

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.

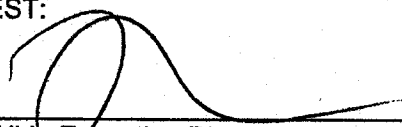
**SECTION 9: RESOLUTION REGARDING STAFF DIRECTION**

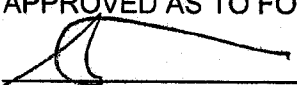
**BE IT FURTHER RESOLVED** by the CVCC that staff shall file a Notice of Determination with the Riverside County Clerk of the Board of Supervisors within five (5) working days of final Project approval.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> 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**

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

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## 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, blow sand 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.



3. Agreement to enforce all other terms and conditions of the MSHCP, this Agreement and the Permits.

- 11.1.3 **County Flood Control.** County Flood Control shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.4 **County Parks.** County Parks shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.5 **County Waste.** County Waste shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.6 **CVCC.** CVCC shall implement the MSHCP and this Agreement through approval of a resolution that adopts the MSHCP and establishes procedures and requirements for the implementation of its terms and conditions for any Covered Activities. The CVCC shall adopt a resolution in substantially the same form as the Model Resolution attached as Exhibit "E."
- 11.1.7 **CVAG.** CVAG shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.8 **CVMC.** CVMC shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.9 **Caltrans.** Caltrans shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.10 **State Parks.** State Parks shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.11 **CVWD.** CVWD shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.12 **IID.** IID shall implement the MSHCP and this Agreement through execution of this Agreement.
- 11.1.13 **MSWD.** MSWD shall implement the MSHCP and this Agreement through execution of this Agreement.

**11.2 Organizational Structure**

- 11.2.1 **Overview.** Successful implementation of the MSHCP requires both a local administrative structure and effective coordination with state and federal partners. The Parties have therefore established an Organizational Structure for implementation and management of the MSHCP described in Section 6.1 of the MSHCP.

11.2.2 **CVCC Organization**

- A. **Overview.** As set forth in Section 6.1 of the MSHCP, implementation of the MSHCP will be overseen and administered by the CVCC, a joint regional authority formed by the County, the Cities, CVWD, IID, and MSWD. The CVCC shall sign this Agreement and shall be a Permittee under the Permits. However, the CVCC shall not limit County or City local land use authority or prevent a Permittee from approving a Discretionary Project. As set forth in Section 6.1.1 of the Plan, the CVCC shall be formed prior to issuance of the Permits, as a separate and independent joint powers authority.
- B. **Duties and Responsibilities.** The CVCC shall provide the primary policy direction for the implementation of the MSHCP and will provide opportunities for public participation in the decision-making process. The CVCC shall have, at a minimum, the powers and duties as set forth in Section 6.1.1.2 of the MSHCP.

11.2.3 **Acquisition and Funding Coordinating Committee.** To assist in implementing its duties under the MSHCP, the CVCC shall form the Acquisition and Funding Coordinating Committee to provide input on local funding priorities and Additional Conservation Lands acquisition priorities. As set forth in Section 6.1.2 of the MSHCP, the Acquisition and Funding Coordinating Committee shall be formed within one hundred twenty (120) days of the issuance of the Permits. Permittee representatives on the Acquisition and Funding Coordinating Committee shall be appointed by the CVCC and shall include any Permittee requesting membership. The Wildlife Agencies shall be ex officio members of the Acquisition and Funding Coordinating Committee. The Acquisition and Funding Coordinating Committee shall advise the CVCC on local funding priorities and Additional Conservation Lands acquisitions as set forth in Section 6.1.2 of the MSHCP. However, the CVCC will have final decision making authority in establishing and implementing these local priorities.

11.2.4 **Joint Project Review Process.** To ensure that the requirements of the Permits, the MSHCP and this Agreement are properly met, a Joint Project Review Process for projects within the Conservation Areas shall be instituted by the CVCC. The process for the Joint Project Review Process is set forth in Section 6.6.1.1 of the MSHCP.

11.2.5 **CVCC Executive Director.**

- A. **Selection.** An appropriate individual shall be selected as the CVCC Executive Director by the CVCC to administer the Plan.

The Executive Director shall implement the duties and responsibilities of the CVCC. During the first five (5) years, the CVCC shall initially contract with CVAG for the Executive Director within thirty (30) days of the formation of the CVCC.

- B. **Duties and Responsibilities.** The Executive Director shall have the powers and duties as set forth in Section 6.1.1.3 of the MSHCP.

11.2.6 **Reserve Management Oversight Committee.**

- A. **Formation and Representation.** As described in Section 6.1.3 of the MSHCP, the RMOC is the primary interagency group that will coordinate implementation of the Plan. The CVCC Executive Director shall appoint the chair of the RMOC from those entities identified below. The RMOC shall be assembled within one hundred twenty (120) days of Permit issuance and shall report to the CVCC. The RMOC shall be composed of one representative from USFWS, CDFW, BLM, State Parks, CVCC, the County and up to five other representatives, as appointed by the CVCC, of private and public agencies or entities that hold land dedicated to Conservation within the MSHCP Reserve System. National Park Service (designated by NPS) and U.S. Forest Service (designated by USFS) will be *ex officio* members.

- B. **Duties and Responsibilities.** The RMOC shall have the duties and responsibilities as set forth in Section 6.1.3 of the MSHCP.

11.2.7 **Reserve Management Unit Committees.** To coordinate management of lands owned by different entities in the MSHCP Reserve System, RMUCs will be established for each of the six Reserve Management Units ("RMU"). The RMUs are described in Section 6.1.4 of the MSHCP. The RMUCs shall be established within one hundred twenty (120) days of Permit issuance. RMUC composition and duties and responsibilities are set forth in Section 6.1.4 of the MSHCP.

11.2.8 **Land Manager.** As described in Section 6.1.5 of the MSHCP, the CVCC may retain or contract with a person or entity to manage Local Permittee RMU lands and coordinate through the RMUCs with the entities managing Conservation land in the RMUs. The required qualifications, duties and responsibilities of the Land Manager are set forth in Section 6.1.5 of the MSHCP.

11.2.9 **Monitoring Program Administrator.** A Monitoring Program Administrator selected by the CVCC shall be responsible for implementing the Monitoring Program contained in Section 8 of the

MSHCP. The duties of the Monitoring Program Administrator are set forth in Section 6.1.6 of the MSHCP.

- 11.2.10 **MSHCP Reserve Management Unit Plan.** As described in Section 6.2 of the MSHCP, the CVCC shall work with each RMUC to develop a Reserve Management Unit Plan ("RMUP"). The RMUPs will define specific management actions, schedules and responsibilities for Plan implementation. The RMUPs shall be prepared within three (3) years of Permit issuance and revised as necessary as lands are added to the MSHCP Reserve System. The RMUPs shall contain, at a minimum, the elements set forth in Section 6.2 of the MSHCP.

### 11.3 Changed Circumstances.

- 11.3.1 **General Terms.** Consistent with USFWS regulations regarding Habitat Conservation Plan assurances, Section 6.8.3 of the MSHCP identifies changes in the circumstances affecting the MSHCP Reserve System and/or Covered Species which can be reasonably anticipated and planned for in the MSHCP and describes the responses to such changes that will be carried out by the Parties. Since the MSHCP includes an Adaptive Management approach to reserve management, changes over time and adaptive responses are already contemplated and do not therefore require amendments to the MSHCP or the Permits. The Parties agree that this Section and Section 6.8.3 of the MSHCP address all reasonably foreseeable Changed Circumstances and describe specific responses for them; other changes not identified as Changed Circumstances will be treated as Unforeseen Circumstances.
- 11.3.2 **Permittee-Initiated Response to Changed Circumstances.** Permittee(s) will give notice to the Wildlife Agencies within sixty (60) calendar days after learning that any of the Changed Circumstances listed in Section 6.8.3 of the MSHCP have occurred. As soon as practicable thereafter, but no later than sixty (60) days after learning of the Changed Circumstances, Permittee(s) will modify its/their activities in the manner described in Section 6.8.3 of the MSHCP, to the extent necessary to address the effects of the Changed Circumstances on the Covered Species, and will report to the Wildlife Agencies on its/their actions. Permittee(s) will undertake such modifications without awaiting notice from the Wildlife Agencies.
- 11.3.3 **Wildlife Agency-Initiated Response to Changed Circumstances.** If the Wildlife Agencies determine that Changed Circumstances have occurred, they shall notify Permittee(s) in writing within sixty (60) calendar days. Within sixty (60) days after receiving such notice, Permittee(s) will begin implementation of the required changes and report to the Wildlife Agencies on its/their actions. If the USFWS

and/or CDFW determine that Changed Circumstances have occurred and that a Permittee has not responded in accordance with Section 6.8.3 of the MSHCP, the Wildlife Agency or Agencies will so notify the affected Permittee and the CVCC and will direct Permittee to make the required changes.

