and Game Code 1600 jurisdictional areas or near any stream channel or lake margin where petroleum products or other pollutants from the equipment could enter these areas.

2.13.4 Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall not be located within 150-feet of Fish and Game Code Section 1600 jurisdictional areas where material could wash into a stream.

2.13.5 All equipment shall carry suitable spill containment equipment to handle a catastrophic spill/leak. This may include oil absorbent pads, booms, or skimmers, as appropriate.

2.13.6 Permittee shall begin the cleanup of all spills immediately. Permittee shall notify CDFW immediately (within 24 hours) of any spills that occur because of activities covered under this agreement and shall consult with CDFW regarding cleanup procedures. Permittee shall have all spill clean-up equipment on site during construction.

2.13.7 Vehicles may enter and exit the work area as necessary for Project activities but may not be parked overnight within fifty (50) feet of the streams; nor shall any

vehicles be parked where mechanical fluid leaks may potentially enter the waters of the state.

- 2.14 Return to Previous Grade. If the gradient of the streambeds may be altered during project operations, Permittee shall return its contours as close as possible to pre-project conditions. Pre-project condition shall be defined by engineered plans approved by the Permittee prior to commencement of project activities. Permittee shall be liable for restoration of contours to pre-project conditions in the event that subsequent erosion is caused by the Project. Within sixty (60) calendar days of project completion Permittee shall restore all temporary impact areas, and no later than ninety (90) calendar days following project completion a letter shall be submitted to CDFW that includes a description of the restoration activities performed and photographs of temporary impact areas before and after restoration.
- 2.15 Bank Stabilization. Permittee shall construct bank stabilization with suitable non-erodible materials that will withstand wash out. The materials used for bank stabilization shall be clean and free of trash and debris.
- 2.16 Pollution and Litter. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.16.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter the streambed or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.16.2 Spoil sites shall not be located within the streambed or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into streambed or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.16.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil, or other petroleum products, or any other substances which could be hazardous to Fish and Wildlife resources resulting from Project related activities shall be prevented from contaminating the soil and/or entering the streambed or flowing stream by Permittee or any party working under contract or with permission of Permittee, shall be removed immediately.
- 2.16.4 No broken concrete, asphalt, cement, debris, soil, silt, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into a place where it may be washed by rainfall or runoff into waters of the State. When operations are complete, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within

150 feet of the high-water mark of any streambed or flowing stream.

- 2.16.5 No equipment maintenance shall be done within or near any streambed or flowing stream where petroleum products or pollutants from the equipment may enter these areas under any flow.
- 2.17 Invasive Species. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.) from one Project site and/or waterbody to another (Fish and Game Code § 702 and 2300). Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index/php> and for invasive mussels and aquatic species can be found at the Aquatic Hitchhiker's website: <http://www.protectyourwaters.net/>. To prevent the spread of invasive plants from outside of the PIA to the PIA, the following measures must be implemented:
- 2.17.1 Wash all vehicles and heavy equipment, including tires and undercarriage, and hand-held tools such as shovels and rakes, that have been used off-site before bringing them onto the Project site.
- 2.17.2 Vacuum and clean the interior of vehicles and heavy equipment that have been used off-site before bringing them to the Project site.
- 2.17.3 Clean by pressure washing, washing in hot water, freezing, or bleaching person gear and clothing, including footwear, that have been worn off-site before bringing them to the Project site.
- 2.17.4 Do not transport soil or other fill material from off-site locations to the Project area unless they are certified weed free.
- 2.17.5 Only use seeds and seedlings approved by CDFW when restoration is required and prepare soils appropriately to encourage new seeds and plants to survive.

3 Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 Bat Avoidance, Monitoring, and Protection Plan. If bats are found and could be adversely impacted by the Project, a BAMPP shall be created by a Designated Biologist and be submitted to CDFW for review and approval within thirty (30) days prior to the start of any Project related activities identified within this Agreement. The BAMPP shall include the bat pre-Project survey results (Refer to Measure 2.4) and Project-specific avoidance and minimization measures that consider, but are not necessarily limited to: 1) pre-Project survey methodology used (i.e., timing,

duration, location, and species detected); 2) pre-Project survey results; 3) qualifications of proposed Designated Biologist(s) that will monitor Project activities where bats are present; 4) Project phasing and timing; 5) installation and monitoring of exclusionary materials, where and when appropriate; 6) monitoring of Project-related noise, vibration, and lighting; and installation of buffers; and 7) procedures and frequency of direct reporting to CDFW.

- 3.2 Preconstruction Nesting Bird Survey Report. Prior to the commencement of Project activities addressed by this Agreement, the Permittee shall submit to CDFW the results of the pre-construction nesting bird surveys completed pursuant to Measure 2.6.2 of this Agreement.
- 3.3 Nesting Bird Summary Reports. Permittee shall prepare and submit to CDFW a summary, as described in Measure 2.6.5 of this Agreement of nesting species identified onsite, discovery of nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. Summary reports shall be submitted on a weekly basis until there is no further evidence of nesting activity. If the Project results in the abandonment of or damage to a nest, Permittee shall notify CDFW within 24 hours.
- 3.4 Burrowing Owl Survey Report. Permittee Prior to commencement of Project activities addressed by this Agreement, Permittee shall prepare and submit to CDFW the results of the burrowing owl habitat assessment completed pursuant to Measure 2.7.4 of this Agreement.
- 3.5 Notification of Start of Construction. Permittee shall notify CDFW at least fourteen (14) days prior to initiation of Project activities in areas subject to Fish and Game Code section 1602. Notification shall be submitted via email to Marlee Poff, Environmental Scientist at Marlee.Poff@wildlife.ca.gov and to the CDFW regional office at R6SAReporting@wildlife.ca.gov.
- 3.6 Notification of Project Completion. Permittee shall notify CDFW no later than ninety (90) days after the completion of Project activities a complete report describing the restoration activities and photos of the temporary impact areas before and after Project activities pursuant to Measure 2.14 of this Agreement. Notification shall be submitted via email to Marlee Poff, Environmental Scientist at Marlee.Poff@wildlife.ca.gov.
- 3.7 Notification to CNDDDB. If any sensitive species are observed on or in proximity to the project site, or during project surveys, Permittee shall submit the occurrence information to the California Natural Diversity Data Base (CNDDDB) within five (5) calendar days of the sighting. Submissions can be made to CNDDDB online at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. A copy of this information shall be mailed within five (5) business days to CDFW Inland Deserts Region, 3602 Inland Empire Blvd., Suite C-220, Ontario, CA, 91764.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through Environmental Permit Information Management System (EPIMS) as instructed by CDFW.

To Permittee:

Anthony Pham
San Bernardino County Public Works
EPIMS-SBR-35736-R6
Cataba Road
825 E 3rd Street
San Bernardino, CA 92415
Anthony.pham@dpw.sbcounty.gov

To CDFW:

Department of Fish and Wildlife
Inland Deserts Region
EPIMS-SBR-37536-R6
Cataba Road
EPIMSHelp@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited

to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on 07/27/2028 unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Exhibit 1 – Project Impact Map

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

CONCURRENCE

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's EPIMS, the permittee accepts and agrees to comply with all provisions contained herein.

The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.

Exhibit 1

