



# CITY COUNCIL STAFF REPORT

DATE: July 2, 2014

PUBLIC HEARING

SUBJECT: THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN ("CVMSHCP") FOR CONSIDERATION OF A MAJOR AMENDMENT TO THE CVMSHCP PLAN BY THE COACHELLA VALLEY CONSERVATION COMMISSION TO ADD THE CITY OF DESERT HOT SPRINGS AND MISSION SPRINGS WATER DISTRICT AS PERMITTEES OF THE PLAN

FROM: David H. Ready, City Manager

BY: Department of Planning Services

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## SUMMARY

The City Council will consider a proposed Major Amendment to the Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP or Plan). The Major Amendment is by the Coachella Valley Conservation Commission to add the City of Desert Hot Springs and the Mission Springs Water District as Permittees of the Plan. As a Permittee under the Plan, the City of Palm Springs is required to act on the proposed Major Amendment to the Plan before any amendment can become effective.

## RECOMMENDATION:

1. Open the public hearing and receive public testimony;
2. Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF PALM SPRINGS MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AS REVISED BY THE MAJOR AMENDMENT; APPROVING THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AS REVISED BY THE MAJOR AMENDMENT; APPROVING THE IMPLEMENTING AGREEMENT; AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"

ITEM NO. 18

3. Adopt Resolution No. \_\_\_\_\_, "MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN (CVMSHCP), ESTABLISHING THE CVMHSCP IMPLEMENTATION POLICY WHICH CONTAINS THE PROCEDURES AND REQUIREMENTS FOR IMPLEMENTATION OF THE CVMSHCP, WHICH ALSO INCLUDES THE COUNCIL'S APPROVAL OF THE CVMSHCP AS REVISED BY THE MAJOR AMENDMENT AND AUTHORIZES THE MAYOR TO EXECUTE THE REVISED IMPLEMENTING AGREEMENT (IA), AND DIRECTS THAT A NOTICE OF DETERMINATION BE FILED"

**PRIOR ACTIONS:**

Dates:	Actions:
03.13.14	Proposed Major Amendment approved by CVCC
04.15.14	Major Amendment approved by City of Desert Hot Springs City Council
04.21.14	Major Amendment approved by Mission Springs Water District Board
05/06.14	Considerations by Cities, County and other Permittees began

**DISCUSSION:**

The proposal is a Major Amendment to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) to include Desert Hot Springs and Mission Springs Water District (MSWD) into the Plan. The proposed Project is a Major Amendment to the approved CVMSHCP to include the City of Desert Hot Springs and MSWD as Permittees of the Plan. The proposed action by the state and federal wildlife agencies is the issuance of Take Authorization associated with the Major Amendment for Covered Activities that are not currently included under the existing federal Section 10(a) Permit and state Natural Community Conservation Plan (NCCP) Permit (Permits). The Major Amendment will provide for covered projects requested by Desert Hot Springs and MSWD. This Major Amendment will restore the boundaries from the 2006 Final CVMSHCP for the Upper Mission Creek/Big Morongo Canyon Conservation Area that would be amended to include all of the private lands within the city limits of Desert Hot Springs. The private lands to be included total approximately 770 acres that were removed from this Conservation Area when Desert Hot Springs chose not to participate in 2006. A map showing the area of the Major Amendment is attached for your information.

The Notice of Availability for public review and comment on the Supplemental Environmental Impact Report/Environmental Impact Statement (SEIR/SEIS), which describes the environmental impacts associated with the inclusion of Desert Hot Springs and MSWD as Permittees to the CVMSHCP, was released on September 6, 2013. This public notice was circulated to the Permittees, local media, public agencies and stakeholder groups. Also on September 6, a notice appeared in the Federal Register describing the availability of the Supplemental EIR/EIS. Also in September 2013, CVCC sent a letter to each property owner of record ("Property Owner Letter")

within the Conservation Areas of the Major Amendment area letting them know that the Major Amendment to the CVMSHCP, Implementing Agreement (“IA”), and Supplemental EIR/EIS were available for review. The release of these documents commenced a 45-day public review period from September 6, 2013 through October 21, 2013. A total of seven individual comment letters were received.

The Final Supplemental EIR includes responses to all written comments received from agencies, private organizations, and the public during the public comment period was released on March 1, 2014. CVCC staff worked closely with Desert Hot Springs staff and Mission Springs Water District staff to prepare and review the responses to comments. In addition, changes to the Final CVMSHCP, Final Implementing Agreement, and Final Supplemental EIR/Supplemental EIS have been made as appropriate in response to the comments received. This fulfills the intent of CEQA and NEPA to provide decision makers and the public a full analysis of the potential impacts of the Major Amendment to the CVMSHCP and to provide the public with an opportunity to provide additional information to decision-makers regarding the potential effects of the Major Amendment.