11.3.4 **Condemnation of Lands Providing Conservation Benefits.** In the event that an authority with eminent domain powers condemns part of the lands to which the MSHCP's Conservation and mitigation measures apply, the applicable Permittee shall seek full reimbursement for fragmentation, and increased management and monitoring costs. The applicable Permittee shall use all funds provided to the Permittee through the condemnation proceedings to provide additional Conservation and mitigation measures that will replace the Conservation benefits that would have been provided by the condemned lands.

11.3.5 **New Listings of Species Not Covered by the MSHCP.** The USFWS or CDFW may list additional species under FESA and/or CESA as threatened or endangered, delist species that are currently listed, or declare listed species as extinct. In the event of a new listing of one or more species not covered by the MSHCP, the following steps will be taken.

If a species not covered by the MSHCP is listed as threatened or endangered under FESA and/or CESA during the Permit application process or during the life of the Permits, the USFWS and/or CDFW and the Permittee(s) will identify actions that may cause Take, jeopardy or adverse modification of Critical Habitat, and the Permittee(s) will avoid such actions in the implementation of their Covered Activities until approval of an amendment to the MSHCP to address the newly listed species in accordance with the Modifications and Amendments Procedures described in Section 6.12 of the MSHCP. Such avoidance measures will include the following: 1) evaluation of applications for proposed Covered Activities with respect to potential effects on the newly listed species; such evaluations will include assessment of the presence of suitable habitat for the newly listed species within the areas potentially affected by the proposed Covered Activity and surveys for the newly listed species, as appropriate, using accepted protocols; and 2) implementation of measures to avoid impacts to the newly listed species based on the results of the data collected in item 1) above and the evaluation of those data in the context of the design of the proposed Covered Activity. Alternatively, a Plan amendment may not be pursued and Take Authorization may be sought separately.

**11.4 Annexation and Deannexation of Lands.** Each of the Permittees shall enforce the terms of the Plan, the Permits and this Agreement as to all individuals or entities subject to its jurisdiction, including lands in the Plan Area annexed into the Permittees' jurisdictions after the Effective Date of this Agreement, provided the Minor Amendment requirements of Section 6.12.3 of the MSHCP and Section 20.4 of this Agreement have been met. If the Minor Amendment requirements cannot be met, a Major Amendment will be required.

In the event of the annexation or deannexation of any land within the Plan Area to another jurisdiction that is not a Permittee, the Parties shall seek to enter into an agreement between the Permittees, the Local Agency Formation Commission ("LAFCO"), the annexing or deannexing jurisdiction and the Wildlife Agencies as part of the annexation process to ensure that any Development of the annexed lands proceeds in accordance with the Conservation Goals and Objectives of the MSHCP. If an agreement can be reached, that jurisdiction shall become a Permittee after executing an addendum to this Agreement. If an agreement cannot be reached, or if the MSHCP requirements are not imposed as a condition of annexation by LAFCO, then the annexed or deannexed land will not receive Take Authorization pursuant to the Permits. Additionally, such annexation or deannexation may result in the revocation or suspension of the Permits pursuant to Section 23.5 of this Agreement. Parties within such annexed or deannexed land that qualify as Participating Special Entities may receive Take Authorization as set forth in Section 11.7 of this Agreement.

**11.5 Incorporation of New Cities within MSHCP Boundaries.** The Parties anticipate that during the term of the MSHCP, and after the Effective Date, one or more new cities may be incorporated within the Plan Area. Such newly incorporated cities, upon adoption of an appropriate Implementation Mechanism and execution of an Implementing Agreement with the Wildlife Agencies substantially similar in form to this Agreement, shall receive Take Authorization pursuant to the Permits and all other rights and obligations granted by the Permits, the MSHCP and this Agreement. Incorporation of a new city within the Plan Area shall constitute a Minor Amendment and shall be processed as such pursuant to Section 20.4 of this Agreement and Section 6.12.3 of the MSHCP. In the event a newly incorporated city fails to participate in the MSHCP, the Permits may be revoked or suspended as set forth in Section 23.5 of this Agreement.

**11.6 Growth-Inducing Effects.** Once mitigation has been imposed upon the Permittees, Participating Special Entity, or Third Party Granted Take Authorization for a proposed project in conformance with the requirements of the MSHCP and the Permits, Permittees shall not be required to provide or impose any additional mitigation for any growth-inducing effects that such

project may have on a Covered Species and/or its Habitat within the Plan Area.

#### 11.7 Participating Special Entity.

11.7.1 **Take Authorization for Participating Special Entities.** Any public service provider, such as a utility company or a public district, including, but not limited to, a school, water, or irrigation district, that operates facilities and/or owns land within the Plan Area may request Take Authorization for its activities pursuant to the Permits as a Participating Special Entity. As set forth below, such activities must comply with all of the terms and requirements of the Permits, the MSHCP and this Agreement.

11.7.2 **Grant of Take Authorization to Participating Special Entity.** The CVCC may grant Take Authorization to a Participating Special Entity for its activities upon compliance with this Section. The Participating Special Entity shall submit a complete application for the proposed activity to the CVCC containing a detailed description of the proposed activity, a map indicating the location of the proposed activity and an analysis of its potential impacts to Covered Species and their Habitats and to the MSHCP Reserve System.

Within thirty (30) days of receipt of the complete application, CVCC and Wildlife Agency staff shall review the application. If CVCC staff, with the concurrence of the Wildlife Agencies, finds that the proposed activity complies with all terms and requirements of the MSHCP, the Permits and this Agreement and does not compromise the viability of the Permits or the MSHCP Reserve System, the CVCC shall issue a Certificate of Inclusion upon completion or fulfillment in full of all appropriate requirements as set forth below and the proposed activity shall be deemed a Covered Activity. In the event the proposed activity crosses the MSHCP Reserve System, CVCC staff must make a finding supported by adequate evidence that the activity will result in a biologically equivalent or superior alternative to the MSHCP Reserve System prior to execution of a Certificate of Inclusion. The Certificate of Inclusion shall depict on an attached map the lands by parcel number, acreage and owner to which the proposed Take Authorization(s) would apply. In the event that the proposed activity does not comply with the terms and requirements of the Permits, the MSHCP and this Agreement, and/or compromises the viability of the MSHCP Reserve System, CVCC and Wildlife Agency staff shall meet with the proposed Participating Special Entity representatives to attempt to reach a mutually agreeable solution.

11.7.3 **Requirements for Participating Special Entities.** In addition to complying with applicable sections of the MSHCP, Participating

Special Entities shall also contribute to Plan implementation through payment of a fee based upon the type of proposed activity, which shall be applicable to all activities in the Plan Area. For regional utility projects that will be constructed to serve Development, such as major truck lines, Participating Special Entities shall pay a fee in the amount of 5% of total capital costs or make other contributions to the Plan as may be agreed to by the CVCC and the Wildlife Agencies. For such activities that will result in only temporary impacts (impacts that generally last for less than five years) and disturbance, Participating Special Entities shall pay a fee in the amount of 3% of total capital costs or other appropriate measures as may be agreed to by the CVCC and the Wildlife Agencies. Additionally, the Participating Special Entities will be charged appropriate administration fees to process the application. Public district or agency projects that will be constructed to serve Development, such as new schools and treatment plants, inside the Conservation Areas shall be designed and implemented pursuant to the requirements of Section 4.0 of the MSHCP and all other requirements of the MSHCP, including payment of Local Development Mitigation Fees as adopted for commercial and industrial Development. For such activities outside of the Conservation Areas, contribution will consist of payment of Local Development Mitigation Fees as adopted for commercial and industrial Development and any other applicable requirements. All fees shall be collected by, or submitted to, the CVCC. All obligations must be satisfied prior to impacts to Covered Species and their Habitats.

