

RESTATED AND AMENDED JOINT EXERCISE OF POWERS AGREEMENT  
CREATING RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY

1. PARTIES AND DATE

This Agreement is made by and between THE COUNTY OF RIVERSIDE, THE CITY OF CORONA, THE CITY OF HEMET, THE CITY LAKE ELSINORE, THE CITY OF MORENO VALLEY, THE CITY OF MURRIETA, THE CITY OF PERRIS, THE CITY OF TEMECULA, and THE CITY OF RIVERSIDE, (hereinafter collectively called the “Member Agencies”), for the acquisition, administration, operation and maintenance of land and facilities for ecosystem conservation and habitat reserves for the Stephens’ kangaroo rat and other species which have been listed as threatened or endangered or which are candidates for such listing pursuant to the laws of the United States or the State of California.

2. RECITALS AND DEFINITIONS

2.1 Agreement. This Agreement hereby restates the Agreement created on May 15, 1990, and includes all prior amendments thereto as follows:

Amendment #1	08/20/1990
Amendment #2	11/06/1990
Amendment #3	04/30/1991
Amendment #4	06/01/1993
Amendment #5	Not Approved
Amendment #6	08/01/1995
Unnumbered Amendment	06/03/1997
Amendment #7	02/11/2003
Amendment #8	02/28/2006
Amendment #9	Not Approved

This Agreement further amends the Agreement created on May 15, 1990 in the manner set forth herein;

2.2 Parties. Each of the parties hereto is a public agency authorized and empowered to contract for the joint exercise of powers under the Government Code of the State of California.

2.3 Power. Each of the Member Agencies has the authority and power to purchase and maintain real property and to establish ecosystem conservation plans, and to design and implement habitat conservation plans for the protection of the Stephens' kangaroo rat and other listed or candidate threatened or endangered species.

2.4 Need. The United States Fish and Wildlife Service (the "Service") has listed the Stephens' kangaroo rat as an endangered species. The California Department of Fish and Game has recommended changing the Stephens' kangaroo rat's status to endangered. In order for the Member Agencies to obtain permits for incidental takings of the Stephens' kangaroo rat and its habitat, the Member Agencies must develop a program for the protection of habitat occupied by the species. This Agreement implements that program and provides for development of a program to protect other listed or candidate threatened or endangered species, and for the establishment and operation of programs to protect habitat required to maintain ecosystems essential for the preservation of species of plants and animals.

### 3. TERMS

3.1 Creation of Agency. There is hereby created a public agency known as the Riverside County Habitat Conservation Agency, herein called the "Agency". The Agency is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. For the purposes of this Agreement, the Agency is a public agency separate from the parties hereto and shall be the agency to administer and execute this Agreement.

3.2 Purpose. The purpose of this Agreement is to create a public agency to plan for, acquire, administer, operate, and maintain land and facilities for ecosystem conservation and habitat reserves to implement a habitat conservation plan for the Stephens' kangaroo rat and other listed or candidate threatened and endangered species.

3.3 Powers. In carrying out the purpose of this Agreement, the Agency shall have the following powers:

3.3.1 To make and enter into contracts;

3.3.2 To employ agents, consultants, attorneys and employees;

3.3.3 To acquire property, and any interest in property, both real and personal by purchase, gift, lease, option, grant, bequest, devise or otherwise, and to hold and dispose of such property;

3.3.4 To acquire real property by eminent domain and to delegate its authority to acquire real property by eminent domain to individual Member Agencies;

3.3.5 To conduct and direct studies and to develop and implement plans to complement, modify or supplement the “Short-Term Habitat Conservation Plan for the Stephens’ kangaroo rat” and to develop and implement plans for a long-term habitat conservation plan for the Stephens’ kangaroo rat;

3.3.6 To undertake programs to protect other listed or candidate threatened or endangered species and for ecosystem conservation;

