

EXHIBIT - D

CVCC ATTACHMENT 2

RESOLUTION NO. 14-004

RESOLUTION OF THE COACHELLA VALLEY CONSERVATION COMMISSION ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CERTIFYING THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE MAJOR AMENDMENT TO THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AND IMPLEMENTING AGREEMENT (SCH # 200006179).

WHEREAS, the Coachella Valley Conservation Commission ("CVCC") has prepared, in cooperation and coordination with the California Department of Fish and Wildlife ("CDFW"), United States Fish and Wildlife Service ("USFWS"), the Cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage, the County of Riverside, Riverside County Flood Control, Riverside County Parks, Riverside County Waste Resources Management District, the Imperial Irrigation District ("IID"), Coachella Valley Water District ("CVWD"), Mission Springs Water District ("MSWD"), California Department of Transportation, California Department of Parks and Recreation, the Coachella Valley Mountains Conservancy, and other governmental agencies, property owners, Development interests, environmental interest groups and other members of the public, a comprehensive Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan for the Coachella Valley in Riverside County ("CVMSHCP" or "Plan"); and

WHEREAS, the Coachella Valley CVMSHCP is a regional, comprehensive, multi-jurisdictional Habitat Conservation Plan focusing on Conservation of Federal and State-Listed Species, other rare and sensitive species, and their Habitats, while maintaining opportunities for recreation and a strong and sustainable environment for economic Development in the region; and

WHEREAS, the CVMSHCP boundary ("CVMSHCP Plan Area") encompasses approximately 1,850 square miles, consisting of approximately 1.1 million acres, extending eastward from the Western Riverside County Multiple Species Habitat Conservation Plan boundary line in Cabazon where it is bounded by the range line common to Range 1 East and Range 2 East, bounded by the San Bernardino County line and the Little San Bernardino Mountains on the north and northeast; the ridgeline of the San Jacinto and Santa Rosa Mountains on the west and southwest; the boundary line with San Diego and Imperial Counties to the south; and bounded by the Chocolate Mountains Aerial Gunnery Range and the range line common to Range 13 East and Range 14 East on the east; and containing the cities of: Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage; and

WHEREAS, the CVMSHCP establishes a framework for compliance with State and Federal Endangered Species regulations while accommodating future growth in the CVMSHCP Plan Area, including issuance of "Take" Permits for certain species pursuant to Section

10(a)(1)(B) of the Federal Endangered Species Act ("ESA") and Section 2800, et seq. of the California Fish and Game Code (otherwise known as the "Natural Community Conservation Planning Act" or "NCCP Act of 2002"); and

WHEREAS, the CVMSHCP provides Take Authorization for Covered Activities for the Covered Species. The CVMSHCP is "self-mitigating," meaning that most Project impacts are reduced to below a level of significance as a result of implementation of CVMSHCP components. Additionally, implementation of the Management and Monitoring Programs outlined in the CVMSHCP further reduce all the potential impacts/consequences of the CVMSHCP; and

WHEREAS, CVCC is the lead agency pursuant to Section 21067 of the California Environmental Quality Act ("CEQA") (Public Res. Code, § 21000 et seq.) and Section 15367 of the State CEQA Guidelines (14 CCR § 15000 et seq.), and the USFWS is the Federal lead agency under the National Environmental Policy Act ("NEPA") (40 C.F.R. 1508.16, 1508.17) (CVCC and USFWS will collectively be referred to hereinafter as "Lead Agencies"); and

WHEREAS, a joint Final Recirculated Environmental Impact Report/Statement ("EIR/EIS") was previously prepared in February 2006 pursuant to CEQA and NEPA ("2006 Final CVMSHCP"), which provides a comprehensive assessment of the potential environmental impacts that could result from the adopted CVMSHCP, and provides the appropriate decision-makers with the required information upon which to base a decision to adopt the amendment to the CVMSHCP; and

WHEREAS, thereafter the Plan was revised to remove Desert Hot Springs as a Permittee and to reflect other project description modifications and, as a result, the Coachella Valley Association of Governments ("CVAG") prepared a Recirculated Draft EIR/Supplemental Final EIS in September 2007, which it certified in June 2008 (the "September 2007 Recirculated EIR/EIS"); and

WHEREAS, because the Lead Agencies now wish to add in the City of Desert Hot Springs ("City") and Mission Springs Water District as Permittees (the "Plan Amendment" or "Project"), the Lead Agencies have prepared a Major Amendment to the CVMSHCP and a Supplemental Environmental Impact Report/Supplemental Final Environmental Impact Statement (the "SEIR/SEIS" or the "Supplemental EIR/EIS") pursuant to State CEQA Guidelines Section 15162 and CEQ NEPA Regulations, 40 C.F.R. 1502.9(c); and

WHEREAS, the proposed Project would include the issuance of Take Authorization associated with the Major Amendment for Covered Activities that are not currently included under the existing federal Section 10(a) Permit and state NCCP Permit ("Permits"). This Major Amendment will restore the boundaries from the 2006 Final CVMSHCP for the Upper Mission Creek/Big Morongo Canyon Conservation Area that would be amended to include all of the private lands within the city limits of Desert Hot Springs. The private lands to be included total approximately 770 acres that were removed from this Conservation Area when Desert Hot Springs chose not to participate in 2006. The city limits of Desert Hot Springs also include two parcels in the Whitewater Canyon Conservation Area that are both owned by BLM and are currently managed consistent with the Plan, therefore no additional disturbance associated with the Major Amendment will occur in this area; and

WHEREAS, CVCC filed a Notice of Preparation ("NOP") of a Draft Supplemental SEIR/SEIS with the State Clearinghouse on March 30, 2011. The NOP was also distributed to

each responsible and trustee agency (and any federal agency involved in approving or funding the project) pursuant to State CEQA Guidelines Sections 15082(a) and 15373, and was circulated for a period of 30 days, pursuant to State CEQA Guidelines Sections 15082(b) and 15103; and

WHEREAS, pursuant to State CEQA Guidelines Section 15082, the Lead Agencies solicited comments from potential responsible agencies, including details about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility, as well as the significant environmental issues, reasonable alternatives and mitigation measures that the responsible agency would need to have analyzed in the Supplemental EIR/EIS; and

WHEREAS, pursuant to State CEQA Guidelines Sections 15085 and 15372, the Supplemental EIR/EIS was completed and released for public review, and a Notice of Completion ("NOC") was filed at the State Clearinghouse on or about September 6, 2013, and a Notice of Availability ("NOA") was filed with the Riverside County Clerk on or about September 5, 2013 with a request for a 30-day posting. A copy of the NOA was published in the *Desert Sun* on or about September 6, 2013. The NOC and NOA provided a summary of the Major Amendment and a deadline for submittal of comments, and contact information for obtaining or reviewing the Plan and the Supplemental EIR/EIS; and

WHEREAS, CVCC, the lead agency under CEQA, released the Supplemental EIR component of the Supplemental EIR/EIS for public review and comment on September 6, 2013 to October 21, 2013; and

WHEREAS, the USFWS, the Federal lead agency, released the Supplemental EIS component of the Supplemental EIR/EIS for public review and comment on September 6, 2013, which review period ended October 21, 2013; and

WHEREAS, in September 2013, CVCC sent a letter to each property owner of record ("Property Owner Letter") within the Conservation Areas of the Plan within the City of Desert Hot Springs notifying them that the Major Amendment to the CVMSHCP, Implementing Agreement ("IA"), and Supplemental EIR/EIS were available for review. As a result of the issuance of the Property Owner Letter, CVCC has responded to 5 telephone calls; and

WHEREAS, during the official public review period for the Supplemental EIR/EIS, the Lead Agencies received seven written comments on the Supplemental EIR/EIS; and

WHEREAS, pursuant to California Public Resources Code Section 21092.5, CVCC provided written responses to comments from all commenting agencies; and

WHEREAS, the Lead Agencies prepared the Final Supplemental EIR/EIS and, pursuant to Public Resources Code Section 21092.5, CVCC provided copies of the Supplemental EIR to all commenting agencies; and

WHEREAS, notice of a public hearing to be held on March 13, 2014, was published in the *Desert Sun*; and

WHEREAS, notices to all landowners in the Conservation Areas notifying them of the March 13, 2014 public hearing and informing them that they may make a public comment of up to three minutes were mailed on February 28, 2014; and

WHEREAS, CVCC, at a public meeting on March 13, 2014, reviewed the Final Supplemental EIR/EIS, CVMSHCP/Natural Communities Conservation Plan ("NCCP"), IA, and other related documents in the record before it; and

WHEREAS, CVCC finds that all environmental impacts identified in the EIR are less than significant and do not require mitigation as described in Section 2 hereof; and

WHEREAS, the cumulative impacts of the Project identified in the SEIR/SEIS and set forth herein, are described in Section 3 hereof; and

WHEREAS, the potential significant and irreversible environmental changes that would result from the proposed Project identified in the SEIR/SEIS and set forth herein, are described in Section 4 hereof; and

WHEREAS, the existence of any growth-inducing impacts resulting from the proposed Project identified in the SEIR/SEIS and set forth herein, are described in Section 5 hereof; and

WHEREAS, although no significant and unavoidable impacts were disclosed, alternatives to the proposed Project are set forth herein, as described in Section 6 hereof; and

WHEREAS, prior to taking action, CVCC has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including the Final Supplemental EIR/EIS, and all oral and written evidence presented to it during all meetings and hearings; and

WHEREAS, the Supplemental EIR/EIS reflects the independent judgment of the CVCC and is deemed adequate for purposes of making decisions on the merits of the Project; and

WHEREAS, no comments made in the public hearings conducted by the Lead Agencies or any additional information submitted have produced substantial new information requiring recirculation or additional environmental review under State CEQA Guidelines Section 15088.5; and

WHEREAS, as contained herein, CVCC has endeavored in good faith to set forth the basis for its decision on the Project; and

WHEREAS, all of the findings and conclusions made by CVCC pursuant to this Resolution are based upon the oral and written evidence presented to it as a whole; and

WHEREAS, all the procedures of CEQA and the State CEQA Guidelines have been met, and the Supplemental EIR/EIS, prepared in connection with the Project, is sufficiently detailed so that all potentially significant effects of the Project on the environment and measures necessary to avoid or substantially lessen such effects have been evaluated in accordance with the above-referenced Act and its Guidelines; and

WHEREAS, at a special meeting assembled on March 13, 2014, the CVCC determined that, based on all of the evidence presented, including but not limited to the SEIR/SEIS, written and oral testimony given at meetings and hearings, the submission of testimony from the public, organizations and regulatory agencies, and the whole of the administrative record, which is incorporated by reference herein, that all environmental impacts associated with the Project are less than significant and do not require mitigation; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, THE COACHELLA VALLEY CONSERVATION COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1: FINDINGS

- A. Certain plant and animal species and Habitat exist, or may exist, within the CVMSHCP Plan Area, which are: 1) state or federally listed as threatened or endangered; 2) proposed for listing as threatened or endangered; or 3) identified as a CDFW Species of Special Concern, a California Fully Protected Species, a California Specially Protected Species, a sensitive plant species as determined by the California Native Plant Society, or other unlisted wildlife considered to be sensitive.
- B. Future growth and land Development within the CVMSHCP Plan Area, including both public and private projects, may result in impacts to 27 species ("Covered Species") identified in the Plan and its associated documents, eleven of which are listed under the ESA or the California Endangered Species Act ("CESA"). Thus, Take Authorization is required prior to the carrying out of otherwise lawful activities that may "Take" one or more of these Covered Species.
- C. The CVMSHCP establishes the conditions under which entities defined under the Plan and its associated documents as "Permittees" will receive certain long-term Take Authorizations and other assurances that will allow the taking of Covered Species incidental to lawful uses authorized by the Permittees; and
- D. The CVMSHCP provides for the assembly and management of a reserve for the Conservation of natural Habitat and its constituent wildlife populations, and establishes an overall Conservation Strategy for the CVMSHCP Plan Area that will guarantee the protection of the Covered Species. The Conservation Strategy includes the Conservation of the Covered Species, existing Habitat, the restoration of degraded Habitat, managing a Reserve System, and conducting biological monitoring in perpetuity.
- E. The CVMSHCP provides for the creation of a Reserve System that will conserve and manage approximately 723,680 acres of Habitat for the 27 Covered Species which includes approximately 557,100 acres of Existing Reserves (as of 2006) and 166,580 acres of Complementary Conservation and Additional Conservation Lands. (CVMSHCP, Table 4-1.)
- F. The CVMSHCP serves as a Habitat Conservation Plan ("HCP") pursuant to Section 10(a)(1)(B) of the ESA, as well as an NCCP pursuant to the NCCP Act of 2002, as amended. The approval of the CVMSHCP and execution of the IA allows the CDFW and USFWS (collectively, the "Wildlife Agencies") to issue Take Authorizations for Covered Species in the CVMSHCP Plan Area to the signatories of the IA.
- G. The CVMSHCP provides Take Authorization for Covered Activities for the Covered Species. The CVMSHCP is "self-mitigating," meaning that most Project

impacts are reduced to below a level of significance as a result of implementation of CVMSHCP components. Additionally, implementation of the Management and Monitoring Programs outlined in the CVMSHCP will further reduce all the potential impacts/consequences of the CVMSHCP.

SECTION 2: FINDINGS REGARDING ENVIRONMENTAL IMPACTS NOT REQUIRING MITIGATION

BE IT FURTHER RESOLVED by CVCC that the Supplemental EIR/EIS and the evidence in the administrative record before it confirms that implementation of the CVMSHCP will result in no significant and unavoidable adverse environmental impacts.

A. Biological Resources

Finding: The proposed Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service; would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service; would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption or other means; would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites; would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan. (SEIR/SEIS at 4.1-3-19.)

Supporting Explanation: When Desert Hot Springs opted not to participate in the CVMSHCP in 2006, it was anticipated that development would still occur inside and outside the Conservation Areas. Therefore, the amount of disturbance, or Take, authorized in the 2008 Permit included the acres subject to disturbance within the city of Desert Hot Springs. The City of Desert Hot Springs covered projects in the Conservation Areas are road improvements that are already covered as CVAG's covered projects. Although this Take was authorized by the state and federal permits, as a non-Permittee, the City does not have the authority to allocate this Take. The Major Amendment will include Take authorization for Desert Hot Springs in the CVMSHCP Permits, allowing the disturbance to occur consistent with the Plan Conservation Goals and Objectives. (SEIR/SEIS at 4.1-3.)

The additional disturbance to Covered Species and natural communities associated with MSWD Covered Activities will be mitigated through the Plan by permanent protection of habitat within Conservation Areas and contributions to the Adaptive Management and Monitoring Program. MSWD projects will be

subject to the Joint Project Review process to minimize the potential impacts and ensure consistency with Conservation Goals and Objectives. (SEIR/SEIS at 4.1-4.)

The Major Amendment benefits would include the expansion of conserved, unfragmented Habitat and natural communities, continued maintenance of Essential Ecological Processes to sustain the Covered Species and their Habitat, and further protection of Biological Corridors and Linkages. Most of the disturbance associated with the city of Desert Hot Springs is already covered under the existing Permit. As shown in Table 4.1-1 of the Supplemental EIR/EIS, the potential additional disturbance authorized by the Major Amendment is limited (less than three acres) for a majority of the Covered Species and would not exceed approximately 29 acres of Habitat (e.g., desert tortoise). The disturbance allowed under the Preferred Alternative would be less than significant because additional loss of Habitat within Conservation Areas would be offset by approximately 770 acres of additional conservation within the Conservation Area, including desert tortoise Habitat. (SEIR/SEIS at 4.1-4.)

The establishment and management of Conservation Areas, including additional conserved lands within the City, would help further reduce Habitat fragmentation, promote maintenance of Essential Ecological Processes including sand transport that supports sensitive Habitat, and enhance connectivity along corridors and linkages by limiting development in this area. Consequently, implementation of the proposed Major Amendment will not result in significant impacts to any sensitive species. Figure 4-1 of the Supplemental EIR/EIS shows Natural Communities in the Conservation Area with the proposed additions. As shown, the additional areas to be conserved consist of Sonoran creosote bush scrub and Sonoran mixed woody and succulent scrub. Figure 4-2 of the Supplemental EIR/EIS shows Covered Species in the Conservation Area with the proposed additions. As shown, two Covered Species occur in the additional areas to be conserved, the Palm Springs pocket mouse and desert tortoise. The limited impact identified in Tables 4.1-1 and 4.1-2 of the Supplemental EIR/EIS will be offset by additional conservation of 770 acres; with a maximum of 10% development allowed in Conservation Areas, 693 of these acres will be permanently conserved. (SEIR/SEIS at 4.1-4-10.)

The existing CVMSHCP provides Take Authorization for Covered Activities as long as such activities comply with required Avoidance, Minimization, and Mitigation Measures as specified in Section 4.4 of the Plan and Land Use Adjacency Guidelines as specified in Section 4.5 of the Plan, and Obligations of Permittees as described in Section 6.6 of the Plan. Details of the general requirements for all Local Permittees are described in Section 2.1 of the SEIR/SEIS. Specific obligations that MSWD has committed to are discussed on Pages 4.1-13 through 4.1-17 of the SEIR/SEIS. The required measures are designed and implemented as part of the Plan to assure future development within and adjacent to established Conservation Areas would result in less than significant impacts to Covered Species, Habitats, natural communities, and Essential Ecological Processes. The development and operation of any Covered Activities proposed by the City and MSWD within the Major Amendment areas will be required to comply with the applicable measures in the Plan designed to mitigate potential effects on the Covered Species. (SEIR/SEIS at 4.1-12.)

Covered Activities for MSWD would not include groundwater extraction and therefore, no direct impacts to sensitive species or associated Habitats related to such activity would occur as a result of the Major Amendment. However, because MSWD will be added as a Permittee and in light of comments received during the NOP review period (Letter from Worden-Williams, Appendix A), MSWD has committed to a number of obligations in addition to the current Monitoring Program outlined in Section 8.4.1 of the Plan as it pertains to the relationship between groundwater extraction and the continued viability of mesquite hummocks as a conserved natural community. (SEIR/SEIS at 4.1-13.)

As discussed in Section 8.4.1 of the Plan, the Monitoring and Adaptive Management Program will include the use of appropriate methods and technologies (which may change over time) to monitor groundwater levels in the Willow Hole, East Indio Hills, and Thousand Palms Conservation Areas where a substantial lowering of the water table could have a significant adverse impact on mesquite hummocks and associated Covered Species. Should monitoring detect a substantial lowering of the water table or a decline in mesquite health, the following actions will be taken: 1) evaluate the results of the monitoring, 2) prepare a damage assessment report, 3) develop effective measures to ameliorate the effects of substantial lowering of the water table on mesquite hummocks and associated Covered Species, and 4) implement effective measures through Adaptive Management. (SEIR/SEIS at 4.1-14.)

In addition to the required Avoidance, Minimization, Mitigation Measures and Land Use Adjacency Guidelines, MSWD has also agreed to implement measures that will be added to Section 6.6.1 of the Plan should this Major Amendment be adopted. They include conservation measures for the approximately 61 acres they own in the Conservation Areas and other measures for activities outside Conservation Areas. (SEIR/SEIS at 4.1-14–16.) All of these measures will ensure the ongoing health of mesquite hummocks in the affected Conservation Areas of the Mission Creek Subbasin.

Riparian Habitat

The addition of approximately 770 acres to the Upper Mission Creek/Big Morongo Canyon Conservation Area would result in an overall beneficial effect to natural communities within the Plan area. There are no riparian communities currently located within either the existing or the additional lands in the Conservation Areas to be addressed under the Major Amendment; therefore, no impacts would occur as a result of the Major Amendment. (SEIR/SEIS at 4.1-17.)

