

**STAGNANT WATER INSPECTION AND ABATEMENT WARRANT  
RELEASE, WAIVER, AND INDEMNITY AGREEMENT  
BY AND BETWEEN  
THE CITY OF DESERT HOT SPRINGS  
AND  
COACHELLA VALLEY MOSQUITO AND VECTOR  
CONTROL DISTRICT**

This Stagnant Water Inspection and Abatement Warrant Release, Waiver, and Indemnity Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California ("City"), and Coachella Valley Mosquito and Vector Control District, an independent special district operating under the Mosquito Abatement and Vector Control District Law (California Health and Safety Code Sections 2000 et seq.), located in the County of Riverside, State of California ("District"), with the District and City sometimes referred to herein each as a "Party" and collectively as "Parties."

**RECITALS:**

**WHEREAS**, District was established in 1928 as an independent special district by the Riverside County Board of Supervisor with the mission of reducing the risk of disease transmission by mosquitos and other vectors and the protection of residents and visitors of the Coachella Valley; and

**WHEREAS**, District's jurisdiction includes the following Coachella Valley cities: Palm Springs, Cathedral City, Desert Hot Springs, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio, and Coachella; and additionally, the unincorporated portions of Riverside County within the Coachella Valley; and

**WHEREAS**, neglected pools and other stagnant water sources are potential breeding sources of mosquitos that can potentially transmit West Nile or other arthropod-borne viruses thereby created health and safety issues with the potential to develop into an area-wide epidemic; and

**WHEREAS**, it is of indispensable importance to the maintenance of the community health that District be able to conduct inspections, testing, treatment, remediation, and abatement of neglected pools or other stagnant water sources; and

**WHEREAS**, in May of 2019, the Superior Court of the State of California issued a Warrant to Inspect and Abate, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A" ("Warrant"), authorizing District's General Manager, and any representative or designee thereof, and any sheriff, police officer or peace officer in the County of Riverside to enter the exterior of any property within District's jurisdictional boundaries to inspect and abate neglected pools or other stagnant water sources ("Execution of the Warrant"). The Warrant is valid through December 31, 2019 ("Warrant Expiration Date"), unless otherwise extended; and

**WHEREAS**, City adopted an ordinance adding Section 4.16.010(A)(20) to the Desert Hot Springs Municipal Code, which deems a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property any swimming pool, pond, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained resulting in the water becoming polluted; and

**WHEREAS**, Desert Hot Springs Municipal Code Section 4.16.010(A)(28) provides that it is a public nuisance for any person to maintain any premises or property upon which there is stagnant or still water or a marshy condition which harbors and breeds mosquitos or other poisonous or objectionable insects; and

**WHEREAS**, pursuant to Section 4.08.010 of the Desert Hot Springs Municipal Code, the City's Code Enforcement Chief has concurrent enforcement authority with the Police Chief regarding any violation of the municipal code resulting in a misdemeanor, an infraction or a public nuisance; and

**WHEREAS**, District and City desire to enter into this agreement, upon the terms and conditions set forth herein, authorizing the City's Code Compliance Division personnel to act as a designee of District's Scientific Operations Manager in executing the Warrant within the jurisdictional boundaries of the City in order to protect the health and safety of the community.

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

**Section 2. DESIGNEES**

District hereby authorizes the City's Code Compliance Division personnel and any private contractors retained by City to act as a designees under the Warrant to execute the Warrant pursuant to the terms of the Warrant, within the jurisdictional boundaries of the City. District represents and warrants that City and City contractors are authorized to act in such capacity under the Warrant.

**Section 3. VOLUNTARY PARTICIPATION**

City acknowledges that it is voluntarily participating in Execution of the Warrant by utilizing its Code Compliance Division personnel and hired contractors to act as designees of District's Scientific Operations Manager for the purposes of executing the Warrant.

**Section 4.**                      **ASSUMPTION OF THE RISK**

City acknowledges that, in Execution of the Warrant, its personnel or contracted agents may be exposed to personal or bodily injury, including death, to themselves or their property as a result of their activities, the activities of others, or the conditions under which such activities are performed. With full knowledge of these dangers, City agrees to accept any and all risks of injury or death or damage.

\_\_\_\_\_  
Initials

**Section 5.**                      **RELEASE AND WAIVER**

Each Party respectively hereby releases and waives all rights and claims such releasing Party has or may have against the other Party, and their officials, officers, agents and employees, and their respective successors and assigns, for losses, judgments, costs, demands, damages, claims, fees or expenses of every type and description, including settlement costs, legal costs, and attorneys' fees, arising out of or otherwise in connection with Execution of the Warrant by the releasing Party's personnel.

**Section 6.**                      **CIVIL CODE SECTION 1542 WAIVER**

Each Party respectively hereby expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.”

Except as otherwise provided herein, this waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected. Each Party respectively further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

\_\_\_\_\_  
City Initials

\_\_\_\_\_  
District Initials

**Section 7.**                      **INDEMNIFICATION**

a. City shall defend, indemnify and hold harmless District, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection therewith), caused by City's Execution of the Warrant by City personnel or contractors retained by City, except for any such claim relates to the negligence, recklessness or willful misconduct of District, its officers, agents, employees or volunteers.

b. District shall defend, indemnify and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection therewith), related to or arising out of District's breach of any obligation hereunder and/or representations, warranties or covenants made by District, except for any such claim relating to the negligence, recklessness or willful misconduct of City, its officers, agents, employees or volunteers.