At their March 13, 2014 meeting, the Coachella Valley Conservation Commission (“CVCC”) certified the Final Supplemental SEIR and approved the Major Amendment to the CVMSHCP to include the City of Desert Hot Springs and MSWD. A public notice was published in the Desert Sun on March 1, 2014 to inform the public about the March 13 CVCC meeting. Notices were sent to all property owners of record in the Conservation Area within the Major Amendment area, notifying them of the March 13, 2014 public hearing. The City of Desert Hot Springs and Mission Springs Water District both approved the Major Amendment unanimously on April 15, 2014 and April 21, 2014, respectively.

The Final Major Amendment documents are available for review on the CVMSHCP website at [www.cvmshcp.org](http://www.cvmshcp.org). These documents include the Final Supplemental EIR/EIS, the Response to Comments, the comment letters received, and the proposed changes to the CVMSHCP made as part of the Major Amendment.

In addition to approving the Major Amendment, an amendment to the CVCC Joint Powers Agreement (JPA) will be necessary to add Mission Springs Water District to the Coachella Valley Conservation Commission and include the entire City of Desert Hot Springs (a portion of the City of Desert Hot Springs was previously included in the CVMSHCP as part of the I-10 annexation in 2010). The staff recommendation includes approval of an amendment to the JPA agreement to make the changes necessary to fully include Desert Hot Springs and Mission Springs Water District.

#### Major Amendment Schedule

To complete the Major Amendment process, the Major Amendment will have to be approved by all current Permittees, CVCC member agencies and state agencies including Caltrans, State Parks, and the Coachella Valley Mountains Conservancy. When the Major Amendment is completed and the permit amended, the fee amount will

be reduced by 8% for all cities and the County as a result of the fee being spread across a larger number of permits.

The U.S. Fish and Wildlife Service will also need to issue a decision on the Major Amendment and revised permits adding Desert Hot Springs and MSWD will be issued by both state and federal Wildlife Agencies. Final completion of the Major Amendment is expected in summer 2014.

### Summary and Benefits of the CVMSHCP Major Amendment

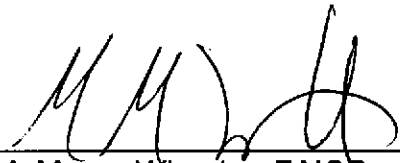
This Major Amendment is necessary to incorporate the City of Desert Hot Springs and MSWD into the Plan as Permittees, define their obligations, commitments, and Covered Activities consistent with the original Plan, and authorize Take associated with their Covered Activities. As Permittees, the City and MSWD will benefit from the CVMSHCP as they become part of this effort to enhance and maintain biological diversity and ecosystem processes while allowing future economic growth within the Coachella Valley. The CVMSHCP allows preservation of a quality of life characterized by well-managed and well-planned growth integrated with an associated open-space system. The City of Desert Hot Springs will be responsible for exercising its land use authority to ensure the goals and objectives of the Plan are met. MSWD will also be responsible to ensure the Conservation Goals and Objectives of the Plan are met. As a benefit to all local Permittees, the CVMSHCP mitigation fee will go down by 8% when the permit is amended.

The CVMSHCP will ultimately conserve over 240,000 acres of open space and protect 27 plant and animal species. Some of the benefits of the CVMSHCP are outlined below.

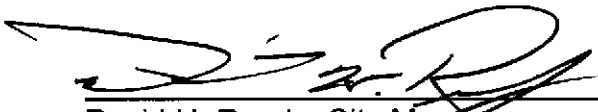
- Assures critical freeway, freeway interchange, water infrastructure, and regional road projects can be built without delays resulting from endangered species conflicts
- Offers certainty for the business community ultimately making the Coachella Valley a more attractive place for businesses to relocate or expand
- Preserves the Coachella Valley's native desert wildlife and creates a magnificent system of open space parks, trails and reserves
- Safeguards significant habitat linkages and wildlife corridors that enable animals to move safely from one habitat area to another
- By providing comprehensive compliance with federal and state endangered species laws, the Plan not only safeguards the desert's natural heritage for future generations, it benefits quality of life in the Coachella Valley.

### FISCAL IMPACT:

Upon completion of the Major Amendment, the Local Development Mitigation Fee will decrease by 8%. The Coachella Valley Conservation Commission will prepare a new fee schedule which will be forwarded to the City at a later date.



