

- D. Changes in anticipated Reserve Assembly or funding strategies and schedules that would have substantial adverse effects on the Covered Species.

20.5.2 **Procedure.** Major Amendments shall be processed as set forth in Section 6.12.4 of the MSHCP and require the same process followed for the original MSHCP approval. A Major Amendment will require an amendment to the MSHCP and this Agreement addressing the new circumstances, subsequent publication and public notification, CEQA/NEPA compliance and intra-Service section 7 Consultation, if one is deemed necessary. Major Amendments shall be subject to review and approval by the CVCC and other Permittees as appropriate, at a noticed public hearing. The Wildlife Agencies will use reasonable efforts to process proposed Major Amendments within one hundred twenty (120) days after publication in the Federal Register of the proposed Major Amendment.

20.6 **Like Exchanges in Conservation Areas.** Like exchanges in Conservation Areas may be implemented pursuant to Section 6.12.2 of the MSHCP.

21. **TERMINATION OF PERMITS**

21.1 **Termination in General.** The Permittees may unanimously elect to terminate the MSHCP and the Permits. In order to terminate, the CVCC shall make written findings at a noticed public hearing that further compliance with this Agreement, and implementation of the MSHCP, are either not feasible or no longer in the best interest of the County, the Cities and the other Permittees. Termination by the Permittees shall not be effective until sixty (60) days after the CVCC has provided written notice to the Wildlife Agencies of the adoption of termination findings.

21.2 **Continuing Obligations.** In the event of termination, consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and 17.22(b)(7), the Permittees will remain obligated to fulfill any existing and outstanding minimization and mitigation measures required under the terms of the Permits for Take that occurs prior to such termination and such minimization and mitigation measures as may be required pursuant to the terms of this Agreement and the MSHCP. With the consent of the Wildlife Agencies, the CVCC may transfer its obligations to a professional land manager approved by the Wildlife Agencies or to the Wildlife Agencies directly, or to another appropriate entity and/or entities acceptable to the Wildlife Agencies.

All Local Development Mitigation Fees that have been collected and held by the CVCC, the County and the Cities shall be placed in an interest bearing account governed by the CVCC, and shall be transferred to a professional land manager, the Wildlife Agencies directly, or other appropriate entity and/or entities acceptable to the Wildlife Agencies.

21.3 **Final Accounting.** At the time of termination, the CVCC shall provide to the Wildlife Agencies a final accounting of management activities and monitoring information. Such final accounting shall include, at a minimum, all of the information contained in the Annual Report described in Section 6.4 of the MSHCP and all outstanding obligations for future actions regarding implementation of the MSHCP. The final accounting shall specify the Permittees' specific responsibilities and time frames for carrying out such obligations to ensure Rough Step requirements are met by the Permittees.

21.4 **Dissolution of the CVCC.** In the event the CVCC disbands or is otherwise dissolved at the time of termination, the CVCC's obligations under this Agreement shall be carried out by the County or other appropriate entity and/or entities acceptable to the Wildlife Agencies.

22. WITHDRAWAL OF PERMITTEE(S)

22.1 **Withdrawal in General.** A Permittee may terminate its participation in the MSHCP and abandon its Take Authorization set forth in the Permits by notifying the Parties hereto in writing of its intent to terminate its participation. Any Permittee that elects to terminate participation in the MSHCP shall provide at least ninety (90) days written notice to all Parties. Prior to any such termination, the Permittee shall provide to the CVCC a final accounting of any information gathered by the Permittee with respect to implementation of the MSHCP, and shall transfer to the CVCC any Local Development Mitigation Fees or other funds related to the MSHCP that have been collected.

22.2 **Mitigation Responsibilities.** Consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and 17.22(b)(7), the withdrawing Permittee remains responsible for any existing and outstanding minimization and mitigation measures required under the terms of the Permits for Take that occurs prior to such withdrawal, and such minimization and mitigation measures as may be required pursuant to the terms of this Agreement and the MSHCP.

22.3 Termination of Permittee Take Authorization.

Termination of participation by any Permittee will automatically terminate Take Authorization for Covered Activities within that Permittee's jurisdiction. However, for those Covered Activities within that Permittee's jurisdiction that have been issued a grading permit or, if a grading permit is not required, have commenced grading activities or have been issued a Certificate of Inclusion prior to the notification or the Permittee's formal decision to terminate, Take Authorization shall continue under the remaining Permits provided all relevant obligations have been met pursuant to the MSHCP, this Agreement and the Permittee's land use entitlements. In this event, the withdrawing Permittee may elect to continue enforcement of the Plan for the Covered Activities. Otherwise, the CVCC or other appropriate remaining Permittee shall enter into a Certificate of Inclusion or other written mechanism or instrument with the Third Party Granted Take Authorization or Participating Special Entity. The Certificate of Inclusion or other written mechanism shall be automatically issued provided the applicable Parties are in compliance with the MSHCP, this Agreement and the Permits.

22.4 Evaluation of Remaining Permits. In the event of termination by any Permittee, the CVCC shall meet and confer with the Wildlife Agencies to determine to what extent, if any, Take Authorization may continue to be provided to the remaining Permittees. In making this determination, the Wildlife Agencies shall evaluate the benefits to Covered Species resulting from the participation of the remaining Permittees, the extent to which the withdrawing Permittee has outstanding obligations for compliance with Take minimization and mitigation measures, an evaluation of whether the Permits continue to meet issuance criteria pursuant to FESA and the NCCP Act, and any other relevant information. Such evaluation shall include an analysis of the viability of the MSHCP Reserve System without the participation of the Permittee, including whether adequate funding will be available to implement the terms of the MSHCP.

23. REMEDIES AND ENFORCEMENT

23.1 Remedies in General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of the MSHCP, this Agreement and the Permits, and to seek remedies for any breach hereof, subject to the following limitations:

23.1.1 No Monetary Damages. No Party shall be liable in money damages to any other Party or any other person for any breach of this

Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

- A. All Parties shall retain whatever liability they would possess for their present and future acts, or failure to act, without existence of this Agreement.
- B. All Parties shall retain whatever liability they possess as an owner of interests in land.
- C. Nothing contained in this Agreement is intended to limit the authority of the United States government or the government of the State of California to seek civil or criminal penalties or otherwise fulfill its/their enforcement responsibilities under FESA, CESA, the NCCP Act, or other applicable law.

23.2 **Default.** Any material breach or violation of this Agreement, the MSHCP, or the Permits shall be deemed a default under this Agreement.

23.2.1 **Notice and Opportunity to Cure Default.** If any Party determines that one of the other Parties is in violation of the terms of this Agreement, or that a violation is threatened, that Party shall give written notice to the violating Party of such violation and demand in writing the cure of such violation. If the violating Party fails to cure the violation within forty-five (45) days after receipt of said written notice and demand from the notifying Party, or said cure reasonably requires more than forty-five (45) days to complete and the violating Party fails to begin the cure within the forty-five (45) day period or fails to continue diligently to complete the cure, the notifying Party may bring an action at law or in equity in a court of competent jurisdiction to: 1) enforce compliance by the defaulting Party with the terms of this Agreement, 2) recover actual damages to which the notifying Party may be entitled for violation by the defaulting Party of the terms of this Agreement subject to the limitations stated in Section 23.1 above, and/or 3) enjoin the violation, ex parte as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief. The notifying Party may apply any damages recovered to the cost of undertaking any corrective action.

23.3 **Injunctive and Temporary Relief.** The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment and therefore injunctive and temporary relief may be

appropriate to ensure compliance with the terms of this Agreement.

23.4 Limitation and Extent of Enforceability. Except as otherwise specifically provided herein, nothing in this Agreement shall be deemed to restrict the rights of the Permittees to the use of those lands, or interest in lands, constituting the Plan Area, provided that nothing in this Agreement shall absolve the Permittees from such other limitations as may apply to such lands, or interest in lands, under other laws or regulations of the United States, the State of California, or any local agency with jurisdiction over those lands.

23.5 Revocation or Suspension of the Permits. The Wildlife Agencies shall have the right to revoke or suspend all or portions of the Permits, in accordance with the laws and regulations in force at the time of such revocation or suspension. Such action may also be triggered by: 1) failure of a Permittee to implement the Implementation Mechanisms adopted by that agency; 2) approval of a proposed Development or public project that significantly compromises the viability of the MSHCP Reserve System; 3) failure to comply with Rough Step requirements set forth in Section 6.5 of the MSHCP; and/or 4) withdrawal of a Permittee. Such suspension or revocation may apply to the entire applicable Permit, or only to a portion such as specified Conservation Area, specified Covered Species, or specified Covered Activities. Such action may also be triggered if the Wildlife Agencies determine that land within the Conservation Areas is annexed to a non-participating public agency and thus, development of such land could significantly compromise the viability of the MSHCP Reserve System.

Except as otherwise required by law, prior to taking action to revoke or suspend the Permits, the Wildlife Agencies, as applicable, shall: 1) provide thirty (30) day prior written notification to the relevant Permittee(s) and the CVCC of the proposed revocation or suspension, and 2) meet and confer with the relevant Permittee(s) and the CVCC to attempt to avoid the need to revoke or suspend all or a portion of the Permits. The Parties may rely upon the informal meet and confer process set forth in Section 23.6 of this Agreement for disputes concerning potential Permit revocation or suspension.

If the Permits are suspended or revoked, Permittees shall not have the authority to rely upon the Permits to approve or carry out any actions which would violate FESA or CESA in the absence of such Permits. In the event of suspension or revocation of the Permits, Permittees' obligations under this Agreement and the MSHCP to carry out all of their responsibilities under the MSHCP, the Permits and this Agreement arising from any Covered Activity approved, authorized or carried out by the Permittees between the Effective Date of the Agreement and the date the Permits are revoked or suspended will continue until the USFWS and/or the CDFW

determines that all Take of Covered Species that occurred under the Permits has been addressed pursuant to the terms of the Permits. Provided the suspension or revocation is not the result of the Permittee(s)' failure to properly implement the MSHCP, no additional mitigation beyond that contemplated in the MSHCP and this Agreement will be required. As to any Covered Activity of a Third Party that is approved or authorized by a Local Permittee and for which Take is authorized prior to the suspension or revocation or for Caltrans Covered Activities for which mitigation has already been contributed, so long as the Local Permittee and Third Party continue to fulfill their obligations under the Permits, the Take Authorization shall continue in effect for that project until completion pursuant to Section 23.7 of this Agreement, except where such Take Authorization will jeopardize a Species listed under FESA or CESA.

23.6 Informal Meet and Confer Process for Disputes Concerning Covered Activities, State Streambed Alteration Agreements, Federal 404 Permits, and ESA Section 7 Consistency Consultation. Concerning Covered Activities, state streambed alteration agreements, federal 404 permits, and section 7 consistency consultations, the Parties agree to work together in good faith to resolve disagreements using the informal dispute resolution procedures set forth in this Section, or such other procedures upon which the Parties may later agree. However, if at any time a Party determines that circumstances so warrant, such Party may seek any available remedy without waiting to complete this informal meet and confer process.

Unless the Parties agree upon another dispute resolution process, or unless the CDFW or the USFWS has initiated administrative proceedings or litigation in federal or state court, the Parties may use the following process to attempt to resolve disputes concerning Covered Activities, state streambed alteration agreements, federal 404 permits, and ESA section 7 consistency consultations:

- A. The CDFW and/or the USFWS will notify the CVCC in writing of:
 1. disagreements they may have with the impact of a proposed Covered Activity on a covered species,
 2. the basis for CDFW's and/or USFWS's contention that the MSHCP lacks certain identified measures necessary to the continued existence of the identified species, or that the MSHCP contains measures that may be detrimental to the continued existence of the impacted Covered Species.
 3. the basis for contending that the proposed Covered Activity is not consistent with the MSHCP and the Permits.
 4. concerns they may have regarding the issuance of a state streambed alteration agreement, a federal 404 permit, or a section 7 consistency determination.

- B. The CVCC, in coordination with the project applicant(s), will have sixty (60) days, or such other time as may be agreed upon, to respond. During this time, the CVCC, in coordination with the project applicant(s), may seek clarification of the information provided in the initial notice. The CDFW and/or the USFWS will use reasonable efforts to provide all information available to them that may be responsive to such inquiries.
- C. Within sixty (60) days after such response was provided or was due, representatives of the Parties (and the project applicant(s) if the project applicant(s) so chooses) having authority to resolve the dispute will meet and negotiate in good faith toward a mutually satisfactory solution.
- D. If any disagreement cannot be resolved through such negotiations, the Parties will consider other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve those remaining disagreements through that process.

23.7 Continuation Of Take Authorization after Revocation, Suspension or Permittee Withdrawal. In the event of revocation or suspension of the Permits pursuant to Section 23.5 of this Agreement or withdrawal of a Permittee pursuant to Section 22 of this Agreement, any Third Party Granted Take Authorization or Participating Special Entity who is in compliance with the terms and conditions of the MSHCP, this Agreement and the Permits can automatically continue to receive Take Authorization from the CVCC or other remaining Permittee upon execution of a Certificate of Inclusion or other written mechanism or instrument issued by the CVCC or other remaining Permittee, except as otherwise required by law.

24. FORCE MAJEURE

In the event that the Permittees are wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittees ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating federal or state agencies or local jurisdictions, the Permittees shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate FESA, CESA or the NCCP Act, and provided further that:

- A. The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

- B. Within fifteen (15) days after the occurrence of the Force Majeure, affected Permittees shall give the Wildlife Agencies written notice describing the particulars of the occurrence;
- C. Permittees shall use their best efforts to remedy their inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest); and
- D. When Permittees are able to resume performance of their obligations, the affected Permittees shall give the Wildlife Agencies written notice to that effect.

25. LEGAL AUTHORITY OF THE USFWS

The USFWS enters into this Agreement pursuant to FESA, the Fish and Wildlife Coordination Act (16 U.S.C. sections 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. sections 742(b) et seq.). Section 10(a)(1)(B) of FESA expressly authorizes the USFWS to issue a Section 10(a) Permit to allow the Incidental Take of animal species listed as threatened or endangered under FESA. The legislative history of section 10(a)(1)(B) clearly indicates that Congress also contemplated that the USFWS would approve a habitat conservation plan that protects Unlisted Species as if they were listed under FESA, and that in doing so, the USFWS would provide assurances for such Unlisted Species. The USFWS routinely approves habitat conservation plans that address both listed and unlisted Species.

26. LEGAL AUTHORITY OF THE CDFW

CDFW enters into this Agreement pursuant to its separate and independent authority under the NCCP Act (California Fish and Wildlife Code sections 2800 et seq.). CDFW may authorize the Take of Covered Species, other than fully protected species, pursuant to California Fish and Wildlife Code section 2835.

27. MISCELLANEOUS PROVISIONS

27.1 Response Times. The Parties agree that time is of the essence in performance of the obligations of this Agreement. Except as otherwise set forth herein or as statutorily required by CEQA, NEPA, CESA, FESA, the NCCP Act or any other laws or regulations, the Wildlife Agencies and the Permittees shall use reasonable efforts to respond to written requests within a forty-five (45) day time period.

27.2 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the MSHCP shall make, or be deemed to make, any Party to this Agreement the agent for, or the partner or joint venturer of, any other Party.

27.3 Nullification of Agreement. In the event that the Permits are not issued, this Agreement shall be null and void and no Party shall be bound by its terms.

27.4 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested to the persons listed below and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines. Notice delivered via certified mail, return receipt requested, shall be deemed given five (5) days after deposit in the United States mail. Notices delivered personally shall be deemed given on the date they are delivered. Notices delivered via overnight delivery shall be deemed given on the next business day after deposit with the overnight mail delivery service. The CVCC shall maintain a list of individuals responsible for ensuring Plan compliance for each of the Parties which may change. The following are the individuals currently responsible for ensuring Plan compliance:

Executive Director
Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260
Telephone: 760-346-1127
Telefax: 760-340-5949

Executive Director
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260
Telephone: 760-346-1127
Telefax: 760-340-5949

Executive Director
Coachella Valley Mountains Conservancy
73-710 Fred Waring Drive, Suite 205
Palm Desert, CA 92260
Telephone: 909-790-3405
Telefax: 909-790-7596

District Director
District 8

California Department of Transportation
464 West 4th Street
San Bernardino, California 92401-1400
Telephone: 909-383-4561
Telefax: 909-383-6899

Deputy Director
Habitat Conservation Division
California Department of Fish and Wildlife
1416 Ninth Street, 13th Floor
Sacramento, California 95814
Telephone: 916-653-1070
Telefax: 916-653-3673

Regional Manager
Eastern Sierra and Inland Deserts Region
California Department of Fish and Wildlife
4665 Lampson Ave. Suite J
Los Alamitos, California 90720
Telephone: 562-430-7212
Telefax: 562-799-8427

City Manager
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, California 92234
Telephone: 760-770-0340
Telefax: 760-770-0399

City Manager
City of Coachella
1515 6th Street
Coachella, California 92236
Telephone: 760-398-3502
Telefax: 760-398-8117

City Manager
City of Desert Hot Springs
65-950 Pierson Blvd
Desert Hot Springs, California 92240
Telephone: 760-329-6411
Telefax: 760-288-3129

City Manager
City of Indian Wells
44-950 Eldorado Drive
Indian Wells, California 92210

Telephone: 760-346-2489
Telefax: 760-346-0407

City Manager
City of Indio
100 Civic Center Mall
Indio, California 92201
Telephone: 760-342-6500
Telefax: 760-342-6556

City Manager
City of La Quinta
78-495 Calle Tampico
La Quinta, California 92253
Telephone: 760-777-7025
Telefax: 760-777-7107

City Manager
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260
Telephone: 760-346-0611
Telefax: 760-340-0574

City Manager
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, California 92263
Telephone: 760-323-8201
Telefax: 760-323-8207

City Manager
City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, California 92270
Telephone: 760-324-4511
Telefax: 760-324-8830

General Manager
Coachella Valley Water District
85995 Avenue 52
Coachella, California 92236
Telephone: 760-398-2651

Telefax: 760-398-3711

General Manager
Imperial Irrigation District
333 East Barioni Boulevard
Imperial, California 92251
Telephone: 760-339-9219
Telefax: 760-339-9392

General Manager
Mission Springs Water District
66575 Second Street
Desert Hot Springs, CA 92240
Telephone: 760-329-6448
Telefax: 760-339-9392

Chief Executive Officer
County of Riverside
County Administrative Center
P.O. Box 1605
Riverside, California 92502-1605
Telephone: 951-955-1100
Telefax: 951-955-1105

General Manager/Chief Engineer
Riverside County Flood Control
and Water Conservation District
1995 Market Street
Riverside, California 92501
Telephone: 951-955-1200
Telefax: 951-788-9965

General Manager
Riverside County Regional Park and Open Space District
4600 Crestmore Road
Riverside, California 92519-3507
Telephone: 951-955-4310
Telefax: 951-955-4305

Chief Executive Officer
Riverside County Waste Resources Management District
14310 Frederick Street

Moreno Valley, California 92553
Telephone: 951-486-3200
Telefax: 951-486-3205

Deputy Operations Manager
United States Fish and Wildlife Service
California/Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846
Telephone: 916-414-6464
Telefax: 916-414-6486

In addition to the above list, the following individuals will also be provided all notices as set forth in this Section:

Chair
Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260
Telephone: 760-346-1127
Telefax: 760-340-5949

Chair
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260
Telephone: 760-346-1127
Telefax: 760-340-5949

Director
California Department of Parks
and Recreation
1416 Ninth Street, Room 1405
Sacramento, CA 95814
Telephone: 916-653-8380
Telefax: 916-657-3909

Board of Supervisors
County of Riverside
P.O. Box 1605
4080 Lemon Street, 5th Floor
Riverside, California 92502-1605
Telephone: 951-955-1050
Telefax: 951-955-1071

Mayor
City of Cathedral City

68-700 Avenida Lalo Guerrero
Cathedral City, California 92234
Telephone: 760-770-0340
Telefax: 760-202-1470

Mayor
City of Coachella
1515 6th Street
Coachella, California 92236
Telephone: 760-398-3502
Telefax: 760-398-8117

Mayor
City of Desert Hot Springs
65-950 Pierson Blvd
Desert Hot Springs, California 92240
Telephone: 760-329-6411
Telefax: 760-288-3129

Mayor
City of Indian Wells
44-950 Eldorado Drive
Indian Wells, California 92210
Telephone: 760-346-2489
Telefax: 760-346-0407

Mayor
City of Indio
100 Civic Center Mall
Indio, California 92201
Telephone: 760-863-5437
Telefax: 760-342-6597

Mayor
City of La Quinta
78-495 Calle Tampico
La Quinta, California
Telephone: 760-777-7025
Telefax: 760-777-7107

Mayor
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260
Telephone: 760-346-0611

Telefax: 760-340-0574

Mayor
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, California 92263
Telephone: 760-323-8204
Telefax: 760-323-8332

Mayor
City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, California 92270
Telephone: 760-324-4511
Telefax: 760-324-8830

Field Supervisor
United States Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, California 92009
Telephone: 760-431-9440
Telefax: 760- 431-9618

County Counsel
County of Riverside
3960 Orange Street, Fifth Floor, Suite 500
Riverside, California 92501
Telephone: 951-955-6300
Telefax: 951-955-6363

General Counsel
Office of the General Counsel
California Department of Fish and Wildlife
1416 Ninth Street, 12th Floor
Sacramento, California 95814
Telephone: 916-654-3821
Telefax: 916-654-3805

27.5 Entire Agreement. This Agreement, together with the MSHCP and the Permits, constitutes the entire Agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, among the

Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein. This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

27.6 Assignment or Transfer. This Agreement and each of its covenants and conditions shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the Permits shall be governed by the Wildlife Agencies regulations in force at the time.

27.7 Defense. Upon request, the CDFW will, to the extent authorized by California law, provide appropriate support to the Permittees in defending, consistent with the terms of the MSHCP, lawsuits arising out of the Permittees' adoption of the MSHCP and/or this Agreement.

27.8 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable federal law.

27.9 Elected Officials Not to Benefit. No member of, or delegate to, the California State Legislature, the United States Congress, the Riverside County Board of Supervisors, or City Council of the Permittees shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

27.10 Availability of Funds. Implementation of this Agreement and the MSHCP by the USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge and agree that the USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Implementation of this Agreement and the MSHCP by the CDFW is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that the CDFW shall not be required under this Agreement to expend any State appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

Implementation of this Agreement and the MSHCP by the CVCC, the County and the Cities is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the general funds of the County or Cities unless expressly authorized by the County Board of Supervisors and/or appropriate City Councils. The obligations of the County, County Parks, County Waste, County Flood Control, CVWD, IID, and MSWD are limited to those specifically set forth in the MSHCP, the Permits and this Agreement.

Implementation of this Agreement and the MSHCP by Caltrans is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that Caltrans shall not be required under this Agreement to expend any State appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

27.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

27.12 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

27.13 Relationship to the FESA, CESA, NCCP Act and Other Authorities. The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, the NCCP Act and other applicable state and federal law. In particular, nothing in this Agreement is intended to limit the authority of the USFWS and CDFW to seek penalties or otherwise fulfill its responsibilities under FESA, CESA and the NCCP Act. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government or CDFW as an agency of the State of California.

27.14 No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, the NCCP Act or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

27.15 References to Regulations. Any reference in this Agreement, the MSHCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

27.16 Applicable Laws. All activities undertaken pursuant to this Agreement, the MSHCP or Permits must be in

compliance with all applicable state and federal laws and regulations.

27.17 Severability. In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one does not automatically cause revocation of the other.

27.18 Headings. The paragraph headings used in this Agreement are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

27.19 Due Authorization. The USFWS and CDFW each represent and warrant for the benefit of the Permittees and their successors and assign that: 1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action; 2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable the USFWS and CDFW to enter into and comply with the terms of this Agreement; and 3) the person executing this Agreement on behalf of the USFWS and CDFW has the authority to bind the USFWS and CDFW respectively.

27.20 Faxed Signatures. Any Party may deliver its signed duplicate of this Agreement to any other Party by facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by such other Party. Any Party delivering a signed duplicate by facsimile transmission shall promptly send the duplicate original bearing its original signature to such other Party, provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the facsimile transmission.