Federally Protected Wetlands

There are no wetlands, defined by Section 404 of the Clean Water Act or other sensitive natural communities such as wetlands, marshes, or vernal pools within the existing or the additional areas to be addressed under the Major Amendment. Therefore, no impacts to federally protected wetlands would occur. (SEIR/SEIS at 4.1-17.)

Wildlife Movement

The additional areas to be included within the Upper Mission Creek/Big Morongo Canyon Conservation Area would result in a beneficial effect to the movement of wildlife species by expanding the limits of the established Conservation Area. The establishment of Conservation Areas within the City would reduce the potential for urban development in the affected area, and would preserve it as open-space and natural desert areas, allowing the continued use by wildlife species. Therefore, no significant adverse impacts to wildlife movement would occur as a result of implementing the Major Amendment. (SEIR/SEIS at 4.1-17.)

Local Policies

There are currently no local policies protecting biological resources within the areas to be included in the Conservation Area. However, due to two recent annexations of approximately 4,000 acres of County lands into the City (together known as the Desert Hot Springs I-10 Annexation) all provisions of the approved CVMSHCP were adopted by the City for that area. The Major Amendment would provide for adoption of CVMSHCP policies throughout the remaining parts of the City not currently covered by the Plan, resulting in a more cohesive biological planning policy throughout the City. (SEIR/SEIS at 4.1-18.)

Adopted Habitat Conservation Plan

The proposed Major Amendment will result in the City of Desert Hot Springs being included as a Permittee to the CVMSHCP that will allow for expansion and continuity of the established Conservation Areas. Conservation Areas within the MSWD service area outside Desert Hot Springs City limits will remain unchanged. As indicated in the preceding discussions, adding the City and MSWD as Permittees of the Plan, and establishing Conservation Areas within the City, would result in an overall beneficial effect to the Covered Species and natural communities currently protected by the Plan. (SEIR/SEIS at 4.1-18.)

Climate Change

The changing climate has the potential to affect wildlife throughout North America, either directly or indirectly through responses to changing habitat conditions (Hinkley et al. 2004). (Final SEIR/SEIS at 4.1-18.)

Because specific effects of climate change on CVMSHCP Covered Species and Natural Communities are speculative and could change over time, both the State of California (California Natural Resources Agency 2009) and the USFWS (2012) emphasize flexible, adaptive strategies for coping with climate change. Hulme (2005) states that adaptation strategies should focus on increasing the flexibility of managing vulnerable ecosystems and increasing the adaptability of vulnerable ecosystems and species. Management also needs to address interacting species and ecosystems. Additionally, large reserves, especially those spanning broad elevational gradients, are critical to encompassing a broad range of present and future climates (Ackerly 2012). Halpin (1997) recommended the following management prescriptions to address climate changes (Final SEIR/SEIS at 4.1-19.):

1. Selection of redundant reserves and selection of reserves that protect habitat diversity;
2. Management for buffer zone flexibility;
3. Management for landscape connectivity;
4. Management for habitat maintenance;

The CVMSHCP incorporates all four elements identified by Halpin (1997) to address climate change; builds a large, interconnected reserve system that spans temperature and elevational gradients; incorporates adaptation strategies to increasing the flexibility of Reserve managers; provides adaptive monitoring to address interacting species and ecosystems. (Final SEIR/SEIS at 4.1-19.)

The external boundaries of the Plan Area encompass approximately 1.1 million acres and the Plan preserves the majority of land from the toe of slope to the ridgeline of mountains surrounding the Coachella Valley and, as such, includes a redundant reserve system that protects habitat diversity in the Coachella Valley. Additionally, the Plan includes adjacency guidelines to manage for buffer zone effects; conservation goals to maintain biological corridors and linkages; and an adaptive management and monitoring strategy to ensure Covered Species and Natural Communities persist in the Plan Area. (Final SEIR/SEIS at 4.1-19.)

The CVMSHCP provides for the long-term conservation of ecological diversity by creating a 210,000 acre integrated Reserve system that maintains physical linkages over a range of existing temperature-moisture regimes and elevations. This climate envelope approach includes the current range of climatic and environmental conditions occupied by each Covered Species and Natural Community. By including geographically distinct sites, the multiple sites criterion will include the range of conditions a given species inhabits today. As the climate changes in the future, there is a possibility that the habitat at one or more sites will become unsuitable for a target species. But preserving multiple sites will increase the likelihood that some refuge for each of the Covered Species will be maintained if climatic conditions change over time, which may provide Covered Species and Natural Community resiliency to even the most extreme predicted effects of climate change (Barrows et. al. 2010). (Final SEIR/SEIS at 4.1-19–20.)

The Plan uses adaptive management and monitoring to ensure Covered Species and Natural Community persistence and support a landscape-scale, ecosystem-based management strategy. The Plan incorporates flexibility into management of vulnerable ecosystems by coordinating the necessary management to achieve the conservation goals and objectives through Resource Management Unit Plans ("RMUP"). The premise of the RMUP is that maximizing cooperation and coordination will result in enhanced, flexible management of all Reserve lands and facilitate management actions. Additionally, RMUP's include components for monitoring and managing natural communities; ecological processes; and biological corridors and linkages to address interacting species and ecosystems.

The Major Amendment would enhance the Plan's ability to ensure Covered Species and Natural Communities persist in the face of accelerated climate change because it will expand an existing conservation area and improve the coordination of management and monitoring by adding Desert Hot Springs and

Mission Springs Water District as permittees with responsibilities and obligations to ensure the Plan's conservation goals are achieved. (Final SEIR/SEIS at 4.1-20.)

Conclusion: Therefore, the proposed Major Amendment would not result in a significant impact to biological resources within the Plan Area. The addition of the City and MSWD as Permittees of the Plan provides a more comprehensive and cohesive Plan that would provide benefits for the Covered Species and natural communities protected in the Plan Area. The Plan also incorporates required Avoidance, Minimization and Mitigation Measures; Land Use Adjacency guidelines; and a comprehensive Monitoring and Management Program designed to mitigate potential adverse effects to the greatest extent practicable. Because the Plan has been designed to adequately conserve the Covered Species and natural communities, and has already incorporated all feasible measures to mitigate Plan impacts as part of the design of the Plan, no additional mitigation measures are either necessary or feasible. (SEIR/SEIS at 4.1-18.)

B. Land Use and Planning

Finding: The proposed Project would not physically divide an established community; would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; and would not conflict with any applicable habitat conservation plan or natural community conservation plan. (SEIR/SEIS at 4.2-3-6.)

Supporting Explanation: The proposed Major Amendment would not result in the physical separation of a community. The proposed Plan Amendment does conflict with some of the land uses established in the existing City General Plan. However, when the City opted out of becoming a Permittee of the Plan, an agreement was made with CVAG to establish most of the previously proposed Conservation Area adjacent to the Morongo Wash floodplain area as a Special Provisions Area, which allows for the purchase and preservation of that area. The General Plan is currently being updated and when complete will have land use designations that are compatible with the proposed Conservation Areas within the City limits and Sphere of Influence. The proposed Major Amendment will result in the City being included as a Permittee to the CVMSHCP that will allow for continuity of the previously established Conservation Areas. Conservation Areas within MSWD boundaries outside City limits will remain unchanged. (SEIR/SEIS at 4.2-4.)

The Major Amendment will not conflict with any plans adopted for the purpose of avoiding or mitigating an environmental effect. The proposed Major Amendment would serve to strengthen the existing CVMSHCP by including the City of Desert Hot Springs and MSWD as Permittees of the Plan and thereby broadening the potential to achieve the land use control and conservation objectives of the Plan to protect Covered Species. The proposed Major Amendment will also establish the area within the City currently designated as the Morongo Wash Special Provisions Area as part of the Upper Mission Creek/Big Morongo Canyon Conservation Area, and will facilitate the future development of County Flood

Control's planned Morongo Wash Flood Control facility. These actions would serve to broaden and reinforce the Plan's goals and objectives aimed at protecting sensitive resources and facilitating logical development in a sustainable manner, and therefore, would not conflict with the adopted CVMSHCP. (SEIR/SEIS at 4.2-4-5.)

Conclusion: Based on the preceding analysis, it has been determined that no significant adverse impacts related to land use have been identified in association with the implementation of the proposed Major Amendment. Therefore, no mitigation measures are required. (SEIR/SEIS at 4.2-6.)

C. Socioeconomic and Fiscal

Finding: The proposed Project would not cause a significant adverse socioeconomic effect on communities located within the amended planning area; would not create a substantial adverse fiscal effect on the City or local governments as a consequence of the loss of public revenues or in association with the provision of governmental infrastructure (staff and facilities) associated with implementation of the Major Amendment; would not create a substantial adverse economic effect on an important sector of the planning area's economy; would not induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of road or other infrastructure); would not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere; and would not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. (SEIR/SEIS at 4.3-8-26.)

Supporting Explanation: The 2007 Recirculated EIR/EIS prepared for the Plan considered the lands in Conservation Areas in each city and on unincorporated County lands, and calculated potential costs and revenues associated with build-out of those lands according to each jurisdiction's General Plan, in current dollars. Although not a Permittee of the Plan, Desert Hot Springs was included in the analysis because the Upper Mission Creek/Big Morongo Canyon Conservation Area encompasses the portions of the Mission Creek flood control channel and Morongo Wash within the City of Desert Hot Springs. The area was designated as a Special Provisions Area to address a potential Morongo Wash flood control facility and its associated mitigation, as well as conservation for a wildlife habitat corridor. (SEIR/SEIS at 4.3-8.)

The overall purpose of the SEIR/SEIS is to evaluate amending the Plan to include both Desert Hot Springs and MSWD as Permittees. However, the supporting Fiscal Impact Assessment (Appendix to SEIR/SEIS) focuses on public costs and revenues that would result if vacant lands identified for conservation by the CVMSHCP were instead allowed to develop in Desert Hot Springs consistent with the current General Plan land use designation. MSWD does not have decision-making authority over land use designations and no Conservation Area boundaries will change within the MSWD service area outside of Desert Hot Springs; therefore, the fiscal impact of adding MSWD as a Permittee is considered less than significant. (SEIR/SEIS at 4.3-8.)

Table 4.3-15 of the SEIR/SEIS summarizes all general fund and restricted fund revenues, that would be lost if vacant lands in Desert Hot Springs with development potential were placed in conservation under the proposed Major Amendment. This table also shows potential annual investment income that would be lost as a result of conservation of these lands. (SEIR/SEIS at 4.3-20-21.)

If lands being proposed for conservation are allowed to develop in the future, they will generate additional municipal costs. Expenditures will be required for general government services and the expansion and/or extension of infrastructure, roads, and other public services. The supporting fiscal model estimates the costs of providing general government services, public safety, and transportation/roadway maintenance to new development on lands identified for conservation under the proposed Major Amendment. The City will not incur these costs if these lands remain undeveloped and are placed in conservation. Table 4.3-19 of the SEIR/SEIS depicts the total annual costs to the City should the lands proposed for conservation under the Plan be developed. (SEIR/SEIS 4.3-23-24.)

Based on Table 4.3-20 of the SEIR/SEIS, currently vacant lands with potential for urban development in Desert Hot Springs would, if developed, result in a negative cash flow for the City over the long term. This is attributable to the fact that residential development does not generate sufficient municipal revenues to cover associated costs, particularly in areas such as Desert Hot Springs, where housing is affordable. Therefore, conservation of these potentially developable lands under the proposed Major Amendment will benefit Desert Hot Springs over the long term. (SEIR/SEIS at 4.3-24-26.)

Population Growth

The proposed Major Amendment would not directly induce population growth in the Plan Area as it would simply result in establishing Conservation Areas within the City and granting Permittee status to the City and MSWD. (SEIR/SEIS at 4.3-26.)

Housing Displacement

The proposed Major Amendment would establish Conservation Areas within City limits and would not displace any existing housing or persons that would necessitate the construction of replacement housing elsewhere. The inclusion of MSWD as a Permittee of the Plan would not result in displacement of any existing housing. (SEIR/SEIS at 4.3-26.)

Displacement of People

The project would not displace any existing housing or persons and would not necessitate the construction of replacement housing elsewhere. (SEIR/SEIS at 4.3-26.)

Conclusion: The Major Amendment would not result in any significant adverse socioeconomic or fiscal impacts.

D. Transportation

Finding: The Proposed Project would not Conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit; would not conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways; would not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks; would not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment); would not result in inadequate emergency access; and would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities.

Supporting Explanation: As shown in Table 2-1, Section 2.4 of the SEIR/SEIS, the City has included a number of roadway projects as Covered Activities under the proposed Major Amendment. Although the affected roadway segments will become Covered Activities under the Major Amendment, they also represent planned improvements per the City's existing General Plan Circulation Element and have been programmatically reviewed under the General Plan EIR. The City has selected key roadway segments from their Circulation Element as Covered Projects under the Major Amendment to ensure efficient levels of service on existing and planned roadways as the City continues to build out in accordance with its General Plan. This is consistent with the approved September 2007 Recirculated EIR/EIS, which specifies that approval of the Plan would result in a significant impact to circulation and transportation systems only if it precluded the ability of the various roadway agencies to make necessary improvements or develop planned key arterials and roadway segments. The currently approved CVMSHCP already includes a number of regional roads within the City as Covered Activities and the impacts of these projects have been evaluated and addressed in the 2007 Recirculated EIR/EIS. These roadways would thus be constructed regardless of whether the City becomes a Plan Permittee. The approved Plan incorporates design and impact avoidance/minimization and mitigation measures that address development, improvement, and operation and maintenance of Covered Activities, including roadways. Implementation of these required measures will be made a condition of project approval for all Covered Activities within the City. (SEIR/SEIS at 4.4-4.)

Congestion Management

The agencies with jurisdiction over transportation in the Major Amendment Area (i.e., City of Desert Hot Springs, CVAG, Riverside County) all have adopted performance criteria for roadway planning and operating procedures. However, only the City of Desert Hot Springs is proposing to add transportation projects to the list of Covered Activities as part of the proposed Major Amendment. The City of Desert Hot Springs utilizes "Level of Service" (LOS) criteria to assess

performance of roadway links and intersections. LOS includes a range of alphabetical connotations "A" through "F", used to characterize roadway operating conditions. LOS A represents the best/free flow conditions and LOS F indicates the worst/system failure. LOS D is considered the generally acceptable service level at intersections and roadways throughout the City, similar to other jurisdictions in the Plan Area, although anything better is desirable.

For purposes of this analysis, a significant impact to transportation caused by the Major Amendment would be one that caused a roadway link or intersection to operate below LOS D. Such a deficiency must be "caused" by implementation of the Major Amendment for it to be considered an impact. Deficiencies that exist without implementation of the Major Amendment are not a result of the "Project" and therefore, would not be considered a significant impact. Significant impacts are also considered based upon substantial conflicts with other transportation systems, including railroads and airports, or the creation of inadequate emergency access as a result of the Major Amendment.

Adding the City of Desert Hot Springs and MSWD as Permittees of the Plan and establishing Conservation Areas within the City will not conflict with the County's Congestion Management Program, as it will not result in the generation of any new vehicle trips. Per the approved September 2007 Final Recirculated EIR/EIS, a LOS deficiency must be caused by implementation of the Plan for it to be considered an impact. Therefore, existing deficiencies in LOS or traffic control systems are not considered a significant impact if they would remain regardless of whether the Major Amendment is approved. The establishment of Conservation Areas within the City and implementation of the stated Conservation Goals and Objectives of the Plan would not conflict with a congestion management program, existing LOS standards, or other standards established by the County for designated roads or highways. (SEIR/SEIS at 4.4-4-5.)

Air Traffic

As noted above, there are no public or private airports within the Major Amendment Area. Therefore, the proposed Major Amendment would not impede existing air traffic navigational patterns or cause a change in the location of existing airport facilities in the region. No significant impacts related to air traffic would occur as a result of project implementation. (SEIR/SEIS 4.4-5.)

Hazards

The proposed Major Amendment would not result in new roadways or other physical improvements that could increase roadway hazards. The City proposed Covered Activities (roadway improvements) would result in improvements to existing roadways and would employ standard construction safety measures per City requirements. Therefore, no significant impacts related to roadway hazards would occur as a result of project implementation. (SEIR/SEIS at 4.4-5.)

Emergency Access

The CVMSHCP allows Take Authorization for emergency access and emergency response within the Plan Area. The Major Amendment will not result in any revisions to this policy and therefore, no impacts related to emergency access would occur. (SEIR/SEIS at 4.4-6.)

Public Transit

Implementation of the proposed Major Amendment would not conflict with adopted policies or involve elimination of facilities supporting alternative transportation such as bus turnouts or bicycle racks. Access to bus stops will be maintained to the extent feasible during construction of proposed roadway improvements that are to be included by the City as Covered Activities. Therefore, no significant impacts related to public transit or alternative transportation would occur as a result of implementing the proposed Major Amendment.

Conclusion: No significant adverse impacts on transportation, traffic, or circulation would result from the proposed Major Amendment and no mitigation measures are required. (SEIR/SEIS at 4.4-6.)

SECTION 3: CUMULATIVE IMPACTS

BE IT FURTHER RESOLVED by CVCC that the Supplemental EIR/EIS and the evidence in the administrative record before it, that the cumulative analysis in the 2007 Recirculated EIR/EIS remains sufficient and the Project would not have any significant adverse cumulative impacts:

The adopted September 2007 EIR/EIS performed an assessment of the long-term land use impacts the implementation of the CVMSHCP would have within the Plan Area. CEQA Guidelines Section 15130 b(1) allows the use of a summary of land use projections set forth in adopted General Plans (and associated EIRs) and the buildout of these plans. Rates of growth were assumed based upon recent trends in land conversion. (SEIR/SEIS at 6-2-3.)

The intent in determining the significance of those cumulative impacts evaluated in the approved EIR/EIS was an assessment of the aggregated effects of past, present, and reasonably foreseeable future projects or actions, regardless of who undertakes them. (SEIR/SEIS at 6-3.)

A cumulative impacts analysis is largely qualitative in nature but builds upon an extensive quantitative analysis of land use patterns and designations, regulatory and environmental constraints and opportunities affecting development, and socio-economic trends. The potential cumulative impacts of the overall Plan have been evaluated to determine the degree to which they degrade a resource to unacceptable levels and the incremental contribution made by the CVMSHCP to the overall cumulative effect.

The cumulative impacts analysis described in the 2007 Recirculated EIR/EIS provides sufficient analysis of the Plan as a whole and approval of the Major

Amendment would not change the scope of that cumulative analysis. Since the state and federal permits were received in October 2008, an economic recession has resulted in very limited development within the proposed Major Amendment area. Projects that were considered reasonably foreseeable future projects in 2007 were impacted by the economic downturn and are no longer viable. Many of the parcels of land proposed for these projects within Conservation Areas have been purchased by CVCC and other partners. Therefore, no further cumulative impact analysis is considered in the SEIR/SEIS. (SEIR/SEIS at 6-3.)

SECTION 4: SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

BE IT FURTHER RESOLVED by CVCC, based on the Supplemental EIR/EIS and the evidence in the administrative record before it, that CVCC makes the following findings concerning significant and irreversible environmental changes:

Section 15126.2(c) of the CEQA Guidelines requires the evaluation of the uses of nonrenewable resources during the initial and continued phases of a project when a large commitment of such resources makes removal or non-removal or non-use thereafter unlikely. NEPA regulations also require an EIS analysis to include a discussion of the potential irreversible and irretrievable commitments of environmental resources as a consequence of the approval and implementation of the Proposed Project (40 CFR 1502.16).

The Proposed Project is a Major Amendment to the approved September 2007 CVMSHCP to add the City of Desert Hot Springs and the Mission Springs Water District as Permittees. The current Plan would be amended to include all of the private lands within the City limits of Desert Hot Springs and restore the original boundaries of the Upper Mission Creek/Big Morongo Canyon and Whitewater Canyon Conservation Areas within City limits. Covered Activities that include certain activities carried out or conducted by Permittees are also included in the Major Amendment as described in Section 2.0 of the SEIR/SEIS. (SEIR/SEIS at 5-2.)