M. Margo Wheeler, FAICP  
Director of Planning Services



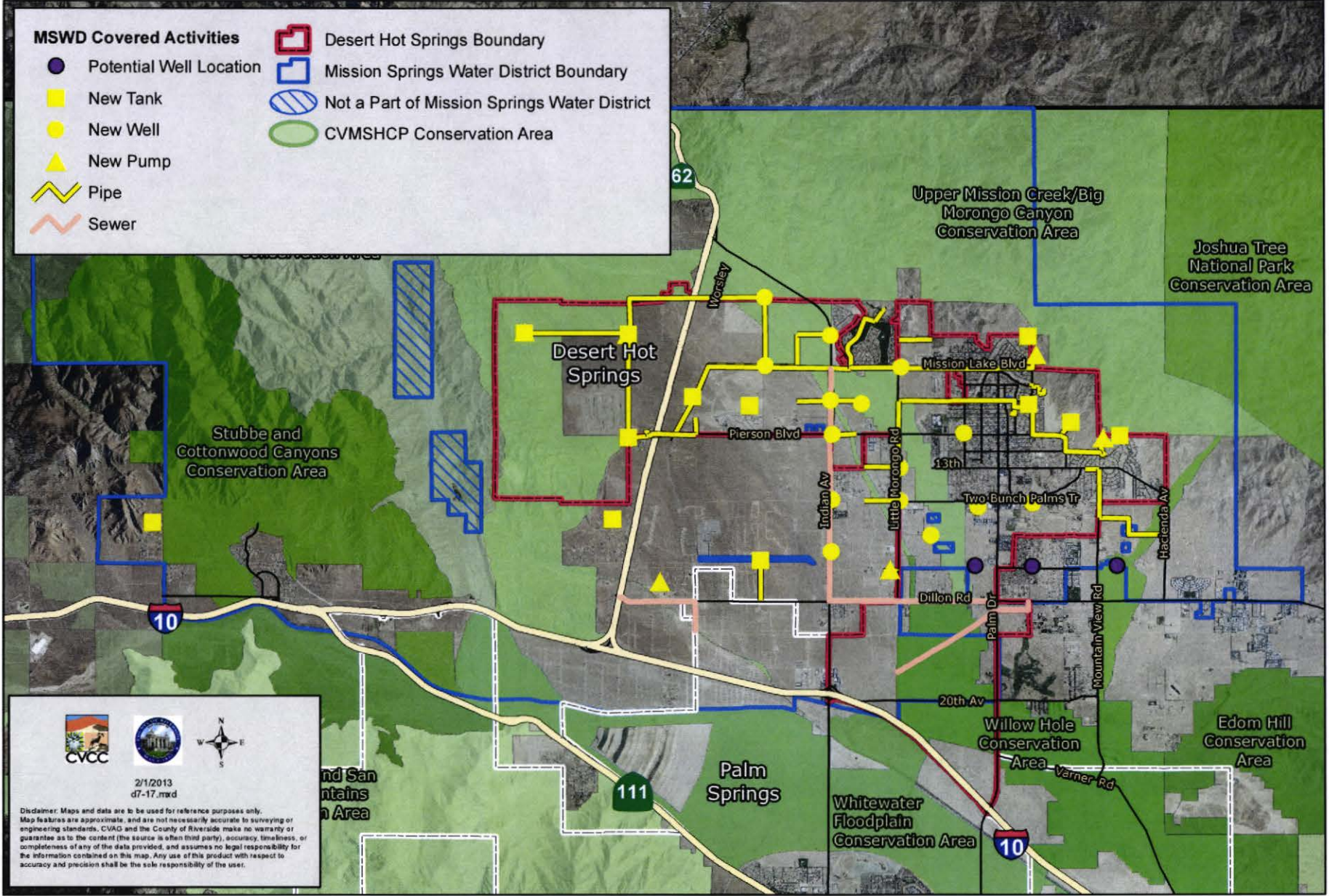
David H. Ready, City Manager

Attachments:




1. Map of Major Amendment Area
2. Draft Resolution—Responsible Agency Findings on the CVMSHCP (Exhibit A)
3. Draft Resolution – CVMSHCP Implementation Policy Resolution (Exhibit C)
4. Notice of Determination (Exhibit D)
5. Joint Powers Agreement – CVCC (Exhibit G)

MATERIAL ON FILE IN THE OFFICE OF THE CITY CLERK  
FOR PUBLIC INSPECTION

**Figure 7-17 Mission Springs Water District Covered Activities  
Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)**



- MSWD Covered Activities**
- Potential Well Location
  - New Tank
  - New Well
  - ▲ New Pump
  - Pipe
  - Sewer
- Desert Hot Springs Boundary
  - Mission Springs Water District Boundary
  - ▨ Not a Part of Mission Springs Water District
  - CVMSHCP Conservation Area

2/1/2013  
d7-17.mxd

Disclaimer: Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. CVCC and the County of Riverside make no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AS REVISED BY THE MAJOR AMENDMENT; APPROVING THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AS REVISED BY THE MAJOR AMENDMENT; APPROVING THE IMPLEMENTING AGREEMENT; AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

WHEREAS, the Coachella Valley Conservation Commission ("CVCC") is the lead agency pursuant to the California Environmental Quality Act ("CEQA") (Public Res. Code, § 21000 et seq.) and the State CEQA Guidelines (14 CCR § 15000 et seq.); and

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

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

WHEREAS, the CVCC now wishes to add the City and Mission Springs Water District as Permittees and so CVCC prepared a Major Amendment to the CVMSHCP (the “Major Amendment”); and

WHEREAS, the Project proposed for approval is the inclusion into the CVMSHCP, as revised by the Major Amendment, of the City of Desert Hot Springs and Mission Springs Water District, as Permittees (the “Project”); and

