

**National Mitigation and Conservation Account
Memorandum of Agreement
Between the Bureau of Land Management and the
National Fish and Wildlife Foundation**

PREAMBLE

This National Mitigation and Conservation Account Memorandum of Agreement (this “Agreement”) is entered into by the United States Bureau of Land Management (the “BLM”), and the National Fish and Wildlife Foundation (the “Foundation”) (together, the “Parties,” and individually, a “Party”), as of the date of the Parties’ signatures to the Agreement (such date, the “Effective Date”).

I. PURPOSE

The BLM is a federal agency within the Department of the Interior responsible for managing the public lands under principles of multiple use and sustained yield (43 U.S.C. 1732(a)). In accordance with congressional policy described in the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701(a)(8)), the BLM manages public lands in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that appropriately preserves and protects certain public lands in their natural condition; that provides food and habitat for fish and wildlife and domestic animals; and that provides for outdoor recreation and human occupancy and use. The BLM also manages the public lands in a manner that recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber (43 U.S.C. 1701(a)(12)). To effectively manage for such multiple use, the BLM will, when appropriate and required by federal laws (e.g., FLPMA, the Clean Water Act or Endangered Species Act) or state mitigation plans, programs, or authorities, require mitigation to offset the impacts of some permitted uses of the public lands. Project applicants may also volunteer mitigation as a component of a project proposal and BLM may accept the mitigation and include it as a requirement of a Permit (as that term is defined below) (collectively referred to as “Decision Documents”). In either case, the Permittee (as that term is defined below) may provide funds to a third party to implement the mitigation in lieu of directly providing the mitigation.

To that end, the purpose of this Agreement is for the Foundation to establish a financial account (the “National Mitigation and Conservation Account” or “NMC Account”) to facilitate implementation of Mitigation Activities (as that term is defined below) for fish, wildlife, plants, and their habitats, and other natural resources (either voluntary or specifically required by federal or state law) relating to BLM authorizations to use the public lands. The Agreement will also help the BLM promote compliance with Decision Documents for permittees or other authorized public land users by allowing for the collection and administration of such funds by the Foundation.

The NMC Account will comprise specific Sub-Accounts (as that term is defined below), to be held, managed, and administered by the Foundation to receive monies paid by Permittees in

connection with impacts associated with projects authorized by the BLM. If a Permittee elects to use the NMC Account at the Foundation to satisfy terms and conditions or other requirements identified by the BLM for the use of the public lands, then the Permittee will provide funding to the Foundation for the Foundation to place in a Sub-Account associated with the Permittee's authorization. The Foundation, in turn, and in coordination with the BLM, will use the monies from the applicable Sub-Account to accomplish specified mitigation, conservation, protection, enhancement, restoration, or related purposes as specifically identified in BLM Decision Documents. The NMC Account may also receive monies paid as voluntary contributions to benefit conservation of important, scarce, or sensitive resources. Use of the NMC Account will be limited by the amount of money available in the Sub-Accounts at any given time, and by the stated purposes as described in the applicable Deposit Documents (as that term is defined below). Funds in the NMC Account will be disbursed in accordance with applicable Deposit Documents and, as appropriate, the instructions of the BLM.

Participation in the MOA does not diminish the BLM's autonomy, authority, or responsibility to conduct or accomplish its mission granted under applicable law or regulation. However, participation in the NMC Account by any BLM Office choosing to use any of the applicable Sub-Accounts established under this Agreement shall bind such BLM Office with respect to its use of the applicable Sub-Accounts to the terms of this Agreement with respect to such Sub-Accounts.

II. AUTHORITY

- A. The BLM is a federal agency within the Department of the Interior responsible for managing the public lands in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*). The BLM is authorized to enter into this Agreement pursuant to Section 307(b) of FLPMA (43 U.S.C. 1737(b)).
- B. The Foundation is a charitable non-profit corporation established in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. § 3701 *et seq.*, as amended (the "Establishment Act"), and is recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The established purpose of the Foundation is to undertake and conduct other activities that will further the conservation and management of fish, wildlife, and plant resources of the United States for present and future generations of Americans. The Foundation is authorized to receive and administer funds for mitigation of impacts to natural resources, and other amounts arising from legal, regulatory, or administrative proceedings, subject to the condition that the amounts are received or administered for purposes that further the conservation and management of fish, wildlife, plants, and other natural resources (16 U.S.C. 3703(c)(1)(K)). The Foundation has no membership and it does not engage in advocacy.

III. DEFINITIONS

- A. "Administrative Costs" shall mean those fees or costs associated with the Foundation's administration of the NMC Account, or Sub-Accounts, associated with each Project and detailed in the Deposit Document. Such costs include standard fees for each Sub-Account

such as an Annual Fee, a Deposit Fee, any bank or financial institution charges, and RFP Fee. Administrative Costs do not include costs to implement Mitigation Activities, as defined in Section III.R. below. Administrative Costs are paid by the Permittee.