## **12. FUNDING OF THE MSHCP**

The funding of the MSHCP, including financing of Reserve System Assembly, and management and monitoring will occur pursuant to Section 5.0 of the MSHCP.

### **12.1 Local Obligations.**

- 12.1.1 **Local Permittee Additional Conservation Lands Obligations.** As described in Sections 4.2 and 5.1.1 of the MSHCP, Local Permittees are responsible for the Conservation of 96,400 acres of Additional Conservation Lands (as of 2006). Approximately 88,900 acres will be conserved through acquisition or other means. The projected cost in 2006 dollars for this acreage is approximately \$301.5 million. The related transaction costs for appraisals, escrow fees, etc. are estimated to be approximately \$15.1 million.
- 12.1.2 **Administration Costs.** The Local Permittees will be responsible for certain Plan administration costs necessary to implement the terms and conditions of the Plan, including staffing for the CVCC. As described in Sections 5.1.2.3 and 5.1.3 of the MSHCP, the Local Permittee



obligation for Plan administration costs for the acquisition program is approximately \$493,000 in the first year, increasing by 3.29% annually to offset inflation. Non-acquisition program administration costs are estimated to be approximately \$56,000 in the first year and \$115,414,000 over the life of the Plan.

- 12.1.3 **Local Permittee Monitoring and Management Obligations.** As described in Sections 5 and 8 of the MSHCP, Local Permittees are responsible under the Plan for monitoring, land management and Adaptive Management costs on lands managed by the Local Permittees. In addition, an endowment would be established to fund monitoring, land management and Adaptive Management.

12.2 **Local Funding Sources.** The local funding program will fund the Local Permittees' obligations under the MSHCP as set forth in Section 5.2 of the Plan. The primary components are as follows:

- 12.2.1 **Local Development Mitigation Fees.** As further described in Section 5.2.1.1 of the MSHCP, the County and the Cities shall adopt fee ordinances establishing a Local Development Mitigation Fee to partially fund Plan implementation. The projected revenues from the Local Development Mitigation Fees are anticipated to be approximately \$517 million over the first fifty (50) years of Plan implementation. The County and the Cities shall transmit all collected Local Development Mitigation Fees to the CVCC, at least quarterly, to be expended to fulfill the terms of the MSHCP.
- 12.2.2 **Transportation and Other Regional Infrastructure Project Contribution.** Permittees' transportation and other regional infrastructure projects will contribute to Plan implementation. For transportation infrastructure, the local funding program will provide approximately \$30 million in contribution from Measure A funds. Additionally, CVWD will acquire 550 acres in the Thousand Palms Conservation Area to mitigate for the Whitewater Flood Control project. CVWD, IID, and MSWD will also make contributions to the management and monitoring endowment. These total contributions are estimated at approximately \$4,108,400. Other regional utility and local public capital construction projects will mitigate their impacts, in whole or in part, under the MSHCP through payment of a per-acre mitigation fee or other appropriate method. As described in Section 6.6.2 of the Plan, Caltrans will acquire or fund the acquisition of 5,791 acres. Caltrans will also contribute \$7.6 million to CVCC for monitoring, management and Adaptive Management. Caltrans and CVAG will also acquire 1,795 acres as mitigation for freeway interchanges and associated arterials and contribute \$1,077,000

towards monitoring, management and Adaptive Management endowment fund.

- 12.2.3 **Landfill Tipping Fees.** Landfill tipping fees in the Plan Area are estimated to generate approximately \$575,000 in 2006 from County landfills, with a projected rate increase of 4% annually thereafter.
- 12.2.4 **Eagle Mountain Landfill Environmental Mitigation Trust Fund.** Eagle Mountain Landfill tipping fees are estimated to generate \$228 million dollars over the next seventy-five (75) years. Should the availability of this funding source become unreliable, Section 5.2.2.4 of the MSHCP provides potential alternative funding sources.
- 12.2.5 **Additional Funding.** As further described in Section 5.2.1.6 of the MSHCP, the Parties shall seek additional funding from private, local, state and federal sources including grants. Additionally, funds may be received from Participating Special Entities. In addition, should certain funding sources become unreliable, Section 5.2.2.4 of the MSHCP provides potential alternative funding sources.

12.3 **Annual Evaluation of Funding.** On an annual basis, the Permittees and the Wildlife Agencies will evaluate the performance of the funding mechanisms and develop any necessary modifications to address possible shortfalls. Additionally, this annual evaluation will include an assessment of the funding plan and anticipate funding needs over the next eighteen (18) months for the purpose of identifying any potential deficiencies in cash flow. If deficiencies are identified through this evaluation, the Permittees and the Wildlife Agencies will develop strategies to address any additional funding needs consistent with the terms and conditions of the Plan. Additional funding needs will be addressed as set forth in Section 5.2.2 of the MSHCP.

### 13. PERMITTEES' TAKE AUTHORIZATION AND OBLIGATIONS

13.1 **Permittees' Take Authorization.** Each Permittee may engage in, and receive Take Authorization for, Covered Activities as set forth in Section 7 of the MSHCP. The County and Cities may also confer Take Authorization and approve projects proposed within their respective jurisdictions, as set forth in Sections 7.1 and 7.2 of the MSHCP. The County, Cities and the CVCC may also confer Take Authorization through the issuance of a Certificate of Inclusion or other written mechanism or instrument as set forth in Section 11.7 of this Agreement.

**13.2 County and Cities Obligations.** The County and the Cities have the following obligations under the MSHCP and this Agreement:

- A.** Adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for private and public projects. Such requirements and policies include: 1) compliance with relevant processes to ensure application of the Conservation Area requirements set forth in Section 4.0 of the MSHCP and thus, satisfaction of the local acquisition obligation; 2) require compliance with the applicable Land Use Adjacency Guidelines set forth in Section 4.5 of the MSHCP; 3) maintain a record of total acres developed and their location within its jurisdiction and transmit such information monthly to the CVCC; 4) convey any changes in County or city boundaries or general plan land use designations to CVCC at the end of each calendar year; 5) ensure compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 6) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 7) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B.** Transmit any collected Local Development Mitigation Fees, other appropriate fees and associated interest as described in Section 5.2.1.1 of the MSHCP to the CVCC at least quarterly.
- C.** Contribute appropriate mitigation as determined by the affected Permittee for County and City public projects, including, but not limited to, any one or any combination of the following: 1) acquisition of replacement habitat at a 1:1 ratio that is biologically equivalent or superior to the property being disturbed; or 2) payment of the Local Development Mitigation Fees as established for commercial and industrial Development. Such contributions shall occur prior to impacts to Covered Species and their Habitats.
- D.** Participate as a member agency in the CVCC as set forth in Section 6.1.1 of the MSHCP.
- E.** Participate as a member of the RMOC as set forth in Section 6.1.3 of the MSHCP, as appropriate.
- F.** Participate in the Joint Project Review Process set forth in Section 6.6.1.1 of the MSHCP for projects in the Conservation Areas.
- G.** Take all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the terms of

project approvals for public and private projects, including compliance with the MSHCP, the Permits and this Agreement.

- H. Manage MSHCP Reserve System lands or conservation easements owned or leased by the County or respective City pursuant to Sections 8 and 9 of the MSHCP.
- I. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require the County or the Cities to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP or other mitigation agreed to by the appropriate Parties.

**13.3 CVCC Obligations.** CVCC has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement, for projects for which it issues Take Authorization such as for Participating Special Entities. Such requirements include: 1) ensuring compliance with relevant processes to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) ensuring compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. Administer and oversee implementation of the MSHCP as set forth in Section 6.1 of the MSHCP.
- C. Collect and expend Local Development Mitigation Fees and other applicable funds as described in Section 5 of the MSHCP.
- D. Transfer Take Authorization to Participating Special Entities pursuant to Section 11.7 of this Agreement.
- E. Accept and manage MSHCP Reserve System property including conservation easements that have been conveyed to it by the County, Cities or other entity, agency or individual, pursuant to Section 6.1.1.2 of the MSHCP.
- F. Ensure compliance with the Conservation Objectives set forth in Section 4.3.7 of the MSHCP.

