

Appendix K
Conservation and Agriculture Easement Templates

DRAFT (7/25/2018)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
[Easement Holder])
[Easement Holder's Address])
Attention: _____)
)

Space Above Line for Recorder's Use Only

TEMPLATE NOTES:

- *This template is prepared for use on privately-owned fee lands. Certain of the provisions below will likely require modification for conservation easements covering Permittee- or other public entity- owned properties (i.e. management plan, recreational uses, and condemnation provisions.)*
- *Consistent with the PCCP, this template assumes the Placer Conservation Authority will hold the conservation easements over privately-owned fee lands. Italicized bracketed language is included below for insertion in conservation easements the Placer Conservation Authority determines will be held by another nonprofit organization, as allowed in the PCCP.*
- *This template does not identify recreational/public access as allowable uses. Additional provisions (i.e. specific restrictions and allowed uses, as well as reference to "recreation plan" contemplated by PCCP) would need to be included if any recreational uses are contemplated for the Easement Area/Property [use Easement Area or Property, as applicable depending on whether part or all of a legal parcel is being committed to the reserve area, selection made in Recital A].*
- *This template also assumes the Implementing Entity, and not the Landowner, will conduct the management and monitoring activities set forth in the Management Plan.*

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [insert full legal name(s) of Grantor] ("Grantor"), in favor of [Placer Conservation Authority, a California Joint Powers Authority] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing

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approximately _____ acres, located in the County of Placer, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”) and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

OR

Grantor is the sole owner in fee simple of certain real property located in the County of Placer, State of California, more particularly known as Assessor’s Parcel Number(s) XXXXXX. Grantor intends to grant this Conservation Easement over approximately XXX acres of the Property (the “**Easement Area**”), as described in **Exhibit A** attached hereto and incorporated herein by this reference and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

B. This Conservation Easement is granted to satisfy certain habitat conservation requirements set forth in the following documents (collectively the “**PCCP Instruments**”):

1. The Placer County Habitat Conservation Plan and Natural Community Conservation Plan (“**Plan**”), dated _____, prepared by County of Placer (“**County**”), City of Lincoln (“**City**”), and Placer County Water Agency (“**PCWA**”), and approved by the United States Fish and Wildlife Service (“**USFWS**”) and the National Marine Fisheries Service (“**NMFS**”) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq., as it may be amended from time to time) (“**ESA**”), and by California Department of Fish and Wildlife (“**CDFW**”) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 et seq., as it may be amended from time to time) (“**NCCPA**”); and
2. Implementing Agreement for the Placer County Habitat Conservation Plan and Natural Community Conservation Plan (the “**Implementing Agreement**”), dated _____, by and among USFWS, NMFS and CDFW (collectively, the “**Wildlife Agencies**”), Placer Conservation Authority, a Joint Powers Authority (“**PCA**”), County, City, and PCWA (collectively, PCA, County, City, and PCWA, are referred to herein as “**Permittees**”); and
3. The federal incidental take permits issued by USFWS and NMFS to Permittees for the Plan pursuant to Section 10 of ESA; and
4. The state incidental take permit issued by CDFW to Permittees for the Plan pursuant to the NCCPA.
5. *[Remove/modify this recital as appropriate when conservation easement is not part of Placer County In-Lieu Fee Program.]* The County Aquatic Resource Program In-Lieu Fee Program Enabling Instrument, dated _____, by and among the County, the U.S. Environmental Protection Agency (“**USEPA**”) and U.S. Army

Corps of Engineers ("USACE").

C. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The USFWS, an agency within the United States Department of the Interior, and the NMFS, an agency within the United States Department of Commerce, have jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, et seq., and other provisions of federal law.

E. *[Remove/modify this recital as appropriate when conservation easement is not part of Placer County In-Lieu Fee Program.]* The USACE and the USEPA have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, et seq.

F. Grantee is a California joint powers authority and is authorized to hold conservation easements pursuant to, among other provisions of law, California Civil Code Section 815.3.

G. In addition to serving as the holder of the conservation easement, the PCA is responsible for overseeing implementation of the PCCP Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with USFWS, NMFS and CDFW. *[The term "Grantee" is used herein specifically to refer to the PCA as the initial holder of the conservation easement, as well as any other qualified successor or assignee to which the conservation easement has been transferred in accordance with the terms and conditions set forth below.]* ***[TEMPLATE NOTE: The italicized language above will require revision if the PCA is not the Grantee.]***

H. The *Easement Area/Property* possesses wildlife, habitat value, and associated open space values of great importance to Grantee, the people of the State of California and of the United States (the "**Conservation Values**"). The Property provides, or will provide high-quality natural, established, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contains, or will contain, [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property. The "**Initial Conservation Values**", described in **Exhibit C** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Plan and present on the *Easement Area/Property* at the time of the execution of the Agreement.

I. Following recordation of this Conservation Easement, the *Easement Area/Property* will be incorporated into the PCCP Reserve System (as such term is defined in the Plan) (“**Reserve System**”) and will count toward the land acquisition commitments set forth in the Plan.

J. The PCA has developed a management plan, known as “_____,” that applies to the Easement Area/Property (the “**Management Plan**”). The Management Plan [*has been*] [*will be*] developed in accordance with the applicable requirements of the PCCP Instruments [*and [identify any applicable reserve unit management plans]*].

K. The Management Plan [*is*] [*upon completion, will be*] incorporated herein by reference. Grantor and Grantee recognize that changes (e.g., in weather cycles, natural resource management technologies, conservation practices) may dictate an adaptation in the management of the Easement Area/Property, consistent with the purposes of this Conservation Easement and the PCCP Instruments. It may be revised from time to time with the written approval of the Grantor, Grantee, and the Wildlife Agencies, so long as the revisions are consistent with the requirements of the PCCP Instruments [*and [identify applicable reserve unit management plans]*]. A full and complete copy of the current Management Plan, including any such revisions, shall be kept on file at the offices of the PCA. [*If the Management Plan has not been developed as of the effective date of the Conservation Easement, explain whether and how it will be incorporated in the Conservation Easement and add the following, if applicable: The Easement Area/Property will be managed in accordance with the applicable requirements of the Plan until the Management Plan is developed.*]

L. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area/Property described in Exhibit A and depicted in Exhibit B (the “**Conservation Easement**”), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Easement Area/Property.