- B. “Agreement” shall have the meaning assigned to such term in the Preamble to this Agreement.
- C. “Annual Fee” shall have the meaning assigned to such term in Section VII.D. of this Agreement.
- D. “BLM” shall have the meaning assigned to such term in the Preamble to and Section II.A. of this Agreement.
- E. “BLM Contact Person” shall have the meaning assigned to such term in Section V.A. of this Agreement.
- F. “BLM Office” and “BLM Offices” shall mean any BLM State, District, or Field office.
- G. “BLM Representative” shall mean the single designated staff person representing the BLM as a whole (or his or her alternate, acting in the place of the BLM Representative) responsible for primary communications and administration related to this Agreement. If and to the extent the BLM elects to establish the Sub-Accounts listed in Sections VII.A. and VII.B. below, the BLM Representative (or his or her alternate) will designate a BLM State Office Representative for that particular Sub-Account under this Agreement (such person, a “BLM State Office Sub-Account Representative”), and shall notify the Foundation in writing of such election and, thereafter, the Sub-Account Representative shall function as the “BLM Representative” for that BLM State Office hereunder for purposes of the relevant Sub-Account.
- H. “BLM State Office Sub-Account” shall mean any Sub-Account identified in Section VII.A. of this Agreement, or any additional Sub-Account approved by the BLM Representative at the request of a BLM State Office and established by the Foundation.
- I. “BLM State Office Sub-Account Representative” shall mean the designated staff person for a particular BLM State Office Sub-Account or Resource Specific Sub-Account representing the respective BLM State Office responsible for primary communications and administration related to that BLM State Office Sub-Account or Resource-Specific Sub-Account.
- J. “Decision Document” shall have the meaning assigned to such term in Section I. of this Agreement.
- K. “Deposit Document” shall have the meaning assigned to such term in Section IV. of this Agreement.

- L. “Deposit Fee” shall mean the amount assessed by the Foundation on a one-time basis to establish each new Sub-Account within the NMC Account as set forth in Section VII.C. of this Agreement.
- M. “Effective Date” shall have the meaning assigned to such term in the Preamble to this Agreement.
- N. “Establishment Act” shall have the meaning assigned to such term in Section II.B. of this Agreement.
- O. “Fiscal Year” shall mean the fiscal year of the Foundation which, as of the date of this Agreement, commences on October 1st of each calendar year and runs through September 30th of the immediately following calendar year.
- P. “Foundation” shall have the meaning assigned to such term in the Preamble to and Section II.B. of this Agreement.
- Q. “Foundation Representative” shall mean the designated staff person for the Foundation (or his or her alternate, acting in the place of the primary Foundation Representative) responsible for primary communications and administration related to this Agreement.
- R. “Mitigation Activities” shall mean any biological or ecological mitigation or conservation actions included as a design feature in a project proposal, otherwise agreed to or volunteered by a project proponent, or required as a condition of approval, as identified in a Decision Document. Mitigation Activities include, but are not limited to, the restoration, enhancement, or protection of habitat and/or other natural resources; actions to protect or manage sensitive species or other natural resources; and other conservation actions.
- S. “NMC Account” shall have the meaning assigned to such term in Section I. of this Agreement.
- T. “Party” shall have the meaning assigned to such term in the Preamble to this Agreement.
- U. “Permit” shall mean any public land use authorization from the BLM, including but not limited to, a valid permit, right-of-way grant, lease, or other authorization instrument.
- V. “Permittee” shall mean any project proponent authorized by the BLM to use the public lands.
- W. “Recipient” shall mean any entity that receives monies from the NMC Account for the performance of Mitigation Activities as set forth in a Recipient Agreement.
- X. “Recipient Agreement” shall mean a contract, grant agreement, purchase order, invoice, or other written agreement between the Foundation and a Recipient for the performance

of a project to be funded through a Sub-Account within the NMC Account, as approved by the BLM in accordance with the applicable Deposit Document(s).

- Y. “Resource-Specific Sub-Account” shall mean any Sub-Account identified in Section VII.B. of this Agreement, or any additional Resource-Specific Sub-Account approved by the BLM Representative at the request of one or more BLM State Offices.
- Z. “RFP” shall have the meaning assigned to such term in Section V.D.3. of this Agreement.
- AA. “RFP Fee” shall have the meaning assigned to such term in Section V.D.3. of this Agreement.
- BB. “Sub-Account” shall mean each individual account established under the NMC Account. Each Sub-Account will be tracked and accounted for by the Foundation in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from other Sub-Accounts within the overall NMC Account.

IV. DEPOSIT DOCUMENT

- A. The Deposit Document shall be a standard form created by the BLM that contains, at a minimum, the following information:
 1. amount of funds being deposited into the Sub-Account;
 2. Permittee/payor of funds;
 3. stated purpose of the funds and, if applicable, a citation (e.g., page, section, condition number) to the applicable Decision Document(s);
 4. the BLM Offices that have the responsibility to approve and verify implementation of the funds being deposited into the Sub-Account;
 5. staff person contact information for the designated BLM Contact Person for the project;
 6. staff person contact information for the designated BLM State Office Sub-Account Representative for the Sub-Account; and
 7. if applicable, written notification that the State Office Sub-Account Representative shall function as the “BLM Representative” for that BLM State Office for purposes of the Sub-Account.
- B. The current version of the Deposit Document is attached hereto as Attachment 1. The Deposit Document may be modified at any time by mutual written consent of the Parties without the need for an amendment to this Agreement.
- C. A copy of BLM’s applicable Decision Document containing the specified Mitigation Activities for the project will be submitted to the Foundation with the Deposit Document.

V. BLM RESPONSIBILITIES

- A. The BLM shall appoint a BLM Representative, who shall represent the BLM in carrying out the BLM’s obligations under this Agreement. The BLM Representative and BLM

State Office Sub-Account Representatives, as described in Sections III.G. and III.I. above, shall be the only persons authorized to approve whether a permittee may make a deposit with NFWF into the NMC Account and Sub-Accounts within the NMC Account in accordance with the BLM Decision Documents. The BLM State Office Sub-Account Representative and the “BLM Contact Person,” as described in Section III.E. above, named on the Deposit Document are the persons from the BLM authorized to verify that disbursements from a BLM State Office Sub-Account or Resource-Specific Sub-Account, as applicable, satisfy BLM mitigation requirements described in a BLM Decision Document. The BLM Contact Person for the Project will ensure disbursements from the Sub-Account are in accordance with the applicable Decision Document and Deposit Document. The BLM State Office Sub-Account Representative and the BLM Contact Person shall be the only persons authorized to provide approval to NFWF for disbursements from the applicable Sub-Account to ensure they are in accordance with BLM Decision Documents. All approvals and actions by the BLM Representative, the BLM Contact Person, and BLM State Office Sub-Account Representatives with respect to funds in the NMC Account shall be in accordance with the applicable Deposit Document and this Agreement.