- G. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require the CVCC to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP.

**13.4 CVAG Obligations.** CVAG has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities.
- B. Contribute \$30 million from Measure A or other funds as set forth in Section 6.6.1 of the Plan.
- C. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require CVAG to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP or other funding mechanisms identified in the Plan.

**13.5 County Flood Control Obligations.** County Flood Control has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. Contribute mitigation through payment of 3% of total capital costs for its Covered Activities. Such payment may be offset through acquisition of replacement Habitat or creation of new Habitat for the benefit of Covered Species, as appropriate. Such mitigation shall be implemented prior to impacts to Covered Species and their Habitats. This provision does not apply to O&M activities.

- C. Manage land owned or leased within the MSHCP Reserve System that has been set aside for Conservation purposes in accordance with Sections 8 and 9 of the MSHCP.
- D. Participate in the Joint Project Review Process for its projects within the Conservation Areas as described in Section 6.6.1.1 of the Plan.
- E. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require County Flood Control to provide funding, or any other form of compensation, beyond the fees collected, mitigation payments of 3% of capital costs pursuant to Section 13.5 above, dedicated lands required pursuant to the Permits or other MSHCP requirements, this Agreement and the MSHCP.

**13.6 County Parks Obligations.** County Parks has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4.0 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. Contribute appropriate mitigation as determined by County Parks for its projects, including, but not limited to, any one or any combination of the following: 1) acquisition of replacement habitat at a 1:1 ratio that is biologically equivalent or superior to the property being disturbed; or 2) payment of the Local Development Mitigation Fees as established for commercial and industrial Development. Such contribution shall occur prior to impacts to Covered Species and their Habitats.
- C. Manage and monitor land owned or leased within the MSHCP Reserve System that has been set aside for Conservation purposes in accordance with Sections 8 and 9 of the MSHCP.
- D. Participate in the Joint Project Review Process for its projects, if any, within the Conservation Areas as described in Section 6.6.1.1 of the Plan.
- E. Carry out all other applicable requirements of the MSHCP, this Agreement and the Permits. Notwithstanding the foregoing, nothing in

this Agreement shall be construed to require County Parks to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits or other MSHCP requirements, this Agreement and the MSHCP.

**13.7 County Waste Obligations.** County Waste has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4.0 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. Manage and monitor land owned within the MSHCP Reserve System that has been set aside for Conservation purposes in accordance with Sections 8 and 9 of the MSHCP.
- C. Participate in the Joint Project Review Process for its projects, if any, within the Conservation Areas as described in Section 6.6.1.1 of the Plan.
- D. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require County Waste to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP.

**13.8 CVWD Obligations.** CVWD has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement, for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4.0 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the

reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.

- B.** As set forth in Section 6.6.1 of the Plan, cooperate with CVCC towards Conservation of a portion of the 7,000 acres CVWD owns in the Conservation Area.
- C.** Contribute \$3,583,400 towards the Endowment Fund for the Monitoring Program, the Management Program and Adaptive Management.
- D.** Additional contributions as set forth in the Plan.
- E.** Participate as a member of the CVCC as set forth in Section 6.1.1 of the MSHCP.
- F.** Participate in the Joint Project Review Process for its projects within the Conservation Areas as described in Section 6.6.1.1 of the Plan.
- G.** Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require CVWD to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP.

**13.9 IID Obligations.** IID has the following obligations under the MSHCP and this Agreement:

- A.** Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B.** As set forth in Section 6.6.1 of the Plan, cooperate with CVCC towards the Conservation of a portion of the land it owns in the Conservation Areas.
- C.** Contribute \$525,000 towards the Endowment Fund for the Monitoring Program, the Management Program and Adaptive Management.



- D. Participate as a member of the CVCC as set forth in Section 6.1.1.1 of the MSHCP.
- E. Participate in the Joint Project Review Process for its projects within the Conservation Areas as described in Section 6.6.1.1 of the Plan.
- F. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require IID to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP.

**13.10 Caltrans Obligations.** Caltrans has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. As set forth in Section 6.6.2 of the Plan, acquire and convey to CVCC or provide funding to the CVCC sufficient to acquire 5,791 acres of Additional Conservation Lands in the Conservation Areas as a contribution to Plan implementation for the Covered Activities described in Section 7.2.2 of the Plan. Within five (5) years of Permit issuance, Caltrans will provide \$7.6 million to CVCC for the monitoring, management, and Adaptive Management of the 5,791 acres.
- C. Within one year of Permit issuance, CVCC and Caltrans shall prepare an agreement that specifies that if the MSHCP Permits are ever revoked, a conservation bank shall be established whereby the contributed lands are conveyed to CDFW with an endowment sufficient to provide for the permanent monitoring, land management, and Adaptive Management of the land. CVCC, the Wildlife Agencies, and Caltrans will enter into a Conservation Bank Agreement once a portion or all of the 5,791 acres are acquired.
- D. As described in Section 6.6.1 of the Plan, cooperate with CVAG and CVCC in the acquisition of 1,795 acres to mitigate the interchange and

associated arterial projects, and the contribution of \$1,077,000 to the endowment for the Monitoring Program, Management Program, and Adaptive Management of those lands.

- E. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits.

**13.11 State Parks Obligations.** State Parks has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. As set forth in Section 6.6.2 of the Plan, prior to construction of camping, trailhead, and trail facilities as a Covered Activity in the Indio Hills/Joshua Tree National Park Linkage Conservation Area, acquire a minimum of 640 acres in the Conservation Area, of which a maximum of 100 acres may be developed as a Covered Activity. Development of the camping and trailhead facility must be consistent with the Conservation Objectives for the Conservation Area.
- C. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits.

**13.12 CVMC Obligations.** CVMC has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities, if any. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the

reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.

- B. Manage easements and land owned or leased within the MSHCP Reserve System that have been set aside for Conservation purposes in accordance with Sections 8 and 9 of the MSHCP.
- C. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require CVMC to provide funding, or any other form of compensation, beyond the fees collected or dedicated lands required pursuant to the Permits, this Agreement and the MSHCP.

**13.13 MSWD Obligations.** MSWD has the following obligations under the MSHCP and this Agreement:

- A. Implement the necessary requirements to fulfill the purposes of the Permits, the MSHCP and this Agreement for its Covered Activities, ~~if any~~. Such requirements include: 1) compliance with relevant processes and measures to ensure application of the Conservation Area requirements set forth in Section 4 of the MSHCP; 2) compliance with the applicable Land Use Adjacency Guidelines as set forth in Section 4.5 of the MSHCP; 3) compliance with the Avoidance, Minimization and Mitigation Measures in Section 4.4 of the MSHCP; 4) ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the MSHCP; and 5) permanently protect and manage Mitigation Land within the reserve system legally owned and/or controlled by the entity unless conveyed to the CVCC.
- B. As set forth in Section 6.6.1 of the MSHCP, cooperate with CVCC towards Conservation of a portion of the 61 acres MSWD owns in the Conservation Area.
- C. Contribute \$350,000 towards the Endowment Fund for the Monitoring Program, the Management Program and Adaptive Management.
- D. Additional non-monetary contributions as set forth in Section 5.1.8 MSWD Responsibilities (page 5-8 to 5-9) and Section 6.6.1 Obligations of the Local Permittees, page 6-20 and Section 6.6.1 under subheading Additional MSWD Contributions, numbered items 2, 5, and 6 (page 6-21 to 6-22) of the MSHCP.
- E. Participate as a member of the CVCC as set forth in Section 6.1.1 of the MSHCP.
- F. Participate in the Joint Project Review Process for its projects within the Conservation Areas as described in Section 6.6.1.1 of the Plan.

- G. Carry out all other applicable requirements of the MSHCP, this Agreement, and the Permits. Notwithstanding the foregoing, nothing within this Agreement shall be construed to require MSWD to provide funding, or any other form of compensation, beyond the requirements of the Permits, this Agreement and the MSHCP.

#### 14. USFWS OBLIGATIONS AND ASSURANCES

##### 14.1 Take Authorization for Covered Activities.

Upon execution of this Agreement by all Parties, and satisfaction of all other applicable legal requirements, the USFWS will issue Permittees a permit under section 10(a)(1)(B) of FESA authorizing incidental Take by Permittees of the Covered wildlife Species resulting from Covered Activities within the Plan Area, subject to and in accordance with, the MSHCP, the Permits and this Agreement.