1. Purpose.

The purpose of this Conservation Easement is to ensure that the Property will be retained forever in its [*insert the following as appropriate for the specific site: natural, restored, or enhanced*] condition for the values and associated wildlife and habitat values as contemplated by the [*if post HCP say HCP and management plan; if pre HCP say mitigation plan*], preventing any use of the *Easement Area/Property* that would impair or interfere with the Conservation

Values. Grantor intends that this Conservation Easement will confine the use of the *Easement Area/Property* to activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation, restoration and enhancement of the *Easement Area/Property*'s Covered Species and their habitats.

2. Baseline Documentation Report.

A Baseline Documentation Report (the "**Report**") has been prepared for the *Easement Area/Property* and approved in writing by Grantor and Grantee. A copy of the Report is on file with Grantor and Grantee at their respective addresses for notices set forth below. The Report contains an accurate representation of the biological and physical condition of the *Easement Area/Property* at the time this Conservation Easement was recorded in the Official Records of Placer County ("**Official Records**"), including a full inventory of all of the *Easement Area/Property*'s Covered Species and natural communities found thereon. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the *Easement Area/Property* or the allowed uses of the *Easement Area/Property*, Grantor and Grantee shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

3. Rights of Grantee and Third Party Beneficiaries.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the *Easement Area/Property* described in Exhibit C or which develop on the *Easement Area/Property* in accordance with the Management Plan and the terms and conditions of this Conservation Easement;

(b) To enter upon the *Easement Area/Property* to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Conservation Easement, and for scientific research necessary to support monitoring and in order to support adaptive management of the Conservation Values; provided, that Grantee shall not unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the *Easement Area/Property*;

(c) To enter upon the *Easement Area/Property* to carry out, at Grantee's sole cost and expense, those management and monitoring requirements applicable to the *Easement Area/Property* that are set forth in the Management Plan, [including, without limitation, installation and maintenance of fencing around the perimeter of the *Easement Area/Property* to the extent referenced in the Management Plan as necessary to protect the Conservation Values;] provided, that Grantee shall use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the *Easement Area/Property*;

(d) To prevent any activity on or use of the *Easement Area/Property* that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the *Easement Area/Property* that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement;

(e) To require that all mineral, air and water rights held by Grantor that Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the *Easement Area/Property* shall remain a part of and be put to beneficial use upon the *Easement Area/Property*, consistent with the purposes of this Conservation Easement; and

(f) All present and future development rights allocated, implied, reserved or inherent in the *Easement Area/Property*; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the *Easement Area/Property*, nor any other property adjacent or otherwise. Nothing in this Conservation Easement relieves Grantor of any obligation or restriction in relation to the development or use of the *Easement Area/Property* imposed by law, including but not limited to local land use restrictions.

Except where there is an imminent threat to the *Easement Area/Property* or its Conservation Values, Grantee and its employees, contractors or agents will only enter the *Easement Area/Property* at reasonable times and with at least forty-eight (48) hours advance notice to Grantor. Grantor may waive these requirements in whole or in part by written notice to Grantee.

4. Prohibited Uses.

Any activity on or use of the *Easement Area/Property* that adversely affects the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Grantor, Grantor's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the *Easement Area/Property*, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural, rangeland or recreational uses) set forth on **Exhibit D** attached hereto and incorporated herein by reference; (ii) a management practice set forth in the Management Plan; or (iii) otherwise necessary to maintain or enhance the Conservation Values:

(a) Unseasonable watering;

(b) Use of fertilizers, pesticides, biocides, herbicides rodenticides, fungicides, or other agents or chemicals;

(c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, excepting off-road vehicle use required to conduct any allowed management practice set forth in the Management Plan;

(d) Agricultural uses, including, without limitation, vineyards, nurseries, or

intensive livestock use (e.g., dairy, feedlot) except as may be provided for in the [pick one: Management Plan or Mitigation Plan] (e.g., prescribed grazing).

- (e) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (f) Planting, introduction, or dispersal of nonnative plant or animal species;
- (g) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks, or other material on or below the surface of the *Easement Area/Property*, and granting or authorizing any surface entry for any of these purposes;
- (h) Removing, destroying, or cutting of trees, shrubs, or other vegetation;
- (i) Manipulating, impounding, or altering any water course, body of water, or water circulation on the *Easement Area/Property*, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters; and
- (j) Without the prior written consent of Grantee, which Grantee may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the *Easement Area/Property* owned by Grantor; changing the place or purpose of use of the water rights owned by Grantor; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the *Easement Area/Property* that are owned by Grantor, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the *Easement Area/Property*; and (iv) any water from wells that are in existence or may be constructed in the future on the *Easement Area/Property*.
- (k) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Landowner, the Property, or the use or activity in question.

[TEMPLATE NOTE: Section 4 “Prohibited Uses” for any Conservation Easement may include additional prohibited uses, or refinements of the above, to address specific site conditions, landowner preferences and operations, and species and habitat needs, as contemplated by Habitat Plan Chapter 8 and approved by the PCA and the Wildlife Agencies. Additionally, this prohibited uses section may require modification to address public access and recreation uses to the extent contemplated or required at the Easement Area/Property under the Management Plan.]

5. Unlawful Entry.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass on the *Easement Area/Property* by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement.