- B. The applicable BLM Office will transmit to the Foundation the completed Deposit Document and supporting documents. The funds identified in the Deposit Document will be sent directly from the Permittee or by the payor on behalf of the Permittee to the Foundation in accordance with payment instructions provided by the Foundation.
- C. The Foundation may request the applicable BLM Contact Person or BLM State Office Sub-Account Representative to review and approve, in writing, a Recipient Agreement for the performance of Mitigation Activities to be funded, in whole or in part, with monies in the applicable Sub-Accounts within the NMC Account in accordance with the identified BLM Decision Document(s) and the applicable Deposit Document(s). The Mitigation Activities may be identified and approved by BLM, through any of the procedures set forth in Section V.D. below. The applicable BLM Contact Person or BLM State Office Sub-Account Representative shall be entitled, after providing a prior written request to the Foundation, to review and approve any (1) Recipient Agreement, including any amendment thereto, prior to execution and (2) requests from Recipients for disbursements of funds from any Sub-Account within the NMC Account, prior to such disbursements being made.
- D. In coordination with the Foundation, the applicable BLM Contact Person or BLM State Office Sub-Account Representative, will review and confirm that funding under the NMC Account is appropriate for any proposed project identified through any of the following procedures if the BLM Contact Person or BLM State Office Sub-Account Representative verifies in writing that the proposed project would satisfy the requirements of Mitigation Activities to be funded, in whole or in part, with monies in the applicable Sub-Accounts within the NMC Account in accordance with the identified BLM Decision Document(s) and the applicable Deposit Document(s):

1. The BLM Contact Person or BLM State Office Sub-Account Representative may consult with the Foundation regarding proposed projects that it is aware of or are otherwise brought to the BLM's attention by the Permittee or other entities in the applicable geography;
 2. The BLM Contact Person or BLM State Office Sub-Account Representative may consult with the Foundation regarding proposed projects submitted in response to one of the Foundation's regularly scheduled general calls for proposals; and
 3. The BLM Representative or BLM State Office Sub-Account Representative may confirm that it is appropriate for the Foundation to conduct one or more specific requests or calls for proposals (each, an RFP) for Mitigation Activities to be funded by the applicable Sub-Account(s) and use the funding from the applicable Sub-Account one or more Mitigation Activities submitted in response to any such RFP. If an RFP is a foreseeable procedure for identifying appropriate Mitigation Activities, after consultation with the Foundation, the applicable BLM Representative and BLM State Office Sub-Account Representative shall identify in the Deposit Document the RFP Fee of \$30,000, as expressed in 2022 dollars and as adjusted annually after 2022 based on an annual CPI escalator. The Foundation's receipt of the RFP Fee from the permittee is an express condition precedent to the Foundation's obligation under this Agreement to conduct any such RFP.
- E. The BLM agrees that, under certain circumstances, following written approval from the applicable BLM Contact Person(s) or BLM State Office Sub-Account Representative(s), the Foundation may disburse funds from multiple Sub-Accounts to complete Mitigation Activities that result in a cost savings or increased conservation benefit provided that the use of such funds for the implementation of such Mitigation Activities is required or allowed by the applicable Decision Documents.
- F. If additional funds are needed, beyond those already deposited into the relevant Sub-Account, to fully complete the Mitigation Activities identified in the Deposit Document or to pay Administrative Costs, the applicable BLM Office(s) may, in accordance with applicable law, require a Permittee to deposit additional funds into the applicable Sub-Account to pay for the Mitigation Activities and Administrative Costs, including but not limited to the RFP Fee described in Section V.E. above.
- G. Requests from the public for release of information about the NMC Account will be directed to the BLM Representative. Such requests will be governed by the requirements of the Freedom of Information Act, Privacy Act, and other authorities, as applicable.

VI. FOUNDATION RESPONSIBILITIES

- A. The Foundation shall appoint the Foundation Representative and an alternate, who shall represent the Foundation in carrying out its obligations under this Agreement.

- B. The Foundation understands and agrees that all monies deposited by Permittees in the NMC Account, including all Sub-Accounts, shall, depending on the purpose and tenure of such monies, either be held in cash (i.e., not invested) or be maintained in an interest bearing or investment account (i.e., invested) at one or more financial institutions that is a member of the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation, or successors to those institutions, as applicable. The Foundation may consult with the BLM to attain information on timelines, purpose, and tenure applicable to deposited funds to assist the Foundation in selecting appropriate investment strategies for Sub-Accounts. The Foundation shall invest applicable amounts in a Sub-Account in accordance with the Foundation's then-prevailing investment policy statement governing cash management or other applicable investment policy statements, as provided in Section VII.F. below. For accounting purposes, the NMC Account shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure that all Sub-Accounts within the NMC Account are distinguishable from each other.
- C. With respect to monies to be invested, the Foundation shall invest such monies consistent with Section VI.B. of this Agreement and applicable Local, State and Federal laws and in accordance with the consultation with the BLM Representative, BLM Contact Person, or BLM State Office Representative referenced in the immediately preceding Section VI.B., as applicable. Investment strategies for applicable monies in the NMC Account shall be implemented by one or more financial institutions retained by the Foundation. In addition, if requested by the BLM as part of the consultation with the BLM Representative, BLM Contact Person, or BLM State Office Representative referenced in the immediately preceding Section VI.B., the Foundation shall invest the funds in any Sub-Account within the NMC Account in a distinct investment pool to reflect a specified purpose and tenure of the relevant funds as identified by the BLM in the applicable Deposit Document. Day-to-day investment decisions will be made by the professional investment advisor or bank with which the Foundation has established or will establish an investment advisory relationship. The Foundation may rely on the advice of any such adviser, and may delegate investment decision-making authority, consistent with applicable Local, State and Federal law, to such adviser with respect to management of the NMC Account or any Sub-Account. Investment income accruing to the NMC Account shall be apportioned *pro rata* to each Sub-Account (and credited thereto) based on the respective balances on deposit in each Sub-Account and the investment strategy applicable to each such Sub-Account, and shall be used to carry out the purposes of the various Sub-Accounts as set forth in the Deposit Document.
- D. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the NMC Account with other funds held or managed by the Foundation that are subject to identical investment restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. In addition, notwithstanding this authorization, and in accordance with Section VI.B. above, funds in the NMC Account and the Sub-Accounts shall at all