##### 14.2 USFWS Findings - Covered Species.

The USFWS has found, following opportunity for public comment, that: 1) the taking of Covered Species within the Plan Area in accordance with the MSHCP as implemented will be incidental to the carrying out of otherwise lawful activities; 2) the MSHCP as implemented will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; 3) the funding sources identified and provided for herein will ensure that adequate funding for the MSHCP will be provided; 4) the requested taking of Covered wildlife Species will not appreciably reduce the likelihood of survival and recovery of such species in the wild; and 5) the MSHCP, as implemented, will satisfy and fulfill all measures agreed upon by the Parties for the purposes of the MSHCP (including procedures determined by the USFWS to be necessary to address Unforeseen Circumstances).

14.3 **Section 10(a) Permit Coverage.** The Section 10(a) Permit will identify all Covered Species. The Permit will take effect for FESA listed Covered Species at the time that the Section 10(a) Permit is issued. For currently Unlisted Species, the Permit will take effect when such species are Listed.

14.4 **Implementation Assistance.** Subject to Section 27.10 of this Agreement, USFWS shall provide staff to serve on all appropriate committees and shall ensure, to the extent possible, staff participation in discussions and meetings with the other Parties to ensure that the implementation of this Agreement is consistent with any findings upon which the Section 10(a) Permit is based. In the event that other habitat conservation plans are proposed within the boundaries of the MSHCP, the USFWS will

require the proponents to consult with the CVCC during the development of the habitat conservation plan or prior to completion of the Section 7 consultation process. The USFWS shall, to the extent appropriate, cooperate with the Permittees in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and existing and future bond issues.

**14.5 Assurances Regarding MSHCP.** After opportunity for public review and comment, based on the best available current scientific and commercial data, the USFWS has found that the MSHCP, as implemented by this Agreement: 1) is consistent with and will complement other applicable Conservation planning and regulatory programs and efforts addressing wildlife within the region, 2) minimizes and mitigates the potential significant adverse impacts of the Covered Activities on the Covered Species, 3) will ensure that the measures agreed upon by the Permittees and the USFWS will be met, and 4) will be implemented. The USFWS shall not take a position inconsistent with the acknowledgments set forth in this Section, including, without limitation, in the form of comments offered by the USFWS in the context of any CEQA or NEPA process associated with approvals for Covered Activities, with regard to effects on Covered Species.

**14.6 Take Authorization for Newly Regulated Covered Species; Savings Provision.** Subject to compliance with all other terms of this Agreement, the Section 10(a) Permit will automatically become effective for each Unlisted Covered Species upon the listing of such species as endangered or threatened under FESA. If it is judicially determined that the USFWS was not authorized to cause the Section 10(a) Permit to become effective automatically as to Covered Species as they become listed pursuant to FESA, the USFWS shall accept the minimization and mitigation measures in the MSHCP and this Agreement as the basis for an application for a section 10(a) amendment or separate Section 10(a) Permits, MBTA Permits, and/or other Take Authorizations. The USFWS shall use reasonable efforts to review and process the application expeditiously so as to ensure, provided the Permit amendment or application meets the requirements of FESA and other applicable federal laws, that the Take Authorization is effective concurrently with the listing of the Covered Species under FESA. In issuing such Permits, amendments and/or Take Authorizations, and to the extent that such judicial determination creating the circumstances requiring such additional review and processing allows, the USFWS shall not request, impose, recommend or require further

mitigation, Conservation, compensation, enhancement or other protection for such Covered Species except as expressly provided in this Agreement.

**14.7 Changes in the Environmental Laws.** It is acknowledged and agreed by the USFWS that the Permittees are agreeing to perform substantial avoidance, minimization, mitigation, Conservation and management measures as set forth in this Agreement. If a change in, or an addition to, any federal law governing or regulating the impacts of Development on land, water or biological resources as they relate to Covered Species, including, but not limited to, FESA and NEPA, the USFWS shall give due consideration to the measures required under the MSHCP in applying the new laws and regulations to the Permittees.

**14.8 Section 7 Consultations.** The USFWS will evaluate the direct, indirect, and cumulative effects of the Covered Activities in its internal FESA biological opinion issued in connection with the MSHCP and issuance of the Section 10(a) Permit. As a result, and to the maximum extent allowable, in any consultation under section 7 of FESA subsequent to the Effective Date involving the Permittee(s) or entity with Third Party Take Authorization with regard to Covered Species and Covered Activities, the USFWS shall ensure that the FESA biological opinion issued in connection with the proposed project that is the subject of the consultation is consistent with the internal FESA biological opinion. Such projects must be consistent with the terms and conditions of the MSHCP and this Agreement. Any terms and conditions included under the reasonable and prudent measures of a FESA biological opinion issued subsequent to the Effective Date with regard to the Covered Species and Covered Activities shall, to the maximum extent appropriate, be consistent with the implementation measures of the MSHCP and this Agreement. The USFWS shall not impose measures in excess of those that have been or will be required by the Permittee(s) or entity with Third Party Take Authorization pursuant to the MSHCP and this Agreement. The USFWS shall process subsequent FESA consultations for Covered Activities in accordance with the process and time periods set forth in 50 Code of Federal Regulations, section 402.14. The Parties agree that this section does not create an independent cause of action.

**14.9 Critical Habitat Designation for Covered Species.** The USFWS acknowledges and agrees that the MSHCP and this Agreement provide a comprehensive, habitat-based approach to the protection of Covered Species by focusing on the

lands essential for the long-term Conservation of the Covered Species and appropriate management for those lands. This approach is consistent with the overall purposes of FESA to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. FESA regulations specify that the criteria to be used in designating critical habitat include "those physical and biological features that are essential to the Conservation of a given species and that may require special management considerations or protection." (50 C.F.R. § 424.12(b).)

The MSHCP and this Agreement provide for the protection of those physical and biological features essential to the Conservation of the Covered Species in a manner consistent with USFWS regulations concerning the designation of Critical Habitat. The USFWS agrees that, to the maximum extent allowable after public review and comment, in the event that a Critical Habitat determination is made for any Covered Species, and unless the USFWS finds that the MSHCP is not being implemented, lands within the boundaries of the MSHCP will not be designated as Critical Habitat. In addition, if Critical Habitat is designated within the MSHCP boundaries, pursuant to Section 14.11 of this Agreement and except as expressly provided in Section 14.11 of this Agreement and Section 6.8 of the MSHCP regarding Unforeseen Circumstances, no subsequent evaluation of the Covered Species, nor any mitigation, compensation, Conservation enhancement or other protective measures other than those set forth in the MSHCP will be required. Moreover, to the maximum extent allowable after public review and comment, the USFWS agrees to reassess and revise the boundaries of existing designated and proposed Critical Habitat of Covered Species within the MSHCP boundaries after its approval, although the Parties recognize that funding constraints may influence the timing of such regulatory action.

**14.10 Future Recovery Plans.** Recovery plans under FESA delineate actions necessary to recover and protect federally Listed Species. These plans frequently include information, or may lead to the development of information, that can contribute to the development of an adaptive management program. However, recovery plans do not obligate any Permittee, individual or entity to undertake specific tasks.

The Parties acknowledge that FESA recovery plans have no effect on the implementation of this MSHCP, except to the extent that they may contribute information to, or assist in achieving the goals of, the Management Program. Any recovery plan applicable to any Covered Species found in the Plan Area that is developed after the Effective Date shall:

- A. Not require any additional land or financial compensation by Permittees;
- B. Be finalized only after the USFWS has consulted with and requested input from the CVCC and made reasonable attempts to give notice to Plan Participants of the preparation of the recovery plan; and

- C. Not in any way diminish the Take Authorization for Covered Species granted to Permittees pursuant to the MSHCP, this Agreement, or the Section 10(a) Permit.