The proposed Major Amendment would not in itself increase or decrease the amount of development that is anticipated to occur, and thus does not directly result in development that would involve the irretrievable and irreversible use of land, water, and building materials. Development impacts would occur regardless of whether the CVMSHCP is amended to include Desert Hot Springs and MSWD. As Permittees of the Plan, both agencies will be required to conform to the Avoidance, Minimization, Mitigation Measures and Land Use Adjacency Guidelines outlined in Sections 4.4 and 4.5 of the Plan, in order to implement their Covered Activities. This would potentially result in fewer environmental impacts in the Conservation Areas within City and MSWD boundaries and is expected to result in more efficient land use patterns outside of Conservation Areas. Establishment of the original boundaries of Conservation Areas within City limits will further preserve sensitive species, their habitat, and other natural resources within the City boundaries. Development outside of Conservation Areas would occur as anticipated in the proposed City of Desert Hot Springs General Plan Update that is being prepared concurrently with the SEIR/SEIS. Development within those areas of the MSWD boundaries outside of the City

limits will occur as specified in either the Palm Springs or County of Riverside General Plans. (SEIR/SEIS at 5-2-3.)

SECTION 5: GROWTH-INDUCING IMPACTS

BE IT FURTHER RESOLVED by CVCC, based on the Supplemental EIR/EIS and the evidence in the administrative record before it, that CVCC makes the following findings concerning growth-inducing impacts:

Section 15126.2(d) of the CEQA Guidelines requires a discussion of how the potential growth-inducing impacts of the Proposed Project could foster economic or population growth or the construction of additional housing, either directly or indirectly, in the surrounding environment. Induced growth is distinguished from the direct employment, population, or housing growth of a project. If a project has characteristics that "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively," then these aspects of the project must be discussed as well. Induced growth is any growth that exceeds planned growth and results from new development that would not have taken place in the absence of the Proposed Project. For example, a project could induce growth by lowering or removing barriers to growth or by creating or allowing a use such as an industrial facility that attracts new population or economic activity. CEQA Guidelines also indicate that the topic of growth should not be assumed to be either beneficial or detrimental (Section 15126.2[d]). (SEIR/SEIS at 5-3.)

The proposed Major Amendment to include the City of Desert Hot Spring and MSWD as Permittees would not directly induce population growth in the CVMSHCP Area and would not displace any existing housing or persons that would necessitate the construction of replacement housing elsewhere. The Major Amendment would result in establishing Conservation Areas within the City and granting Permittee status to the City and MSWD. The City will be responsible for exercising land use authority to implement the CVMSHCP. Consequently, approval of the proposed Major Amendment would not result in significant growth-inducing impacts. (SEIR/SEIS at 5-3.)

SECTION 6: RESOLUTION REGARDING ALTERNATIVES

BE IT FURTHER RESOLVED by CVCC that the Supplemental EIR/EIS and the evidence in the administrative record before it confirms that the alternatives discussed in the approved September 2007 Recirculated EIR/EIS provide sufficient analysis and no further alternatives other than an updated No Action/No Project Alternative are considered in the SEIR for the Plan Amendment.

The evaluation of environmental impacts in the SEIR/SEIS concluded that the Plan Amendment would not result in any temporary or permanent significant and unavoidable effects for any of the environmental issue areas identified in Appendix G of the State CEQA Guidelines.

Where significant impacts are identified, section 15126.6 of the State CEQA Guidelines requires EIRs to consider and discuss alternatives to the proposed actions. Subsection (a) states:

- (a) An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.

Subsection 15126.6(b) states the purpose of the alternatives analysis:

- (b) Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

In subsection 15126.6(c), the State CEQA Guidelines describe the selection process for a range of reasonable alternatives:

- (c) The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

The range of alternatives required is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed Project. Alternatives are limited to ones that would avoid or substantially lessen any of the significant effects of the Project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the Project.

However, when a project would not result in any significant and unavoidable impacts, the lead agency has no obligation to consider the feasibility of alternatives to lessen or avoid environmental impacts, even if the alternative would reduce the impact to a greater degree than the proposed Project. (Pub. Res. Code § 21002; *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.)

Pursuant to CEQA Guidelines, Section 15126.6(e)(2), CEQA requires that an environmentally superior alternative, other than the No Project Alternative, be identified in an EIR, after comparing the potentially significant impacts of each alternative as compared to the Proposed Project.

Project Objectives

The specific objective of the Major Amendment is to add the City of Desert Hot Springs and MSWD as Permittees of the Plan. In so doing, all of the private lands within the city limits of the City of Desert Hot Springs will be included, thus restoring the 2006 boundaries of the Upper Mission Creek/Big Morongo Canyon Conservation Area within city limits. In addition, as Permittees of the Plan, Desert Hot Springs and MSWD will contribute to the overall goals and objectives of the CVMSHCP along with the other Permittees within the Plan Area. Desert Hot Springs and MSWD will be included in the state and federal Incidental Take permits issued for species covered by the CVMSHCP in lieu of the current case-by-case development review process, as it relates to biological resources. At the same time, the proposed Major Amendment will bring lands within the city limits of Desert Hot Springs into the CVMSHCP's comprehensive biological resource conservation strategy that provides adequate assurance of habitat conservation and long-term viability and protection of Covered Species. (SEIR/SEIS at 1-8.)

Alternatives Selected for Analysis

The alternatives selected for review include:

- No Action/No Project Alternative
- Public Lands Alternative
- Core Habitat with Ecological Processes Alternative
- Enhanced Conservation Alternative

As discussed in detail in Section 7.0 of the SEIR/SEIS, the SEIR/SEIS supplements the approved September 2007 Recirculated EIR/EIS that discussed a wide range of alternatives to the CVMSHCP without the City of Desert Hot Springs as a Permittee. The Proposed Action/Preferred Alternative is considered the environmentally superior alternative under CEQA and the environmentally preferred alternative under NEPA because it is the only alternative that would meet the primary objectives of the Plan Amendment, which is adding both Desert Hot Springs and Mission Springs Water District as Permittees of the Plan. Amending the CVMSHCP and permit as proposed would be the environmentally preferable alternative because adding these two new Permittees would provide a more comprehensive and cohesive Plan that would benefit the Covered Species and natural communities protected within the Plan Area. Furthermore, no significant environmental impacts of the Proposed Action/Preferred Alternative have been identified in this SEIR/SEIS. (SEIR/SEIS at 2-10-11.)

The alternatives discussed in the approved September 2007 Recirculated EIR/EIS provide sufficient analysis and no further alternatives other than an updated No Action/No Project Alternative are considered in the SEIR/SEIS for the Plan Amendment. However, each of the environmental topics discussed in Section 4.0 of the SEIR/SEIS, and set forth below this Resolution below, provide an analysis of whether the proposed Major Amendment would change any conclusions contained in each of the alternatives. (SEIR/SEIS at 2-11, 7-2.)

Evaluation of Alternatives

No Action/No Project Alternative

Description: Under the approved EIR/EIS, it was determined the No Action/No Project Alternative may result in significant adverse impacts to biological resources for CEQA analysis purposes due to the lack of protection for both Covered and non-Covered Species. Since there is now an approved Plan in place, the No Action/No Project Alternative for the proposed Major Amendment would mean that neither the City nor MSWD would become Permittees of the Plan. (SEIR/SEIS at 7-3.)

Impacts:

Biological Resources

The No Project Alternative under this scenario would mean that some areas of the City and the MSWD boundaries would not receive full protection for Covered and non-Covered Species as provided by the Plan. Therefore, significant adverse impacts to biological resources could occur under the No Action/No Project Alternative. Since no feasible mitigation measures have been identified should the preferred project not be approved, the impact of this Alternative remains significant. (SEIR/SEIS at 4.1-19.)

Land Use and Planning

Under the approved EIR/EIS, it was determined the No Action/No Project Alternative may have a significant long-term adverse impact on land use due to piecemeal habitat conservation that may lead to the fragmentation of human communities and stifle efficient economic development and activities. Since there is now an approved Plan in place, the No Project Alternative for the proposed Major Amendment would mean that both the City and MSWD would not become Permittees of the Plan. Without the Major Amendment, both agencies would have to comply with state and federal regulations for the Covered Species on a case by case basis. Furthermore, this alternative would not have the beneficial effect of strengthening the existing CVMSHCP by broadening the potential to achieve land use control and conservation objectives to protect Covered Species. Therefore, no mitigation measures are required. (SEIR/SEIS at 4.2-6.)

Socioeconomic and Fiscal Impacts

Under the approved Recirculated EIR/EIS, it was determined the No Action/No Project Alternative would result in all lands proposed for inclusion in Conservation Areas under the Preferred Alternative potentially being available for development. Since there is now an approved Plan in place, the No Action/No Project Alternative for the proposed Major Amendment would mean that both the City of Desert Hot Springs and MSWD would not become Permittees of the Plan. It was concluded that vacant lands with potential for urban development in Desert Hot Springs would, if developed, result in a negative cash flow for the City over the long term and conservation of some lands as recommended under the Proposed Action/Preferred Alternative will benefit Desert Hot Springs over the long term. Therefore, the beneficial fiscal impact for the City would not be realized under the No Action/No Project Alternative. (SEIR/SEIS at 4.3-27.)

Transportation

As indicated in the approved 2007 Recirculated EIR/EIS prepared for the Plan, no significant adverse direct impacts on transportation, traffic, or circulation would result from this Alternative; however, for CEQA/NEPA analysis purposes, significant adverse indirect impacts could result due to rejecting the proposed Major Amendment. Since there is an approved Plan in place, the proposed Major Amendment would further the goals and objectives of the Plan, by increasing conservation within the Plan boundaries and facilitating planned roadway improvements for local and regional roadways within the City's jurisdiction. (SEIR/SEIS at 4.4-7.)

Objectives and Feasibility: Similar to the conclusion in the approved EIR/EIS, the No Action/No Project Alternative under this scenario would mean that some areas of the City and the MSWD boundaries would not receive full protection for Covered and non-Covered Species as provided by the Plan. Therefore, significant adverse impacts to biological resources could occur under the No Action/No Project Alternative. The No Action/No Project Alternative would result in Desert Hot Springs and MSWD not being added as Permittees of the Plan and no Take Authorization would be issued for their proposed Covered Activities. The City and MSWD would not be responsible for ensuring the implementation of the CVMSHCP, including acquisition, monitoring and management within their jurisdictions. The City and MSWD would be responsible for obtaining their own permits through the USFWS and CDFW for any project approvals that may affect sensitive species or core habitat areas. This Alternative would not serve to enhance and maintain biological diversity and ecosystem processes while allowing future economic growth in the planning area. (SEIR/SEIS at 7-3.)

Finding: The CVCC rejects this alternative on the basis that it would fail to achieve the Project's objectives, and finds that this ground provides sufficient justification for rejection of this alternative. Therefore, it is eliminated from further consideration.

Public Lands Alternative

Description: Under the Public Lands Alternative, substantial areas would be protected in the mountainous portions of the Plan Area. Because this Alternative entails no land acquisition, only Core Habitat, Essential Ecological Processes, and Biological Corridors and Linkages that happen to be on existing public conservation lands or private conservation lands would be protected. As a result, sand transport, watershed, and other ecological processes would not be protected, Biological Corridors and Linkages would not be conserved, and Core Habitat areas would likely be fragmented in many instances. As indicated in the approved 2007 Recirculated EIR/EIS, this Alternative would not include a broad acquisition plan as part of the Plan requirements. Management of the existing reserves would be increased, so that Covered Species within these reserves would receive greater protection. (SEIR/SEIS at 7-2.)

Impacts:

Biological Resources

Conservation lands would decrease under this alternative and would thus result in a greater impact to Covered Species and natural communities. However, no feasible mitigation measures were identified in the approved EIR/EIS. The Major Amendment would not result in any changes to that conclusion and no mitigation measures are required. (SEIR/SEIS at 4.1-18.)

Land Use and Planning

As indicated in the approved 2007 Recirculated EIR/EIS, the Public Lands Alternative would not include a broad acquisition plan as part of the Plan requirements. Management of the existing reserves would be increased, so that Covered Species within these reserves would receive greater protection. The proposed Major Amendment would not result in any changes to that conclusion. As with the Proposed Action/Preferred Alternative, there would be no direct impact on applicable plans because this Alternative does not propose additional conservation of lands. For the same reason, this Alternative would not result in the physical division of an established community. State and federal lands would be managed in a manner consistent with their respective management plans, and thus this Alternative would not conflict with such plans. The proposed Major Amendment would not result in any changes to that conclusion. Therefore, no mitigation measures are required. (SEIR/SEIS at 4.2-5.)

Socioeconomic and Fiscal Impacts

This Alternative includes all lands managed for conservation under local, state, and federal agency ownership, and Private Conservation Lands, and could require additional management prescriptions to be implemented on certain BLM and other public lands. No new areas would be acquired for CVMSHCP purposes. Because this Alternative does not propose additional conservation of lands, no socioeconomic effects would result including displacement of housing or people. State and federal lands would be managed in a manner consistent with their respective management plans, and thus this Alternative would not conflict with such plans. (SEIR/SEIS at 4.3-26.)

Transportation

As indicated in the approved 2007 Recirculated EIR/EIS prepared for the Plan, no significant adverse impacts on transportation, traffic, or circulation would result from this Alternative for CEQA/NEPA analysis purposes and no mitigation is required. The Major Amendment would not result in any changes to that conclusion. (SEIR/SEIS at 4.4-6.)

Objectives and Feasibility: Although findings rejecting alternatives in favor of the Project are not required because the Project as proposed would not result in any significant and unavoidable impacts (Pub. Res. Code § 21002), for the reasons set forth herein, and as discussed further in the SEIR/SEIS, CVCC hereby rejects the Public Lands Alternative because it would result in potentially significant environmental impacts. Overall conservation lands would decrease under this Alternative and would thus result in a greater impact to Covered Species and natural communities. In addition, it was found to have potentially significant impacts to groundwater recharge. No feasible mitigation measures were identified. Adoption of the Major Amendment would not result in any changes to that conclusion. (SEIR/SEIS at 7-2.)

Finding: The CVCC rejects this alternative on the basis that it would cause potentially significant effects that would not occur with the Proposed Project, and finds that this ground provides sufficient justification for rejection of this alternative. Therefore, it is eliminated from further consideration.

Core Habitat with Ecological Processes Alternative

Description: Under the Core Habitat with Ecological Processes Alternative, it would establish Conservation Areas intended to protect Core Habitat for the Covered Species and natural

communities included in the Plan, Essential Ecological Processes necessary to sustain these habitats, and some Biological Corridors. The Conservation Areas include most of the Public Lands Alternative lands as well as the acquisition of additional private lands particularly in the mountains surrounding the Coachella Valley as necessary to: avoid habitat fragmentation of Core Habitat, protect Essential Ecological Processes, and maintain Biological Corridors. (SEIR/SEIS at 7-2.)

Impacts:

Biological Resources

This Alternative would result in less conservation than the Preferred Alternative, and thus would have greater impacts on Covered Species and natural communities. No Feasible mitigation measures were identified in the approved EIR/EIS. The Major Amendment would not result in any changes to that conclusion and impacts of this alternative would remain significant. (SEIR/SEIS at 4.1-18.)

Land Use and Planning

As indicated in the approved Recirculated EIR/EIS, this Alternative would have a lower level of conservation of private lands compared to the Proposed Action/Preferred Alternative, and thus would have even fewer potential conflicts with applicable land use plans. Based upon the coordinated and integrated nature of this Alternative, impacts to federal, state, regional, local, or tribal land use plans, policies, or controls are considered to be less than significant. This Alternative would not physically divide an established community for the reasons described under the Proposed Action/Preferred Alternative. The proposed Major Amendment would not result in any changes to that conclusion. Therefore, no mitigation measures are required. (SEIR/SEIS at 4.2-5.)

Socioeconomic and Fiscal Impacts

This Alternative would have a lower level of conservation of private lands compared to the Proposed Action and Preferred Alternative. Although the jurisdictions would be able to develop lands that would otherwise be conserved, the increased land mass in each jurisdiction would not be significant for CEQA/NEPA analysis purposes, and would not impact any jurisdiction's ability to provide adequate lands for development. Affordable housing could be permitted on lands that would otherwise be conserved. It would not directly induce substantial population growth in the CVMSHCP Area, as the Plan does not propose any new construction. The Major Amendment would not result in any changes to these conclusions. (SEIR/SEIS at 4.3-26-27.)

Transportation

As indicated in the approved Recirculated EIR/EIS prepared for the Plan, no significant adverse impacts on transportation, traffic, or circulation would result from this Alternative for CEQA/NEPA analysis purposes and no mitigation is required. (SEIR/SEIS at 4.4-6.)

Objectives and Feasibility: Although findings rejecting alternatives in favor of the Project are not required because the Project as proposed would not result in any significant and unavoidable impacts (Pub. Res. Code § 21002), for the reasons set forth herein, and as discussed further in the SEIR/SEIS, CVCC hereby rejects the Core Habitat with Ecological Processes Alternative because it would result in potentially significant environmental impacts that would not result from

the Proposed Project. As indicated in the approved 2007 Recirculated EIR/EIS, this Alternative would result in less conservation than the Preferred Alternative, and thus would have greater impact on Covered Species and natural communities. No feasible mitigation measures were identified. Adoption of the Major Amendment would not result in any changes to that conclusion. (SEIR/SEIS at 7-2.)

Finding: The CVCC rejects this alternative on the basis that it would cause potentially significant effects that would not occur with the Proposed Project, and finds that this ground provides sufficient justification for rejection of this alternative. Therefore, it is eliminated from further consideration.

Enhanced Conservation Alternative

Description: The Enhanced Conservation Alternative expands upon the Proposed Action/Preferred Alternative and includes the same Covered Activities as the Preferred Alternative. It would result in less Take than the Proposed Action/Preferred Alternative and additional Conservation Lands would be added. (SEIR/SEIS at 7-2.)

Impacts:

Biological Resources

This Alternative would result in the acquisition and management of more land than the Preferred Alternative. All other provisions of the Preferred Alternative would apply. Therefore, impacts from this Alternative would be less than significant and no mitigation measures were required in the approved EIR/EIS. The Major Amendment would not result in any changes to that conclusion and no mitigation measures are required. (SEIR/SEIS at 4.1-19.)

Land Use and Planning

As indicated in the approved Recirculated EIR/EIS, this Alternative would result in a substantial increase in lands in Conservation Areas compared to the other alternatives. The analysis determined this additional conservation could result in significant land use compatibility conflicts and physically divide established communities. The proposed Major Amendment would not result in any changes to that conclusion. Therefore, no mitigation measures are required. (SEIR/SEIS at 4.2-5-6.)

Socioeconomic and Fiscal Impacts

This Alternative would result in slight increases in lands included in Conservation Areas in the City of Desert Hot Springs. The overall percentage increase, however, would not significantly increase the lands lost by the City. Impacts to the fiscal health of the City would be expected to be similar to those described above under the Proposed Action/Preferred Alternative. Impacts to the development potential within Desert Hot Springs would be expected to be similar to those described above under the Proposed Action/Preferred Alternative. This Alternative would not directly induce substantial population growth in the Plan Area, as the Plan does not propose any new construction. This Alternative would not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere. This Alternative also does not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. The Major Amendment would not result in any changes to these conclusions. (SEIR/SEIS at 4.3-27.)

Transportation

As indicated in the approved Recirculated EIR/EIS prepared for the Plan, this Alternative would result in significant impacts on transportation, traffic, or circulation for CEQA/NEPA analysis purposes. The impacts of this Alternative to local, regional, state and federal roadways cannot be effectively mitigated. The Major Amendment would not result in any changes to that conclusion. (SEIR/SEIS at 4.4-6.)