times be distinguishable and uniquely identifiable within the Foundation's internal account system from all other funds maintained or managed by the Foundation.

- E. The Foundation shall administer the NMC Account consistent with Section VII. below.
- F. For all Sub-Accounts, the Foundation shall pay Recipients' requests for disbursements as approved by the applicable BLM Contact Person or BLM State Office Sub-Account Representative, as applicable, in writing and in accordance with the procedures set forth in the respective Recipient Agreements and/or Decision Documents, as applicable.
- G. If requested by the applicable BLM Contact Person or BLM State Office Sub-Account Representative, the Foundation shall participate with the BLM in technical reviews at reasonable intervals, if any, to evaluate the progress and results of projects funded by the NMC Account. In consultation with the applicable BLM Contact Person or BLM State Office Sub-Account Representative, the Foundation will take appropriate steps to terminate or cancel a Recipient Agreement for a project pursuant to the terms of the applicable Recipient Agreement.
- H. To the extent funds are available in the applicable Sub-Account, the Foundation may retain one or more land acquisition consultants for selected projects and programs in consultation with the BLM Contact Person or BLM State Office Representative, as applicable. Services to be procured by the Foundation in this respect may include review of acquisition plans, appraisal reviews, site visits, land negotiations, and other related services required for Mitigation Activities and to assist BLM in its determination as to whether proposed Mitigation Activities to be funded, in whole or in part, with monies in the applicable Sub-Accounts within the NMC Account are in accordance with the identified BLM Decision Document(s) and the applicable Deposit Document(s).
- I. If additional funds are needed to fully complete the Mitigation Activities identified in the Deposit Document, the Foundation shall notify the BLM. Nothing in this Agreement shall obligate or be deemed or construed to obligate the Foundation to make or commit to make any expenditure of funds beyond those deposited into a Sub-Account.

VII. ACCOUNT ADMINISTRATION

- A. Within forty-five (45) days after the Effective Date, the Foundation shall establish the NMC Account. In connection with its creation and funding within the NMC Account, the Foundation will establish the following initial BLM State Office Sub-Accounts under this Agreement as and when the Foundation receives a Deposit Fee from the first depositor (i.e., the first Permittee to use the Sub-Account) for the establishment of each such Sub-Account:
 - 1. BLM Alaska State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.

2. BLM Arizona State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
3. BLM California State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
4. BLM Colorado State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
5. BLM Idaho State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
6. BLM Montana-Dakotas State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
7. BLM Nevada State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
8. BLM New Mexico State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
9. BLM Oregon-Washington State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
10. BLM Utah State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.

11. BLM Wyoming State Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
 12. BLM Eastern States Office Sub-Account: Funds deposited into this single, comingled, non-project-specific Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the BLM and are to be used as specified in the Deposit Document for each deposit.
- B. In addition to the twelve (12) non-resource-specific BLM State Office Sub-Accounts listed in Section VII.A. above, the Foundation will establish the following Resource-Specific Sub-Accounts under this Agreement as and when the Foundation receives a Deposit Fee from the first depositor (i.e., the first Permittee to use the Sub-Account) for the establishment of each such Sub-Account:
1. Flat-Tailed Horned Lizard Conservation Sub-Account: Funds deposited into this comingled Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of the California and Arizona BLM Offices, and are to be used as specified in the Decision Document for each deposit.
 2. Arizona Desert Tortoise Mitigation Sub-Account: Funds deposited into this comingled Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of Arizona BLM Offices, and are to be used as specified in the Decision Document for each deposit.
 3. Nevada Desert Tortoise Mitigation Sub-Account: Funds deposited into this comingled Sub-Account are for projects that are permitted by, or otherwise subject to the jurisdiction of Nevada BLM Offices, and are to be used as specified in the Decision Document for each deposit.
- C. The Foundation shall assess and collect a Deposit Fee from the first depositor (i.e., the first Permittee to use the Sub-Account) for the establishment of each Sub-Account (such Deposit Fee to be deducted from the initial deposit into the Sub-Account itself if not paid from a separate source). The Deposit Fee for each Sub-Account listed in Sections VII.A. and VII.B. above, and any Sub-Account established pursuant to Section VII.H. below, shall be Three Thousand Four Hundred Dollars (\$3,400).
- D. The Foundation shall assess and collect an Annual Fee against each Sub-Account either quarterly (in one-fourth increments) or annually (based on the Foundation's Fiscal Year), in either case at the Foundation's election, during each Fiscal Year in which the NMC Account is in existence. The Annual Fee is collected from the balance of the applicable Sub-Account. The Annual Fees for each BLM State Office Sub-Account listed in Sections VII.A. and VII.B. above, will be the greater of (i) three percent (3%) of the Sub-Account's balance at the time of calculation or (ii) One Thousand Dollars (\$1,000) or as agreed upon by the BLM and the Foundation. The Annual Fees for any additional Sub-

Account will be mutually agreed upon by the BLM and the Foundation, and specified in the written notice provided pursuant to Section VII.H. below.