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

WHEREAS, a Supplemental Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) has been prepared pursuant to State CEQA Guidelines Section 15162 and CEQ NEPA Regulations, 40 C.F.R. 1502.9(c) in order to analyze all potential adverse environmental impacts of the Project; and

WHEREAS, CVCC, at a public meeting on March 13, 2014 reviewed the Final Supplemental EIR/EIS, Major Amendment to the CVMSHCP and CVMSHCP/Natural Communities Conservation Plan (“CVMSHCP”), Implementing Agreement, and other related documents in the record before it and by Resolution No. 14-004, certified the Final Supplemental EIR/EIS, and approved the Major Amendment to the CVMSHCP, and Implementing Agreement; and

WHEREAS, pursuant to State CEQA Guidelines sections 15091, 15096 sub. (h), 15381, and other provisions of CEQA, the City is a responsible agency for the Project and must therefore make certain findings prior to the approval of the Project; and

WHEREAS, the City Council of the City, at its regularly scheduled public meeting on July 2<sup>nd</sup>, 2014, independently reviewed and considered the Final Supplemental EIR/EIS and other related documents in the record before it; and

WHEREAS, all the procedures of CEQA and the State CEQA Guidelines have been met, and the Final Supplemental EIR/EIS, prepared in connection with the Major Amendment, as well as the September 2007 Recirculated EIR/EIS, are sufficiently detailed so that all the potentially significant effects of the Project on the environment and measures necessary to avoid or substantially lessen such effects have been



evaluated in accordance with the above-referenced Act and Guidelines; and

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

WHEREAS, all of the findings and conclusions made by the City Council pursuant to this Resolution are based upon the oral and written evidence presented to it as a whole and not based solely on the information provided in this Resolution; and

WHEREAS, prior to taking action, the City Council has heard, been presented with, reviewed and considered all of the information and data presented to it, including the Draft Supplemental EIR/EIS, Final Supplemental EIR/EIS, the September 2007 Recirculated EIR/EIS, and other documentation relating to the Project, and all oral and written evidence presented to it;

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

WHEREAS, the documents and other materials that constitute the record of proceedings/administrative record for the City's approval of the Project are located at the City Hall located at 3200 East Tahquitz Canyon Way; and the custodian of these records is Mr. David H. Ready, City Manager of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM SPRINGS AS FOLLOWS:

- A. The Final Supplemental EIR/EIS prepared for the Major Amendment to the CVMSHCP is hereby received by the City Council in the form attached hereto as Exhibit A, and incorporated herein by this reference. The September 2007 Recirculated EIR/EIS is hereby received by the City Council in the form attached hereto as Exhibit B, and incorporated herein by this reference
- B. The City Council hereby finds and determines that the September 2007 Recirculated EIR/EIS, as revised by the Final Supplemental EIR/EIS, has been completed in compliance with CEQA and the State CEQA Guidelines and, as the decision-making body for the City of Palm Springs, the City Council has reviewed and considered the information contained in the September 2007 Recirculated EIR/EIS, as revised by the Final Supplemental EIR/EIS, and related documents before it and all of the environmental effects of the CVMSHCP, as revised by the Major Amendment, and finds that the September 2007 Recirculated EIR/EIS, as revised by the Final Supplemental EIR/EIS, reflects the independent judgment and

analysis of the City.

- C. The City Council concurs with the environmental findings in CVAG Resolution Nos. 07-009 and CVCC Resolution 14-004 and adopts these findings, attached hereto as Exhibit C and Exhibit D, respectively, and incorporated herein by this reference.
- D. The City Council hereby approves the CVMSHCP (as amended by the Major Amendment) and authorizes the Mayor to execute the Implementing Agreement.
- E. The City Council hereby authorizes and directs that a Notice of Determination shall be filed with the Clerk of the County of Riverside within five (5) working days of approval of the Project.

PASSED, APPROVED AND ADOPTED this 2<sup>nd</sup> day of July, 2014.

AYES:  
 NOES:  
 ABSTAIN:

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Steve Pougnet, Mayor  
 City of Palm Springs

ATTEST:

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James Thompson, City Clerk  
 City of Palm Springs

APPROVED AS TO FORM:

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Douglas C. Holland, City Attorney

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I, James Thompson, City Clerk of the City of Palm Springs do hereby certify that the foregoing Resolution No. \_\_\_\_\_ was duly and regularly adopted by the City Council at a regular meeting thereof, held on the 2<sup>nd</sup> day of July, 2014, and that the foregoing is a full, true and correct copy of said Resolution.

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

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS TO ESTABLISH PROCEDURES AND REQUIREMENTS FOR IMPLEMENTATION OF THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN AND THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN / NATURAL COMMUNITY CONSERVATION PLAN, AS REVISED BY THE MAJOR AMENDMENT

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

SECTION I. TITLE

This Resolution shall be known as the "Coachella Valley Multiple Species Habitat Conservation Plan Implementation Policy."