**14.11 No Surprises Assurances and Unforeseen Circumstances.**

- 14.11.1 **No Surprises Assurances.** The USFWS has promulgated the Habitat Conservation Plan Assurances Rule, published in the Federal Register on February 23, 1998 (63 Federal Register 8859), and codified at 50 Code of Federal Regulations, sections 17.3, 17.22(b) and 17.32(b) ("No Surprises Rule").
- 14.11.2 Pursuant to the No Surprise Rule, the assurances by the USFWS in this Section shall apply so long as the commitments and provisions of the MSHCP, this Agreement and the Section 10(a) Permit are properly implemented.
- 14.11.3 As set forth in Section 6.8.1 of the MSHCP, pursuant to the No Surprises Rule, as long as the MSHCP is being properly implemented, the USFWS will not require from Permittees, Third Parties Granted Take Authorization, Participating Special Entities or other individuals or entities receiving Take Authorization under the Permits the commitment of additional land, or financial compensation or additional restrictions on the use of land or other natural resources with regard to Covered Activities and their impact on the Covered Species beyond the level and/or amounts specified in the MSHCP, the Permits and this Agreement.
- 14.11.4 As set forth in Section 6.8.1 of the MSHCP, pursuant to the No Surprises Rule, the USFWS has the burden of making a finding that Unforeseen Circumstances exist with regard to any Covered Species, using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. In deciding whether any Unforeseen Circumstances exist, the USFWS shall consider, but not be limited to the following factors:
- A. The extent of the current range of the Covered Species;
  - B. The percentage of the range of Covered Species and Habitat that has been adversely affected by the Covered Activities;
  - C. The percentage of the range of the Covered Species and Habitat that has been conserved by the MSHCP;



- D. The ecological significance of that portion of the range or Habitat of the Covered Species;
- E. The level of knowledge about the Covered Species and Habitat and the degree of specificity of the species Conservation program under the MSHCP; and
- F. Whether failure to adopt additional Conservation measures would appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

14.11.5 In the event the USFWS makes a finding of Unforeseen Circumstances and such Unforeseen Circumstances warrant the requirement of additional mitigation, enhancement or compensation measures, any such additional measures shall be restricted to modification of the management of the MSHCP Reserve System, and shall be the least burdensome measures available to address the Unforeseen Circumstances.

14.11.6 Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Section 6.8.3 of the MSHCP, and Permittees shall implement any measures for such circumstances as called for in the MSHCP, as described in Section 11.3 of this Agreement.

**14.12 Migratory Bird Treaty Act.** The Section 10(a) Permit shall constitute a Special Purpose Permit under 50 Code of Federal Regulations section 21.27, for the Take of Covered Species listed under FESA and which are also listed under the MBTA (16 U.S.C. §§ 703-712), in the amount and/or number specified in the MSHCP, subject to the terms and conditions specified in the Section 10(a) Permit. Any such Take will not be in violation of the MBTA. The MBTA Special Purpose Permit will extend to Covered Species listed under FESA and also under the MBTA after the Effective Date of the Section 10(a) Permit. This Special Purpose Permit shall be valid for a period of three (3) years from its Effective Date, provided the Section 10(a) Permit remains in effect for such period. The Special Purpose Permit shall be renewed pursuant to the requirements of the MBTA, provided the Permittees remain in compliance with the terms of this Agreement and the Section 10(a) Permit. Each such renewal shall be valid for a period of three (3) years, provided that the Section 10(a) Permit remains in effect for such period.

**14.13 Management of Land.** USFWS agrees to manage its land within the MSHCP Reserve System pursuant to the provisions of the Plan.

## 15. CDFW OBLIGATIONS AND ASSURANCES

### 15.1 Issuance of NCCP Permit.

- 15.1.1 Concurrent with the execution of this Agreement, CDFW has issued an NCCP Permit to the Permittees authorizing the Take of Covered Species, subject to and in accordance with the MSHCP and this Agreement.
- 15.1.2 Except as set forth in Section 15.5 of this Agreement, as to each Covered Species, including both Listed and Unlisted Species, that Take Authorization shall become effective upon issuance of the NCCP Permit.

**15.2 NCCP Permit Findings.** In separate findings, CDFW has found, following opportunity for public comment, that the MSHCP and this Agreement: 1) adequately provide for the Conservation and management of the Covered Species and their Habitat within the MSHCP and 2) satisfy all legal requirements under the NCCP Act necessary for CDFW to issue an NCCP Permit for such species. CDFW has found that the MSHCP meets the requirements of the NCCP Act for an NCCP Plan, and has approved the MSHCP as an NCCP Plan. In separate findings, CDFW has further found that the MSHCP and this Agreement adequately provide for the mitigation of potential "significant effects on the environment" (as defined in California Public Resources Code section 21068) which may result to Covered Species and their Habitat from the Covered Activities in the Plan Area.

**15.3 State Assurances.** Except for the provisions in Section 15.5, provided Permittees are implementing the terms and conditions of the MSHCP, this 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.

The Parties acknowledge that, notwithstanding the assurances provided by this Section, future modifications to mitigation that are specifically contemplated under the MSHCP and this Agreement may require adjustments in the mitigation set forth in the MSHCP as of the Effective Date, including, but not limited to, Take minimization measures and MSHCP Reserve

System management. Such changes are part of the MSHCP's operating Conservation program and are not precluded by the assurances provided in this Section. In particular, this Section shall not be construed to diminish the obligation of the Permittees, Third Parties Granted Take Authorization or Participating Special Entities to undertake mitigation actions in response to Changed Circumstances and to revise mitigation measures under the Management Program. However, CDFW acknowledges that neither the Management Program, nor the MSHCP's provisions concerning Changed Circumstances, are intended to require modifications to the MSHCP's mitigation program that would require additional funding nor to impose significant additional burdens on Permittees, discretionary approvals issued by Permittees, or on Participating Special Entities with respect to Take minimization measures.

**15.4 Implementation Assistance.** Subject to Section 27.10 of this Agreement, CDFW shall provide staff to serve on appropriate committees and shall ensure the availability of staff for informal discussions and meetings with the other Parties to ensure that the implementation of this Agreement is consistent with, and will not render invalid, any findings upon which the NCCP Permit is based. To the extent consistent with its legal authorities, CDFW shall cooperate with the Permittees in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and existing and future bond issues.

**15.5 Fully Protected Species.** The following Covered Species listed in the MSHCP are fully protected under California Fish and Wildlife Code sections 3511 and 4700: 1) Peninsular bighorn sheep; 2) Yuma clapper rail; and 3) California black rail. Take of these species is prohibited under the California Fish and Wildlife Code except as specifically provided in section 2081.7 of that Code. Under the NCCP permit, only CVWD is authorized to Take fully protected species, as described in that permit. Under Fish and Wildlife Code section 2081.7, CDFW may authorize CVWD to take Yuma clapper rail and California black rail, if the requirements of that section are met. CDFW acknowledges and agrees that if the measures set forth in the MSHCP are fully complied with, the Covered Activities are not likely to result in Take of fully protected species, except by CVWD. If CDFW determines that such measures are not adequate to prevent Take of one of the Fully Protected Species, CDFW shall notify the CVCC, USFWS and other affected Permittees in writing of such discovery and propose new, additional, or different Conservation measures that it believes are necessary to avoid Take of these species. The affected Permittees shall implement measures proposed by CDFW or such other measures agreed to by the Parties as adequate to avoid Take of Fully Protected Species.

If at any time there is a change in state law such that CDFW may issue a section 2081(b) Permit or Take Authorization under Fish and Wildlife Code section 2835, other permit, or authorization allowing the Take of any species subject to California Fish and Wildlife Code sections 3511, 4700, 4800, 5050 or 5515, the Permittees may apply for an amendment of the MSHCP and NCCP Permit or for a new permit for such species. In processing any such application, CDFW shall give good faith consideration to Take avoidance and mitigation measures already provided in the MSHCP and shall issue the amendment or Permit under the same terms and conditions as the existing NCCP Permit, to the extent permitted by law.

**15.6 Changes in the Environmental Laws.** It is acknowledged and agreed by CDFW that the Permittees are agreeing to perform substantial avoidance, minimization, mitigation, Conservation and management measures set forth in this Agreement and the MSHCP. If a change in, or addition to, the Environmental Laws takes place, CDFW shall give good faith consideration to the measures required under the MSHCP in applying the new laws and regulations to the Permittees.

**15.7 Consultations by CDFW.** Except as otherwise required by law, CDFW shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding impacts to Covered Species that exceed the requirements prescribed in and pursuant to the MSHCP and this Agreement, including, without limitation, in the form of comments offered by CDFW in the context of any CEQA process associated with approvals for Covered Activities with regard to effects on Covered Species.