- E. Bank charges assessed by any financial institution with respect to management of any Sub-Account will be assessed against and collected from the balance of the applicable Sub-Account.
- F. Unless requested otherwise by the BLM in writing as part of the consultation with the BLM Representative, BLM Contact Person, or BLM State Office Representative referenced in Section VI.B., the Foundation shall either hold amounts in the NMC Account in cash or shall invest amounts in the Sub-Accounts identified in Sections VII.A. and VII.B. above, in accordance with the Foundation's then-prevailing investment policy statement governing cash management. See Section VI.B. above, for details on the Foundation's investment strategies.
- G. Unless requested otherwise by the BLM in writing, the Foundation shall submit NMC Account activity reports on the Sub-Accounts to the applicable BLM or Sub-Account Representatives semi-annually by June 15 and December 15 of each year the NMC Account is in existence. The Foundation shall report on deposits, disbursements, fees, and investment activity during each applicable reporting period, with a reconciliation of the remaining unobligated balance in each Sub-Account. The reports will also include the current status of all active Recipient Agreements. At the BLM's written request, the Foundation shall provide to the BLM Representative copies of its audited financial statements.
- H. The BLM Representative may request additional Sub-Accounts to be established under this Agreement. The Parties agree and acknowledge that, at their mutual election, additional Sub-Accounts may be established and the terms of existing Sub-Accounts within the NMC Account may be modified through the execution of a modification to the Deposit Document under Section IV.B. of this Agreement by mutual written consent of the Parties without the need for an amendment to this Agreement. Such modification shall include all provisions applicable to the Sub-Account, including but not limited to the applicable investment policy statement for the Sub-Account. If the Parties determine the establishment of a new type of Sub-Account necessitates the execution of a further written agreement setting forth new terms or conditions, the Parties shall enter into a written agreement, which shall be deemed to supersede the provisions of this Agreement with regard to that type of Sub-Account.
- I. No funds received by or disbursed from the NMC Account may be used by any Recipient to pay for lobbying activities, any illegal activities, or litigation.
- J. No funds disbursed from the NMC Account may be used to unlawfully augment any BLM federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. § 1301(a) (the "Purpose Statute"), Title 31, U.S.C. § 1341 (the "Anti-Deficiency Act"), Title 31, U.S.C. § 3302(b) (the "Miscellaneous Receipts Act"), or other applicable law.

VIII. TERMINATION OF AGREEMENT

- A. This Agreement shall terminate upon any of the following events: 1) the Parties agree to termination of this Agreement in writing (which may or may not be because all the monies in the NMC Account have been disbursed); or 2) one Party gives the other Party sixty (60) days prior written notice of its intent to withdraw from the Agreement. Notwithstanding the preceding sentence, termination is not effective unless and until all funds in the NMC Account are disbursed in accordance with the terms of subsection B below.
- B. In the event of termination of this Agreement prior to all monies in the NMC Account having been expended, the Foundation shall immediately (unless otherwise requested by the BLM Representative in writing) undertake all reasonable steps to disburse remaining funds in the NMC Account cooperatively with the BLM, which steps shall include but not be limited to the following:
1. Direct Recipients to stop any unfunded work;
 2. Direct Recipients to place no further work orders or enter into any further contracts for materials, services, or facilities, except as necessary to complete work;
 3. Enter into no further contracts with Recipients and terminate all pending contracts (to the extent such contracts allow) for project work that has not yet commenced;
 4. Promptly take all other reasonable steps to minimize the additional obligation of NMC Account funds;
 5. Deliver or make available to the BLM all data, drawings, specifications, reports, summaries, and such other information and material as may have been developed under this Agreement or any project documents, whether completed or in progress; and
 6. Disburse remaining funds in the NMC Account according to the BLM's written request and in accordance with applicable law, withholding an amount sufficient to pay outstanding obligations that remain after any required steps, which may include, but are not necessarily limited to (1) through (5) above have been completed.
- C. Within ninety (90) days following final disbursement of the funds in the NMC Account, the Foundation shall provide to the BLM a final financial activity report on the NMC Account covering the period from the date of the last NMC Account activity report provided under Section VII.G. through the date of the final disbursement of funds from the NMC Account.

IX. CONTACT INFORMATION/COMMUNICATIONS

- A. No obligations may be incurred, and no funds disbursed, except in accordance with the applicable Deposit Document(s). All approvals, notices and reports required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, facsimile, or electronic pdf format. Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.
- B. All deposits made to the NMC Account by check shall be delivered to the Foundation's headquarters office at 1133 Fifteenth Street, NW, Suite 1000, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits made to the NMC Account by electronic funds transfer shall be made in accordance with wire instructions provided by Foundation in writing to the depositor.
- C. The individuals named below shall be the BLM Representative and the Foundation Representative for purposes of this Agreement. Contact information for the BLM Representative and Foundation Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the NMC Account shall be as set forth in Section IX.B. above):

If to the BLM:

Deborah (Deblyn) Mead
 National Mitigation Lead
 Bureau of Land Management
 2850 Youngfield Street
 Lakewood, CO 80215
 Phone: 202-494-7865
 Facsimile: 303-239-3933
 Email: dmead@blm.gov

BLM Alternate:

Laura Romin
 National Threatened and Endangered
 Species Program Lead
 Bureau of Land Management
 440 West, 200 South, Ste. 500
 Salt Lake City, UT 84101
 Phone: 385-214-7422
 Facsimile: 801-539-4237
 Email: lromin@blm.gov