6. Grantor's Reserved Rights; Allowed Uses.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the *Easement Area/Property*, including without limitation, the following (collectively, the "**Allowed Uses**"):

(a) Those specific uses and activities identified in the Management Plan(s) or detailed in Exhibit D attached hereto, and

(b) All other uses of the *Easement Area/Property* that are not expressly prohibited or limited by this Conservation Easement, and are consistent with the purposes of this Conservation Easement as set forth in Section 1.

Grantor shall have the right to exercise any of the Allowed Uses directly or to allow or invite others to engage in any of the Allowed Uses. While Grantor is not obligated under this Conservation Easement to perform the management and monitoring actions set forth in the Management Plan(s), Grantor's exercise of the Allowed Uses shall be conducted in a manner that is consistent with the Management Plan(s) and Conservation Values.

7. Grantee's Remedies.

If Grantee or any Third-Party Beneficiary (as defined in Section 7(d) below) determines there is a violation of the terms of this Conservation Easement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Grantor, with a copy provided to Grantee and each other Third-Party Beneficiary. The notice of violation shall specify the measures the Grantor must take to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within such thirty (30) day period; or Grantor fails to continue diligently to complete the cure, Grantee or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any damages to which Grantee and the Third-Party Beneficiaries may be entitled for violation of the terms of this Agreement or for any injury to the Conservation Values, to 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, including, but not limited to, the restoration of the *Easement Area/Property* to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability

therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the *Easement Area/Property* at the election of the party receiving such damages.

If Grantee or any Third-Party Beneficiary, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Grantee and/or any Third-Party Beneficiary may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. The rights of Grantee and the Third-Party Beneficiaries under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantee shall notify the Grantor and Third-Party Beneficiaries within 30 days of such an occurrence. Grantor agrees that Grantee's and Third-Party Beneficiaries' remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in California Civil Code Section 815, et seq., or applicable federal law. The failure of Grantee or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

(a) Costs of Enforcement.

Any reasonable costs incurred by the Grantee or any Third Party Beneficiary, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

(b) Enforcement Discretion.

Enforcement of the terms of this Conservation Easement against Grantor shall be at the respective discretion of Grantee and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of such party's rights under this Conservation Easement. No delay or omission by Grantee or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to, or shall

entitle, Grantee or any Third-Party Beneficiary to bring any action against Grantor for any injury to or change in the Easement Area/Property resulting from (i) any natural cause beyond Grantor's control, including, but not limited to, climate change, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area/Property resulting from such causes; (ii) acts by Grantee or any Third-Party Beneficiary or any of their employees, contractors or agents; or (iii) acts by persons that entered the Easement Area/Property unlawfully or by Trespass whose activities degrade or harm the Conservation Values of the Easement Area/Property or whose activities are otherwise inconsistent with this Conservation Easement where Grantor has undertaken all reasonable actions to prevent such activities [for public agencies only: or (iii) acts by persons that entered the Easement Area/Property lawfully or unlawfully whose activities degrade or harm the Conservation Values of the Easement Area/Property, or whose activities are otherwise inconsistent with this Conservation Easement, where Landowner has undertaken all reasonable actions to discourage or prevent such activities].

(d) Third Party Beneficiary Rights.

Each of PCA (during any such period, if any, that PCA does not also constitute Grantee), USFWS, NMFS [for conservation easements under the CARP ILF Program: USACE, USEPA] and CDFW (collectively, "Third-Party Beneficiaries") shall be a third-party beneficiary of this Conservation Easement. All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Grantor and Grantee acknowledge that Third-Party Beneficiaries shall have the same rights of access to the Easement Area/Property granted to Grantee in Section 3 above, and with rights to enforce all of the provisions of this Conservation Easement. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Easement Area/Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, notwithstanding the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement. These rights are in addition to, and do not limit, the rights of enforcement under the PCCP Instruments. In addition, the applicable IRT Agencies reasonably determines in writing that the Easement Area/Property is, for a prolonged period, not being held, monitored, or stewarded for conservation purposes in the manner specified in this Conservation Easement or the Management Plan/Mitigation Plan, the Conservation Easement shall revert to the State of California or, subject to approval by the applicable IRT Agencies, another entity as described in California Government Code Section 65967, subdivisions (b) and (c).

8. Public Access.

Nothing contained in this Agreement gives or grants to the public a right to enter upon or use the *Easement Area/Property* or any portion thereof. Nor shall this Agreement extinguish any public right to enter upon or use the *Easement Area/Property*.

9. Costs and Liabilities.

Except for those specific obligations to be undertaken by Grantee under Section 3

above, Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Grantor's ownership, operation, management, and maintenance activities on and relating to the Easement Area/Property. Grantor agrees that neither the Grantee nor Third Party Beneficiaries shall have any duty or responsibility for the operation or maintenance of the Easement Area/Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Area/Property. Each of Grantor and Grantee shall remain responsible for obtaining any applicable governmental permits and approvals for its activity or use allowed on the Easement Area/Property under this Conservation Easement, and each of Grantor and Grantee shall undertake all allowed activities and uses of the Easement Area/Property in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area/Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor and Grantee shall keep the Easement Area/Property free from any liens, including those arising out of any obligations incurred by either for any labor or materials furnished or alleged to have been furnished to it or for its use on the Easement Area/Property.

10. Indemnification.

(a) Indemnification by Grantor.

Grantor shall hold harmless, protect and indemnify Grantee and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantor Indemnified Party" and, collectively, the "Grantor Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) the activities of Grantor on the Easement Area/Property; (ii) the inaccuracy of any representation or warranty made by Grantor in this Conservation Easement; (iii) the breach by Grantor of any provision of this Conservation Easement; (iv) any injury to or the death of any person, or physical damage to any Easement Area/Property resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area/Property, unless such injury or death or physical damage to any Easement Area/Property relates to an activity on, or use of, the Easement Area/Property by Grantee, including without limitation, those activities performed under the Management Plan, or is solely due to the negligent or willful misconduct of the Grantor Indemnified Party; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or by any entity, other than one of the Grantor Indemnified Parties, acting at the time upon permission from Grantor, in any way affecting, involving or relating to the Easement Area/Property. If any action or proceeding is brought against any of the Grantor Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice

from Grantee and the Third-Party Beneficiaries, defend such action or proceeding by counsel reasonably acceptable to the Grantor Indemnified Party.