3.3.7 To incur debts, liabilities, and obligations;

3.3.8 To sue and be sued in its own name;

3.3.9 To employ personnel to operate, maintain, and administer habitat and ecosystem reserves;

3.3.10 To be an applicant, make applications for, and receive grants from governmental and private entities and to participate in State bond issues;

3.3.11 To prepare project reports and applications, to qualify for grants, and to enter into grant contracts and to do all other things necessary to comply with State and Federal laws and regulations with respect to grants;

3.3.12 To borrow or receive advances of funds from the Member Agencies or from such other sources as may be permitted by law;

3.3.13 To contract with the Member Agencies and other parties who operate or will operate ecosystem or habitat conservation reserves;

3.3.14 To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses to carry out the powers of the Agency;

3.3.15 To acquire, hold, and dispose of equipment; and

3.3.16 To exercise all other powers common to the Member Agencies not specifically mentioned above which may be necessary to carry out the purposes of this Agreement.

3.4 Effective Date. The Agency was created on May 15, 1990, and this Amended and Restated Agreement shall become effective on the first day following the execution of this Agreement by the last of the Member Agencies.

3.5 Additional Members. In connection with the admission of any additional public agency after formation of the Agency, each of the existing members and the prospective member or members shall execute a memorandum of understanding specifying the obligations of the prospective member for contributions toward past or present Agency expenditures and assets.

3.6 Board of Directors. This Agreement and the Agency created hereby shall be administered by the governing body of the Agency which shall be known as the “Board of Directors of the Riverside County Habitat Conservation Agency” herein called the “Board”. The Board shall be composed of one Elected Official from each Member Agency. Each Member Agency shall appoint one Elected Official to serve as the regular representative and shall also appoint an Elected Official to serve as an alternate representative of such Agency to the Board. In the absence of the regular representative of a Member Agency, the alternate representative of such Agency shall, if present, participate in a meeting of the Board the same as if the alternate representative were the regular representative. Members of the Board and their alternates shall be appointed by and shall serve at the pleasure of their appointing body. All voting powers shall reside in the Board. Alternate representatives of Member Agencies may participate in all meetings of the Board except that the Agency’s alternate representatives may vote only in the absence of the regular representative of such Agency.

3.6.1 Compensation. Unless prohibited by law from accepting compensation, each regular and alternate member (when performing the duties of a regular member) of the Board shall be compensated at the rate of One Hundred Dollars (\$100) per day, for any portion of a day they spend attending to the business of the RCHCA, but not to exceed Four Hundred Dollars (\$400) in any given month, along with necessary traveling and personal expenses incurred in the performance of his or her duties as authorized by the Board. Except as hereinabove expressly provided, members of the Board and their alternates shall not be entitled to any other salary or compensation for attendance at or participation in meetings of the Board or for any similar services rendered on behalf of the Agency.

3.7 Meetings of the Board of Directors.

3.7.1 Regular Meetings. The Board shall hold at least four regular meetings per year. The dates, hours, and places of the regular meeting shall be set by the Board, and a copy of the meeting schedule shall be furnished to each Member Agency.

3.7.2 Ralph M. Brown Act. All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

3.7.3 Minutes. The Secretary of the Agency shall cause to be kept minutes of all meetings of the Board, shall cause the minutes of all meetings to be approved by the Board, and shall cause a copy of the approved minutes to be forwarded to each member of the Board and to each of the parties hereto.

3.7.4 Voting and Quorum. The total voting power of all seats of the Board shall be 100%. Each regular representative shall have a percentage of the vote equal to the percentage of his or her Member Agency's overall contribution or deemed contribution to the Agency as calculated pursuant to Sections 3.10.1 and 3.10.2 below. A Member Agency's overall contribution to the Agency shall be calculated monthly or on such other periodic basis as the Board may approve. The majority of the number of Directors of the Board shall constitute a quorum of the Board for the transaction of business; provided, however, that in the absence of a quorum the majority of the Directors present at any Board meeting may adjourn until the time fixed for the next regular meeting of the Board. The affirmative vote of at least three Directors constituting more than 50% of the voting strength of the Board as represented in the quorum which is present at that time shall be required for the approval of any actions; provided however, that a numerical majority of the Directors as represented in any such quorum may approve any action unless at least three Directors constituting more than 50% of the voting strength of the Board as represented in such quorum vote to disapprove any such action.