If to the Foundation:

Eliza Braendel
 Senior Manager, IDEA
 National Fish and Wildlife Foundation
 1133 Fifteenth Street N.W., Suite 1000
 Washington, DC 20005
 Phone: 415-593-7628
 Facsimile: 202-857-0162
 Email: eliza.braendel@nfwf.org

Foundation Alternate:

Anne Butterfield
 Senior Manager, IDEA
 National Fish and Wildlife Foundation
 1133 Fifteenth Street N.W., Suite 1000
 Washington, DC 20005
 Phone: 415-243-3106
 Facsimile: 202-857-0162
 Email: anne.butterfield@nfwf.org

X. MISCELLANEOUS PROVISIONS

- A. No Assignment. No Party may assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the other Party.
- B. Amendments. This Agreement may be amended only in writing agreed to and signed by all Parties.
- C. No Additional Support. In establishing the NMC Account, the BLM assumes no obligation to provide any funding or support to the Foundation in the implementation of this Agreement beyond the terms stated in this Agreement.
- D. Compliance with Laws; Insurance.
1. The Foundation agrees to contractually require that all Recipients comply with all applicable Federal, State, and local laws, regulations, and ordinances and secure all appropriate and necessary public or private permits and consents in carrying out projects financed by the NMC Account.
 2. The Foundation agrees to contractually require Recipients to 1) obtain and maintain all appropriate insurance, with the Foundation and the BLM named as an additional insured to the extent practicable, against liability for injury to persons or property from any and all activities undertaken by such Recipients in carrying out projects financed by the NMC Account; and 2) defend and indemnify the Foundation and the BLM, and their respective officers, directors, agents, representatives, and employees, to the extent allowable by State or Federal law, in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with such Recipients' performance of a project or activity financed by the NMC Account.
- E. Publicity. At the BLM's request, the Foundation agrees to require Recipients to include the BLM or applicable BLM Office's names or logos in all press releases, publications, annual reports, video credits, dedications, and other public communications regarding any of the projects financed with funds from the NMC Account.
- F. The Foundation may provide information about this Agreement and the subject matter hereof to the United States federal government in compliance with the Establishment Act.
- G. Severability. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

- H. Responsibility for Conduct. Each Party shall be responsible for the consequences of its own actions or inaction, willful misconduct, gross negligence, and/or breach of obligations in connection with this Agreement, and in connection with any work undertaken in accordance with this Agreement.
- I. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.
- J. Disclaimers. Unless otherwise directed by the BLM, the Foundation shall ensure that all information submitted for publication or other public releases of information regarding this Agreement or any project funded by the NMC Account shall carry the following disclaimer:
- The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies or opinions of the U.S. Government. Mention of trade names or commercial products does not constitute the endorsement by the U.S. Government.
- K. Appropriations Not Obligated. This Agreement establishes an elective process for Permittees to deposit funds into the NMC Account at the Foundation to pay the costs of Mitigation Activities and Administrative Costs to satisfy terms and conditions or other requirements identified by the BLM for the use of the public lands associated with the Permittee's authorization. Therefore, nothing in this Agreement may be construed to obligate the United States or any BLM Office to any current or future expenditure of money or resources either in advance of the availability of appropriations for such purposes from the U.S. Congress or other appropriating authority or when funds are available.
- L. No Limitation on BLM Responsibilities. Nothing contained in this Agreement is intended to limit the authority of the BLM to fulfill its statutory or regulatory responsibilities or to otherwise limit the powers afforded to the BLM by applicable law.
- M. No Third-Party Rights. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person or entity not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between the BLM or the Foundation and any third parties, including Permittees and/or Recipients whose projects are financed by the NMC Account.
- N. Members of Congress Not to Benefit. No member of Congress shall benefit from the provisions of this Agreement.
- O. Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.


- P. This Agreement excludes any obligation for the exchange of federal or state funds, supplies, equipment of services. Any such exchange or transfer shall be handled through instruments specifically used for those purposes.

The Parties have executed this Agreement as of the last date signed below.

UNITED STATES BUREAU OF LAND MANAGEMENT

By: **DAVID JENKINS** Digitally signed by DAVID JENKINS
 Date: 2022.03.14 13:11:37 -06'00' Date: _____
 David Jenkins
 Assistant Director, Resources and Planning

NATIONAL FISH AND WILDLIFE FOUNDATION

By:  Date: March 15, 2022
 Jeff Trandahl
 Executive Director and Chief Executive Officer

ATTACHMENT1: Deposit Document

Attachment 1
BUREAU OF LAND MANAGEMENT
NATIONAL MITIGATION AND CONSERVATION ACCOUNT
DEPOSIT DOCUMENT

*Detailed instructions for properly completing this document are below (pp. 6-7).
The applicable BLM State Office is responsible for submitting this completed form to the National Fish and Wildlife Foundation (NFWF) when a project Permittee will be depositing funds with NFWF. Once the Deposit Document is completed the applicable BLM State Office shall submit it to NFWF, and should submit copies to the BLM Representative and the Permittee. The Permittee should include a copy with the deposit.*

PROJECT INFORMATION

Project Name:

Project Phase (if applicable):

Project Location (State(s), County(ies)):

Project Permittee (and, if applicable, the parent company):

Project Permittee Contact Information (if available at time this form is submitted to NFWF):

Decision Document Attached

[insert name of Decision Document, date, and permit #]

Project Decision Document Identification/Tracking Number (ePlanning NEPA #):

BLM SUB-ACCOUNT INFORMATION

Check the applicable Sub-Account to which monies are to be deposited.