(b) Indemnification by Grantee.

Grantee shall hold harmless, protect, and indemnify Grantor and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an “**Grantee Indemnified Party**,” and collectively, the “**Grantee Indemnified Parties**”) from and against any and all Claims arising from or in any way connected with: (a) the activities of Grantee on the *Easement Area/Property*, including without limitation the Grantee’s performance of management and monitoring activities set forth in the Management Plan; (b) breach by Grantee of any provision of this Conservation Easement; (c) any injury to or the death of any person, or physical damage to any Easement Area/Property occurring on or about the *Easement Area/Property* resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the *Easement Area/Property* by Grantee, including without limitation, those performed under the Management Plan, unless due solely to the negligence or willful misconduct of the Grantee Indemnified Party; and (d) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Grantee in any way affecting, involving or relating to the *Easement Area/Property*. If any action or proceeding is brought against any of the Grantee Indemnified Parties by reason of any such Claim, Grantee shall, at the election of and upon written notice from Grantor, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

11. Extinguishment.

This Conservation Easement constitutes a property right, and the terms and conditions of this Conservation Easement shall be effective in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. This Conservation Easement cannot be terminated or extinguished, in whole or in part, except by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Grantee’s interest in the *Easement Area/Property*, and if the *Easement Area/Property*, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Grantee shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the *Easement Area/Property*, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

12. Condemnation.

The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined in California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. [**TEMPLATE NOTE: If Easement Holder is CDFG or another state agency, substitute the preceding sentence with the following: This Conservation Easement is a “wildlife conservation easement” acquired by an agency of the State of California, the condemnation of which is**

prohibited except as provided in California Fish and Game Code Section 1348.3.]

13. Transfer of Conservation Easement.

This Conservation Easement may be transferred by Grantee upon written approval of the Third-Party Beneficiaries, which approval shall not be unreasonably withheld or delayed; provided, that Grantee shall give Grantor and Third-Party Beneficiaries at least sixty (60) calendar days prior written notice of the proposed assignment or transfer. Grantee may transfer its rights under this Conservation Easement only to an entity or organization: (a) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions then applicable); and (b) otherwise reasonably acceptable to the Third-Party Beneficiaries. Grantee shall require the transferee to record the conveyance in the Official Records of the County where the *Easement Area/Property* is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of Section 17 below.

14. Transfer of Easement Area/Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the *Easement Area/Property*, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and the Third-Party Beneficiaries of the intent to transfer any interest at least sixty (60) calendar days prior to the date of such transfer. Grantee and the Third-Party Beneficiaries shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 17. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the *Easement Area/Property*, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Conservation Easement.

15. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor, Grantee, or Third-Party Beneficiary desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantor name]
 [Grantor address]
Attn: _____

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To Grantee: [Grantee name]
[Grantee address]
Attn: _____

To PCA: [Placer Conservation Authority]
[PCA address]
Attn: _____

To CDFW: [Department of Fish and Wildlife]
North Central Region
[REGION ADDRESS]
[Attn: Regional Manager]

With a copy to: Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
Sacramento Field Office
2800 Cottage Way, Room W-2605,
Sacramento, CA 95825
Attn: Field Supervisor

[Include USACE and USEPA for conservation easements that are part of the CARP ILF Program.]

To USACE: U.S. Army Corps of Engineers
Sacramento District
1325 J Street -- Room 1350
Sacramento, CA 95814
Attn: Chief, Regulatory Division

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

16. Amendment.

This Conservation Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the parties hereto, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Conservation Easement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Conservation Easement to any extent or in any manner. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries; any amendment made without such consent is void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and California law governing conservation easements, and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Conservation Easement by reference to its recordation data, and must be recorded in the Official Records of the County where the *Easement Area/Property* is located. Grantee shall promptly provide a conformed copy of the recorded amendment to the Third-Party Beneficiaries.

17. Merger.

The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the *Easement Area/Property* become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Grantee identified by the PCA and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Conservation Easement shall be recorded against the *Easement Area/Property*.

18. No Hazardous Materials Liability.

Grantor represents and warrants that, after reasonable review of Grantor's records as of the date of this Conservation Easement, Grantor has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the *Easement Area/Property*, or transported to or from or affecting the *Easement Area/Property* [except as disclosed in the Report]. [Insert site-specific conditions, if applicable.] Grantor further represents and warrants that Grantor shall comply with all Environmental Laws (as defined below) in using the *Easement Area/Property* and that Grantor shall keep the *Easement Area/Property* free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Grantor under this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantor Indemnified Parties (as defined in Section 10(a)) from and against any and all Claims (as defined in Section 10(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the *Easement Area/Property* at any time, except any Hazardous Materials placed, disposed or released by Grantor Indemnified Parties, or their employees or agents. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any *Easement Area/Property*; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or

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proceeding is brought against any of the Grantor Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Grantor Indemnified Party.

Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or the Third Party Beneficiaries any of the following:

(a) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

(b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(c) The obligations of a responsible person under any applicable Environmental Laws; or

(d) The right or duty to investigate and remediate any Hazardous Materials associated with the *Easement Area/Property*; or

(e) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the *Easement Area/Property*.

The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.; hereinafter "**RCRA**"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.; hereinafter "**HTA**"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.; hereinafter "**HCL**"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.; hereinafter "**HAS**"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

The term "**Environmental Laws**" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that all activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

19. Representations and Warranties.

(a) Authority.