3.8 Officers. The Board shall elect its own officers, which shall include a chairperson, vice-chairperson, secretary, treasurer, and auditor. The chairperson and vice-chairperson shall be members of the Board and the secretary may, but need not, be a member of the Board.

3.8.1 Treasurer. The treasurer of the Agency shall be the treasurer of the County of Riverside, who shall be the depository and have custody of all money of the Agency from whatever sources.

3.8.2 Auditor. The auditor of the Agency shall be the Auditor/Controller of the County of Riverside and shall draw all warrants to pay demands against the Agency approved by the Board.

3.8.3 Other Officers. The Board may appoint a general manager and an attorney for the Agency. The Agency may contract with Member Agencies for the use of employees of the Member Agencies on mutually agreeable terms and conditions. The public officer, officers or persons who have charge of, handle, or have access to any property of the Agency shall file an official bond in an amount to be fixed by the Board.

3.8.4 General Manager. The general manager, if appointed, or such other officer or employee of the Agency to whom the Board delegates such authority, shall have the power to appoint, promote, demote and remove employees of the Agency subject to the provisions of the Agency's approved budget, and subject to such personnel policies as may have been adopted by the Board. The General Manager shall also have the power to enter into Agreements in an amount not to exceed Twenty-Five Thousand dollars (\$25,000) per Agreement, per fiscal year, and enter into non-substantive Amendments to such Agreements where there is no change to the maximum obligation amount or the scope of work in the Agreement in accordance with the Riverside County Purchasing Department guidelines.

3.9 Rules and Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The laws of the State of California applicable to the general law City of Moreno Valley shall govern the Agency in the manner of exercising its powers, subject, however, to such restrictions as are applicable to said city in the manner of exercising such powers, as required by Government Code Section 6509. Should the City of Moreno Valley not be a Member Agency, the laws applicable to the County of Riverside shall be used for purposes of Section 6509. The Board, at its first meeting or as soon thereafter as may be possible, shall adopt such rules and regulations as the Board may deem necessary for the conduct of the Agency's affairs. Among these rules shall be a conflict of interest code and a purchasing ordinance. The Board may, as it deems appropriate, review and revise these rules and regulations.

3.10 Contributions/Estimated Budget.

3.10.1 Contribution of Mitigation Fees. The Member Agencies have imposed a mitigation fee on certain types of development within their jurisdictions to implement the initial habitat conservation program for the Stephens' kangaroo rat. All mitigation fees for the Stephens' kangaroo rat collected by the Member Agencies prior to the effective date of this Agreement, less monies expended by the County for consultants' services and land acquisition, shall be deposited into the treasury of the Agency within sixty (60) days of such effective date. Monies expended by the County for consultants' services and land acquisition for the benefit of the SKR shall be included in the County's overall contribution to the Agency for purposes of calculating the County's percentage vote under Section 3.7.4 above. All mitigation fees collected for the Stephens' kangaroo rat from and after August 24, 2006, shall be forwarded to the Agency for the period of April 1 through June 30 before July 31; for the period of July 1 through September 30 before October 31; for the period of October 1 through December 31 before January 31; and for the period January 1 through March 31 before April 30 of each fiscal year.