Objectives and Feasibility: Although findings rejecting alternatives in favor of the Project are not required because the Project as proposed would not result in any significant and unavoidable impacts (Pub. Res. Code § 21002), for the reasons set forth herein, and as discussed further in the SEIR/SEIS, CVCC hereby rejects the Enhanced Conservation Alternative because it would not achieve the objectives of the CVMSHCP to the same degree as the Project. As indicated in the approved 2007 Recirculated EIR/EIS, this Alternative would not result in any significant impacts. However, it would result in highly fragmented Conservation Areas in some locations interspersed with urban land uses and major transportation links, undermining the effectiveness of Conservation in these areas. Adoption of the Major Amendment would not result in any changes to that conclusion. (SEIR/SEIS at 7-2.)

Finding: The CVCC rejects this alternative on the basis that it would not achieve the objectives of the CVMSHCP to the same degree as the Project, and finds that this ground provides sufficient justification for rejection of this alternative. Therefore, it is eliminated from further consideration.

Environmentally Superior Alternative

As disclosed in the analysis above, the alternative that causes the least damage to biological resources and physical environment and best preserves natural resources is the Proposed Action/Preferred Alternative. The addition of the City and MSWD as Permittees of the Plan provides a more comprehensive and cohesive Plan that would provide beneficial impacts for the Covered Species and natural communities protected within the Plan Area. The Plan also incorporates required avoidance, minimization and mitigation measures; land use adjacency guidelines; and a comprehensive Monitoring and Management Program designed to mitigate potential adverse effects to the greatest extent practicable. Therefore, the Proposed Action/Preferred Alternative is considered the environmentally superior alternative under CEQA. (SEIR/SEIS at 7-4.)

SECTION 7: CERTIFICATION OF THE SEIR/SEIS

BE IT FURTHER RESOLVED by the CVCC that it has reviewed and considered the Final Supplemental EIR/EIS, and all other applicable documents in the record, in evaluating the Project, that the Supplemental EIR/EIS is an accurate and objective statement that complies with CEQA and reflects CVCC's independent judgment, and that the Final Supplemental EIR/EIS and all other volumes of the CVCVMSHCP are incorporated herein by this reference.

BE IT FURTHER RESOLVED by the CVCC that it hereby **CERTIFIES** the Final Supplemental EIR/EIS, adopts the Major Amendment to the CVCVMSHCP, approves the revised IA, and authorizes the execution of the revised IA.

Findings

No significant and unavoidable environmental impacts (both project-specific and cumulative) have been identified in the SEIR/SEIS. As set out in this Resolution, all impacts of the Proposed Project are less than significant.

Conclusions

All significant environmental impacts from the implementation of the Project have been identified in the SEIR/SEIS and will be less than significant level.

Other reasonable alternatives to the Project which could feasibly achieve the basic objectives of the Project have been considered and rejected in favor of the Project.

SECTION 8: RESOLUTION REGARDING CUSTODIAN OF RECORD

BE IT FURTHER RESOLVED by the CVCC that the documents and other materials that constitute the record of proceedings/administrative record for the CVCC's approval of the Project are located at 73710 Fred Waring Drive, Suite 200, Palm Desert, California 92260, and the custodian of these records is the Executive Director of CVCC.

SECTION 9: RESOLUTION REGARDING STAFF DIRECTION

BE IT FURTHER RESOLVED by the CVCC that staff shall file a Notice of Determination with the Riverside County Clerk of the Board of Supervisors within five (5) working days of final Project approval.

PASSED, APPROVED AND ADOPTED this 13th day of March, 2014.

AYES: 9
NOES: 0
ABSTAIN: 0




Richard W. Kite, Chair
Coachella Valley Conservation Commission

ATTEST:



Tom Kirk, Executive Director
Coachella Valley Conservation Commission

APPROVED AS TO FORM:



Toni Eggebraaten, CVCC Counsel

ATTACHMENT - 2

**RESTATEMENT AND FOURTH AMENDMENT
JOINT POWERS AGREEMENT CREATING THE
COACHELLA VALLEY CONSERVATION COMMISSION**

This Agreement is intended to be a restatement and fourth amendment of the Joint Powers Agreement Creating the Coachella Valley Conservation Commission dated December 1, 2005. This Agreement is made and entered into on the 13th day of March 2014, for identification purposes only, pursuant to Government Code Sections 6500 et seq., by and between the following public agencies:

- (a) City of Cathedral City,
- (b) City of Coachella,
- (c) City of Desert Hot Springs
- (d) City of Indian Wells,
- (e) City of Indio,
- (f) City of La Quinta,
- (g) City of Palm Desert,
- (h) City of Palm Springs,
- (i) City of Rancho Mirage,
- (j) County of Riverside,
- (k) Coachella Valley Water District,
- (l) Imperial Irrigation District, and
- (m) Mission Springs Water District.

The foregoing public agencies are referred to herein below, individually and collectively, as "Party" or "Parties," "Member" or "Members" and "Member Agency" or "Member Agencies."

The following public agencies are ex officio, non-voting "Participants" on CVCC's governing board:

- (n) Coachella Valley Association of Governments (CVAG);
- (o) Riverside County Flood Control and Water Conservation District;
- (p) Riverside County Regional Parks and Open Space District; and
- (q) Riverside County Waste Management District.

RECITALS

Each of the Parties herein is a public agency. Each is authorized and empowered to contract with the other Parties for the joint exercise of powers pursuant to California Government Code Sections 6500, et seq.

The Coachella Valley Conservation Commission, hereinafter "CVCC," was formed so that its members could, collectively, oversee and administer the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). The original parties contemplated, however, that one or more of the original Members might withdraw from the CVCC prior to issuance of the Permit. Prior to the issuance, the City of Desert Hot Springs did, in fact, vote not to participate in the CVMSHCP and was therefore removed from the CVCC so that, by a prior amendment of this Agreement, the original reference to Desert Hot Springs as a party to the Agreement was removed. Subsequent to that amendment to this Agreement, Desert Hot Springs has proposed a Major Amendment to the CVMSHCP such that the area within Desert Hot Springs would be added again to the area that is subject to the CVMSHCP. It is anticipated that the Major Amendment will be finalized and approved by all requisite entities within the next twelve months.

Additionally, in 2010 Desert Hot Springs annexed certain land on the condition that the area of annexation remains subject to the CVMSHCP. Therefore, an Amendment to the Implementing Agreement for the Coachella Valley Multiple Species Habitat Conservation Plan was signed by the U.S. Fish and Wildlife Service, CVCC, the City of Desert Hot Springs and the California Department of Fish and Game. In signing the Implementing Agreement Amendment, the City of Desert Hot Springs agreed to the terms and conditions thereof and, to fulfill the obligations of the CVMSHCP, to become a Permittee of the Plan for the Desert Hot Springs I-10 Community Annexation Area. In 2011, a Third Amendment to this Agreement was approved by the CVCC to include the City of Desert Hot Springs for the I-10 Community Annexation Area. That Amendment was not approved by all other Members, pending completion of the Major Amendment.

The Parties now wish to amend this Agreement to include the City of Desert Hot Springs and Mission Springs Water District as Members of the CVCC. For Desert Hot Springs, such membership would be immediately applicable to all land within the jurisdictional boundaries of

2015 MAR -6 PM 12:47

the City of Desert Hot Springs, including the Desert Hot Springs I-10 Community Annexation Area. In so doing, the Parties also wish to ratify the Third Amendment to this Agreement.

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

Article 1

Definitions

Section 1.1 Definitions. Unless otherwise defined herein, or the context requires otherwise, the terms with the initial cap letters that are used in this Agreement shall have the same meaning as set forth in the MSHCP. As used in this Agreement, unless the context requires otherwise, the meaning of the terms set forth below shall be as follows:

(a) “Accrue,” in the context of the date that an obligation of CVCC accrued, shall not refer to the date of a demand or claim. Rather, where there is one act, omission or event giving rise to the obligation, the date of that one act, omission or event shall be the date the obligation accrued. However, where an obligation arises out of more than one act, omission or event, the accrual date shall refer to the entire period of time running from the first act, omission or event through the date of the last act, omission or event related to the same obligation.

(b) “Commission” shall mean the governing legislative body of CVCC.

(c) “Commissioner” shall mean the individual designated by a Member Agency to serve as the Member’s representative on the Commission. Except where the context dictates otherwise, references to “Commissioner” shall include a reference to the alternate designated by the Represented Member Agency to serve in the absence of a Commissioner.

(d) “CVAG” shall mean the Coachella Valley Association of Governments.

(e) “Law” or “the Law” shall mean the Joint Exercise of Powers Act, being Articles 1 and 2 of Chapter 5 of Division 7 of Title 1 of the California Government Code (Sections 6500, et seq.).

(f) “Member” or “Member Agency” shall mean a public agency with voting rights in CVCC listed in subparagraph (a) through (l) in the opening paragraph of this Agreement that becomes a signatory to this Agreement or any new party as permitted pursuant to Section 13.1 (Admission of New Parties).

(g) “MSHCP” shall mean (i) the Coachella Valley Multiple Species Habitat Conservation Plan, which is a comprehensive, multiple species habitat conservation planning program in the Coachella Valley area of Riverside County, California that complies with the requirements of Section 10(a)(1) of the Federal Endangered Species Act and the California Natural Community Conservation Planning Act of 2002; as well as (ii) any agreement implementing same.

(h) “Participant” refers to a public agency that is a signatory to the MSHCP but not a party to this Agreement. A Participant may attend Commission and other meetings of CVCC to participate in discussions for implementing, overseeing and administering the MSHCP. Participants’ obligations are limited to those outlined in their respective Permit requirements in the MSHCP. They are not subject to assessment should the Commission determine additional resources are necessary to administer the MSHCP and consequently are non-voting Participants of CVCC.

(i) “Represented Member Agency” refers to the Member Agency represented by a Commissioner, i.e., the Member Agency that appointed a particular Commissioner.

(j) “Treasurer” for CVCC shall be the Treasurer of CVAG (provided CVAG’s Treasurer is a Member or a certified public accountant) or any other certified public accountant or Member designated by the Commission.

Article 2

Creation of CVCC

Section 2.1 Creation. There is hereby created pursuant to the Law a public entity to be known as the “Coachella Valley Conservation Commission,” which shall be an agency or entity that is separate from the Parties to this Agreement.

Article 3

Powers and Duties of CVAG

Section 3.1 CVAG's Participation. CVAG shall be a non-voting ex officio Participant of CVCC and shall have the following powers and duties:

- (a) To provide, under contract with CVCC, all administrative services required by CVCC during the first five (5) years of the implementation of the MSHCP; and thereafter as the administrative services contract may be renewed from time to time by CVCC;
- (b) To empower its Executive Director to serve as Secretary of CVCC;
- (c) To exercise such other powers and duties as the Commission deems necessary to achieve the purposes of this Agreement.

Section 3.2 Principal Office. The principal office of CVAG shall be the principal office of CVCC. The Commission is hereby granted full power and authority to change said principal office from said location to another within the Coachella Valley.

Article 4

Term of Agreement

Section 4.1 Term. This Agreement shall become effective and CVCC shall exist at such time as this Agreement has been executed by at least a majority of the public agencies identified in the first paragraph of this Agreement. This Agreement shall be automatically terminated and considered null and void in the event that, after the Member Agencies which determine not to adopt the MSHCP have withdrawn from CVCC, the MSHCP is not approved by the remaining Parties or the Permit contemplated thereby is not issued by the Wildlife Agencies. Upon issuance of the Permit, the term of this Agreement shall automatically expire at such time as CVCC shall have no further obligations pursuant to the MSHCP or the Permit.

Article 5

Membership

Section 5.1 Membership. Excluding ex-officio, non-voting Participants, each public agency which has executed or hereafter executes this Agreement, and any addenda, amendments or supplement thereto, and which has not, pursuant to the provisions hereof, withdrawn or been terminated, shall be a Member of CVCC.

Article 6

Purposes and Powers

Section 6.1 Purpose. The purpose of this Agreement is to create a public agency to collectively monitor the Members' compliance with their responsibilities under the MSHCP, and to do all acts related or incidental thereto, either by CVCC alone or in cooperation with the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service and other entities, and to otherwise adopt, implement, manage and administer the MSHCP. Prior to formal adoption of the MSHCP and/or execution of the Implementing Agreement, CVCC shall assist in the processing of the MSHCP for adoption, related negotiations, environmental review, editing, drafting, planning, promoting or other administration required or related thereto.

Within the jurisdictional boundaries of each Member Agency, however, the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances, and the granting of land-use entitlements (collectively, "local land-use actions") are matters within the sole and absolute discretion of that Member Agency. Nothing herein shall be construed to require the approval of such local land-use actions by CVCC.

Section 6.2 General Powers. CVCC shall have the power to exercise any power common to all the Members as authorized by the Law and is hereby authorized to do all acts necessary for the exercise of these common powers, including, if adopted, any powers or authority implied or expressed in the MSHCP and Implementing Agreement, including, but not limited to, any of the following:

(a) To coordinate the finalization, adoption, implementation, management and administration of the MSHCP;

- (b) To make and enter into contracts, leases and other agreements;
- (c) To incur debt, liabilities or obligations;
- (d) To acquire, hold and dispose of property by purchase, lease, lease purchase or sale as necessary to the full exercise of its powers;
- (e) To lease, acquire, construct, manage, maintain and operate any buildings, works or improvements;
- (f) To sue and be sued in its own name;
- (g) To contract for the services of engineers, attorneys, planners, educators, scientists, technical specialists, financial consultants and, separate and apart therefrom, to employ such other agents, employees, consultants, advisors, independent contractors and other staff as it deems necessary;
- (h) To issue bonds, notes and other indebtednesses, and to enter into installment sale and installment purchase contracts, all as provided for in Section 11.9 (Issuance of Bonds, Notes and Other Indebtedness);
- (i) To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, the State of California or other public or private entities;
- (j) To receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;
- (k) To adopt rules, regulations, policies, bylaws and procedures governing the operation of CVCC;
- (l) To perform all acts necessary or proper to carry out fully the purposes of this Agreement;
- (m) To invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of CVCC, as CVCC determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to California Government Code Section 53601;
- (n) To the extent not hereinafter specially provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to the County of Riverside; and

(o) Notwithstanding the powers described in this Section 6.2, nothing in this Agreement shall limit the local land-use actions or powers granted to a Member under state law or charter and nothing in this Agreement shall be interpreted as a limitation on those local land-use actions or powers.

Section 6.3 Implementation of the MSHCP. CVCC shall provide guidance to Members on the implementation of the MSHCP and will provide opportunities for public participation in the decision-making process. Those duties shall include but are not limited to the following:

(a) Upon due consideration and approval, sign the Implementing Agreement and act as a Permittee under the Permit;

(b) Consistent with the terms of the MSHCP, hire, appoint, designate and/or contract with an Executive Director, Land Manager and Monitoring Program Administrator.

(c) Establish the Acquisition and Funding Coordinating Committee, the Reserve Management Oversight Committee, the Reserve Management Unit Committees and designate the Monitoring Program Administrator;

(d) Establish a Trails Management Subcommittee to the Reserve Management Unit Committee for the Santa Rosa and San Jacinto Mountains Conservation Area;

(e) Establish policies as appropriate under which the Acquisition and Funding Coordinating Committee will make recommendations to CVCC;

(f) Identify and make decisions on Local Permittee MSHCP Reserve System acquisitions where such decision is to be made by CVCC pursuant to the MSHCP;

(g) Ensure adequate management of locally managed Reserve Lands;

(h) Assist in the development of Reserve Management Unit Plans;

(i) Contract with outside entities for specific services, such as land management and law enforcement, as needed;

(j) Manage and coordinate the MSHCP local funding plan as set forth in the MSHCP;

(k) Develop and implement financing strategies to maximize funding sources;

(l) Develop an investment policy and review said policy on an annual basis;

(m) Adopt an annual budget, including but not limited to expenses associated with land acquisition, and the Monitoring Program, Management Program and Adaptive Management, consistent with the annual work plans for same;

- (n) Annually review development mitigation fee remittance for compliance and accuracy;
- (o) Prepare annual reports assessing the status of the Permittees' compliance with the MSHCP and hold public workshops to present the findings;
- (p) Conduct an annual rough step analysis to ensure the reserve system is being assembled, over time, in a configuration consistent with the MSHCP;
- (q) Act as custodian of records for information concerning MSHCP implementation;
- (r) Maintain a record of the amount of Take and habitat loss for each Local Permittee;
- (s) Maintain a record of the amount of Take Authorization to Participating Special Entities as set forth in the Implementing Agreement;
- (t) Grant Take Authorization to Participating Special Entities and others as set forth in the Implementing Agreement;
- (u) Acquire land and administer grant programs to non-profit organizations and Permittees to conserve lands that contribute to MSHCP Reserve Assembly;
- (v) Coordinate conservation easement agreements with landowners, seek grants and other funding sources to assist with acquisition, and coordinate with other state and federal acquisition programs in the Plan Area to ensure efficiency and consistency among acquisition programs; and
- (w) Hold regularly scheduled public meetings.

Article 7

Commission

Section 7.1 Governing Body. CVCC shall be governed by a Commission consisting of a Commissioner representing each Member Agency; except that each Supervisor's District of the County of Riverside shall be represented by a Commissioner. An alternate for each Commissioner may be appointed by the Represented Member Agency, which alternate shall meet the same qualifications as a Commissioner, except that an alternate for a County Supervisor may be any current member of the governing body of another member entity of the Coachella Valley Conservation Commission. An alternate appointed by any one County Supervisor may

not be from the same entity as an alternate appointed by any other County Supervisor. In the absence of the Commissioner, the alternate shall have the same authority and power as the Commissioner. Each Participant may also appoint a Commissioner and alternate. Excluding ex officio Participants, each Commissioner shall have the voting rights provided for in Section 7.13 (Voting). Ex officio Participants shall be non-voting members of the Commission. The Commission shall exercise all powers and conduct all business of CVCC, either directly or by delegation to other bodies or persons pursuant to this Agreement, the MSHCP and applicable law.

Section 7.2 Qualifications. Excluding ex officio Participants, each Commissioner shall be a current member of the governing body of the appointing Member Agency. Termination of office with the Represented Member Agency shall automatically terminate membership on the Commission. Except as to County Supervisors serving as Commissioners, each Commissioner (and alternate, including any alternate designated by the County) shall serve at the pleasure of the governing body of the appointing Member (or appointing Participant) and may be removed at any time, with or without cause, in the sole discretion of said Member's (or Participant's) governing body.

Section 7.3 Regular Commission Meetings. The Commission shall hold at least one regular annual meeting and shall provide for such other regular meetings as it deems necessary. Meetings of the Commission shall be held at such locations in the Coachella Valley and at such times as may be designated from time to time by the Commission.

Section 7.4 Special Meetings of the Commission. Subject to all noticing requirements of The Brown Act, special meetings of the Commission may be called by the Chair, to be held at such times and places within the Coachella Valley as may be ordered by the Chair. A majority of the Commissioners may also call a special meeting for any purpose.

Section 7.5 Quorum. Except as otherwise provided in this Agreement, CVCC shall act only upon a majority of a quorum of the Commission. A quorum of any meeting of Commissioners shall consist of a majority of the Commissioners then designated by and serving on behalf of the Members. Ex officio, non-voting Participants shall not be included when calculating the number of Commissioners necessary to constitute a quorum or the number of votes necessary to approve an action. In the event that a Member Agency has failed to designate a Commissioner, or a Member Agency's designated Commissioner has died, resigned, left office,

been terminated or is otherwise unwilling or unable to act as the designating Member Agency's representative, and a replacement Commissioner has not yet been designated, and there is no designated alternate, such that a Member Agency has no duly acting representative on the Commission, that Member Agency's vacant Commission seat shall not be included when calculating the number of Commissioners necessary to constitute a quorum or the number of votes necessary to approve an action. Except as otherwise provided in this Agreement, every act or decision made by a majority of the Commissioners present at a meeting duly held at which a quorum is present is the act of the Commission. In the absence of a quorum, any meeting of the Commissioners may be adjourned from time to time by a vote of the majority present, but no other business may be transacted except as provided for in this Section.