**15.8 Management of Land.** CDFW agrees to manage its land within the MSHCP Reserve System consistent with the MSHCP, along with other legal mandates and management objectives.

**16. RELATIONSHIP TO OTHER EXISTING HABITAT CONSERVATION PLANS, NCCP PERMITS AND SECTION 2081 PERMITS**

**16.1 General.** The Parties acknowledge that there are Habitat Conservation Plans, biological opinions issued pursuant to section 7 and section 2081 Permits, currently in existence for projects in the Coachella Valley and surrounding mountains within Riverside County. The Parties agree that the MSHCP is not incompatible with nor does it negate these existing plans and Permits. Upon request, the Parties may consider consolidation of these Permits and plans into the MSHCP.

**16.2 Coachella Valley Fringe-Toed Lizard Take Authorization.** The Permittees will relinquish the Coachella Valley Fringe-Toed Lizard ("CVFTL") Section 10(a) Permit pursuant to 50 CFR 13.26 within six months of issuance of the MSHCP Section 10(a) Permit, which will allow for final accounting and completion of other administrative activities under the CVFTL HCP. Upon relinquishment of the CVFTL permit, Take Authorization for the CVFTL for Covered Activities will be provided pursuant to the MSHCP Section 10(a) Permit. Because the CVFTL Section 10(a) Permit will no longer exist, the consistency determination (under Fish and Wildlife Code section 2080.1) which was based on such permit will also terminate. Upon issuance of the MSHCP Section 10(a) Permit, the current fees required under the CVFTL HCP will no longer be imposed.

## **17. THIRD PARTY TAKE AUTHORIZATION**

**17.1 Authorization.** Upon execution of this Agreement by the Parties and the issuance of the Permits by the Wildlife Agencies, the Permittees may allow the Take of Covered Species by landowners, developers, and other private and public entities undertaking Covered Activities. Such Covered Activities must be under the direct control of the Permittees in conformance with approvals granted by the Permittees, or carried out in conformity with a Certificate of Inclusion or other written mechanism or instrument, and in compliance with this Agreement, the Permits and the MSHCP. As set forth in Section 11.1.1 of this Agreement, Permittees shall include as a part of any discretionary or certain City ministerial approvals, a Certificate of Inclusion or other written mechanism, a condition requiring compliance with the Permits, the MSHCP and this Agreement, that describes the Take Authorization to be granted pursuant to Section 17.2 of this Agreement. Such property owners, developers, and private and public entities shall receive Take Authorization provided they are in full compliance with all requirements of this Agreement, the MSHCP, the Permits, the Implementation Mechanism adopted by Permittees, issued entitlements and all other applicable requirements.

**17.2 Timing of Take Authorization.** Authorization of Take for Third Parties shall occur upon issuance of a grading permit by a Local Permittee or issuance of a Certificate of Inclusion by the CVCC or other Local Permittee. Alternatively, as an incentive to convey property needed for inclusion in the MSHCP Reserve System and for which monetary compensation will not be provided, Third Party Take Authorization may be granted upon project approval and property conveyance. In order

to obtain this early Take Authorization, the conveyance must occur within forty-five (45) days of project approval. Any subsequent suspension or revocation of Permits terminating Third Party Take Authorization will not be applicable to the Take Authorization granted upon the project's approval, provided the property has been conveyed and all other mitigation obligations have been satisfied, except where such Take Authorization will jeopardize a Covered Species listed under FESA and/or CESA. In this event, the provisions of Section 17.4 of this Agreement would be triggered. No grading permit or Certificate of Inclusion shall be issued by a Local Permittee until all mitigation requirements imposed by the Permittees through the Implementation Mechanism have been fully satisfied or are guaranteed to occur within a set time frame as approved by the Permittee. In the event that such mitigation requirements have not been satisfied prior to issuance of grading permit or Certificate of Inclusion, the applicant and the Permittee shall enter into an agreement setting forth the terms and conditions of MSHCP compliance and appropriate remedies for non-compliance. The Take Authorization conferred by the Permittees to the Third Parties shall be for the length of time, and run concurrently with, the specific land development approval or other entitlement or approval granted by the Permittees and the term of the Permits.

**17.3 Effect of MSHCP Amendments on Third Parties.** Amendments or other revisions to the MSHCP, subsequent to the granting of Take to a Third Party by a Permittee, shall not affect the Take conferred upon a Third Party or the level of compensation required unless the Third Party, the Wildlife Agencies and the affected Permittee all agree to such amendments or revisions.

**17.4 Effect of Revocation or Suspension of Permits on Third Parties.** In the event that one or both of the Wildlife Agencies revoke or suspend all or a portion of the Take Authorization allowed under the Permits, and provided the affected Permittee continues to carry out its obligations under the MSHCP, this Agreement and the Permits, the Take Authorization and other assurances granted to Third Parties Granted Take Authorization by the Permittees will remain in effect as to each individual Third Party project that received Take Authorization prior to the revocation or suspension unless USFWS or CDFW determines that continuation of the Permits with regard to Take by Third Parties Granted Take Authorization would likely jeopardize a species listed under FESA and/or CESA. In this event, the CVCC, applicable Permittee(s), Third Parties Granted Take

Authorization and Wildlife Agencies, shall meet and confer pursuant to the provisions in Section 23.6 of this Agreement. If these Parties cannot reach a mutually satisfactory resolution, the Wildlife Agencies may revoke or suspend all Take Authorization under the MSHCP for that listed species. In this event, all Local Permittees, Third Parties Granted Take Authorization and Participating Special Entities would be eligible for full or partial refund from the CVCC or other appropriate Permittees of any mitigation contribution, as appropriate, except to the extent that Take had already occurred. The CVCC or other applicable Permittee will issue a notice to all potentially affected property owners that Take Authorization for that listed species is no longer valid under the Plan.

**17.5 Effect of No Surprises Assurances on Third Parties.** Pursuant to the No Surprises Rule, the Wildlife Agencies shall not require the commitment of additional land or financial compensation or other mitigation from the Permittees, and the Permittees will not require such commitments from a Third Party pursuant to the Permits, the MSHCP or this Agreement beyond those measures imposed on the Third Party by the Local Permittee in accordance with the Permit, the MSHCP and this Agreement, unless agreed to by the Third Party. The Parties acknowledge that additional measures may be required for a species that is not a Covered Species, as described in Section 11.3.5 of this Agreement.

**17.6 Retention of Enforcement Authority Over Third Parties.** The Parties reserve the right to enforce all applicable federal, state, or local laws against persons or entities which engage in unlawful land development activity without obtaining proper permits and approvals. The Parties further reserve the right to enforce all applicable federal, state, or local laws against Third Parties conducting land development activities within the Plan Area not in compliance with project approvals pursuant to the MSHCP. Local Permittees have the obligation to enforce conditions of project approval as described in Section 13.0 of this Agreement.

## **18. COOPERATIVE EFFORT**

In order to ensure that the legal requirements set forth in this Agreement are fulfilled, each of the Parties to this Agreement must perform certain specified tasks as set forth in this Agreement and the MSHCP. The MSHCP and this Agreement thus describe a cooperative effort by federal, state and local agencies to implement a program of Conservation for the Covered Species.

Additionally, the Parties shall work cooperatively to enter into appropriate Memoranda of Understanding or other appropriate agreements with any non-Party managing land within the MSHCP Reserve System to manage lands in conformance and compliance with the MSHCP. A draft Model Memorandum of Understanding is attached hereto as Exhibit "F."

## **19. TERM**

**19.1 Effective Date.** This Agreement shall be effective upon issuance of the Permits. Any Permittee executing this Agreement after the Effective Date shall, upon execution, become a Party to this Agreement, with all the rights and obligations of Parties defined herein, and this Agreement shall be enforceable between each later executing Permittee and all prior signing Parties.

**19.2 Term of the Agreement.** This Agreement shall run for a term of seventy-five (75) years from the Effective Date, unless terminated in accordance with Section 21 of this Agreement or unless extended by agreement of all of the Parties hereto.