SECTION II. FINDINGS AND PURPOSE

- A. The City Council finds that the ecosystems of the City of City of Palm Springs ("City"), the Coachella Valley and surrounding mountains located in central Riverside County and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents; these vegetation communities and natural areas contain habitat value which contributes to the region's environmental resources; and special protections for these vegetation communities and natural areas must be established to prevent future endangerment of the plant and animal species that are dependent upon them. This Resolution will protect the City's and the region's biological resources, vegetation communities, and natural areas, and prevent their degradation and loss by guiding development outside of biological resource core areas, and by establishing mitigation standards which will be applied to development projects. Adoption and implementation of this Resolution will enable the City to achieve the conservation goals set forth in the Coachella Valley Multiple Species Habitat Conservation Plan ("CVMSHCP"), to implement the associated Implementing Agreement executed by the City Council on July 2, 2014, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA"), the California Natural Community Conservation Planning Act ("NCCP Act"), and other applicable laws.
- B. The purpose and intent of this Resolution is to maintain and restore biological diversity and the natural ecosystem processes which support

this diversity, to protect vegetation communities and natural areas within the City, the Coachella Valley and the surrounding mountains located in central Riverside County which support species covered under the CVMSHCP; to maintain a future of economic development within the City by providing a streamlined regulatory process from which development can proceed in an orderly process; and to protect the existing character of the City and the region through the implementation of a system of reserves which will provide for permanent open space, community edges, and habitat conservation for species covered by the CVMSHCP. The further purpose of this Resolution is to reaffirm the previous Implementing Resolution adopted by the Plan Permittees and to bring it forward to reflect the Major Amendment to the Plan approved by Coachella Valley Conservation Commission in March 2014.

### SECTION III. APPLICATION OF REGULATIONS

Except as provided in Section IV, this Resolution shall apply to all land within the City shown on the CVMSHCP Plan Area Map (which has been revised from the original CVMSHCP Plan Area Map to reflect the Major Amendment), attached as Exhibit "1" hereto. Upon application to the City for a development project, an applicant shall be required to comply with the procedures set forth in this Resolution. Upon the City's initiation of a project that is subject to CEQA, the City shall be required to comply with the procedures set forth in this Resolution. No project requiring a discretionary, or certain ministerial permits or approvals that could have adverse impacts to species covered under the CVMSHCP shall be approved by the City, and no City-initiated public project shall be undertaken, unless the project is consistent with the CVMSHCP and this Resolution.

### SECTION IV. EXEMPTIONS

This Resolution shall not apply to the following:

- A. The adoption or amendment of the City's General Plan.
- B. The adoption or amendment of any land use or zoning ordinance.
- C. Any project for which and to the extent that a vesting tentative map pursuant to the Subdivision Map Act, or a development agreement pursuant to Government Code sections 65864 et seq., approved or executed prior to adoption of this Resolution, confers vested rights under the City's ordinances or state law to proceed with the project notwithstanding the enactment of this Resolution. Projects subject to this exemption must comply with all provisions of any applicable state and federal law.
- D. Any project for which the City Council determines that application of this Resolution would result in the property owner being deprived of all reasonable economic use of the property in violation of federal or state

constitutional prohibitions against the taking of property without just compensation.

#### SECTION V. PROCEDURES

- A. The City shall ensure compliance with Conservation Area requirements and measures as set forth in Section 4 of the CVMSHCP.
- B. The City shall impose, as a condition to the City's approval of a discretionary project and certain ministerial projects, such conditions as are necessary to ensure surveys are prepared for the project as required by Sections 4.3 and 4.4 of the CVMSHCP.
- C. The City shall impose as a condition to the City's approval of a project such conditions as necessary to ensure the project complies with and implements the applicable Land Use Adjacency Guidelines set forth in Section 4.5 of the CVMSHCP.
- D. The City shall ensure that public and private projects comply with the Avoidance, Minimization and Mitigation Measures set forth in Section 4.4 of the CVMSHCP.
- E. The City shall transmit any collected Local Development Mitigation Fees, other appropriate fees and associated interest as described in Section 5.2.1.1 of the CVMSHCP to the CVCC at least quarterly.
- F. The City shall contribute appropriate mitigation for City public projects as set forth in the CVMSHCP.
- G. The City shall participate as a member agency in the CVCC as set forth in Section 6.1.1 of the CVMSHCP.
- H. The City shall participate as a member of the RMOC as set forth in Section 6.1.3 of the CVMSHCP, as appropriate.
- I. The City shall participate in the Joint Review Process as set forth in Section 6.6.1.1 of the CVMSHCP for projects in the Conservation Areas.
- J. The City shall manage CVMSHCP Reserve System lands and conservation easements owned or leased by the City pursuant to Sections 8 and 9 of the CVMSHCP.
- K. The City shall maintain a record of total acres developed and their location within City jurisdiction and transmit such information monthly to the CVCC.
- L. The City shall transmit any changes in City boundaries or general plan land use designations to the CVCC at the end of each calendar year.