Grantor has good and sufficient title to the *Easement Area/Property* (including all appurtenances thereto, including, without limitation, [*all minerals and mineral rights and all water and water rights*]), and Grantor has full right and authority to grant the Conservation Easement to Grantee. There are no monetary liens and encumbrances recorded against the *Easement Area/Property* except as expressly identified in **Exhibit E**. All deeds of trust and mortgages recorded against the *Easement Area/Property*, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in Exhibit E.

(b) Compliance with Laws.

Grantor has not received notice of, and has no knowledge of, any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the *Easement Area/Property* [*except as disclosed in the Report*]. [*Insert site-specific conditions, if applicable.*]

(c) No Litigation.

There is no action, suit or proceeding which is pending or threatened against the *Easement Area/Property* or any portion thereof relating to or arising out of the ownership or use of the *Easement Area/Property*, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. General Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law.

(b) Liberal Construction.

It is the intent of this Conservation Easement to preserve the condition of the *Easement Area/Property* and each of the Conservation Values protected thereon, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Grantor's use and enjoyment of the *Easement Area/Property* to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Conservation Easement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Conservation Easement is the intended best and most productive use of the *Easement Area/Property*. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had

the opportunity to review and revise this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of California, the county in which the *Easement Area/Property* is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This instrument sets forth the entire agreement of the parties and the Third Party Beneficiaries with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 16.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the *Easement Area/Property*.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) Additional Easements.

Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Conservation Easement), or grant or otherwise abandon or relinquish any mineral, air, or water right or agreement relating to the Property, without first obtaining the written consent of Grantee and the Third-Party Beneficiaries. Grantee and any of the Third-Party Beneficiaries may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subordinate to this Conservation Easement and complies with Section 14. Grantor shall provide a copy of any grant or Transfer document to the Grantee and Third-Party Beneficiaries.

(j) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement. Grantee shall provide a copy of the recorded Conservation Easement to the Third Party Beneficiaries within thirty (30) calendar days of recordation.

(k) Counterparts.

The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement the day and year first above written.

Grantor:

Name: _____

Title: _____

EASEMENT HOLDER:

[Placer Conservation Authority, a California Joint Powers Authority]

By: _____

Name: _____

Title: _____

EXHIBITS:

Exhibit A -- Legal Description of the *Easement Area/Property*

Exhibit B -- Map of the *Easement Area/Property*

Exhibit C -- Initial Conservation Values

Exhibit D -- Allowed Uses

Exhibit E -- Title Encumbrances

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RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
[Easement Holder])
[Easement Holder's Address])
Attention: _____)
)

Space Above Line for Recorder's Use Only

TEMPLATE NOTES:

- *This template is prepared for use on privately-owned fee lands.*
- *Consistent with the PCCP, this template assumes the Placer Conservation Authority will hold the agricultural conservation easements over privately-owned fee lands. Italicized bracketed language is included below for insertion in agricultural conservation easements the Placer Conservation Authority determines will be held by another nonprofit organization, as allowed in the PCCP.*
- *This template does not identify recreational/public access as allowable uses. Additional provisions (i.e. specific restrictions and allowed uses, as well as reference to "recreation plan" contemplated by PCCP) would need to be included if any recreational uses are contemplated for the Easement Area/Property [use Easement Area or Property, as applicable depending on whether part or all of a legal parcel is being committed to the reserve area, selection made in Recital A].*
- *This template also assumes the Placer Conservation Authority, and not the Landowner, will conduct the management and monitoring activities set forth in the Management Plan.*

AGRICULTURAL CONSERVATION EASEMENT DEED

THIS AGRICULTURAL CONSERVATION EASEMENT DEED ("Agriculture Easement") is made as of the _____ day of _____, 20____, by [insert full legal name(s) of Grantor] ("**Grantor**"), in favor of [Placer Conservation Authority, a California Joint Powers Authority] ("**Grantee**"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the County of Placer, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the

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“Property”) and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

OR

Grantor is the sole owner in fee simple of certain real property located in the County of Placer, State of California, more particularly known as Assessor’s Parcel Number(s) XXXXXX. Grantor intends to grant this Agriculture Easement over approximately XXX acres of the Property (the “**Easement Area**”), as described in **Exhibit A** attached hereto and incorporated herein by this reference and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

B. This Agriculture Easement is granted to satisfy certain conservation requirements set forth in the following documents (collectively the “**PCCP Instruments**”):

1. The Placer County Habitat Conservation Plan and Natural Community Conservation Plan (“**Plan**”), dated _____, prepared by County of Placer (“**County**”), City of Lincoln (“**City**”), and Placer County Water Agency (“**PCWA**”), and approved by the United States Fish and Wildlife Service (“**USFWS**”) and the National Marine Fisheries Service (“**NMFS**”) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq., as it may be amended from time to time) (“**ESA**”), and by California Department of Fish and Wildlife (“**CDFW**”) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 et seq., as it may be amended from time to time) (“**NCCPA**”); and
2. Implementing Agreement for the Placer County Habitat Conservation Plan and Natural Community Conservation Plan (the “**Implementing Agreement**”), dated _____, by and among USFWS, NMFS and CDFW (collectively, the “**Wildlife Agencies**”), Placer Conservation Authority, a Joint Powers Authority (“**PCA**”), County, City, and PCWA (collectively, PCA, County, City, and PCWA, are referred to herein as “**Permittees**”); and
3. The federal incidental take permits issued by USFWS and NMFS to Permittees for the Plan pursuant to Section 10 of ESA; and
4. The state incidental take permit issued by CDFW to Permittees for the Plan pursuant to the NCCPA.
5. *[Remove/modify this recital as appropriate when Agriculture Easement is not part of Placer County In-Lieu Fee Program.]* The County Aquatic Resource Program In-Lieu Fee Program Enabling Instrument, dated _____, by and among the County, the U.S. Environmental Protection Agency (“**USEPA**”) and U.S. Army Corps of Engineers (“**USACE**”).

C. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The USFWS, an agency within the United States Department of the Interior, and the NMFS, an agency within the United States Department of Commerce, have jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, et seq., and other provisions of federal law.

E. *[Remove/modify this recital as appropriate when Agriculture Easement is not part of Placer County In-Lieu Fee Program.]* The USACE and the USEPA have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, et seq.

F. Grantee is a California joint powers authority and is authorized to hold conservation easements pursuant to, among other provisions of law, California Civil Code Section 815.3.

G. In addition to serving as the holder of the Agriculture Easement, the PCA is responsible for overseeing implementation of the PCCP Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with USFWS, NMFS and CDFW. *[The term "Grantee" is used herein specifically to refer to the PCA as the initial holder of the Agriculture Easement, as well as any other qualified successor or assignee to which the Agriculture Easement has been transferred in accordance with the terms and conditions set forth below.]* **[TEMPLATE NOTE: The italicized language above will require revision if the PCA is not the Grantee.]**

H. The *Easement Area/Property* possesses agricultural productive capacity and open space character *[if areas of the Stream System are present add: "and aquatic resources"]* of great importance to Grantee, the people of the State of California and of the United States (the "**Conservation Values**"). The Property provides, or will provide high-quality natural, established, restored and/or enhanced habitat for *[specify listed and sensitive plant and/or animal species]* and contains, or will contain, *[list habitats; native and/or non-native]*, *[include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States]*. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property. The "**Initial Conservation Values**", described in **Exhibit C** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Plan and present on the *Easement Area/Property* at the time of the execution of the Agriculture Easement. The existing buildings and improvements on the *Easement Area/Property* as depicted in Exhibit C ("**Building**

Envelopes and Existing Features") are included in this Agriculture Easement. *[If areas of the Stream System are present add: The stream system on the Easement Area/Property as depicted in Exhibit C ("Stream System") is also included.]* Except as shown in Exhibit C, the *Easement Area/Property* is open farmland that has the soil quality, growing season, and water supply needed for sustained agricultural production.

I. Following recordation of this Agriculture Easement, the *Easement Area/Property* will be incorporated into the PCCP Reserve System (as such term is defined in the Plan) ("**Reserve System**") and will count toward the land acquisition commitments set forth in the Plan.

J. All section numbers referred to in this Agriculture Easement are references to sections within this Agriculture Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the *Easement Area/Property* described in Exhibit A and depicted in Exhibit B (the "**Agriculture Easement**"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the *Easement Area/Property*.

1. Purpose.

The purpose of this Conservation Easement is to enable the *Easement Area/Property* to remain in agricultural use and to protect its open space character *[if areas of the Stream System are present add: and existing and future aquatic resource values]* by forever preventing any use of the *Easement Area/Property* that would impair or interfere with the Conservation Values. Grantor intends that this Conservation Easement will confine the use of the *Easement Area/Property* to activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation and protection of the *Easement Area/Property*'s soils, agricultural productive capacity, and agricultural viability, utility, character and values.

2. Baseline Documentation Report.

A Baseline Documentation Report (the "**Report**") has been prepared for the *Easement Area/Property* and approved in writing by Grantor and Grantee. A copy of the Report is on file with Grantor and Grantee at their respective addresses for notices set forth below. The Report contains an accurate representation of the physical condition of the *Easement Area/Property* at the time this Agriculture Easement was recorded in the Official Records of Placer County ("**Official Records**"), including a full description of the *Easement Area/Property*'s Building Envelopes and Existing Features, agricultural productive capacity,

agricultural soil quality, and open space characteristics [*if areas of the Stream System are present add: and aquatic resource features and values*]. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical condition of the *Easement Area/Property* or the allowed uses of the *Easement Area/Property*, Grantor and Grantee shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

3. Grantee's Rights.

To accomplish the purposes of this Agriculture Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the *Easement Area/Property* described in Exhibit C or which develop on the *Easement Area/Property* in accordance with the terms and conditions of this Agriculture Easement;

(b) To enter upon the *Easement Area/Property* to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Agriculture Easement; provided, that Grantee shall not unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the *Easement Area/Property*;

(c) To prevent any activity on or use of the *Easement Area/Property* that is inconsistent with the purposes of this Agriculture Easement and to require the restoration of such areas or features of the *Easement Area/Property* that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Agriculture Easement;

(d) To require that all mineral, air and water rights held by Grantor that Grantee deems necessary to preserve and protect the Conservation Values of the *Easement Area/Property* shall remain a part of and be put to beneficial use upon the *Easement Area/Property*, consistent with the purposes of this Agriculture Easement; and

(e) All present and future development rights allocated, implied, reserved or inherent in the *Easement Area/Property*; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the *Easement Area/Property*, nor any other property adjacent or otherwise. Nothing in this Agriculture Easement relieves Grantor of any obligation or restriction in relation to the development or use of the *Easement Area/Property* imposed by law, including but not limited to local land use restrictions.

Except where there is an imminent threat to the *Easement Area/Property* or its Conservation Values, Grantee and its employees, contractors or agents will only enter the *Easement Area/Property* at reasonable times and with at least forty-eight (48) hours advance notice to Grantor. Grantor may waive these requirements in whole or in part by written notice to Grantee.