Section 7.6 Chair and Vice-Chair. The Commission shall annually elect from its membership a Chair and Vice-Chair to serve for a one-year term.

Section 7.7 Conduct of Meetings. The Chair or, in the absence of the Chair, the Vice-Chair, shall preside at all meetings of the Commissioners.

Section 7.8 Resignation of a Commissioner. Any Commissioner may resign effective on giving written notice to the Commission and the other Member Agencies, unless the notice specifies a later time for the effectiveness of such resignation. A successor shall be appointed by the Represented Member Agency as provided for in this Agreement.

Section 7.9 Vacancies on the Commission. A vacancy on the Commission shall exist (a) on the death or resignation of any Commissioner, (b) at the end of any Commissioner's term on the governing body of the Represented Member Agency, (c) whenever the number of Commissioners is increased, (d) upon termination by the Represented Member Agency, or (d) on the failure of the Member Agencies to appoint the full number of Commissioners authorized. A vacancy shall be filled only by the Represented Member Agency for whom a Commissioner is not then serving. Absent notice to the contrary from the Represented Member Agency, the alternate for the Represented Member Agency may continue to act in the place of the vacating Commissioner.

Section 7.10 Other Officers. The Executive Director of CVAG shall be the secretary of CVCC. Any officer, employee or agent of any Member of CVCC may also be an officer, employee, or agent of any of the Member Agencies. CVCC shall have the power to appoint such additional officers and to employ such employees and assistants as may be appropriate. Each

and all of said officers, employees and assistants shall serve at the pleasure of CVCC and shall perform such duties and shall have such powers as CVCC may, from time to time, determine. Any officer may resign at any time by giving written notice to the Secretary. Any such resignation shall be effective upon receipt of such notice or at any later time specified in the notice. Officers shall assume the duties of their offices immediately after their appointment and shall hold office until their successors are appointed, except in the case of their removal or resignation. Vacancies shall be filled by appointment of the Commissioners and such appointee shall hold office until the appointment of his or her successor.

Section 7.11 Minutes. The secretary of CVCC shall cause to be kept minutes of regular, adjourned regular and special meetings of the Commission. The Secretary shall cause a copy of all minutes, along with copies of all ordinances and resolutions, to be forwarded to each of the Parties hereto.

Section 7.12 Rules. A majority of Commissioners may adopt rules governing meetings if not inconsistent or in conflict with this Agreement. In the absence of rules adopted by the Commissioners, Roberts' Rules of Order, as they may be amended from time to time, shall govern the meetings of the Commission in so far as they are not inconsistent or in conflict with this Agreement or any CVCC bylaws.

Section 7.13 Voting. Except as otherwise provided by this Agreement, each Commissioner shall have one vote.

Section 7.14 Compensation. Commissioners shall serve without compensation from CVCC. For purposes of this Section, "compensation" does not include reimbursement of actual expenses or per diem.

Article 8

Committees

Section 8.1 Committees. From time to time, and in addition to the committees to be established pursuant to the MSHCP, the Commission may create by majority vote various other committees to carry on the business of CVCC.

Article 9
Conduct of Meetings

Section 9.1 Compliance with Brown Act. All meetings of the Commission and other CVCC committees, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with applicable provisions of the Ralph M. Brown Act, California Government Code Sections 54950, et seq.

Article 10
Employees

Section 10.1 CVCC Staff. CVCC may contract with CVAG for staff services, retain its own staff, or contract with another entity for services. Unless other employment is approved by the Commission, the CVCC Executive Director may utilize CVAG staff as may be necessary to accomplish the purposes of CVCC. CVAG staff time, as well as office expenses, direct and indirect overhead, shall be charged to CVCC utilizing direct billing and other accounting practices that provide for a clear separation of funds.

Section 10.2 Status. Where CVAG's or other Member Agency's staff are utilized to accomplish the purposes of CVCC, all of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members when performing their respective functions shall apply to them to the same degree and extent when engaged in the performance of any of the functions and other duties under this Agreement. However, no staff employed directly by CVCC, if any, shall be deemed, by reason of their employment by CVCC, to be employed by any of the Members or, by reason of their employment by CVCC, to be subject to any of the employment requirements of the Member Agencies.

Section 10.3 Legal Counsel. CVCC may appoint General Counsel who shall provide legal advice and perform such other duties as may be prescribed by the Commission. Counsel to one or more of the Members shall be eligible to serve as General Counsel to CVCC and such appointment shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with or

inimical to his or her duties as counsel to the Member Agency or Agencies, consistent with all applicable conflict-of-interest statutes and regulations.

Article 11

Financial Provisions

Section 11.1 Fiscal Year. The fiscal year of CVCC shall be from July 1 of each year to the succeeding June 30.

Section 11.2 Depository. The Treasurer shall be the depository and have custody of all money of CVCC from whatever source and shall perform the duties specified in Government Code Section 6505.5. All funds of CVCC shall be strictly and separately accounted for, and regular reports shall be rendered to the Commission and the Members of all receipts and disbursements at least quarterly during the fiscal year. The books and records of CVCC shall be open to inspection by a Member or Commissioner at all reasonable times upon reasonable notice. The Treasurer shall contract with an independent certified public accountant to make an annual audit of the accounts and records of CVCC, which shall be conducted, at a minimum, in accordance with the requirements of the State Controller under Section 26909 of the California Government Code, and shall conform to generally accepted auditing standards.

Section 11.3 Property Bonds. The Commission shall from time to time designate the officers and persons, in addition to the Treasurer, who shall have charge of, handle, or have access to any property of CVCC. Each such officer and person, including the Treasurer, shall file a bond in an amount designated by the Commission. When fixing the amount of such bonds, the Commission shall be deemed to be acting for and on behalf of the Represented Member Agencies in compliance with Government Code Section 6505.1

Section 11.4 Budget. As soon as practicable after the effective date of this Agreement, and thereafter at least thirty (30) days prior to the commencement of each fiscal year, the Executive Director shall present a proposed budget to the Commission for the forthcoming fiscal year. Prior to the commencement of the fiscal year, the Commission shall adopt a budget for the new fiscal year. No expenditures in excess of those provided for in the current, duly adopted budget shall be made without the approval of the Commission.

Section 11.5 Working Capital Account. A Working Capital account, which is to be used for the purpose of funding general overhead and administrative expenses for the ongoing operations of CVCC, shall be established by the Commission in an amount approved in connection with the annual budget process.

Section 11.6 Additional Funding. In the event that the Commission proposes to seek funding for a budget in excess of the funds available from the funding mechanisms set out in the Plan, an advance or grant may be requested from CVAG and/or any Member Agency. Should such request be declined, the Commission, by three-fourths vote of the Member Agencies, meaning an affirmative vote by three-fourths of the total number of Member Agencies, may levy an assessment on Member Agencies. Said vote shall include a determination as to the amount deemed necessary and the manner of apportionment. Thus, notwithstanding the fact that the County shall be represented by five Commissioners, the County shall have only one vote on issues of assessments or apportionment thereof.

The determination as to the apportionment of an assessment shall be fair and reasonable given the purpose for which the assessment is required and the degree to which each Member is affected and/or benefited by the contemplated expenditure. A Member Agency unable to immediately fund an assessment shall be permitted to pay an assessment in installments. Subject only to the arbitration rights set out at Section 11.7, the determination of the assessment to be paid by each Member and the due date shall be final, binding and enforceable as a term of this Agreement.

Nothing in this Agreement shall be construed by the Parties to require the expenditure of any money from the general funds of a Party unless expressly authorized by the appropriate governing body of that Party.

Section 11.7 Arbitration. Notwithstanding any other provision herein, the Parties agree as follows: Any determination with respect to an assessment levied pursuant to Section 11.6, 13.4 or 15.3 shall be subject to binding arbitration at the request of any Party to which liability is assigned; provided, however, that the request for arbitration shall be made within ninety days of the date that the Commission votes to impose the assessment. If the Parties cannot agree on the method of arbitration and selection of the arbitrator within ninety days of notice of the request for arbitration, the arbitration shall be administered by JAMS, or its successor, pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator shall exercise his or her

independent judgment as to whether or not the Commission has abused its discretion when it determined the manner of apportionment of an assessment. The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. Judgment on the arbitration award may be entered in any court having jurisdiction.

Section 11.8 [Reserved.]

Section 11.9 Issuance of Bonds, Notes and Other Indebtedness. CVCC may issue bonds, notes or other forms of indebtedness if such issuance is approved by two-thirds (2/3) vote of the Commission.

Section 11.10 Disbursements. The Executive Director shall request warrants from the Treasurer in accordance with budgets approved by the Commission subject to quarterly review by the Commission. The Treasurer shall pay such claims or disbursements and such requisition for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Commission.

Section 11.11 Accounts. All funds will be placed in accounts and the receipt, transfer or disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Government Code Section 6505 et seq. and any other applicable laws. All revenues and expenditures shall be reported to the Commission.

Section 11.12 Expenditures Within Approved Annual Budget. All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of the Commission.

Article 12

Relationship of CVCC and Its Members

Section 12.1 Separate Entity. CVCC shall be a public entity separate from the Parties to this Agreement and the debts, liabilities and obligations of CVCC shall not be the debts, liabilities or obligations of the Members. No Member shall be jointly or severally liable for any debt or obligation of CVCC or any of its Members. Specifically, nothing herein is intended to give rise to any right in any third party to enforce an obligation set out herein of one Party to

another Party to this Agreement. All property, equipment, supplies, funds and records of CVCC shall be owned by CVCC, except as otherwise provided in this Agreement.

Article 13

Admission and Withdrawal of Parties

Section 13.1 Admission of New Parties. To the extent that the Plan Area falls within an agency's jurisdictional boundaries, any public agency identified in the first paragraph of this Agreement, which public agency did not execute the Agreement when it previously went into effect, shall subsequently be admitted as a Member upon request by that public agency's legislative body and without further approval of the then existing Member Agencies. The admission of said new Member shall be evidenced by the execution of a written addendum to this Agreement signed by the new Member. Additional public entities not identified in the first paragraph of this Agreement may become Members of CVCC upon such terms and conditions as provided in the MSHCP. Admission of such additional public entities shall be evidenced by the execution of a written addendum to this Agreement signed by all the Parties including the new Parties

Section 13.2 Withdrawal of Membership.

(a) Prior to Permit Issuance. A Member may withdraw from CVCC at any time prior to the issuance of a Permit pursuant to the MSHCP, and notwithstanding any other provision herein, that Member shall have no continuing liability for any assessments levied by CVCC after the effective date specified in the notice of withdrawal.

(b) After Permit Issuance. After Permit issuance a Member may withdraw by delivering written notice to the Commission's secretary that the Member's legislative body has approved withdrawal and such withdrawal shall be effective 90 days thereafter. Withdrawal after Permit issuance shall not relieve the Member of its proportionate share of any debt or other liability of CVCC that accrued prior to the effective date of the Member's withdrawal, provided notice of the potential liability was given by CVCC to the Member prior to or within the first four years of said Member's withdrawal from the CVCC. Withdrawal shall result in the forfeiture of that Member's rights and claims relating to the distribution of property and funds

upon termination of CVCC as set forth in Section 13.3 (Disposition of Property Upon Termination).

Section 13.3 Disposition of Property Upon Termination. In the event of the termination of this Agreement, any property interest remaining in CVCC following the discharge of all obligations shall be disposed of as the Commission shall determine with the objective of returning to each Member a proportionate return on the contributions made by each, less previous returns if any.

Section 13.4 Continuing Liability. Notwithstanding a withdrawal of membership, a past Member Agency shall be responsible to CVCC for its proportionate share, as determined and approved by a 3/4 vote of the Member Agencies, of any liability of the CVCC Accruing during the withdrawn Member's period of participation in CVCC, provided notice of the potential liability was given by CVCC to the Member prior to or within the first four years of said Member's withdrawal from the CVCC. The determination as to the apportionment of such an assessment shall be fair and reasonable given the purpose for which the assessment is required and the degree to which each Member is affected and/or benefited by the contemplated expenditure. The Members acknowledge that, given the possible variables, determination of a proper apportionment may be difficult. Therefore, subject only to arbitration rights set out at Section 11.7, the Members agree that the Commission's good faith determination of a fair apportionment shall be final, binding and enforceable as a term of this Agreement. Any such assessment shall be paid to CVCC within thirty (30) days of billing by CVCC.

Article 14

Provision for Bylaws

Section 14.1. Bylaws. As soon as practicable after the first meeting of the Commission, the Commission shall cause to be developed bylaws to govern the day-to-day operation of CVCC.

Article 15

Contribution and Indemnity Among Members

Section 15.1 No Third Party Beneficiaries. This Article shall reflect the Parties' rights and obligations as by and among themselves. Nothing herein shall create any right in any third party to enforce any right or obligation set out in this Agreement as against any Party hereto.

Section 15.2 Hold Harmless and Indemnity. Subject to the provisions of Section 15.3 and provided that a Party has acted in good faith and in accordance with this Agreement, the MSHCP, the Implementing Agreement and the Permit, CVCC shall defend with counsel acceptable to said Party, indemnify and hold such Party free and harmless from any loss, liability or damage incurred or suffered by such Party by reason of litigation arising from or as a result of any of the following: the Party's development mitigation fee ordinance; the Party's participation in CVCC; action taken to approve and/or implement the MSHCP; claims of inverse condemnation or unconstitutional takings against a Party as a result of or related to its participation in the MSHCP; or any other act performed or to be performed by the Party pursuant to this Agreement, the MSHCP, the Implementing Agreement or the Permit; provided, however that such indemnification or agreement to hold harmless pursuant to this section shall be recoverable only out of CVCC assets and not from other Parties. To the extent CVCC's assets are insufficient to satisfy its obligations under this Section, any member Agency forced to expend its own funds to satisfy what would otherwise be CVCC's obligations shall be entitled to reimbursement from CVCC.

Section 15.3 Limitations on Liability. CVCC shall be authorized to defend, indemnify and hold harmless any Commissioner, officer, agent or employee for actions taken or not taken within the scope of authority given or granted by CVCC and from and against any claim or suit arising out of any act or omission of CVCC, the Commission or any Commissioner, officer, agent or employee in connection with this Agreement and may purchase insurance as the Commission may deem appropriate for this purpose.

The Parties acknowledge that Section 895.2 of the California Government Code provides that a Member is jointly and severally liable for the torts of the joint powers agency, but that Sections 895.4 and 895.6 of that Code allow the members of a joint powers agency to contractually agree to indemnity and contribution provisions that allow such liability to be

apportioned among the members based on their respective degree of fault giving rise to the liability. The Parties further acknowledge that they have agreed at Section 15.2 above to indemnify and defend those Member agencies against loss, liability or damage suffered by a Member Agency individually as a result of that Agency's good faith acts taken pursuant to this Agreement or the MSHCP. Now, therefore, in contemplation of such authority, the Parties agree that, as among themselves, each shall assume that portion of the liability imposed upon CVCC or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement that is not covered by insurance, that is determined by the Commission to be that Member's proportionate share Accruing during the Member's period of participation in CVCC. Said determination shall be by three-fourths vote of the Member Agencies, meaning an affirmative vote of three-fourths of the total number of Member Agencies. The Members acknowledge that, given the possible variables, determination of a proper apportionment may be difficult. Therefore, subject only to arbitration rights set out at Section 11.7, the Members agree that the Commission's good faith determination of a fair apportionment shall be final, binding and enforceable as a term of this Agreement. Each Member shall to the extent provided herein indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Section 895.2.

Article 16

Miscellaneous Provisions

Section 16.1 Notices. Notices to Members hereunder shall be sufficient if delivered to the principal office of the respective Member.

Section 16.2 Amendments. This Agreement may be amended or terminated, provided such amendment or termination is consistent with the provisions of the MSHCP and has been approved by each Member. The vote, assent or approval of each Member shall be evidenced by a certified copy of a resolution, minute order or similar writing of the governing body of the Member Agency, filed with CVCC.

Section 16.3 Prohibition Against Assignment. No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share, interest, fund, or asset of

CVCC. This Agreement shall be binding upon, and shall inure to, the benefit of the successors of each Party.

Section 16.4 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

Section 16.5 Severability. If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to 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, sections, 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.

Section 16.6 Multiple Originals. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 16.7 Execution. The governing legislative body of each Member has each authorized execution of this Agreement, as evidenced by the authorized signatures below.

CITY OF CATHEDRAL CITY



Mayor Kathleen J. De Rosa
City of Cathedral City

DATE 7/9/14

CITY OF COACHELLA

Mayor Eduardo Garcia
City of Coachella

DATE _____

CVCC. This Agreement shall be binding upon, and shall inure to, the benefit of the successors of each Party.

Section 16.4 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

Section 16.5 Severability. If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to 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, sections, 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.

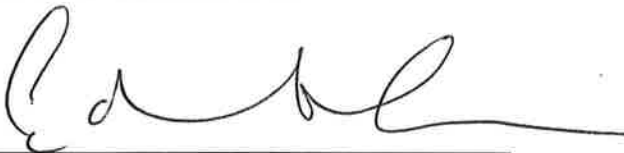
Section 16.6 Multiple Originals. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 16.7 Execution. The governing legislative body of each Member has each authorized execution of this Agreement, as evidenced by the authorized signatures below.

CITY OF CATHEDRAL CITY

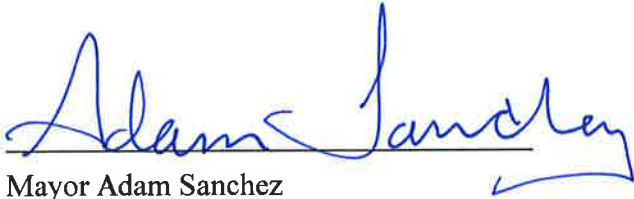
DATE _____
Mayor Kathleen De Rosa
City of Cathedral City

CITY OF COACHELLA



DATE 12/1/2014
Mayor Eduardo Garcia
City of Coachella

CITY OF DESERT HOT SPRINGS



Mayor Adam Sanchez
City of Desert Hot Springs

DATE 1/13/15

CITY OF INDIAN WELLS

Mayor Ted Mertens
City of Indian Wells

DATE _____

CITY OF INDIO

Mayor Mike Wilson
City of Indio

DATE _____

CITY OF LA QUINTA

Mayor Don Adolph
City of La Quinta


DATE _____

CITY OF DESERT HOT SPRINGS

Mayor Adam Sanchez
City of Desert Hot Springs

DATE _____

CITY OF INDIAN WELLS



Mayor Ted Mertens
City of Indian Wells

DATE 6-19-14

CITY OF INDIO

Mayor Mike Wilson
City of Indio

DATE _____

CITY OF LA QUINTA

Mayor Don Adolph
City of La Quinta

DATE _____

CITY OF DESERT HOT SPRINGS

Mayor Adam Sanchez
City of Desert Hot Springs


DATE _____

CITY OF INDIAN WELLS

Mayor Ted Mertens
City of Indian Wells

DATE _____

CITY OF INDIO



Mayor Mike Wilson
City of Indio

DATE 6/19/14

CITY OF LA QUINTA

Mayor Don Adolph
City of La Quinta

DATE _____

CITY OF DESERT HOT SPRINGS

Mayor Adam Sanchez
City of Desert Hot Springs

DATE _____

CITY OF INDIAN WELLS

Mayor Ted Mertens
City of Indian Wells

DATE _____

CITY OF INDIO

Mayor Mike Wilson
City of Indio

DATE _____

CITY OF LA QUINTA



Frank J. Spevacek, City Manager
City of La Quinta, California

DATE 23 June 2014

CVCC. This Agreement shall be binding upon, and shall inure to, the benefit of the successors of each Party.

Section 16.4 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Parties. There are no oral understandings or agreements not set forth in writing herein.