- M. Pursuant to the CVMSHCP, the City may transfer any property interest acquired or obtained in fee title or as a conservation easement to the CVCC for management. The City may also grant a conservation easement to the California Department of Fish and Game for any property interest obtained pursuant to Section V of this Resolution.
- N. Carry out all other applicable requirements of the CVMSHCP.

#### SECTION VI. DEFINITIONS

For purposes of this Resolution, the following terms shall have the meaning set forth herein:

- A. "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 CVMSHCP Plan Area.
- B. "Conservation Areas" means a system of lands described in Section 4.3 of the CVMSHCP that provide Core Habitat and Other Conserved Habitat for the Covered Species, conserve natural communities, conserve Essential Ecological Processes, and secure Biological Corridors and Linkages between major habitat areas. There are 21 Conservation Areas from which the CVMSHCP Reserve System will be assembled.
- C. "CVMSHCP" means the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan, as amended by the Major Amendment.
- D. "Map of CVMSHCP" means the map of the area encompassed by the CVMSHCP as set forth in the attached Exhibit "1."
- E. "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.

#### SECTION VII. EFFECTIVE DATE

The Mayor shall sign this Resolution and the City Clerk shall attest thereto, and thereupon and thereafter this Resolution shall take effect and be in force according to law.

PASSED, APPROVED, AND ADOPTED, this 2<sup>nd</sup> day of July, 2014

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Steve Pougnet, Mayor  
City of Palm Springs

ATTEST:

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James Thompson, City Clerk  
City of Palm Springs

AS TO FORM:

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Doug Holland City Attorney

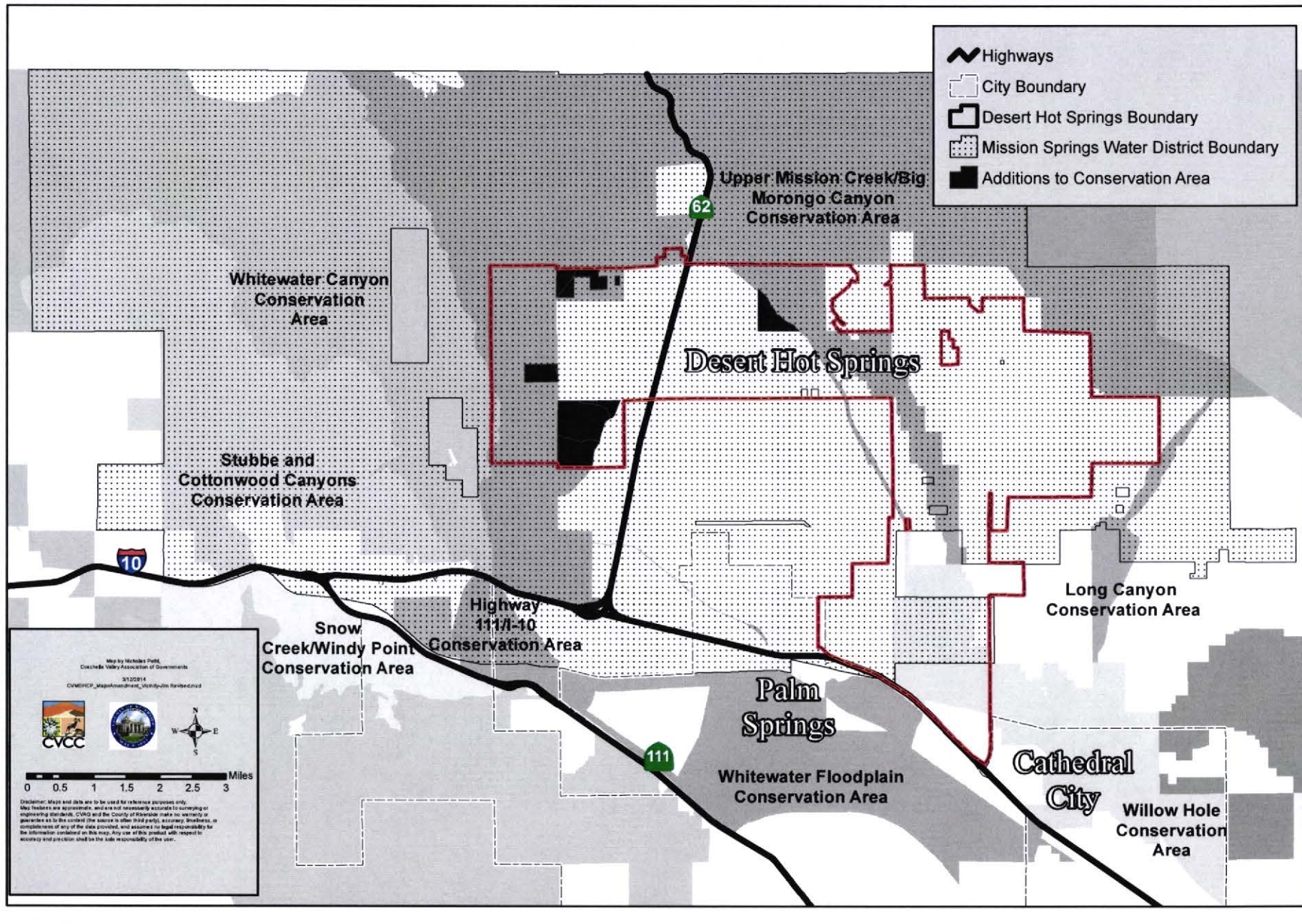


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I, James Thompson, City Clerk of the City of Palm Springs do hereby certify that the foregoing Resolution No. \_\_\_\_ was duly and regularly adopted by the City Council at a regular meeting thereof, held on the 2<sup>nd</sup> day of July 2014, and that the foregoing is full, true and correct copy of said Resolution.

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

# Exhibit I

## Major Amendment to Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)



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

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

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

The foregoing public agencies are referred to hereinbelow, individually and collectively, as “Party” or “Parties,” “Member” or “Members” and “Member Agency” or “Member Agencies.”

The following public agencies are ex officio, non-voting “Participants” on CVCC’s governing board:

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

## RECITALS

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

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

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

The Parties now wish to amend this Agreement to include the City of Desert Hot Springs and Mission Springs Water District as a Members of the CVCC. For Desert Hot Springs, such membership would be immediately applicable to all land within the jurisdictional boundaries of the City of Desert Hot Springs, including the Desert Hot Springs I-10 Community Annexation

Area. Further, provided the Major Amendment adding the entire city area is finalized within the next eighteen months, the membership would then be applicable to all land within the jurisdictional boundaries of the City of Desert Hot Springs. In so doing, the Parties also wish to ratify the Third Amendment to this Agreement.

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

## Article 1

### Definitions

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

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

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

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

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

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

(f) "Member" or "Member Agency" shall mean a public agency with voting rights in CVCC listed in subparagraph (a) through (l) in the opening paragraph of this Agreement that

becomes a signatory to this Agreement or any new party as permitted pursuant to Section 13.1 (Admission of New Parties).

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

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

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

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

## Article 2

### Creation of CVCC

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

~~Section 2.2 No Precommitment To MSHCP. The Parties are entering into this Agreement prior to the adoption of the MSHCP for the purpose of allowing the proposed Permittees to collectively prepare as necessary for the issuance and acceptance of the Permit to~~

~~be issued if the MSHCP is ultimately adopted by the Member Agencies. However, nothing herein is intended as a precommitment by a Party to approve or adopt the MSHCP.~~

### **Article 3**

#### **Powers and Duties of CVAG**

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

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

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

### **Article 4**

#### **Term of Agreement**

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

## Article 5

### Membership

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

## Article 6

### Purposes and Powers

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 7**

### **Commission**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 8**

### **Committees**

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

**Article 9**  
**Conduct of Meetings**

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

**Article 10**  
**Employees**

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

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

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

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

## **Article 11**

### **Financial Provisions**

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

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

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

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



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

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

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

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

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

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

Section 11.8 [Reserved.]

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

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

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

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

## **Article 12**

### **Relationship of CVCC and Its Members**

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

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

### **Article 13**

#### **Admission and Withdrawal of Parties**

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

#### Section 13.2 Withdrawal of Membership.

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

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

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

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

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

## **Article 14**

### **Provision for Bylaws**

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

## Article 15

### Contribution and Indemnity Among Members

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

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

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

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

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

## **Article 16**

### **Miscellaneous Provisions**

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

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

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

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

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

Section 16.5 Severability. If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

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

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

CITY OF CATHEDRAL CITY

\_\_\_\_\_  
Mayor Kathleen De Rosa  
City of Cathedral City

DATE \_\_\_\_\_

CITY OF COACHELLA

\_\_\_\_\_  
Mayor Eduardo Garcia  
City of Coachella

DATE \_\_\_\_\_

CITY OF INDIAN WELLS

\_\_\_\_\_  
Mayor Ted Mertens  
City of Indian Wells

DATE \_\_\_\_\_

CITY OF INDIO

\_\_\_\_\_  
Mayor Mike Wilson  
City of Indio

DATE \_\_\_\_\_

CITY OF LA QUINTA

\_\_\_\_\_  
Mayor Don Adolph  
City of La Quinta

DATE \_\_\_\_\_

CITY OF PALM DESERT

\_\_\_\_\_  
Mayor Van Tanner  
City of Palm Desert

DATE \_\_\_\_\_



CITY OF RANCHO MIRAGE

\_\_\_\_\_  
Mayor Iris Smotrich  
City of Rancho Mirage

DATE \_\_\_\_\_

CITY OF PALM SPRINGS

\_\_\_\_\_  
Mayor Steve Pougnet  
City of Palm Springs

DATE \_\_\_\_\_

COUNTY OF RIVERSIDE

\_\_\_\_\_  
Jeff Stone, Chair  
Board of Supervisors  
County of Riverside

DATE \_\_\_\_\_

COACHELLA VALLEY WATER DISTRICT

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

DATE \_\_\_\_\_

IMPERIAL IRRIGATION DISTRICT

DATE \_\_\_\_\_

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

CITY OF DESERT HOT SPRINGS

DATE \_\_\_\_\_

Mayor Adam Sanchez  
City of Desert Hot Springs

MISSION SPRINGS WATER DISTRICT

DATE \_\_\_\_\_

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

**CITY OF PALM SPRINGS  
PUBLIC HEARING NOTIFICATION**



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Date: July 2, 2014  
Subject: Case 5.1346 MSHCP

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**AFFIDAVIT OF PUBLICATION**

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was published in the Desert Sun on June 21, 2014.