#### **Section 8.**

#### **TERM; NOTICE OF INEFFECTIVE WARRANT**

a. This Agreement shall be coterminous with the Warrant and any extensions thereto, and any replacement warrants issued for substantially the same purposes as the Warrant. In the event the Warrant terminates, is recalled, or otherwise becomes ineffective or unenforceable prior to Warrant Expiration Date, District shall immediately notify City of the same via all of the following methods of notice: (1) telephone both City Manager and City Attorneys' Office, and send follow up electronic mail to both (requesting "delivery" and "read" receipt) ("Option 1"); and 2) a letter deposited in U.S. mail, certified, to City ("Option 2"). Upon (1) effective notice by District, (2) notice from a Court with competent subject matter jurisdiction that the Warrant has terminated, was recalled, or otherwise ineffective prior to Warrant Expiration Date, or (3) the Warrant naturally expiring on the Warrant Expiration Date, City shall immediately cease Execution of the Warrant.

b. In the event the Warrant terminates, is recalled, or otherwise becomes ineffective or unenforceable prior to Warrant Expiration Date, to the fullest extent permitted by Law, District shall release, indemnify, defend and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising from or related to City's continued Execution of the Warrant (which Warrant has been terminated, recalled or otherwise been rendered ineffective or unenforceable) through such time the City receives effective notice of such expiration or unenforceability. For purposes of this Section only, effective notice shall be deemed delivered upon District's strict compliance of either: (i) notice listed under Option 1), above, with record of a successful "delivery" and "read receipt" via electronic mail; or (ii) as of the second (2nd)

day after deposit in the United States mail under Option 2. Effective notice shall not relieve District of providing notice under all methods of notice set forth in this Section.

**Section 9.                    TERMINATION OR SUSPENSION**

This Agreement may be terminated or suspended without cause by either party at any time provided that the respective party provides the other party written notice of such termination or suspension.

**Section 10.                NOT AGENT**

Nothing in this Agreement shall be deemed, construed or represented by City or District or by any third person to create the relationship of principal and agent. Except as expressly provided herein, neither Party shall have authority, express or implied, to act on behalf of the other in any capacity whatsoever as an agent, nor shall either Party have any authority, express or implied, to bind the other to any obligation whatsoever.

**Section 11.                MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument duly signed by both Parties.

**Section 12.                ENTIRE AGREEMENT**

a.     This Agreement supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement.

b.     This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c.     No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

**Section 13.                AMBIGUITIES**

This Agreement is in all respects intended by each party hereto to be deemed and construed to have been jointly prepared by the parties and the parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

**Section 14.                NOTICES**

a.     Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United

States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:

Charles Maynard  
City of Desert Hot Springs  
11-000 Palm Drive  
Desert Hot Springs, CA 92240  
Telephone: (760) 329-6411  
Email: CMaynard@CityofDHS.org

To District:

Jeremy Wittie, General Manager  
Coachella Valley Mosquito & Vector Control  
District  
43-420 Trader Place  
Indio, CA 92201  
Telephone: (760) 342-8287 Ext.502  
Email: jwittie@cvmvcd.org

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

#### **Section 15. NON-LIABILITY OF OFFICERS AND EMPLOYEES**

No officer or employee of either Party shall be personally liable to the other, or any successor in interest, in the event of any default or breach or for any amount which may become due, or for any breach of any obligation of the terms of this Agreement.

#### **Section 16. REVIEW BY ATTORNEYS**

Each party hereto has had its attorneys review this Agreement and all related documents. Each party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

#### **Section 17. WAIVER**

No waiver shall be binding, unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

#### **Section 18. ASSIGNMENT AND SUBCONTRACTING**

Except as provided herein, assignments of any or all rights, duties or obligations of either Party will be permitted only with the written consent of the other Party.

**Section 19.**                    **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 20.**                    **SUCCESSORS, HEIRS AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the parties.

**Section 21.**                    **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

**Section 22.**                    **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 23.**                    **VENUE**

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

**Section 24.**                    **LITIGATION EXPENSES AND ATTORNEY'S FEES**

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**Section 25.**                    **EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the either Party, until signed by the authorized representative(s), and approved as to form by the City Attorney and General Counsel, respectively.

**Section 26. NO THIRD PARTY BENEFICIARIES**

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

**Section 27. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

**Section 28. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

**Section 29. SURVIVAL**

The rights and obligations created by this Agreement with respect to assumption of risk; release and waiver; and duty to defend, indemnify and hold harmless shall survive termination or expiration of this Agreement.

**[SIGNATURES TO FOLLOW ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**CITY OF DESERT HOT SPRINGS**

**COACHELLA VALLEY  
MOSQUITO  
AND VECTOR CONTROL  
DISTRICT**

\_\_\_\_\_  
Charles Maynard, City Manager

\_\_\_\_\_  
Jeremy Wittie, General Manager

**APPROVED AS TO CONTENT:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Christina Archuleta,  
Compliance Manager

\_\_\_\_\_  
Roberta Dieckmann,  
Interim Operations Manager

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk  
Board

\_\_\_\_\_  
Graciela Morales, Clerk of the

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney

\_\_\_\_\_  
Lena D. Wade, Esq., General Counsel

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