- A. No Withholding. The County and the Cities may not recover the costs of administering the provisions of their SKR Mitigation Fee ordinance using the Local Development Mitigation Fee revenues generated by them through said ordinance.
- B. Audit. Pursuant to Section 3.12 of the JPA, the County and Cities shall maintain complete and accurate records with respect to all Local Development Mitigation Fees collected under their Local Development Mitigation Fee ordinance. All such records shall be clearly identifiable. The County and Cities shall allow a representative of the Authority during normal business hours to examine, audit, and make transcripts of copies of such records.
- C. Breach of Obligations. If the County or the Cities fail to remit on at least a quarterly basis as required in Section 3.10.1, above, within 30 days of the due date as set forth herein, any delinquent amounts will be assessed interest at the rate of RCHCA's prevailing rate for invested funds.
- D. Process for Notification of Delinquency. The following guide for notification of delinquency is established:

- a. RCHCA staff will notify, in writing, the City Manager of any jurisdiction within 15 days of not receiving a remittance fee within the time period set forth in Section 3.10.1, above.
- b. After an additional 30 days, RCHCA staff will notify the jurisdiction again with an accompanying invoice for the approximate amount owed plus interest and penalties;
- c. RCHCA staff will continue this notification until the 90 day mark, at which time RCHCA will determine if an audit of the jurisdictions SKR Mitigation Fee account, general ledger and any other financial data is necessary to determine the amount owed, the cause of the delay, and make any recommendations to resolve the issue; and
- d. If an audit is required due to irregularities in reporting and remittance the jurisdiction will incur the cost of the audit.

3.10.2 Non-Mitigation Fee Contributions. The Board may accept contributions of property from Member Agencies in lieu of mitigation fees, or with the approval of the Board, a Member Agency may hold and maintain its own property as a contribution to the reserve program. Such property shall count toward a Member Agency's overall contribution for purposes of calculating the Member Agency's percentage vote under Section 3.7.4 above only if approved by the Board and only if held and maintained in accordance with the Agency's rules and regulations for maintenance and operation of reserves. The value of such contributions shall be calculated based upon the agreement of two-thirds of the governing bodies of the Member Agencies or by the Board subject to an independent appraisal ordered by the Board. Funds received from state and federal grants, special assessments, or any other third-party sources also shall be deemed to be contributions of the Member Agencies and shall be used in calculating each Member Agency's percentage vote based on each Member Agency's pro rata share of the approved allocation of take arising from such third-party sources as of the date the funds are received.

3.10.3 Use of Contributions. When approved by the Board, revenues received by the Board, including without limitation, fees and other contributions, may be used to further any of the purposes of the Agency.

3.10.4 Budget. No later than May 31 of each year, the Board shall prepare and approve an estimated budget of the amount of money required to implement the habitat reserve program during the ensuing fiscal year. Such estimates shall be based, as nearly as is practicable, on the total land acquisition, land improvement, maintenance, administration, and operation costs during the current fiscal year as such costs are set forth in the then current approved budget for the Agency. The estimated budget of the Agency prepared and approved by the Board shall be forwarded to the governing bodies of the Member Agencies for consideration and approval. The Board's estimated budget shall be deemed the final budget of the Agency upon receipt by the Agency of certified copies of approving resolutions or minute orders from the governing body of each of the Member Agencies. Until such time as formal approval has been received from each Member Agency, the estimated budget shall constitute merely a proposed budget, subject to reconsideration or revisions. If a final budget has not been approved for the Agency by July 1 of each year, the budget for the previous year shall serve as the Agency's working budget for the ensuing fiscal year until a new budget is approved.

3.11 Consultant Contracts. The Agency shall, upon request of the County, accept assignment of all consultant contracts which the County has entered into for the preparation and implementation of the Short-Term and Long-Term Habitat Conservation Plans for the Stephens' kangaroo rat.

3.12 Accounting and Audits.

3.12.1 Fiscal Year. The fiscal year of the Agency shall be from July 1 through the following June 30.

3.12.2 Accounting Procedures and Audit. Full books and accounts shall be maintained for the Agency in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies. The Auditor of the Agency shall either make, or contract with a certified public accountant to make an annual audit of the account and records of the Agency. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards. A report of the audit shall be filed as a public record with each of the Member Agencies and with the Riverside County Auditor within 30 days of its completion. Such report shall be filed within 12 months of the end of the fiscal year under examination.