Section 16.5 Severability. If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to 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, sections, 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.

Section 16.6 Multiple Originals. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 16.7 Execution. The governing legislative body of each Member has each authorized execution of this Agreement, as evidenced by the authorized signatures below.

CITY OF CATHEDRAL CITY

Mayor Kathleen De Rosa
City of Cathedral City

DATE _____

CITY OF COACHELLA

Mayor Eduardo Garcia
City of Coachella

DATE _____

CITY OF LA QUINTA

Mayor Don Adolph
City of La Quinta

DATE _____

CITY OF PALM DESERT



Mayor Van G. Tanner
City of Palm Desert

DATE June 26, 2014

CITY OF RANCHO MIRAGE

Mayor Iris Smotrich
City of Rancho Mirage

DATE _____

CITY OF PALM SPRINGS

Mayor Steve Pougnet
City of Palm Springs

DATE _____

CITY OF PALM DESERT

DATE _____
Mayor Van Tanner
City of Palm Desert

CITY OF RANCHO MIRAGE

DATE _____
Mayor Iris Smotrich
City of Rancho Mirage

ATTEST:

James Thompson
City Clerk

CITY OF PALM SPRINGS

APPROVED BY CITY COUNCIL

Res 23600 7-2-14 AS204

Steph P. Pougnet EP
Mayor Stephen P. Pougnet
City of Palm Springs

DATE 9-17-14

John P. Slaw
City Attorney
8/20/2014

COUNTY OF RIVERSIDE

DATE _____
Jeff Stone, Chair
Board of Supervisors
County of Riverside

CITY OF PALM DESERT

Mayor Van Tanner
City of Palm Desert

DATE _____

CITY OF RANCHO MIRAGE



Mayor Iris Smotrich
City of Rancho Mirage

DATE 6-6-2014

CITY OF PALM SPRINGS

Mayor Steve Pougnet
City of Palm Springs

DATE _____

COUNTY OF RIVERSIDE

Jeff Stone, Chair
Board of Supervisors
County of Riverside

DATE _____

CITY OF RANCHO MIRAGE

Mayor Iris Smotrich
City of Rancho Mirage


DATE _____

CITY OF PALM SPRINGS

Mayor Steve Pougnet
City of Palm Springs

DATE _____

COUNTY OF RIVERSIDE



Jeff Stone, Chair
Board of Supervisors
County of Riverside

DATE 7/29/14

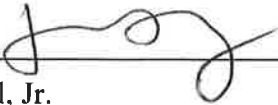
ATTEST:
KECIA HARPER-IHEM, Clerk
By  DEPUTY

COACHELLA VALLEY WATER DISTRICT

John Powell, Jr.
Board President
Coachella Valley Water District
Coachella, California

DATE _____

COACHELLA VALLEY WATER DISTRICT



John Powell, Jr.
Board President
Coachella Valley Water District
Coachella, California

DATE 6-24-14

IMPERIAL IRRIGATION DISTRICT

James C. Hanks
Board President
Imperial Irrigation District
Imperial, California

DATE _____

MISSION SPRINGS WATER DISTRICT

Russ Martin
Board President
Mission Springs Water District
Desert Hot Springs, California


DATE _____

COACHELLA VALLEY WATER DISTRICT

DATE _____

John Powell, Jr.
Board President
Coachella Valley Water District
Coachella, California

IMPERIAL IRRIGATION DISTRICT



DATE 6-24-14

Steve Benson
Board Vice President
Imperial Irrigation District
Imperial, California

MISSION SPRINGS WATER DISTRICT

DATE _____

Russ Martin
Board President
Mission Springs Water District
Desert Hot Springs, California

COACHELLA VALLEY WATER DISTRICT

John Powell, Jr.
Board President
Coachella Valley Water District
Coachella, California


DATE _____

IMPERIAL IRRIGATION DISTRICT

James C. Hanks
Board President
Imperial Irrigation District
Imperial, California

DATE _____

MISSION SPRINGS WATER DISTRICT



Russ Martin
Board President
Mission Springs Water District
Desert Hot Springs, California

DATE 7-2-14

ATTACHMENT - 3

IMPLEMENTING AGREEMENT

for the

**COACHELLA VALLEY
MULTIPLE SPECIES HABITAT CONSERVATION PLAN/
NATURAL COMMUNITY CONSERVATION PLAN**

by and between

**COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS,
COACHELLA VALLEY CONSERVATION COMMISSION, COUNTY OF
RIVERSIDE, RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, RIVERSIDE COUNTY WASTE RESOURCES
MANAGEMENT DISTRICT, RIVERSIDE COUNTY REGIONAL PARKS
AND OPEN SPACE DISTRICT, CITY OF CATHEDRAL CITY, CITY OF
COACHELLA, CITY OF DESERT HOT SPRINGS, CITY OF INDIAN
WELLS, CITY OF INDIO, CITY OF LA QUINTA, CITY OF PALM DESERT,
CITY OF PALM SPRINGS, CITY OF RANCHO MIRAGE, COACHELLA
VALLEY WATER DISTRICT, IMPERIAL IRRIGATION DISTRICT,
MISSION SPRINGS WATER DISTRICT, COACHELLA VALLEY
MOUNTAINS CONSERVANCY, CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE, CALIFORNIA DEPARTMENT OF TRANSPORTATION,
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, AND
UNITED STATES FISH AND WILDLIFE SERVICE**

TABLE OF CONTENTS

	<u>Page(s)</u>
1 PARTIES	1
2 DEFINED TERMS	1
2.1 Acceptable Biologist.....	1
2.2 Acquisition and Funding Coordinating Committee.....	1
2.3 Adaptive Management	1
2.4 Additional Conservation Lands	1
2.5 Allowable Uses	1
2.6 Annual Report(s).....	1
2.7 Area Plan.....	2
2.8 Biological Corridor	2
2.9 California Department of Fish and Wildlife (“CDFW”)	2
2.10 California Department of Parks and Recreation (“State Parks”).....	2
2.11 California Department of Transportation (“Caltrans”).....	2
2.12 California Endangered Species Act (“CESA”).....	2
2.13 California Environmental Quality Act (“CEQA”).....	2
2.14 Candidate Species	2
2.15 Certificate of Inclusion	2
2.16 Changed Circumstances.....	2
2.17 Cities	2
2.18 Coachella Valley Association of Governments (“CVAG”).....	2
2.19 Coachella Valley Conservation Commission (“CVCC”)	3

2.20	Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (“CVFTL HCP”)	3
2.21	Coachella Valley Mountains Conservancy (“CVMC”).....	3
2.22	Complementary Conservation	3
2.23	Conservation	3
2.24	Conservation Areas.....	3
2.25	Conservation Goal(s)	3
2.26	Conservation Level	3
2.27	Conservation Objective(s)	3
2.28	Conservation Strategy.....	3
2.29	Conserved Habitat.....	3
2.30	Core Habitat.....	4
2.31	County.....	4
2.32	County Flood Control	4
2.33	County Parks.....	4
2.34	County Waste.....	4
2.35	Covered Activities	4
2.36	Covered Species.....	4
2.37	Critical Habitat.....	4
2.38	Development.....	4
2.39	Discretionary Project	4
2.40	Effective Date	4
2.41	Emergency	4
2.42	Endangered Species	5

2.43	Essential Ecological Processes	5
2.44	Essential Habitat	5
2.45	Existing Conservation Lands	5
2.46	Existing Uses	5
2.47	Feasible	5
2.48	Federal Endangered Species Act (“FESA”)	5
2.49	Habitat.....	5
2.50	HabiTrak	5
2.51	Implementing Agreement (“IA”).....	5
2.52	Independent Science Advisors (“ISA”).....	5
2.53	Joint Project Review Process	5
2.54	Land Manager	5
2.55	Land Use Adjacency Guidelines.....	6
2.56	Legal Instrument	6
2.57	Linkage	6
2.58	Listed Species	6
2.59	Local Development Mitigation Fee	6
2.60	Local Permittees.....	6
2.61	Major Amendments	6
2.62	Management Program	6
2.63	Migratory Bird Treaty Act (“MBTA”)	6
2.64	Migratory Bird Treaty Act (“MBTA”) Special Purpose Purpose Permit.....	6

2.65	Minor Amendments	6
2.66	Mitigation Lands	6
2.67	Monitoring Program	7
2.68	Monitoring Program Administrator (“MPA”)	7
2.69	Monitoring Report(s)	7
2.70	MSHCP	7
2.71	MSHCP Reserve System	7
2.72	NCCP Act	7
2.73	NCCP Permit	7
2.74	NEPA	7
2.75	Non-Listed Species	7
2.76	No Surprises Assurances	7
2.77	Operation and Maintenance Activities (“O&M”)	7
2.78	Other Conserved Habitat	7
2.79	Participating Special Entity	8
2.80	Party and Parties	8
2.81	Permit(s)	8
2.82	Permittees	8
2.83	Plan	8
2.84	Plan Area	8
2.85	Planning Agreement	8
2.86	Plan Participants	8
2.87	Private Conservation Land	8

2.88	Reserve Lands	8
2.89	Reserve Management Oversight Committee (“RMOC”)	8
2.90	Reserve Management Unit (“RMU”)	8
2.91	Reserve Management Unit Plan (“RMUP”)	9
2.92	Reserve System	9
2.93	Reserve System Assembly	9
2.94	Rough Step	9
2.95	Rough Step Analysis Unit	9
2.96	Scientific Advisory Committee (“SAC”)	9
2.97	Section 10(a) Permit	9
2.98	Special Provisions Area	9
2.99	Species Conservation Goal(s)	9
2.100	State Assurances	9
2.101	State Permittees	9
2.102	Take	9
2.103	Take Authorization	9
2.104	Third Party Take Authorization	9
2.105	Threatened Species	10
2.106	Unforeseen Circumstances	10
2.107	United States Fish and Wildlife Service (“USFWS”)	10
2.108	Wildlife Agencies	10
3	RECITALS	10
4	PURPOSES	12

5	INCORPORATION OF THE MSHCP	13
6	CONSERVATION STRATEGY	13
7	MSHCP RESERVE SYSTEM ASSEMBLY	14
	7.1 Overview	14
	7.2 Contribution of Existing Conservation Lands	14
	7.3 Complementary Conservation	15
	7.4 Contribution of Additional Conservation Lands.....	15
	7.5 Review of Development Proposals in Conservation Areas	15
	7.6 Reserve Assembly Accounting	15
8	MSHCP RESERVE SYSTEM MANAGEMENT REQUIREMENTS.....	16
	8.1 Overview	16
	8.2 Management Activities	16
	8.3 Management Program	16
9.0	MSHCP RESERVE SYSTEM MONITORING REQUIREMENTS.....	16
	9.1 Monitoring Program.....	16
	9.2 Monitoring Program Administrator	16
	9.3 Monitoring Reporting Requirements	16
10	REPORTING REQUIREMENTS	16
	10.1 Annual Reporting	16
	10.2 Certificate of Reports.....	17
11	MSHCP IMPLEMENTATION STRUCTURE	18
	11.1 Permittee Implementation Mechanisms.....	18
	11.1.1 The Cities	18

11.1.2	The County.....	19
11.1.3	County Flood Control	19
11.1.4	County Parks.....	19
11.1.5	County Waste.....	19
11.1.6	CVCC.....	19
11.1.7	CVAG	19
11.1.8	CVMC.....	19
11.1.9	Caltrans	20
11.1.10	State Parks.....	20
11.1.11	CVWD	20
11.1.12	IID.....	20
11.1.13	MSWD.....	24
11.2	Organizational Structure	20
11.2.1	Overview.....	20
11.2.2	CVCC Organization.....	20
	A. Overview.....	20
	B. Duties and Responsibilities.....	20
11.2.3	Acquisition and Funding Coordinating Committee.....	20
11.2.4	Joint Project Review Process.....	21
11.2.5	CVCC Executive Director	21
	A. Selection.....	21
	B. Duties and Responsibilities.....	21
11.2.6	Reserve Management Oversight Committee	21

A.	Formation and Representation	21
B.	Duties and Responsibilities	21
11.2.7	Reserve Management Unit Committees	22
11.2.8	Land Manager	22
11.2.9	Monitoring Program Administrator	22
11.2.10	MSHCP Reserve Management Unit Plan	22
11.3	Changed Circumstances	22
11.3.1	General Terms	22
11.3.2	Permittees-Initiated Response to Changed Circumstances	23
11.3.3	Wildlife Agency-Initiated Response to Changed Circumstances	23
11.3.4	Condemnation of Lands Providing Conservation Benefits	23
11.3.5	New Listings of Species Not Covered by the MSHCP	23
11.4	Annexation and Deannexation of Lands	24
11.5	Incorporation of New Cities within MSHCP Boundaries	24
11.6	Growth-Inducing Effects	25
11.7	Participating Special Entity	25
11.7.1	Take Authorization for Participating Special Entities	25
11.7.2	Grant of Take Authorization to Participating Special Entity	25
11.7.3	Requirements for Participating Special Entities	26
12	FUNDING OF THE MSHCP	26
12.1	Local Obligations	26
12.1.1	Local Permittee Additional Conservation Lands Obligations	26
12.1.2	Administration Costs	27

12.1.3	Local Permittee Monitoring and Management Obligations.....	27
12.2	Local Funding Sources	27
12.2.1	Local Development Mitigation Fees.....	27
12.2.2	Transportation and Other Regional Infrastructure Project Contributions.....	27
12.2.3	Landfill Tipping Fees.....	28
12.2.4	Eagle Mountain Landfill Environmental Mitigation Trust Fund.	28
12.2.5	Additional Funding	28
12.3	Annual Evaluation of Funding.....	28
13	PERMITTEES' TAKE AUTHORIZATION AND OBLIGATIONS	28
13.1	Permittees' Take Authorization.....	28
13.2	County and Cities Obligations	28
13.3	CVCC Obligations.....	30
13.4	CVAG Obligations.....	31
13.5	County Flood Control Obligations	31
13.6	County Parks Obligations	32
13.7	County Waste Obligations	33
13.8	CVWD Obligations.....	33
13.9	IID Obligations	34
13.10	Caltrans Obligations.....	35
13.11	State Parks Obligations.....	36
13.12	CVMC Obligations	36
13.13	MSWD Obligations	42

14	USFWS OBLIGATIONS AND ASSURANCES.....	37
14.1	Take Authorization for Covered Activities.....	37
14.2	USFWS Findings - Covered Species	37
14.3	Section 10(a) Permit Coverage.....	37
14.4	Implementation Assistance	37
14.5	Assurances Regarding MSHCP	38
14.6	Take Authorization for Newly Regulated Covered Species; Savings Provision	38
14.7	Changes in the Environmental Laws	38
14.8	Section 7 Consultations.....	38
14.9	Critical Habitat Designation for Covered Species	39
14.10	Future Recovery Plans	39
14.11	No Surprises Assurances and Unforeseen Circumstances.....	40
	14.11.1 No Surprises Assurances.....	40
14.12	Migratory Bird Treaty Act.....	41
14.13	Management of Land	41
15	CDFW OBLIGATIONS AND ASSURANCES	42
15.1	Issuance of NCCP Permit.	42
15.2	NCCP Permit Findings	42
15.3	State Assurances.	42
15.4	Implementation Assistance.	43
15.5	Fully Protected Species.....	43
15.6	Changes in the Environmental Laws	43

15.7	Consultations by CDFW	43
15.8	Management of Land	44
16	RELATIONSHIP TO OTHER EXISTING HABITAT CONSERVATION PLANS, NCCP PERMITS AND SECTION 2081 PERMITS	44
16.1	General.....	44
16.2	Coachella Valley Fringe-Toed Lizard Take Authorization.....	44
17	THIRD PARTY TAKE AUTHORIZATION	44
17.1	Authorization.....	44
17.2	Timing of Take Authorization.....	45
17.3	Effect of MSHCP Amendments on Third Parties.....	45
17.4	Effect of Revocation or Suspension of Permits on Third Parties.....	45
17.5	Effect of No Surprises Assurances on Third Parties.....	46
17.6	Retention of Enforcement Authority Over Third Parties.....	46
18	COOPERATIVE EFFORT	46
19	TERM	46
19.1	Effective Date.....	46
19.2	Term of the Agreement.....	46
19.3	Term of the Permits.....	46
19.4	Extension of the Permit.....	47
19.5	Permanent Preservation.....	47
20	MODIFICATIONS AND AMENDMENTS TO THE MSHCP	47
20.1	Clerical Changes.....	47
20.2	Land Use Changes.....	47
20.3	Adaptive Management Changes.....	47

20.4	Minor Amendments	47
	20.4.1 List of Minor Amendments.....	48
	20.4.2 Minor Amendments not Requiring Wildlife Agencies Concurrence	48
	20.4.3 Minor Amendments Requiring Wildlife Agencies Concurrence.....	49
	20.4.4 Procedure	49
20.5	Major Amendments	50
	20.5.1 List of Major Amendments.....	50
	20.5.2 Procedure	50
20.6	Like Exchanges in Conservation Areas	51
21	TERMINATION OF PERMITS.....	51
	21.1 Termination in General.....	51
	21.2 Continuing Obligations.....	51
	21.3 Final Accounting.....	51
	21.4 Dissolution of the CVCC.....	52
22	WITHDRAWAL OF PERMITTEE(S).....	52
	22.1 Withdrawal in General.....	52
	22.2 Mitigation Responsibilities.....	52
	22.3 Termination of Permittee Take Authorization.....	52
	22.4 Evaluation of Remaining Permits.....	52
23	REMEDIES AND ENFORCEMENT	53
	23.1 Remedies in General.....	53
	23.1.1 No Monetary Damages.....	53

23.2	Default.....	53
	23.2.1 Notice and Opportunity to Cure Default.....	53
23.3	Injunctive and Temporary Relief.....	54
23.4	Limitation and Extent of Enforceability.....	54
23.5	Revocation or Suspension of the Permits.....	54
23.6	Informal Meet and Confer Process for Disputes Concerning Covered Activities, State Streambed Alteration Agreements, Federal 404 Permits, and ESA Section 7 Consistency Consultation.....	55
23.7	Continuation Of Take Authorization after Revocation, Suspension or Permittee Withdrawal.....	56
24	FORCE MAJEURE.....	56
25	LEGAL AUTHORITY OF THE USFWS.....	57
26	LEGAL AUTHORITY OF THE CDFW.....	57
27	MISCELLANEOUS PROVISIONS.....	57
	27.1 Response Times.....	57
	27.2 No Partnership.....	57
	27.3 Nullification of Agreement.....	57
	27.4 Notices.....	57
	27.5 Entire Agreement.....	63
	27.6 Assignment or Transfer.....	64
	27.7 Defense.....	64
	27.8 Attorneys' Fees.....	64
	27.9 Elected Officials Not to Benefit.....	64
	27.10 Availability of Funds.....	64

27.11	Governing Law.	65
27.12	Duplicate Originals.	65
27.13	Relationship to the FESA, CESA, NCCP Act and Other Authorities.	65
27.14	No Third Party Beneficiaries.	65
27.15	References to Regulations.....	65
27.16	Applicable Laws.	65
27.17	Severability	65
27.18	Headings	65
27.19	Due Authorization.....	66
27.20	Faxed Signatures.....	66
27.21	Calculation of Dates and Dates of Performance.....	66
27.22	Further Instruments.....	66

1. PARTIES

This Implementing Agreement ("Agreement"), made and entered into as of this ___ day of _____, 2007, by and among the Coachella Valley Association of Governments, Coachella Valley Conservation Commission, County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Regional Parks and Open Space District, Riverside County Waste Resources Management District, City of Cathedral City, City of Coachella, City of Desert Hot Springs, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of Palm Springs, City of Rancho Mirage, Coachella Valley Water District, Imperial Irrigation District, Mission Springs Water District, Coachella Valley Mountains Conservancy, California Department of Transportation, California Department of Parks and Recreation (together with their successors and assigns collectively, the "Permittees"), California Department of Fish and Wildlife and United States Fish and Wildlife Service (collectively, the "Parties"), defines the Parties' roles and responsibilities and provides a common understanding of the actions that will be undertaken to implement the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP" or "Plan"). The United States Fish and Wildlife Service and the California Department of Fish and Wildlife may be referred to collectively herein as the "Wildlife Agencies."