If this is the initial Deposit Document for Sub-Account establishment and the initial deposit, please check this box

BLM [applicable name in checked box below] State Office Sub-Account

Alaska Arizona California Colorado Idaho Montana Nevada

New Mexico Oregon-Washington Utah Wyoming Eastern States

Flat-Tailed Horned Lizard Conservation Sub-Account

Arizona Desert Tortoise Mitigation Sub-Account

Nevada Desert Tortoise Mitigation Sub-Account

Name of BLM State Office Sub-Account Representative:

BLM State Office(s):

BLM District Office(s) (if applicable):

BLM Field Office(s) (if applicable):

Name of BLM Contact Person(s):

MONIES REQUIRED FOR DEPOSIT:

Check the applicable box below and specify the dollar amount(s) for deposit.

BLM [applicable name in checked box above] State Office Sub-Account Deposit

Mitigation Activities	\$ _____
NFWF Deposit Fee (\$3,400 to be paid by initial depositor)	\$ _____
NFWF Annual Fee (estimated)	\$ _____
NFWF RFP Fee (\$30,000 (2022 dollars), as adjusted by CPI, consult NFWF for amount prior to deposit)	\$ _____

Flat-Tailed Horned Lizard Conservation Sub-Account Deposit

Mitigation Activities	\$ _____
NFWF Deposit Fee (\$3,400 to be paid by initial depositor)	\$ _____
NFWF Annual Fee (estimated)	\$ _____
NFWF RFP Fee (\$30,000 (2022 dollars), as adjusted by CPI, consult NFWF for amount prior to deposit)	\$ _____

Arizona Desert Tortoise Mitigation Sub-Account Deposit

Mitigation Activities	\$ _____
NFWF Deposit Fee (\$3,400 to be paid by initial depositor)	\$ _____
NFWF Annual Fee (estimated)	\$ _____
NFWF RFP Fee (\$30,000 (2022 dollars), as adjusted by CPI, consult NFWF for amount prior to deposit)	\$ _____

Nevada Desert Tortoise Mitigation Sub-Account Deposit

Mitigation Activities	\$ _____
NFWF Deposit Fee (\$3,400 to be paid by initial depositor)	\$ _____
NFWF Annual Fee (estimated)	\$ _____
NFWF RFP Fee (\$30,000 (2022 dollars), as adjusted by CPI, consult NFWF for amount prior to deposit)	\$ _____

TOTAL DEPOSIT for Project (or Project Phase) \$ _____

Prior Deposit Document(s) submitted for previous deposit(s) for this same project:
(check and complete, if applicable)

Project Phase: _____ **Deposit:** \$ _____
Project Phase: _____ **Deposit:** \$ _____
Project Phase: _____ **Deposit:** \$ _____

SUB-ACCOUNT MITIGATION ACTIVITIES DETAILS:

Check the applicable box(es) below for the Sub-Account(s) that is/are to receive monies and provide the required information. See the instructions below before completing this section.

BLM [applicable name in checked box above] State Office Sub-Account Mitigation Activities:

1. Description of Mitigation Activities *(See instructions below before filling in this section.):*
2. Citation (e.g., page, section, condition number) to Applicable Decision Document(s) *(These documents must be provided to NFWF at time of submission of Deposit Document.):*
3. Implementation Schedule *(including determination of start date, performance period, and due date and determination method for satisfaction of mitigation requirements):*
4. BLM Contact Person and Information:
 [insert BLM Office]
 [insert BLM Contact Person’s Name}
 [insert BLM Office Address]
 [insert Phone Number]
 [insert Email Address]

Flat-Tailed Horned Lizard Conservation Sub-Account Mitigation Activities:

East Mesa **West Mesa** **Arizona (Yuma)**

1. Description of Mitigation Activities *(See instructions below before filling in this section.):*
2. Citation (e.g., page, section, condition number) to Applicable Decision Document(s) *(These documents must be provided to NFWF at time of submission of Deposit Document.):*

3. Implementation Schedule *(including determination of start date, performance period, and due date and determination method for satisfaction of mitigation requirements):*
4. BLM Contact Person and Information:
 [insert BLM Office]
 [insert BLM Contact Person's Name}
 [insert BLM Office Address]
 [insert Phone Number]
 [insert Email Address]

Arizona Desert Tortoise Mitigation Sub-Account Mitigation Activities:

- Sonoran Desert Tortoise** **Mojave Desert Tortoise**

1. Description of Mitigation Activities *(See instructions below before filling in this section.):*
2. Citation (e.g., page, section, condition number) to Applicable Decision Document(s) *(These documents must be provided to NFWF at time of submission of Deposit Document.):*
3. Implementation Schedule *(including determination of start date, performance period, and due date and determination method for satisfaction of mitigation requirements):*
4. BLM Contact Person and Information:
 [insert BLM Office]
 [insert BLM Contact Person's Name}
 [insert BLM Office Address]
 [insert Phone Number]
 [insert Email Address]

Nevada Desert Tortoise Mitigation Sub-Account Mitigation Activities:

- Southern Nevada District Office** **Lincoln County**

1. Description of Mitigation Activities *(See instructions below before filling in this section.):*
2. Citation (e.g., page, section, condition number) to Applicable Decision Document(s) *(These documents must be provided to NFWF at time of submission of Deposit Document.):*
3. Implementation Schedule *(including determination of start date, performance period, and due date and determination method for satisfaction of mitigation requirements):*
4. BLM Contact Person and Information:
 [insert BLM Office]
 [insert BLM Contact Person's Name}
 [insert BLM Office Address]

[insert Phone Number]
[insert Email Address]

BLM Representative Approval: *(If this is the initial Deposit Document for the Sub-Account establishment and initial deposit, BLM Representative to sign and date this form prior to its submission to NFWF):*

- This Deposit Document has been checked for completeness by the BLM Representative**
- The BLM elects to designate the BLM State Office Sub-Account Representative below to function as the BLM Representative for purposes of this Sub-Account** *(check if applicable):*

(Name)

Date

Email:

Phone:

BLM State Office Representative Approval:

- This Deposit Document has been checked for completeness by the BLM [insert State name] State Office Sub-Account Representative** *(BLM State Office Sub-Account Representative to sign and date this form prior to its submission to NFWF):*

(Name)

Date

Email:

Phone:

DEPOSIT DOCUMENT INFORMATION & INSTRUCTIONS

The Deposit Document is used for internal purposes by the Bureau of Land Management (BLM) and the National Fish and Wildlife Foundation (NFWF). The Deposit Document is not itself a Decision Document.