I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Kathie Hart, CMC  
Chief Deputy City Clerk

**AFFIDAVIT OF POSTING**

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was posted at City Hall, 3200 E. Tahquitz Canyon Drive, on the exterior legal notice posting board, and in the Office of the City Clerk and on June 19, 2014.

I declare under penalty of perjury that the foregoing is true and correct.


  
\_\_\_\_\_  
Kathie Hart, CMC  
Chief Deputy City Clerk

**AFFIDAVIT OF MAILING**

I, Kathie Hart, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was mailed to each and every person on the attached list on June 19, 2014, in a sealed envelope, with postage prepaid, and depositing same in the U.S. Mail at Palm Springs, California.

(6 notices)

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Kathie Hart, CMC  
Chief Deputy City Clerk

NOTICE OF PUBLIC HEARING  
CITY COUNCIL  
CITY OF PALM SPRINGS

CASE 5.1346 MSHCP - AN ORDINANCE AND RESOLUTION FOR A MAJOR  
AMENDMENT TO THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT  
CONSERVATION PLAN (CVMSHCP)

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Palm Springs, California, will hold a public hearing at its meeting of July 2, 2014. The City Council meeting begins at 6:00 p.m., in the Council Chambers at City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

The purpose of this hearing is to consider an ordinance and resolution for a major amendment to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), by the Coachella Valley Conservation Commission to add the City of Desert Hot Springs and Mission Springs Water District as permittees of the Plan.

**ENVIRONMENTAL DETERMINATION:** An environmental assessment was prepared under the guidelines of the California Environmental Quality Act (CEQA) at the time that the CVMSHCP was adopted by the City. According to Public Resources Code Section 21166 and State CEQA Guidelines Section 15162, no further environmental analysis is required.

**REVIEW INFORMATION:** The staff report and other supporting documents regarding this project are also available for public review at City Hall from 8:00 a.m. to 6:00 p.m. Monday through Thursday. Please contact the Office of the City Clerk at (760) 323-8204 if you would like to schedule an appointment to review these documents.


**COMMENT ON THIS APPLICATION:** Response to this notice may be made verbally at the public hearing and/or in writing before the hearing. Written comments may be made to the City Council by letter (for mail or hand delivery) to:

James Thompson, City Clerk  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Any challenge of the proposed project in court may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the City Clerk at, or prior to, the public hearing. (Government Code Section 65009(b)(2)).

An opportunity will be given at said hearing for all interested persons to be heard. Questions regarding this case may be directed to Edward Robertson, Principal Planner, at (760) 323-8245.

Si necesita ayuda con esta carta, por favor llame a la Ciudad de Palm Springs y puede hablar con Nadine Fieger telefono (760) 323-8245.

  
James Thompson, City Clerk

## **Cindy Berardi**

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**From:** Joanne Bruggemans  
**Sent:** Thursday, June 19, 2014 11:30 AM  
**To:** Andreas Hills; Araby Commons; Araby Cove; Baristo; Canyon Corridor; Chino Canyon; Deepwell Estates; Demuth Park; Desert Park Estates; El Mirador; El Rancho Vista Estates; Four Seasons; Historic Tennis Club; Indian Canyons; Los Compadres; Mountain Gate; Movie Colony East; Old Las Palmas; Parkview Mobile Estates; Racquet Club Estates; Racquet Club South; Racquet Club West; Sonora Sunrise; Sunmor; Sunrise Vista Chino; Tahquitz River Estates; The Mesa; The Movie Colony; Twin Palms; Vista Las Palmas; Vista Norte; Warm Sands  
**Cc:** Edward Robertson; Cindy Berardi  
**Subject:** Case 5.1346 MSHCP - Amendment to the Coachella Valley Multiple Species Habitat Conservation Plan  
**Attachments:** CC PHN MSHCP LDNF fee revision.pdf

Morning –

Please find the attached Public Hearing Notice of the City Council for July 2, 2014 of the proposed.

Thank you,

*Joanne*

Joanne Bruggemans  
City of Palm Springs  
Planning Services Department  
3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262  
Phone: (760) 323-8245 Fax: (760) 322-8360  
Email: [joanne.bruggemans@palmspringsca.gov](mailto:joanne.bruggemans@palmspringsca.gov)