2. DEFINED TERMS

Terms used in this Agreement and specifically defined in the Federal Endangered Species Act, California Endangered Species Act, the California Natural Community Conservation Planning Act or the MSHCP shall have the same meaning when utilized in this Agreement, unless this Agreement expressly provides otherwise.

The following terms used in this Agreement shall have the meanings set forth below:

2.1 "Acceptable Biologist" means a biologist whose name is on a list maintained by CVCC of biologists who are acceptable to CVCC, CDFW, and USFWS for purposes of conducting surveys of Covered Species.

2.2 "Acquisition and Funding Coordinating Committee" means a committee formed by the CVCC that provides input on local funding priorities and Additional Conservation Land acquisitions.

2.3 "Adaptive Management" means to use the results of new information gathered through the monitoring program of the Plan and from other sources to adjust management strategies and practices to assist in providing for the Conservation of Covered Species.

2.4 "Additional Conservation Lands" means Conserved Habitat that will contribute to Reserve System Assembly as described in Section 4.2.2 of the MSHCP.

2.5 "Allowable Uses" means uses allowed within the MSHCP Reserve System, as defined in Section 7.3.2 of the MSHCP.

2.6 "Annual Report(s)" means the report(s) prepared pursuant to the requirements of Section 6.4 of the MSHCP.

2.7 "Area Plan" means a community planning area defined in the County of Riverside General Plan. Four County of Riverside Area Plans are located within the MSHCP Plan Area.

2.8 "Biological Corridor" means the wildlife movement area that is constrained by existing development, freeways, or other impediments. [See also "Linkage"]

2.9 "California Department of Fish and Wildlife ("CDFW") means a department of the California Resources Agency.

2.10 "California Department of Parks and Recreation ("State Parks")" means a department of the California Resource Agency.

2.11 "California Department of Transportation ("Caltrans")" means a department of the California Business, Transportation, and Housing Agency.

2.12 "California Endangered Species Act ("CESA") means California Fish and Wildlife Code, Section 2050 et seq. and all rules, regulations and guidelines promulgated there under, as amended.

2.13 "California Environmental Quality Act ("CEQA")" means the California Public Resources Code, Section 21000 et seq. and all guidelines promulgated there under, as amended. For the MSHCP, CVAG shall be the Lead Agency under CEQA, as defined under state CEQA Guidelines Section 15367.

2.14 "Candidate Species" means both (1) a species formally noticed by the California Fish and Wildlife Commission as under review for listing as threatened or endangered, or a species for which the Fish and Wildlife Commission has published a notice of proposed regulation to add a species as threatened or endangered, and (2) a species which the USFWS has identified as being a candidate for listing, but for which development of a listing regulation is precluded by other higher priority listing activities.

2.15 "Certificate of Inclusion" means the document attached as Exhibit "H" to this Agreement that would be required to be executed prior to a Participating Special Entity receiving Take Authorization pursuant to Section 11.7 of this Agreement or for other Covered Activities, as appropriate.

2.16 "Changed Circumstances" means changes in circumstances affecting a Covered Species or geographic area covered by the MSHCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the MSHCP. Changed Circumstances and the planned responses to those circumstances are more particularly described in Section 6.8.3 of the MSHCP. Changed Circumstances do not include Unforeseen Circumstances.

2.17 "Cities" means the cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage, collectively.

2.18 "Coachella Valley Association of Governments ("CVAG")" means a joint powers authority that functioned as Lead Agency for the preparation of the MSHCP.

2.19 "Coachella Valley Conservation Commission ("CVCC")" means a joint powers authority formed by the Local Permittees to provide primary policy direction for implementation of the MSHCP, as set forth in Section 6.1.1 of the MSHCP, and Section 11.2.2 of this Agreement.

2.20 "Coachella Valley Fringe-toed Lizard Habitat Conservation Plan ("CVFTL HCP")" means the CVFTL HCP in the Plan area, dated April 21, 1986, more particularly described in Section 16.2 of this Agreement.

2.21 "Coachella Valley Mountains Conservancy ("CVMC")" means a state agency within the California Resources Agency.

2.22 "Complementary Conservation" means the land projected to be acquired in the Conservation Areas for Conservation purposes independent of, but compatible with, the MSHCP as described in Section 4.2.1 of the MSHCP.

2.23 "Conservation" means to use, and the use of, methods and procedures within the MSHCP Reserve System and within the Plan Area as set forth in the MSHCP Plan, that are necessary to bring any species to the point at which the measures provided pursuant to FESA and the California Fish and Wildlife

Code are no longer necessary. However, Permittees will have no duty to enhance, restore, or revegetate MSHCP Reserve System lands unless required by the MSHCP, this Agreement, or agreed to through implementation of the Plan.

2.24 "Conservation Areas" means a system of lands described in Section 4.3 of the MSHCP that provides Core Habitat and Other Conserved Habitat for the Covered Species, conserves natural communities, conserves Essential Ecological Processes, and secures Biological Corridors and Linkages between major Habitat areas. There are 21 Conservation Areas from which the MSHCP Reserve System will be assembled.

2.25 "Conservation Goal(s)" means a broad statement of intent that describes how the Plan will accomplish the protection of Core Habitat, Essential Ecological Processes, Biological Corridors, and Linkages in the MSHCP Reserve System to ensure that the Covered Species are adequately conserved. Conservation Goals are also designed to ensure the persistence of natural communities.

2.26 "Conservation Level" means a numerical designation, as described in Section 2.4 of the MSHCP, assigned to all land within the Plan Area.

2.27 "Conservation Objective(s)" means measurable statements of actions or measures that will lead to attainment of the Conservation Goals.

2.28 "Conservation Strategy" means the overall approach to assure Conservation of Covered Species within the Plan Area.

2.29 "Conserved Habitat" means land that is permanently protected and managed for the benefit of the Covered Species under the institutional arrangements that provide for its ongoing management, and under the legal arrangements that prevent its conversion to other uses.

2.30 "Core Habitat" means the areas identified in the Plan for a given species that are composed of a Habitat patch or aggregation of Habitat patches that (1) are of sufficient size to support a self-sustaining population of that species, (2) are not fragmented in a way to cause separation into isolated populations, (3) have functional Essential Ecological Processes, and (4) have effective Biological Corridors and/or Linkages to other Habitats,

where feasible, to allow gene flow among populations and to promote movement of large predators.

2.31 "County" means the County of Riverside.

2.32 "County Flood Control" means the Riverside County Flood Control and Water Conservation District.

2.33 "County Parks" means the Riverside County Regional Parks and Open Space District.

2.34 "County Waste" means the Riverside County Waste Resources Management District.

2.35 "Covered Activities" means certain activities carried out or conducted by Permittees, Participating Special Entities, Third Parties Granted Take Authorization and others within the MSHCP Plan Area, as described in Section 7 of the MSHCP, that will receive Take Authorization under the Section 10(a) Permit and the NCCP Permit, provided these activities are otherwise lawful.

2.36 "Covered Species" means the species for which Take Authorization is provided through the Permits issued in conjunction with this Agreement. These species are discussed in Section 9 of the MSHCP, and listed in Exhibit "C" to this Agreement.

2.37 "Critical Habitat" means Habitat for species listed under FESA that has been designated pursuant to Section 4 of FESA and identified in 50 C.F.R., Sections 17.95 and 17.96.

2.38 "Development" means the uses to which land shall be put, including construction of buildings, structures, infrastructure and all associated alterations of the land.

2.39 "Discretionary Project" means a proposed project requiring discretionary action by a Permittee, as that term is used in CEQA and defined in state CEQA Guidelines Section 15357, including issuance of a grading permit for County projects.

2.40 "Effective Date" means the date on which this Agreement takes effect, as set forth in Section 19.1 of this Agreement.

2.41 "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to,

life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soils or geologic movements, as well as such occurrences as riot, accident, or sabotage.

2.42 "Endangered Species" means those species listed as endangered under FESA and/or CESA.

2.43 "Essential Ecological Processes" means processes that maintain specific Habitat types and are necessary to sustain the Habitat (in a state usable by Covered Species). Essential Ecological Processes may include abiotic hydrological processes (both subsurface and surface), erosion, deposition, blowsand movement, substrate development and soil formation, disturbance regimes such as flooding and fire, and biotic processes such as reproduction, pollination, dispersal, and migration.

2.44 "Essential Habitat" means certain lands delineated in the Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000).

2.45 "Existing Conservation Lands" means a subset of the MSHCP Reserve System lands consisting of lands in public or private ownership and managed for Conservation and/or open space values that contribute to the Conservation of Covered Species, as generally depicted in Figure 4-2 of the MSHCP.

2.46 "Existing Uses" means an existing use, public or private, which is the primary use on the property.

2.47 "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

2.48 "Federal Endangered Species Act ("FESA")" means 16 U.S.C., Section 1531 et seq. and all rules and regulations promulgated there under, as amended.

2.49 "Habitat" means the combination of environmental conditions of a specific place providing for the needs of a species or a population of such species.

2.50 "HabiTrak" means a GIS application to provide data on Habitat loss and Conservation, which occurs under the Permits.

2.51 "Implementing Agreement ("IA")" means the executed agreement that implements the terms and conditions of the MSHCP.

2.52 "Independent Science Advisors ("ISA")" means the qualified biologists, Conservation experts and others that provide scientific input to assist in the planning and implementation of the MSHCP for the benefit of the Covered Species, as set forth in Section 3.1.2 of the MSHCP.

2.53 "Joint Project Review Process" means the review process described in Section 6.6.1.1 of the MSHCP for Development proposed in Conservation Areas.

2.54 "Land Manager" means the entity, or entities, which has the responsibility to manage land acquired by the Permittees as set forth in Section 6.1.5 of the MSHCP.

2.55 "Land Use Adjacency Guidelines" means standards delineated in Section 4.5 of the MSHCP for land uses adjacent to or within Conservation Areas that are necessary to avoid or minimize edge effects. "Adjacent" means that a parcel shares a common boundary with a parcel in a Conservation Area.

2.56 "Legal Instrument" as used within the Plan and/or IA, shall refer to recorded legal instruments acceptable to the Wildlife Agencies, which provides legal protection in perpetuity to conservation lands; this legal protection may consist of a conservation easement consistent with California Civil Code Section 815 et seq. or a perpetual deed restriction that meets the requirements of a conservation easement under this statute.

2.57 "Linkage" means Habitat that provides for the occupancy of Covered Species and their movement between larger blocks of Habitat over time, potentially over a period of generations. In general, Linkages are large enough to include adequate Habitat to support small populations of the species and, thus, do not require that an individual of the species transit the entire Linkage to maintain gene flow between populations. What functions as a Linkage for one species may provide only a Biological Corridor or no value for other species. [See also "Biological Corridor."]

2.58 "Listed Species" means a species that is listed under FESA and/or CESA.

2.59 "Local Development Mitigation Fee" means the fee imposed by applicable Local Permittees on new Development pursuant to Government Code, Sections 66000 et seq.

2.60 "Local Permittees" means CVAG, CVCC, County, County Flood Control, County Parks, County Waste, CVWD, IID, MSWD, and the Cities.

2.61 "Major Amendments" means those proposed amendments to the MSHCP and this Agreement, as described in Section 20.5 of this Agreement and Section 6.12.4 of the MSHCP.

2.62 "Management Program" means the MSHCP management actions, as described in Section 8 of the MSHCP.

2.63 "Migratory Bird Treaty Act ("MBTA")" means 50 C.F.R., Section 21 et seq. and all rules and regulations promulgated there under, as amended.

2.64 "Migratory Bird Treaty Act ("MBTA") Special Purpose Permit" means a permit issued by the USFWS under 50 Code of Federal Regulations, section 21.27, authorizing Take, in connection with Covered Activities, under the MBTA of the Covered Species listed in 50 Code of Federal Regulations Section 10.13 that are also listed as endangered or threatened under FESA.

2.65 "Minor Amendments" means minor changes to the MSHCP and this Agreement, as defined in Section 20.4 of this Agreement and Section 6.12.3 of the MSHCP.

2.66 "Mitigation Lands" means a subset of Additional Conservation Lands as described in Section and 4.2.2 of the MSHCP.

2.67 "Monitoring Program" means the monitoring programs and activities set forth in Section 8 of the MSHCP.

2.68 "Monitoring Program Administrator ("MPA")" means the individual or entity responsible for administering the monitoring program, as described in Section 6.1.6 of the MSHCP.

2.69 "Monitoring Report(s)" means the report(s) prepared pursuant to the requirements of Section 8.7 of the MSHCP.

2.70 "MSHCP" means a synonym for Plan, used in the text where needed for clarity.

2.71 "MSHCP Reserve System" means a reserve that will total approximately 745,900 acres. The MSHCP Reserve System will provide for the Conservation of the Covered Species.

2.72 "NCCP Act" means the California Natural Community Conservation Planning Act of 2002 (California Fish and Wildlife Code § 2800 et seq.), including all regulations promulgated thereunder, as amended.

2.73 "NCCP Permit" means the Permit issued under the NCCP Act for the MSHCP to permit the Take of identified species listed under CESA as threatened or endangered, a species that is a candidate for listing, and Non-listed Species.

2.74 "NEPA" means the National Environmental Policy Act (42 U.S.C., Section 4321 - 4335) and all rules and regulations promulgated thereunder, as amended. For the purposes of the MSHCP, USFWS is the Lead Agency under NEPA, as defined in 40 C.F.R., Section 1508.16.

2.75 "Non-Listed Species" means a species that is not listed under FESA and/or CESA.

2.76 "No Surprises Assurances" means the guarantee that, provided Permittees are properly implementing the terms and conditions of the MSHCP, this Agreement, and the Permit(s), the USFWS can only require additional mitigation for Covered Species beyond that provided for in the MSHCP as a result of Unforeseen Circumstances in accordance with the "No Surprises" regulations at 50 C.F.R., Sections 17.22(b)(5) and 17.32(b)(5) and as discussed in Section 6.8 of the MSHCP.

2.77 "Operation and Maintenance Activities ("O&M")" means those Covered Activities that include the ongoing operation and maintenance of public facilities, as described in Section 7.3.1.1 of the MSHCP.

2.78 "Other Conserved Habitat" means part of a Conservation Area that does not contain Core Habitat for a given species, but which still has Conservation value. These values may include Essential Ecological Processes, Biological Corridors, Linkages, buffering from edge effects, enhanced species persistence probability in proximate Core Habitat, genetic diversity, recolonization potential, and flexibility in the event of long-term Habitat change.

2.79 "Participating Special Entity" means any regional public service provider, such as a utility company or a public

district or agency, that operates and/or owns land within the Plan Area and that applies for Take Authorization pursuant to Section 11.7 of this Agreement.

2.80 "Party" and "Parties" mean the signatories to this Agreement, namely CVCC, CVAG, County, County Flood Control, County Parks, County Waste, the Cities, CVWD, IID, MSWD, Caltrans, State Parks, CVMC, CDFW, USFWS and any other city within the Plan Area that incorporates after the Effective Date and complies with Section 11.5 of this Agreement.

2.81 "Permit(s)" means, collectively, the Section 10(a)(1) Permit and NCCP Permit issued by the Wildlife Agencies to Permittees for Take of Covered Species pursuant to FESA and the NCCP Act and in conformance with the MSHCP and this Agreement.

2.82 "Permittees" means CVAG, CVCC, County, County Flood Control, County Parks, County Waste, the Cities, CVWD, IID, MSWD, Caltrans, State Parks and CVMC.

2.83 "Plan" means the Coachella Valley Multiple Species Habitat Conservation Plan, a comprehensive multiple species habitat conservation planning program that addresses multiple species' needs, including Habitat and the preservation of natural communities in the Coachella Valley area of Riverside County, California, as depicted in Figure 4-1 in Section 4 of the MSHCP and Exhibit "A" of this Agreement.

2.84 "Plan Area" means the boundaries of the MSHCP, consisting of approximately 1.1 million acres in the Coachella Valley area of Riverside County, California, as depicted in Figure 1-2 of the MSHCP Plan, and Exhibit "B" to this Agreement.

2.85 "Planning Agreement" means the Memorandum of Understanding prepared consistent with the NCCP Act to guide development of the MSHCP that is contained in Appendix II of the MSHCP.

2.86 "Plan Participants" means CVAG, CVCC, County, County Flood Control, County Parks, County Waste, the Cities, CVWD, IID, MSWD, CVMC, Caltrans, State Parks and others receiving Take Authorization under the Permits.

2.87 "Private Conservation Land" means land owned by a non-governmental entity committed to Conservation in perpetuity through deed restriction, conservation easement, or other binding agreement satisfactory to CDFW and USFWS.

2.88 "Reserve Lands" means Existing Conservation Lands, Additional Conservation Lands, and Complementary Conservation.

2.89 "Reserve Management Oversight Committee ("RMOC")" means the committee established by the CVCC to provide biological, technical, and operational expertise for implementation of the MSHCP, including oversight of the MSHCP Reserve System, as described in Section 6.1.3 of the MSHCP.

2.90 "Reserve Management Unit ("RMU")" means the unit identified in Section 6.1.4 of the MSHCP.

2.91 "Reserve Management Unit Plan ("RMUP")" means the plan setting forth management practices for identified portions of the MSHCP Reserve System Area, prepared and adopted as described in Section 6.2 of the MSHCP.

2.92 "Reserve System" means a synonym for MSHCP Reserve System.

2.93 "Reserve System Assembly" means the process of conserving lands within the Conservation Areas through acquisition or other means to assemble the MSHCP Reserve System.

2.94 "Rough Step" means a Conservation Area assembly accounting process to monitor Conservation and loss of specified Habitats within the Plan Area.

2.95 "Rough Step Analysis Unit" means a geographic unit within which Rough Step is tracked. The Conservation Areas are the Rough Step Analysis Units.

2.96 "Scientific Advisory Committee ("SAC")" means the committee of scientists that provided scientific input into the development of the Plan, as described in Section 3.1.1.

2.97 "Section 10(a) Permit" means the permit issued by the USFWS to Permittees pursuant to 16 U.S.C., Section 1539(a), authorizing Take of Covered Species.

2.98 "Special Provisions Area" means provisions that apply to a given location or area, identified by a location description or in a figure, which address specific conditions necessary to achieve Conservation in that location or area.

2.99 "Species Conservation Goal(s)" means the Goals for the Conservation of each Covered Species described in Section 9 of the MSHCP.

2.100 "State Assurances" means, except as provided in Section 15.5 of this Agreement, provided Permittees are implementing the terms and conditions of the MSHCP, the Agreement, and the Permits, if there are Unforeseen Circumstances, CDFW shall not require additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources for the life of the NCCP Permit without the consent of the Permittees, unless CDFW determines that continued implementation of this Agreement, the MSHCP, and/or the Permits would jeopardize the continued existence of a Covered Species, or as required by law and would therefore lead to NCCP Permit revocation or suspension.

2.101 "State Permittees" means Caltrans, State Parks, and CVMC.

2.102 "Take" means the definition of such term in FESA and the California Fish and Wildlife Code. Section 9 of FESA does not prohibit Take of Federally Listed plants.

2.103 "Take Authorization" means the ability to incidentally Take species pursuant to the Section 10(a)(1)(B) Permit and/or the NCCP Permit.

2.104 "Third Party Take Authorization" means Take Authorization received by a landowner, developer, or other public or private entity from the Permittees pursuant to Section 17 of this Agreement, thereby receiving Take Authorization for Covered Species pursuant to the Permits.