4. Prohibited Uses.

Any activity on or use of the *Easement Area/Property* that adversely affects the purposes of this Agriculture Easement is prohibited. Without limiting the generality of the foregoing, Grantor, Grantor's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the *Easement Area/Property*, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural or rangeland uses) set forth on **Exhibit D** attached hereto and incorporated herein by reference; or (ii) is otherwise necessary to maintain or enhance the Conservation Values:

(a) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks, or other material on or below the surface of the *Easement Area/Property*, and granting or authorizing any surface entry for any of these purposes;

(b) Activities or uses that substantially degrade water quality, including but not limited to degradation or pollution of any surface or subsurface waters;

(c) Construction, erection, installation, or placement of buildings, structures, roads, or other improvements outside the footprint of the Building Envelopes and Existing Features as depicted in Exhibit C; provided, however, that (i) planting crops, (ii) constructing, repairing and replacing fences, and (iii) installing and maintaining agricultural irrigation systems is not prohibited.

(d) Without the prior written consent of Grantee, which Grantee may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the *Easement Area/Property* owned by Grantor; changing the place or purpose of use of the water rights owned by Grantor; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the *Easement Area/Property* that are owned by Grantor, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the *Easement Area/Property*; and (iv) any water from wells that are in existence or may be constructed in the future on the *Easement Area/Property*.

(e) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Landowner, the Property, or the use or activity in question.

(f) *[If areas of the Stream System are present add: Removal of trees or other vegetation, deposition of trash or other material, or ground disturbance, within the Stream System as depicted in Exhibit C.]*

[TEMPLATE NOTE: Section 4 “Prohibited Uses” for any Agriculture Easement may include additional prohibited uses, or refinements of the above, to address specific site conditions or conservation values, or landowner preferences and operations, as approved by the PCA.]

5. Unlawful Entry.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass on the *Easement Area/Property* by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Agriculture Easement.

6. Grantor’s Reserved Rights; Allowed Uses.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the *Easement Area/Property*, including without limitation, the following (collectively, the “**Allowed Uses**”).

(a) The use of the *Easement Area/Property* for agricultural purposes (“**Agricultural Uses**”) that are consistent with the purposes of this Agricultural Easement. Such Agricultural Uses shall be in accordance with generally accepted agricultural practices and applicable law and shall not result in significant soil degradation or significant pollution. For the purposes of this Agriculture Easement "Agricultural Uses" means: breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food and fiber; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the *Easement Area/Property*, provided that the processing, storage, and sale of any such crops or products that are not food or fiber shall require the consent of Grantee.

(b) The use of agrichemicals, including, but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable grazing and agricultural purposes. Such use shall be minimized to the maximum extent practicable near surface water and during periods of high ground water.

(c) The control of predatory and problem animals by the use of selective control techniques in accordance with applicable local, State and Federal laws and regulations; provided, however, that no species listed as threatened or endangered under the California Endangered Species Act or the Federal Endangered Species Act shall be harmed.

(d) The development and maintenance of water resources as necessary or appropriate for Agricultural Uses, provided that the creation or enlargement of any water impoundment shall not damage, impair, or interfere with the Conservation Values in any way; and the distribution of water on the *Easement Area/Property* for Agricultural Uses.

(e) Those specific uses and activities identified in Exhibit D attached hereto.

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(f) All other uses of the *Easement Area/Property* that are not expressly prohibited or limited by this Agriculture Easement, and are consistent with the purposes of this Agriculture Easement as set forth in Section 1.

Grantor shall have the right to exercise any of the Allowed Uses directly or to allow or invite others to engage in any of the Allowed Uses.

7. Grantee's Remedies.

If Grantee determines there is a violation of the terms of this Agriculture Easement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Grantor. The notice of violation shall specify the measures the Grantor must take to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee; or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within such thirty (30) day period; or Grantor fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agriculture Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Agriculture Easement or for any injury to the Conservation Values, to 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, including, but not limited to, the restoration of the *Easement Area/Property* to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the *Easement Area/Property* at Grantee's election.

If Grantee determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. The rights of Grantee under this section apply equally to actual or threatened violations of the terms of this Agriculture Easement. Grantee shall notify the Grantor within 30 days of such an occurrence. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Agriculture Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Agriculture Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in California Civil Code Section 815, et seq., or applicable federal law. The failure of Grantee to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

(a) Costs of Enforcement.

Any reasonable costs incurred by the Grantee, where it is the prevailing party, in

enforcing the terms of this Agriculture Easement against the Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Agriculture Easement shall be borne by Grantor.

(b) Enforcement Discretion.

Enforcement of the terms of this Agriculture Easement against Grantor shall be at the respective discretion of Grantee, and any forbearance to exercise its rights under this Agriculture Easement in the event of any breach of any term of this Agriculture Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agriculture Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Agriculture Easement shall be construed to, or shall entitle, Grantee to bring any action against Grantor for any injury to or change in the *Easement Area/Property* resulting from (i) any natural cause beyond Grantor's control, including, but not limited to, climate change, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the *Easement Area/Property* resulting from such causes; (ii) acts by Grantee or its employees, contractors or agents; or (iii) acts by persons that entered the *Easement Area/Property* unlawfully or by Trespass whose activities degrade or harm the Conservation Values of the *Easement Area/Property* or whose activities are otherwise inconsistent with this Agriculture Easement where Grantor has undertaken all reasonable actions to prevent such activities [*for public agencies only: or (iii) acts by persons that entered the Easement Area/Property lawfully or unlawfully whose activities degrade or harm the Conservation Values of the Easement Area/Property, or whose activities are otherwise inconsistent with this Agriculture Easement, where Landowner has undertaken all reasonable actions to discourage or prevent such activities*].

8. Public Access.

Nothing contained in this Agreement gives or grants to the public a right to enter upon or use the *Easement Area/Property* or any portion thereof.