The Deposit Document is to be filled out by the appropriate BLM Office staff (i.e., the representative staff person with knowledge of the project in the BLM office responsible for issuing the Decision Document). The BLM Office staff who takes the lead in preparing the Deposit Document shall coordinate with the BLM Representative and/or their BLM State Office Sub-Account Representative, as applicable, and NFWF staff prior to finalizing the Deposit Document. If it is the initial Deposit Document for the Sub-Account establishment and initial deposit, the BLM Representative is to sign and date the Deposit Document prior to its submission to NFWF). The BLM Representative and/or BLM State Office Sub-Account Representative, as applicable, is/are responsible for checking the Deposit Document for completeness. Once the Deposit Document is completed and signed by the BLM Representative and/or BLM State Office Sub-Account Representative, as applicable, it will be submitted to NFWF. After NFWF has verified its receipt and accuracy, a copy should be submitted to the Permittee. The Permittee should be instructed to include a copy of the Deposit Document with the deposit.

Instructions for Preparing the Deposit Document:

- Complete the **Project Information** section of the Deposit Document. Note that a copy of the Decision Document must be attached to the copy of the Deposit Document submitted to the Foundation.
- Complete the **BLM Sub-Account Information** section of the Deposit Document. Identify any BLM District or Field offices involved with the land use authorization for the project. If a Field Office is the responsible BLM Office for completing the Deposit Document, the BLM State Office Sub-Account Representative should ensure that the applicable District Office also receives a copy of the completed, signed Deposit Document.
- Complete the **Monies Required for Deposit** section of the Deposit Document. There are twelve non-resource-specific BLM State Office Sub-Accounts (one Sub-Account for each State Office) and three resource-specific Sub Accounts approved for establishment under the BLM National Account. For each Sub-Account, there is a one-time Deposit Fee to establish the Sub-Account and an Annual Fee. The one-time Deposit Fee will be paid by the initial depositor. The Annual Fee is the greater of three percent (3%) of the funds under management in the Sub-Account or One Thousand Dollars (\$1,000). The first line is the amount of funds to be deposited for the “Mitigation Activities.” The second line is the amount of funds to be deposited for the NFWF Deposit Fee; this applies only to the initial depositor. The third line is for an estimated amount of funds to be deposited for the NFWF Annual Fee for each year BLM anticipates the monies will exist in the Sub-Account. The

fourth line is the amount of funds to be deposited for an RFP if the BLM chooses to have NFWF conduct a RFP process to accomplish the Mitigation Activities (e.g., a habitat restoration/improvement project). The NFWF RFP Fee is \$30,000 (2022 dollars), as adjusted by CPI.

1. Check the box next to each Sub-Account that is to receive monies for Mitigation Activities for the permitted project or project phase(s). For BLM State Office Sub-Accounts, check the box next to the applicable BLM State Office.
2. Specify the dollar amount to be deposited into each such Sub-Account for Mitigation Activities.
3. Specify the dollar amount to be deposited into each such Sub-Account for any applicable Deposit Fee, Annual Fee, or RFP Fee. (Contact NFWF with any questions about whether any such fees are applicable, and the amount of the RFP Fee, if applicable.)
4. Add the dollar amounts described above and provide the "TOTAL DEPOSIT" dollar amount to be received from or on behalf of the Permittee.
5. If the deposit is for a project that made one or more deposits for a prior phase of the same project, check the "Prior Deposit Document" box and specify the previous phase and dollar amount deposited.

Complete the **Sub-Account Mitigation Activities Details** section of the Deposit Document.

1. Describe the Mitigation Activities to be conducted with the monies deposited. Identify the resource(s) requiring mitigation, the type of mitigation to be accomplished (e.g., land acquisition, habitat restoration/enhancement/improvement, invasive species treatment, or any short-term management/monitoring of the mitigation area), the acreage totals, and any other applicable information.

If the monies to be deposited are for long-term management/monitoring of the project or mitigation area, are intended to fund a management endowment or other long-term conservation requirement, contact the BLM Representative and NFWF staff to discuss whether an additional Sub-Account with a long-term investment strategy is needed BEFORE submitting the Deposit Document.

2. Include the citation (e.g., page, section, condition number) to the applicable Decision Document(s). Note that a copy of the Decision Document must be provided to NFWF at time of submission of Deposit Document.
3. Specify the implementation schedule, including determination of start date, performance period, and due date, and determination method for satisfaction of mitigation requirements (i.e., performance criteria).
4. Provide the name of the BLM Contact Person for the Project and their contact information. This person will coordinate with NFWF to ensure expenditures from the Sub-Account are in accordance with the Decision Document.

- Submit the completed Deposit Document to the **BLM Representative and/or BLM State Office Sub-Account Representative**, as applicable, for review and signature prior to submitting it to NFWF. After NFWF has verified its receipt and accuracy, a copy may be submitted to the Permittee.