2.105 "Threatened Species" means those species listed as threatened under FESA and/or CESA.

2.106 "Unforeseen Circumstances" means changes in circumstances affecting a Covered Species or geographic area covered by the MSHCP that could not reasonably have been anticipated by the Parties at the time of the MSHCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species. As defined, the term is intended to have the same meaning as it is used: (1) to define the limit of the Permittees' obligation on the "No Surprises" regulations set forth in 50 C.F.R., Sections 17.22(b)(5) and

17.32(b)(5); and (2) in California Fish and Wildlife Code, Section 2805(k).

2.107 "United States Fish and Wildlife Service ("USFWS")" means an agency of the United States Department of the Interior.

2.108 "Wildlife Agencies" means USFWS and CDFW, collectively.

3. RECITALS

This Agreement is entered into with regard to the following facts:

WHEREAS, CVAG is a joint powers authority, created pursuant to the provisions of Government Code section 6500; and

WHEREAS, CVCC is a joint powers authority, created pursuant to the provisions of Government Code section 6500; and

WHEREAS, CVWD is a governmental agency, created pursuant to the provisions of California Water Code section 30000; and

WHEREAS, IID is a governmental agency, created pursuant to the provisions of California Water Code section 20500; and

WHEREAS, MSWD is a County Water District, created pursuant to the provisions of California Water Code section 3000 et seq; and

WHEREAS, the County is a governmental agency, created pursuant to the provisions of the California Government Code, Title 3, Div. 1, Chapter 3, Article 1, section 23300; and

WHEREAS, County Flood Control is a governmental agency, created pursuant to the provisions of the California Water Appendix, Chapter 48-1; and

WHEREAS, County Parks is a governmental agency, created pursuant to the provisions of Public Resources Code section 5506.7; and

WHEREAS, County Waste is a governmental agency, created pursuant to the provisions of the Health and Safety Code sections 4700 et seq.; and

WHEREAS, the Cities are California municipal corporations located within the Coachella Valley of Riverside County, California; and

WHEREAS, Caltrans is a department of the California Business, Transportation and Housing Agency, created pursuant to the provisions of the California Government Code sections

14000 et seq.; and

WHEREAS, State Parks is a department of the California Resources Agency, created pursuant to the provisions of the California Government Code sections 14000 et seq.; and

WHEREAS, CVMC is a state agency within the California Resources Agency, created pursuant to the provisions of Public Resources Code sections 33500 et seq.; and

WHEREAS, CDFW is a department of the California Resources Agency with jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under the California Endangered Species Act (California Fish and Wildlife Code sections 2050 et seq.), the California Native Plant Protection Act (California Fish and Wildlife Code sections 1900 et seq.), the California Natural Community Conservation Planning Act (California Fish and Wildlife Code sections 2800 et seq.) and other relevant state laws; and

WHEREAS, USFWS is an agency of the United States Department of the Interior and has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species to the extent set forth in FESA and other relevant federal laws; and

WHEREAS, the MSHCP is a multi-jurisdictional habitat conservation plan focusing on the conservation of both sensitive species and associated habitats to address biological and ecological diversity conservation needs in the Coachella Valley and surrounding mountains located in Central Riverside County, setting aside significant areas of undisturbed land for the conservation of sensitive habitat while preserving open space and recreational opportunities; and

WHEREAS, the MSHCP's external boundaries encompass approximately 1.2 million acres, which extend to include the Coachella Valley watershed; and

WHEREAS, certain plant and animal species and habitat have been identified that exist, or may exist, within the Coachella Valley and surrounding mountains, and which have been: 1) state or federally listed as threatened or endangered; 2) proposed for listing as threatened or endangered; or 3) identified as a CDFW Species of Special Concern, a California Fully Protected Species, a California Specially Protected Species, a sensitive plant species as determined by the California Native Plant Society or other unlisted wildlife considered sensitive within the Plan Area; and

WHEREAS, future growth and land development within the Plan Area, including both public and private projects, may result in the "taking" of such species as defined in state and federal law, thus requiring Take Authorization prior to the carrying out of otherwise lawful activities; and

WHEREAS, the MSHCP will give the County, the Cities and other Permittees the ability to control local land use decisions and maintain economic development flexibility while providing a coordinated reserve system and implementation program that will facilitate the preservation of biological diversity, as well as enhancing the region's quality of life. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts

between protection of wildlife and plants and the reasonable use of natural resources for economic development; and

WHEREAS, the MSHCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitats due to the direct and indirect impacts of future development of both private and public lands within the Plan Area; and

WHEREAS, the MSHCP, this Agreement and the Permits establish the conditions under which the Permittees will receive from the USFWS and CDFW certain long-term Take Authorizations and other assurances that will allow the taking of Covered Species incidental to lawful uses authorized by the Permittees; and

WHEREAS, Permittees will, for the benefit of public and private property owners and other project proponents within the MSHCP boundaries, transfer Take Authorization received from the Wildlife Agencies through the land use entitlement process, issuance of Certificate of Inclusion or other appropriate mechanism as set forth in the MSHCP and this Agreement; and

WHEREAS, Permittees, with technical assistance from the USFWS and CDFW, have prepared the MSHCP as part of their application for Take Authorization for Covered Species, as defined below, to the Wildlife Agencies under FESA and the NCCP Act, which describes the biological impacts of the MSHCP on the Covered Species and their habitats, and defines the comprehensive avoidance, minimization, conservation and mitigation measures required to avoid and mitigate effects of Take of Covered Species from Permittees' Covered Activities; and

WHEREAS, the MSHCP has been developed through a cooperative effort involving USFWS, CDFW, local governmental agencies, property owners, development interests, environmental interest groups and other members of the public.

AGREEMENT

THEREFORE, the Parties do hereby understand and agree as follows:

4. PURPOSES

The purposes of this Agreement are:

4.1 To ensure implementation of each of the terms of the MSHCP and this Agreement for the benefit of the Covered Species and Natural Communities, while allowing well managed and planned future economic growth;

4.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities and tasks as set forth in the MSHCP, the Permits and this Agreement; and

4.3 To provide assurances to Permittees and others participating in the MSHCP that:

- A. With respect to Covered Species, compliance with the terms of the MSHCP, the Permits and this Agreement constitutes compliance with the provisions of FESA, CESA and the NCCP Act;
- B. Implementation of this Agreement and the MSHCP will adequately provide for the Conservation and protection of the Covered Species and their Habitats in the Plan Area; and
- C. Pursuant to the federal "No Surprises" provisions of 50 Code of Federal Regulations, section 17.22(b)(5) and 17.32(b)(5) and State Assurances pursuant to Fish and Wildlife Code section 2820(f) and Sections 14.11 and 15.3 of this Agreement, respectively, as long as the terms of the MSHCP, this Agreement and the Permits are properly implemented, the Wildlife Agencies will not require additional mitigation from Permittees, with respect to Covered Species, except as provided for in this Agreement or as required by law.

5. INCORPORATION OF THE MSHCP

The MSHCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the MSHCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the MSHCP will be interpreted to be supplementary to each other.

6. CONSERVATION STRATEGY

6.1 The MSHCP is intended to conserve adequate habitat in an unfragmented manner to provide for the protection and security of long-term viable populations of the species that are either currently listed as threatened or endangered, are proposed for listing, or are believed to have a high probability of being proposed for listing in the future if not protected by the Plan. The MSHCP is intended to preserve biological diversity as well as maintain the quality of life within the Coachella Valley and surrounding mountains by conserving species and their associated habitats and coordinating, streamlining and planning Development. By adopting this regional approach, the MSHCP will result in much greater and more biologically effective Habitat and species Conservation than a project-by-project approach could produce. The MSHCP is intended to proactively address requirements of the state and federal ESAs to avoid disruption of economic development activities in the Plan Area.

6.2 The MSHCP provides a broad Conservation Strategy, which will be implemented generally through the following:

- A. As set forth in Section 4.0 of the MSHCP, the MSHCP Reserve System shall be approximately 745,900 acres and will consist of Existing Conservation Lands, lands conserved through Complementary Conservation and Additional Conservation Lands. The MSHCP Reserve System is divided into 21 Conservation Areas that provide Core and other Conserved Habitat for Covered Species, conserve the natural communities

included in the Plan and Essential Ecological Processes essential to sustain the Core Habitat and secure Biological Corridors and Linkages between major Habitat areas.

- B. For each of the Conservation Areas, Conservation Objectives and required measures shall be implemented as set forth in Section 4.3 of the MSHCP.
- C. New land uses adjacent to or within the MSHCP Conservation Areas shall implement the Land Use Adjacency Guidelines set forth in Section 4.5 of the MSHCP, as applicable.
- D. The Avoidance, Minimization and Mitigation Measures set forth in Section 4.4 of the MSHCP shall be implemented.
- E. Monitoring and management activities will be undertaken for each of the MSHCP Covered Species. Monitoring and management activities are described in Section 8 of the MSHCP.
- F. Species-specific Conservation Goals and Objectives shall be implemented for each of the Covered Species in the MSHCP and are set forth in Section 9 of the MSHCP.
- G. Natural Communities Conservation Goals and Objectives have been developed and shall be implemented for each of the Covered Natural Communities in the MSHCP and are set forth in Section 10 of the MSHCP.

7. MSHCP RESERVE SYSTEM ASSEMBLY

7.1 Overview. As set forth in Section 4 of the MSHCP, the MSHCP Reserve System will consist of approximately 745,900 acres and will consist of Existing Conservation Lands, lands conserved through Complementary Conservation and Additional Conservation Lands. The MSHCP Reserve System is divided into 21 Conservation Areas that provide Core and other Conserved Habitat for Covered Species, conserve the natural communities included in the Plan and Essential Ecological Processes essential to sustain the Core Habitat and secure Biological Corridors and Linkages between major habitat areas.

7.2 Contribution of Existing Conservation Lands. As described in Section 4.1 of the MSHCP, the MSHCP Reserve System will include Existing Conservation Lands. As of 1996, these lands were comprised of approximately 496,400 acres. Because of acquisitions, the acreage had increased to 557,100 by 2006. Of this acreage, 491,500 acres (as of 1996), or 529,200 acres (as of 2006) are federal and state Existing Conservation

Lands. Approximately 900 acres (as of 1996), or 19,100 acres (as of 2006) are non-profit organization Existing Conservation Lands. Approximately 4,000 acres (as of 1996) or 8,800 acres (as of 2006) are Local Permittee Existing Conservation Lands.

7.3 Complementary Conservation. As described in Section 4.2.1 of the MSHCP, the MSHCP Reserve System will include approximately 69,290 acres (as of 1996), or 29,990 acres (as of 2006) through Complementary Conservation efforts. Such efforts include BLM and United States Forest Service acquisition programs in the Santa Rosa and San Jacinto Mountains National Monument, BLM Wilderness in-holding acquisitions, including Mecca Hills and Orocopia Mountains Wilderness Areas, and Joshua Tree National Park.

7.4 Contribution of Additional Conservation Lands. As described in Table 4-1 and Sections 4.2.2 and 5.1.1 of the MSHCP, the MSHCP Reserve System will include Additional Conservation Lands comprised of approximately 129,690 acres as of 2006, that will be acquired or otherwise conserved. Of this acreage, approximately 96,400 acres (as of 2006) will be acquired or otherwise conserved as the Local Permittees' share of Plan implementation. Approximately 39,850 acres (as of 1996) or 21,390 acres (as of 2006) will be acquired or otherwise conserved as the state and federal contribution to Plan implementation. Approximately 10,800 acres of public and quasi-public lands are also projected to be conserved. In addition, as described in Section 4.2.2.2.4 of the MSHCP, the Local Permittees will protect the fluvial sand transport Essential Ecological Process in the Cabazon, Long Canyon, and West Deception Canyon Conservation Areas to ensure no net reduction in fluvial sand transport in these areas, which comprise approximately 7,800 acres.

7.5 Review of Development Proposals in Conservation Areas. As set forth in Section 4.3 of the MSHCP, Development in Conservation Areas will be limited to uses that are compatible with the Conservation Objectives for the specific Conservation Area. Discretionary Projects in Conservation Areas, other than second units on parcels with an existing residence, shall be required to assess the project's ability to meet the Conservation Objectives in the Conservation Area. Additionally, the Permittees will participate in the Joint Project Review Process set forth in Section 6.6.1.1 of the MSHCP.

7.6 Reserve Assembly Accounting. In order to ensure that the MSHCP Reserve System is established, all

Permittees will be required to maintain a record of total acres and location of Development within their jurisdiction within the Plan boundaries and submit this information to the CVCC on a monthly basis. However, Caltrans must submit such information on a bi-annual basis. As set forth in Section 6.4 of the MSHCP, annual reports will be prepared in order to account for Habitat losses and gains associated with public and private Development projects. The annual reports will be used to demonstrate that Conservation is occurring in rough proportionality with Development, reflect that the MSHCP Reserve System is being assembled as contemplated in the MSHCP and ensure that Habitat Conservation Goals and Objectives and required measures are being implemented.

8. MSHCP RESERVE SYSTEM MANAGEMENT REQUIREMENTS

8.1 Overview. The MSHCP Reserve System will be managed pursuant to Section 8 of the MSHCP. The Plan establishes RMUs to ensure coordinated management in order to achieve the Conservation Goals and Objectives. Additionally, within three (3) years of Permit issuance, the RMUCs and the Land Manager will develop a Reserve System Management Plan. The elements of this plan are described in Section 6.2 of the MSHCP and will include ongoing management measures and Adaptive Management actions.

8.2 Management Activities. Management activities pursuant to the MSHCP are set forth in Section 8 of the MSHCP. As set forth in Sections 6.1.3 and 8.2.2 of the MSHCP, such activities will be overseen by the RMOC and implemented by the RMUCs, in coordination with the Land Manager and Monitoring Program Administrator.

8.3 Management Program. Section 8 of the MSHCP sets forth the Management Program, allowing flexibility to ensure protection of species for which current scientific data is currently lacking. Consistent with an Adaptive Management approach, the Parties agree that the methods and means of implementing the Management Program shall be changed as necessary to respond to species' needs and new scientific data as these items may change over time.

9. MSHCP RESERVE SYSTEM MONITORING REQUIREMENTS

9.1 Monitoring Program. Monitoring of the MSHCP Reserve System will be instituted pursuant to Section 8.3 of the MSHCP. Implementation of the long-term Monitoring Program includes an initial inventory and assessment period.

9.2 Monitoring Program Administrator. A Monitoring Program Administrator shall be selected by the CVCC and shall be responsible for implementing the Monitoring Program with oversight from the RMOC. The Monitoring Program Administrator's duties are set forth in Section 6.1.6 of the MSHCP.

9.3 Monitoring Reporting Requirements. Pursuant to Section 8.7 of the MSHCP, the Monitoring Program Administrator shall prepare annual monitoring reports that provide an analysis of the monitoring results and any implications for the Management Program and Reserve System Assembly.

These reports will be submitted to the RMOC, the RMUCs and the Land Manager and will include, at a minimum, the items listed in Section 8.7 of the MSHCP.

10. REPORTING REQUIREMENTS

10.1 Annual Reporting. As described in Section 6.4 of the MSHCP, the CVCC will prepare an annual report that will be submitted to the Wildlife Agencies and Permittees. The annual report for the preceding calendar year shall be submitted by March 30. The annual report shall be presented at a CVCC public workshop and copies made available to the public. The annual report shall include, at a minimum, the following information:

- A.** An overview of the status of the Conservation Areas.
- B.** Results of monitoring as described in Section 8.7 of the MSHCP. Identification of Adaptive Management actions indicated and whether or not such actions were implemented.
- C.** A description of Reserve Management activities for the previous year.
- D.** An accounting of the number of acres acquired, conserved through cooperative management agreements or otherwise protected during the previous year to quantify the progress achieved towards identified Conservation Objectives.
- E.** An accounting of the number of acres of Core Habitat, Essential Ecological Processes, Biological Corridors and Linkages and natural communities conserved within each Conservation Area developed or impacted by Covered Activities during the previous year.
- F.** An accounting of the number of acres of habitat for the species and natural communities outside the MSHCP Conservation Areas in the Plan Area developed during the previous year.
- G.** An accounting of the status of each Covered Species with respect to the Species Conservation Goals and Objectives in Sections 4 and 9.
- H.** An evaluation of any significant issues encountered in Plan implementation during the previous year and proposed resolution.
- I.** Expenditures for acquisition and MSHCP Reserve System management over the previous year and applicable budgets for the upcoming fiscal year.
- J.** Summary of compliance activities required of Permittees.

- K. A copy of the audit of CVCC finances for the most recent fiscal year.
- L. Summary of all unauthorized/unpermitted activities detected and enforcement actions taken during the previous year
- M. Additional technical, commercial, and scientific information and/or data that are reasonably available and necessary to evaluate performance and compliance with the commitments and objectives of the Plan shall be provided to the Wildlife Agencies upon written request.

10.2 **Certification of Reports.** All reports shall include the following certification from the responsible entity official that supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of those involved in the preparation of the report, the information submitted is appropriate and complete.

11. MSHCP IMPLEMENTATION STRUCTURE

11.1 **Permittee Implementation Mechanisms.** As set forth below, the Permittees have selected legal mechanisms to ensure implementation of the terms of the MSHCP and this Agreement ("Implementation Mechanism"). The Permits shall be effective upon issuance. If, however, within six (6) months of execution of this Agreement, the County and Cities have not adopted an appropriate Implementation Mechanism, the Wildlife Agencies may initiate suspension or revocation proceedings pursuant to Section 23.5 of this Agreement. The Permittees' obligations to fully implement the terms and conditions of the MSHCP and this Agreement commence upon execution of this Agreement. After adoption of an Implementation Mechanism, the Local Permittees shall submit a copy of the appropriate documents to the CVCC and the Wildlife Agencies substantially in the form addressed below, or take such other actions that will ensure effective MSHCP implementation.

11.1.1 The Cities

- A. The Cities shall adopt an ordinance imposing the Local Development Mitigation Fee as analyzed in the Nexus Fee Report. A model ordinance imposing such fees is attached to this Agreement as Exhibit "D." The Cities shall adopt ordinances in substantially the same form or at a minimum, containing the same requirements as the model ordinance.

- B. The Cities shall adopt a resolution that adopts the MSHCP and establishes procedures and requirements for the implementation of its terms and conditions. A model resolution is attached to this Agreement as Exhibit "E." The Cities shall adopt a resolution in substantially the same form or at a minimum, containing the same requirements as the model resolution. The resolution shall contain at least the following conditions:
 - 1. Commitment to ensure compliance with the Conservation Area requirements and measures set forth in Section 4 of the MSHCP, including but not limited to the Property Owner Initiated Habitat Evaluation and Acquisition Negotiation Strategy (HANS), if HANS is applicable.
 - 2. Imposition of all other terms of the MSHCP, this Agreement and the Permits including but not limited to participation in the Joint Project Review Process set forth in Section 6.6.1.1 of the MSHCP, and compliance with the applicable Land Use Adjacency Guidelines set forth in Section 4.5 of the MSHCP.
 - 3. Agreement to enforce all terms and conditions of the MSHCP, this Agreement and the Permits.

11.1.2 The County.

- A. The County shall establish a development mitigation fee for the unincorporated area of the County to specifically provide for habitat acquisition pursuant to the MSHCP.
- B. The County shall implement the MSHCP through incorporation of the relevant terms and requirements into its General Plan, including but not limited to the following:
 - 1. Commitment to ensure compliance with the Conservation Area requirements and measures set forth in Section 4.0 of the MSHCP, including but not limited to the Property Owner Initiated Habitat Evaluation and Acquisition Negotiation Strategy, if applicable.
 - 2. Imposition of all other terms of the MSHCP, this Agreement and the Permits including but not limited to participation in the Joint Project Review Process set forth in Section 6.6.1.1 of the MSHCP, and compliance with the applicable Land Use Adjacency Guidelines set forth in Section 4.5 of the MSHCP.