3.13 Withdrawal. Any Member Agency may withdraw from the Agency by giving the Agency written notice of its withdrawal. Upon withdrawal of any Member Agency from the Agency, the withdrawing member shall not receive any distribution, partial or otherwise, of any cash or other assets of the Agency.

3.14 Dissolution. Upon dissolution of the Agency pursuant to Section 3.18, the assets of the Agency may be distributed in kind or assets may be sold and the proceeds thereof distributed to the members at the time of dissolution; provided, however, that any distribution of assets shall be subject to the prior discharge of enforceable liability incurred by the Agency. Subject to the foregoing, upon dissolution of the Agency, each member shall receive its proportionate share of the assets of the Agency as the same appear on the books of the Agency. Each member's proportionate share shall be based upon such member's contributions to the Agency calculated in accordance with Section 3.10 above.

3.15 Liabilities. Except as provided hereinabove, the debts, liabilities and obligations of the Agency shall be the debts, liabilities and obligations of the Agency alone and not of the parties to this Agreement.

3.16 Indemnification of Member Agencies. Provided that a Member Agency has acted in good faith and in accordance with this Agreement and the Short-Term Habitat Conservation Plan for the Stephens' kangaroo rat, the Agency shall defend, indemnify and hold such Member Agency free and harmless from any loss, liability or damage incurred or suffered by such Member Agency by reason of litigation arising from or as a result of any of the following: the Member Agency's impact mitigation fee ordinance; the Member Agency's participation in the Agency; actions taken to implement the Short- or Long-Term Habitat Conservation Plans for the preservation of the Stephens' kangaroo rat; claims of inverse condemnation or unconstitutional takings against a Member Agency; or any other act performed or to be performed by the Member Agency pursuant to this Agreement, the Short-Term Habitat Conservation Plan for the Stephens' kangaroo rat, or the implementing agreements; provided, however, that such indemnification or agreement to hold harmless pursuant to this Section shall be recoverable only out of Agency assets and not from other Member Agencies.

3.17 Rescission or Termination.

3.17.1 Term. The Agency shall continue until this Agreement is rescinded or terminated as herein provided or until the duties of the Agency are assumed by a state or regional governmental agency.

3.17.2 Rescission or Termination. This Agreement may be rescinded and the Agency terminated by written consent of all of the Member Agencies evidenced by a certified copy of a resolution of their governing bodies.

3.18 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given in writing and addressed to the principal office of the Agency.

3.19 Validity. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall by any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

3.20 Amendment. This Agreement contains all of the terms and conditions agreed to by and between the parties hereto and shall not be amended except by an agreement in writing signed by not less than two-thirds (2/3) of the total number of Member Agencies comprising at least fifty percent (50%) of the total voting strength of the Board of Directors

3.21 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

3.22 Assignment. The parties hereto shall not assign any rights or obligations under this Agreement without the written consent of all other parties.

3.23 Additional Documents. The parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

Amendment #1	08/20/1990
Amendment #2	11/06/1990
Amendment #3	04/30/1991
Amendment #4	06/01/1993
Amendment #5	Not Approved
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Unnumbered Amendment	06/03/1997
Amendment #7	02/11/2003
Amendment #8	02/28/2006
Amendment #9	Not Approved

Dated: \_\_\_\_\_

CITY OF CORONA

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF HEMET

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF LAKE ELSINORE

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF MORENO VALLEY

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF MURRIETA

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF PERRIS

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

CITY OF RIVERSIDE

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

COUNTY OF RIVERSIDE

Attest:

By:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Riverside County Counsel

Dated: \_\_\_\_\_

CITY OF TEMECULA

Attest:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor