

SECOND AMENDMENT TO THE 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 Second Amendment to the Implementing Agreement ("Agreement"), made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2015, 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 Game 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 Game Commission as under review for listing as threatened or endangered, or a species for which the Fish and Game 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 Game Code

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

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

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

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

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

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

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

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

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

2.31 "County" means the County of Riverside.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.72 "NCCP Act" means the California Natural Community Conservation Planning Act of 2002 (California Fish and Game 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 Game 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 Game 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 Game Code sections 2050 et seq.), the California Native Plant Protection Act (California Fish and Game Code sections 1900 et seq.), the California Natural Community Conservation Planning Act (California Fish and Game 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 Game 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.

**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.

#### 11.6 Participating Special Entity.

11.6.1 **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.

11.6.2 **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.

**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 Game 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 Game 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 Game 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 Game Code section 2835, other permit, or authorization allowing the Take of any species subject to California Fish and Game 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 Game 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.

**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.

20.3.1 **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.

20.3.2 **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.

20.3.3 **Minor Amendments Requiring Wildlife Agencies Concurrence.**

**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.

20.3.4 **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.

**20.4 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.

**20.4.1 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
- D.** Changes in anticipated Reserve Assembly or funding strategies and schedules that would have substantial adverse effects on the Covered Species.

**20.4.2 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.

20.5 **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 Game Code sections 2800 et seq.). CDFW may authorize the Take of Covered Species, other than fully protected species, pursuant to California Fish and Game 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 112  
Palm Desert, CA 92260  
Telephone: 760-776-5026

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  
Inland Deserts Region  
California Department of Fish and Wildlife  
3602 Inland Empire Blvd., Suite C-220  
Ontario, CA 91764  
Telephone: 949-458-1754

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  
2177 Salk Avenue, Suite 250  
Carlsbad, California 92008  
Telephone: 760-431-9440  
Telefax: 760- 431-9618



County Counsel  
County of Riverside  
3535 10th Street  
Riverside, California 92501-3624  
Telephone: 951-955-6301  
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.

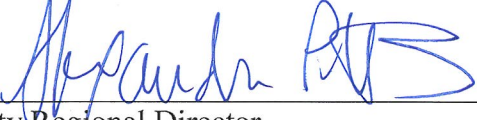
**27.20 Faxed Signatures.** Any Party may deliver its signed duplicate of this Agreement to any other Party by facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by such other Party. Any Party delivering a signed duplicate by facsimile 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 Regional Director  
United States Fish and Wildlife Service  
Pacific Southwest Region  
Sacramento, California

Date: 12-9-15

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

\_\_\_\_\_  
Deputy Director  
Ecosystem Conservation Division  
California Department of Fish and Wildlife  
Sacramento, California

Date: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

\_\_\_\_\_  
Regional Manager  
Inland Deserts Region  
California Department of Fish and Wildlife  
Ontario, California

Date: \_\_\_\_\_

21/25/16

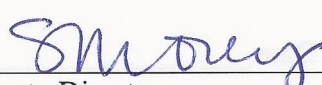
27.22 **Further Instruments.** Each of the Parties shall, promptly upon the request of the others, execute, acknowledge, and deliver to the others any and all further instruments and shall give such further assurances as are reasonably requested or appropriate to evidence or give effect to the provisions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

\_\_\_\_\_  
Date: \_\_\_\_\_  
Deputy Manager  
United States Fish and Wildlife Service  
California/Nevada Operations Office  
Sacramento, California

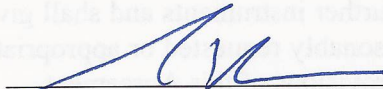
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

  
\_\_\_\_\_  
Date: 8.22.16  
Deputy Director  
Ecosystem Conservation Division  
California Department of Fish and Wildlife  
Sacramento, California

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

  
\_\_\_\_\_  
Date: 8/22/16  
Regional Manager  
Inland Deserts Region  
California Department of Fish and Wildlife  
Ontario, California

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

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

Date: 8/22/16

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: \_\_\_\_\_




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: 6-30-14

COACHELLA VALLEY CONSERVATION COMMISSION

  
\_\_\_\_\_  
Chair  
Coachella Valley Conservation Commission  
Palm Desert, California

Date: 3-13-14

COACHELLA VALLEY MOUNTAINS CONSERVANCY

Barford Carter

Chair  
Coachella Valley Mountains Conservancy  
Palm Desert, California

Date: 5/12/14

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: \_\_\_\_\_

COACHELLA VALLEY MOUNTAINS CONSERVANCY

\_\_\_\_\_  
Chair  
Coachella Valley Mountains Conservancy  
Palm Desert, California

Date: \_\_\_\_\_

RIVERSIDE COUNTY BOARD OF SUPERVISORS

*Jeff Stone*  
\_\_\_\_\_  
Chair of the Board of Supervisors **JEFF STONE**  
Riverside County Board of Supervisors  
Riverside, California

Date: 7/29/14

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

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: *[Signature]* 7/17/14  
KARIN L. WATTS-BAZAN 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

*Marion Ashley*  
\_\_\_\_\_  
Chair  
Riverside County Flood Control  
and Water Conservation District  
Riverside, California

Date: 7/29/14

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*  
KARIN L. WATTS-BAZAN  
DATE: 7/17/14

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

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: 9.24.15

RIVERSIDE COUNTY REGIONAL PARK  
AND OPEN SPACE DISTRICT

\_\_\_\_\_  
Chair  
Riverside County Regional Park and Open Space District  
Riverside, 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  
**KEVIN JEFFRIES**  
Riverside County Regional Park and Open Space District  
Riverside, California

Date: 7/29/14

FORM APPROVED COUNTY COUNSEL  
BY: [Signature] 7/17/14  
KARIN L. WATTS-BAZAN DATE

ATTEST:  
KEVIN HARPER-IHEM, Clerk  
BY: [Signature]  
DEPUTY

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

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: \_\_\_\_\_

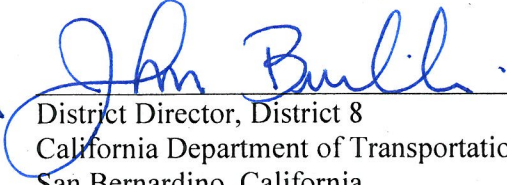
ATTEST:  
KECIA HARPER-IHEM, Clerk  
By: Karin L. Watts-Bazan  
DEPUTY

RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

\_\_\_\_\_  
Chair  
Riverside County Waste Resources Management District  
Riverside, California

Date: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF TRANSPORTATION

*Interim*   
\_\_\_\_\_  
District Director, District 8  
California Department of Transportation  
San Bernardino, California

Date: 7/8/15

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: \_\_\_\_\_



RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

\_\_\_\_\_  
Chair  
Riverside County Waste Resources Management District  
Riverside, California

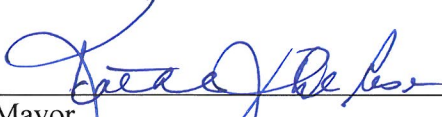
Date: \_\_\_\_\_

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: 07.09.2014

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: \_\_\_\_\_

RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

\_\_\_\_\_  
Chair  
Riverside County Waste Resources Management District  
Riverside, California

Date: \_\_\_\_\_

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: 12/1/2014

CITY OF DESERT HOT SPRINGS

\_\_\_\_\_  
Mayor  
City of Desert Hot Springs  
Desert Hot Springs, California

Date: \_\_\_\_\_

RIVERSIDE COUNTY WASTE RESOURCES MANAGEMENT DISTRICT

\_\_\_\_\_  
Chair  
Riverside County Waste Resources Management District  
Riverside, California

Date: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Director  
California Department of Transportation  
Sacramento, California

Date: \_\_\_\_\_

CITY OF CATHEDRAL CITY

\_\_\_\_\_  
Mayor  
City of Cathedral City  
Cathedral City, California

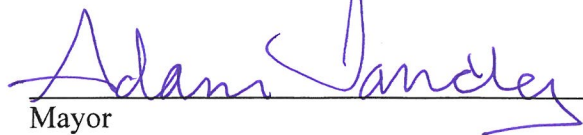
Date: \_\_\_\_\_

CITY OF COACHELLA

\_\_\_\_\_  
Mayor  
City of Coachella  
Coachella, California

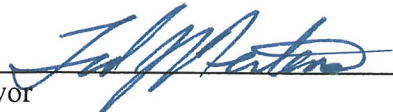
Date: \_\_\_\_\_

CITY OF DESERT HOT SPRINGS

  
\_\_\_\_\_  
Mayor  
City of Desert Hot Springs  
Desert Hot Springs, California

Date: 1/13/15

CITY OF INDIAN WELLS

  
\_\_\_\_\_  
Mayor  
City of Indian Wells  
Indian Wells, California

Date: 6-19-14

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 INDIAN WELLS

---

Mayor  
City of Indian Wells  
Indian Wells, California

Date: \_\_\_\_\_

CITY OF INDIO



---

Mayor  
City of Indio  
Indio, California

Date: 6/19/14

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 INDIAN WELLS

\_\_\_\_\_  
Mayor  
City of Indian Wells  
Indian Wells, California

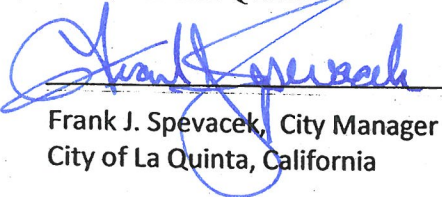
Date: \_\_\_\_\_

CITY OF INDIO

\_\_\_\_\_  
Mayor  
City of Indio  
Indio, California

Date: \_\_\_\_\_

CITY OF LA QUINTA

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

Date: 23 June 2014

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 INDIAN WELLS

\_\_\_\_\_  
Mayor  
City of Indian Wells  
Indian Wells, California

Date: \_\_\_\_\_

CITY OF INDIO

\_\_\_\_\_  
Mayor  
City of Indio  
Indio, California

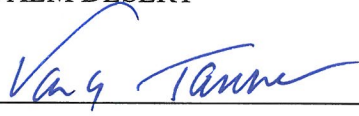
Date: \_\_\_\_\_

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: **June 26, 2014**

CITY OF PALM SPRINGS

\_\_\_\_\_  
Mayor  
City of Palm Springs  
Palm Springs, California

Date: \_\_\_\_\_

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

Steph P. Payne  
\_\_\_\_\_  
Mayor  
City of Palm Springs  
Palm Springs, California

ER

Date: 9-17-14

APPROVED BY CITY COUNCIL

Res 23601 7.2.14 AG209

APPROVED AS TO FORM

John R. Shaw  
\_\_\_\_\_  
City Attorney

Date: 9/20/2014

ATTEST:

James Thompson  
\_\_\_\_\_  
City Clerk



CITY OF RANCHO MIRAGE

  
\_\_\_\_\_

Mayor  
City of Rancho Mirage  
Rancho Mirage, California

Date: 6-9-2014

IMPERIAL IRRIGATION DISTRICT

\_\_\_\_\_  
Chair  
Imperial Irrigation District  
Imperial, California

Date: \_\_\_\_\_

COACHELLA VALLEY WATER DISTRICT

\_\_\_\_\_  
Chair  
Coachella Valley Water District  
Palm Desert, California

Date: \_\_\_\_\_

MISSION SPRINGS WATER DISTRICT

\_\_\_\_\_  
Chair  
Mission Springs Water District  
Desert Hot Springs, California

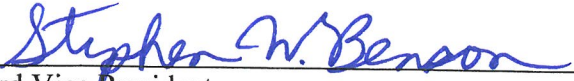
Date: \_\_\_\_\_

CITY OF RANCHO MIRAGE

\_\_\_\_\_  
Mayor  
City of Rancho Mirage  
Rancho Mirage, California

Date: \_\_\_\_\_

IMPERIAL IRRIGATION DISTRICT

  
\_\_\_\_\_  
Board Vice President  
Imperial Irrigation District  
Imperial, California

Date: 6-24-14

COACHELLA VALLEY WATER DISTRICT

\_\_\_\_\_  
Chair  
Coachella Valley Water District  
Palm Desert, California

Date: \_\_\_\_\_

MISSION SPRINGS WATER DISTRICT

\_\_\_\_\_  
Chair  
Mission Springs Water District  
Desert Hot Springs, California

Date: \_\_\_\_\_

CITY OF RANCHO MIRAGE

\_\_\_\_\_  
Mayor  
City of Rancho Mirage  
Rancho Mirage, California


Date: \_\_\_\_\_

IMPERIAL IRRIGATION DISTRICT

\_\_\_\_\_  
Chair  
Imperial Irrigation District  
Imperial, California

Date: \_\_\_\_\_

COACHELLA VALLEY WATER DISTRICT

  
\_\_\_\_\_  
Chair  
Coachella Valley Water District  
Palm Desert, California

Date: 6-24-14

MISSION SPRINGS WATER DISTRICT

\_\_\_\_\_  
Chair  
Mission Springs Water District  
Desert Hot Springs, California

Date: \_\_\_\_\_

CITY OF RANCHO MIRAGE

\_\_\_\_\_  
Mayor  
City of Rancho Mirage  
Rancho Mirage, California

Date: \_\_\_\_\_

IMPERIAL IRRIGATION DISTRICT

\_\_\_\_\_  
Chair  
Imperial Irrigation District  
Imperial, California


Date: \_\_\_\_\_

COACHELLA VALLEY WATER DISTRICT

\_\_\_\_\_  
Chair  
Coachella Valley Water District  
Palm Desert, California

Date: \_\_\_\_\_

MISSION SPRINGS WATER DISTRICT

  
\_\_\_\_\_  
President  
Mission Springs Water District  
Desert Hot Springs, California

Date: 7-2-14