**19.3 Term of the Permits.** The Permits shall run for a term of seventy-five (75) years from the Effective Date unless terminated as provided in this Agreement, provided the requirements of Section 11.1 of this Agreement have been met. This term was selected as reasonable due to the scope and breadth of the Plan, the need to establish an adequate endowment to manage and monitor the MSHCP Reserve System and the projected growth and planned infrastructure within the Plan Area.

**19.4 Extension of the Permit.** Upon agreement of the Parties and in compliance with all applicable laws, the Wildlife Agencies may, with respect to the Permits under their respective jurisdiction, extend the Permits beyond their initial terms under the applicable regulations in force on the date of such extension. If Permittees desire to extend the Permits, they will so notify the Wildlife Agencies at least twelve (12) months before the then-current term is scheduled to expire and submit an application to renew the Permits. Extension of the Permits constitutes extension of the MSHCP and this Agreement for the same amount of time, subject to any modifications agreed to by the Parties at the time of extension.

**19.5 Permanent Preservation.** Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Take of a Covered Species and/or their habitat modified within the Plan Area, such Take and habitat modification will be



permanent. The Parties therefore agree that obligations regarding the preservation and maintenance of the habitat provided for under the Permits, the MSHCP and this Agreement is likewise intended to be permanent and to extend beyond the term of this Agreement.

## **20. MODIFICATIONS AND AMENDMENTS TO THE MSHCP**

**20.1 Clerical Changes.** Clerical changes to the MSHCP shall be made by the CVCC on its own initiative or in response to a written request submitted by any Permittee or Wildlife Agency, which includes documentation supporting the proposed clerical change. Clerical changes shall not require any amendment to the MSHCP, the Permits or this Agreement. Clerical changes include corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning as well as corrections of any maps or exhibits to correct insignificant errors in mapping. The Parties anticipate that most clerical changes to the MSHCP will occur during the first ten (10) years of the Permits. Annual reports shall include a summary of clerical changes made to the MSHCP in the preceding calendar year.

**20.2 Land Use Changes.** The Parties agree that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances, and the granting of implementing land use entitlements by the County and the Cities are matters within the sole discretion of the County and Cities and shall not require amendments to this Agreement or the approval of other Parties to this Agreement. However, the Parties agree that: 1) no such action by the County or the Cities shall in any way alter or diminish their obligations under this Agreement, the MSHCP, or the Permits, and 2) approval of certain projects may lead to revocation or suspension of the Permits pursuant to Section 23.5 of this Agreement.

**20.3 Adaptive Management Changes.** Except as otherwise provided, changes to avoidance measures, minimization, mitigation, compensation and MSHCP Reserve System management strategies developed through and consistent with the Management Program described in Section 8.0 of the MSHCP shall not require any amendment to the MSHCP, this Agreement or the Permits.

**20.4 Minor Amendments.** Minor Amendments are amendments to the MSHCP of a minor or technical nature where

the effect on Covered Species, levels of Take and Permittees' ability to implement the MSHCP are not significantly different than those described in the MSHCP as originally adopted. Minor Amendments to the MSHCP shall not require amendments to this Agreement or the Permits.

**20.4.1 List of Minor Amendments.** As set forth in Section 6.12.3 of the MSHCP, the following are contemplated as Minor Amendments to the MSHCP and therefore, will be administratively implemented pursuant to the procedures below. Minor Amendments processed pursuant to this subsection are limited to those listed in Sections 20.4.2 and 20.4.3 of this Agreement.

**20.4.2 Minor Amendments not Requiring Wildlife Agencies Concurrence.**

- A. Minor corrections to land ownership;
- B. Adjustment of land ownership and Conservation acreages in the Santa Rosa and San Jacinto Mountains Conservation Area upon completion of a land exchange between the Agua Caliente Band of Cahuilla Indians and BLM, as discussed in Section 4.2.1.1 of the Final MSHCP;
- C. Minor revisions to survey, monitoring, reporting and/or management protocols that clearly do not affect Covered Species or overall MSHCP Reserve System functions and values;
- D. Application of Take Authorization to Development within cities incorporated within the MSHCP boundaries after the Effective Date of this Agreement, pursuant to Section 11.5 of this Agreement, provided such inclusion does not preclude Reserve Assembly, significantly increase the cost of MSHCP Reserve System Assembly or management or preclude achieving Conservation Area Conservation Objectives or Species Conservation Goals;
- E. Annexation or deannexation of property within the Plan Area pursuant to Section 11.4 of this Agreement, provided such inclusion does not preclude Reserve Assembly, significantly increase the cost of MSHCP Additional Conservation Lands management or assembly, or preclude achieving Conservation Area Conservation Objectives or Species Conservation Goals;
- F. Updates/corrections to the natural communities map and/or species occurrence data; and
- G. Changes to the RMU boundaries.

### **20.4.3 Minor Amendments Requiring Wildlife Agencies Concurrence.**

- A.** Conservation Area boundary adjustments as set forth in Section 6.12.2 of the MSHCP.
- B.** Construction and operation of CVWD water recharge and storage and other water related facilities as set forth in Section 7.3 of the MSHCP.
- C.** Modifications of the alignment of the Palm Desert to La Quinta Connector Trail from the alignment in the Trails Plan in the Final MSHCP.
- D.** Transfer of Conservation Objectives for conserved natural communities and/or identified Covered Species between Conservation Areas or between Recovery Zones in the Santa Rosa and San Jacinto Mountains Conservation Area may occur if the following is demonstrated:
  - 1. The transfer does not reduce the number of acres anticipated by the Plan of the natural community or the species' habitat conserved.
  - 2. The transfer does not reduce the Conservation value of the lands that will be conserved based on natural community patch size, configuration, and juxtaposition within the matrix of Conserved Habitat and is of greater or equal habitat value.
  - 3. There is no reduction in Conservation and no increase in Take.
  - 4. Transfers must be within kind (for a Covered Species or natural community). Any shifts must be species-specific and meet the above criteria.
- E.** Changes to the list of exotic species in Table 4-112 of the MSHCP.
- F.** Future proposals for new trails on Reserve Lands in the Santa Rosa and San Jacinto Mountains Conservation Area, other than the identified new trails (including perimeter trails).
- G.** Construction of the Morongo Wash Flood Control Facility as described in Section 7.3.1.

**20.4.4 Procedure.** Any Party may propose Minor Amendments to the MSHCP or this Agreement by providing written notice to all other affected Parties.

Such notice shall include a description of the proposed Minor Amendment, an explanation of the reason for the proposed Minor Amendment, an analysis of its environmental effects including any impacts to the Conservation of Covered Species and a description of why that Party believes the effects of the proposed Minor Amendment: 1) are not significantly different from, and are biologically equivalent to, the terms in the MSHCP as originally adopted; 2) substantially conform to the terms in the MSHCP as originally adopted; and 3) will not significantly reduce the ability to acquire the Additional Conservation Lands. The Wildlife Agencies and affected parties shall submit any comments on the proposed Minor Amendment in writing within sixty (60) days of receipt of such notice. Any Party can institute the informal meet and confer process set forth in Section 23.6 of this Agreement to resolve disagreements concerning Minor Amendments.

For the minor amendments requiring Wildlife Agencies' concurrence, any non-concurrence must occur within sixty (60) days of receipt of the written notice as referenced above. If the Wildlife Agencies concur or if they fail to respond within the sixty (60) days period, the Minor Amendment may be approved. If the Wildlife Agencies do not concur with the analysis supporting the Minor Amendment in writing within the 60-day period, the project will be subject to a Major Amendment.

**20.5 Major Amendments.** Major Amendments are those proposed changes to the MSHCP and the Permits that are not clerical or Minor Amendments. Major Amendments to the MSHCP shall require a subsequent amendment to this Agreement and the Permits, and public notice as required by applicable laws and regulations. The CVCC shall submit any proposed Major Amendments to the Wildlife Agencies.

**20.5.1 List of Major Amendments.** Major Amendments include, but are not limited to, any of the following:

- A. All amendments not contemplated in this Agreement as clerical or Minor Amendments to the MSHCP, except subsequent minor changes which are not specifically listed as a Minor Amendment in this Agreement that the Wildlife Agencies have determined to be insubstantial and appropriate for implementation as a Minor Amendment;
- B. Changes to the boundary of the Plan Area;
- C. Addition of species to the Covered Species list; and