27.21 Calculation of Dates and Dates of Performance. Where periods of time of forty-five (45) days or more are used in this Agreement, calculation of dates of performance shall be by calendar days, (e.g., where the text reads sixty (60) days, it shall be read to mean sixty (60) calendar days). Where periods of time are used in this Agreement of less than forty-five (45) days, calculation of date or performance shall be by business or working days. In the event that the date of performance is not a business day, due to falling on a Saturday, Sunday, or observed

state or federal holiday, the date of performance shall be construed to be the next business day subsequent to the calculated date of performance.

27.22 Further Instruments. Each of the Parties shall, promptly upon the request of the others, execute, acknowledge, and deliver to the others any and all further instruments and shall give such further assurances as are reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

UNITED STATES FISH AND WILDLIFE SERVICE

Deputy Manager
United States Fish and Wildlife Service
California/Nevada Operations Office
Sacramento, California

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Deputy Director
Habitat Conservation Division
California Department of Fish and Wildlife
Sacramento, California

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Regional Manager
Eastern Sierra and Inland Deserts Region
California Department of Fish and Wildlife
Los Alamitos, California

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

General Counsel (approval as to form)
California Department of Fish and Wildlife
Sacramento, California

Date: _____

**COACHELLA VALLEY ASSOCIATION
OF GOVERNMENTS**

Chair of the Executive Committee
Coachella Valley Association of Governments
Palm Desert, California

Date: _____

COACHELLA VALLEY CONSERVATION COMMISSION

Chair
Coachella Valley Conservation Commission
Palm Desert, California

Date: _____

COACHELLA VALLEY MOUNTAINS CONSERVANCY

Chair
Coachella Valley Mountains Conservancy
Palm Desert, California

Date: _____

RIVERSIDE COUNTY BOARD OF SUPERVISORS

Chair of the Board of Supervisors
Riverside County Board of Supervisors
Riverside, California

Date: _____

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

Chair
Riverside County Flood Control
and Water Conservation District
Riverside, California

Date: _____

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Director of State Parks
California Department of Parks and Recreation
Sacramento, California

Date: _____

**RIVERSIDE COUNTY REGIONAL PARK
AND OPEN SPACE DISTRICT**

Chair
Riverside County Regional Park and Open Space District
Riverside, California

Date: _____

FORM APPROVED COUNTY COUNSEL
BY: KARIN L. WATTS-BAZAN DATE: 7/29/14

RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

Chair Jeff Stone
JEFF STONE
Riverside County Waste Resources Management District
Riverside, California

Date: 7/29/14

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Director
California Department of Transportation
Sacramento, California

Date: _____

CITY OF CATHEDRAL CITY

Mayor
City of Cathedral City
Cathedral City, California

Date: _____

CITY OF COACHELLA

Mayor
City of Coachella
Coachella, California

Date: _____

CITY OF DESERT HOT SPRINGS

Mayor
City of Desert Hot Springs
Desert Hot Springs, California

Date: _____

ATTEST:
KECIA HARPER-IHEM, Clerk
By: [Signature]
DEPUTY

CITY OF INDIAN WELLS

Mayor
City of Indian Wells
Indian Wells, California

Date: _____

CITY OF INDIO

Mayor
City of Indio
Indio, California

Date: _____

CITY OF LA QUINTA

Mayor
City of La Quinta
La Quinta, California

Date: _____

CITY OF PALM DESERT

Mayor
City of Palm Desert
Palm Desert, California

Date: _____

CITY OF PALM SPRINGS

Mayor
City of Palm Springs
Palm Springs, California

Date: _____

CITY OF RANCHO MIRAGE

Date: _____

Mayor
City of Rancho Mirage
Rancho Mirage, California

IMPERIAL IRRIGATION DISTRICT

Date: _____

Chair
Imperial Irrigation District
Imperial, California

COACHELLA VALLEY WATER DISTRICT

Date: _____

Chair
Coachella Valley Water District
Palm Desert, California

MISSION SPRINGS WATER DISTRICT

Date: _____

Chair
Mission Springs Water District
Desert Hot Springs, California