9. Costs and Liabilities.

Except for those specific obligations to be undertaken by Grantee under Section 3 above, Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Grantor's ownership, operation, management, and maintenance activities on and relating to the *Easement Area/Property*. Grantor agrees that the Grantee shall not have any duty or responsibility for the operation or maintenance of the *Easement Area/Property*, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the *Easement Area/Property*. Each of Grantor and Grantee shall remain responsible for obtaining any applicable governmental permits and approvals for its activity or use allowed on the *Easement Area/Property* under this Agriculture Easement, and

each of Grantor and Grantee shall undertake all allowed activities and uses of the *Easement Area/Property* in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the *Easement Area/Property* by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Agriculture Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor and Grantee shall keep the *Easement Area/Property* free from any liens, including those arising out of any obligations incurred by either for any labor or materials furnished or alleged to have been furnished to it or for its use on the *Easement Area/Property*.

10. Indemnification.

(a) Indemnification by Grantor.

Grantor shall hold harmless, protect and indemnify Grantee and its members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a “**Grantor Indemnified Party**” and, collectively, the “**Grantor Indemnified Parties**”) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a “**Claim**” and, collectively, “**Claims**”), arising from or in any way connected with: (i) the activities of Grantor on the *Easement Area/Property*; (ii) the inaccuracy of any representation or warranty made by Grantor in this Agriculture Easement; (iii) the breach by Grantor of any provision of this Agriculture Easement; (iv) any injury to or the death of any person, or physical damage to any *Easement Area/Property* resulting from any act, omission, condition, or other matter related to or occurring on or about the *Easement Area/Property*, unless such injury or death or physical damage to any *Easement Area/Property* relates to an activity on, or use of, the *Easement Area/Property* by Grantee, or is solely due to the negligent or willful misconduct of the Grantor Indemnified Party; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or by any entity, other than one of the Grantor Indemnified Parties, acting at the time upon permission from Grantor, in any way affecting, involving or relating to the *Easement Area/Property*. If any action or proceeding is brought against any of the Grantor Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantor Indemnified Party.

(b) Indemnification by Grantee.

Grantee shall hold harmless, protect, and indemnify Grantor and its members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an “**Grantee Indemnified Party**,” and collectively, the “**Grantee Indemnified Parties**”) from and against any and all Claims arising from or in any way connected with: (a) the activities of Grantee on the *Easement Area/Property*; (b) breach by Grantee of any provision of this Agriculture Easement; (c) any injury to or the death of any person, or physical damage to any *Easement Area/Property*

occurring on or about the *Easement Area/Property* resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the *Easement Area/Property* by Grantee, unless due solely to the negligence or willful misconduct of the Grantee Indemnified Party; and (d) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Grantee in any way affecting, involving or relating to the *Easement Area/Property*. If any action or proceeding is brought against any of the Grantee Indemnified Parties by reason of any such Claim, Grantee shall, at the election of and upon written notice from Grantor, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

11. Extinguishment.

This Agriculture Easement constitutes a property right, and the terms and conditions of this Agriculture Easement shall be effective in perpetuity. Liberal construction is expressly required for purposes of effectuating the Agriculture Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. This Agriculture Easement cannot be terminated or extinguished, in whole or in part, except by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Grantee's interest in the *Easement Area/Property*, and if the *Easement Area/Property*, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Grantee shall be entitled to receive the fair market value of the Agriculture Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the *Easement Area/Property*, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

12. Condemnation.

The purposes of this Agriculture Easement are presumed to be the best and most necessary public use as defined in California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

13. Transfer of Agriculture Easement.

This Agriculture Easement may be transferred by Grantee. Grantee may transfer its rights under this Agriculture Easement only to an entity or organization authorized to acquire and hold Agriculture Easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions then applicable). Grantee shall require the transferee to record the conveyance in the Official Records of the County where the *Easement Area/Property* is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Agriculture Easement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of Section 17 below.

14. Transfer of Easement Area/Property.

Grantor agrees to incorporate the terms of this Agriculture Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the *Easement Area/Property*, including, without limitation, a leasehold interest.

Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least sixty (60) calendar days prior to the date of such transfer. Grantee shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Agriculture Easement. The failure of Grantor to perform any act provided in this section shall not impair the validity of this Agriculture Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 17. Any successor in interest of Grantor, by acceptance of a deed, lease, or other document purporting to convey an interest in the *Easement Area/Property*, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agriculture Easement.

15. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantor name]
 [Grantor address]
 Attn: _____

To Grantee: [Grantee name]
 [Grantee address]
 Attn: _____

To PCA: [Placer Conservation Authority]
 [PCA address]
 Attn: _____

or to such other address a party shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

16. Amendment.

This Agriculture Easement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by Grantor and Grantee, or their successors in interest, it being understood that no Grantee or Grantor will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Agriculture Easement may allow to be made from time to time will operate to amend or modify any of the terms of this Agriculture Easement to any extent or in any manner. Any amendment shall be consistent with the purposes of the Agriculture Easement and shall not affect the perpetual

duration of the Agriculture Easement. Any such amendment must refer to this Agriculture Easement by reference to its recordation data, and must be recorded in the Official Records of the County where the *Easement Area/Property* is located.

17. Merger.

The doctrine of merger shall not operate to extinguish the Agriculture Easement if the Agriculture Easement and the *Easement Area/Property* become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Agriculture Easement then, a replacement Agriculture Easement, with a new Grantee identified by the PCA, containing the same protections embodied in this Agriculture Easement shall be recorded against the *Easement Area/Property*.

18. No Hazardous Materials Liability.

Grantor represents and warrants that, after reasonable review of Grantor's records as of the date of this Agriculture Easement, Grantor has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the *Easement Area/Property*, or transported to or from or affecting the *Easement Area/Property* [except as disclosed in the Report]. [Insert site-specific conditions, if applicable.] Grantor further represents and warrants that Grantor shall comply with all Environmental Laws (as defined below) in using the *Easement Area/Property* and that Grantor shall keep the *Easement Area/Property* free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Grantor under this Agriculture Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantor Indemnified Parties (as defined in Section 10(a)) from and against any and all Claims (as defined in Section 10(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the *Easement Area/Property* at any time, except any Hazardous Materials placed, disposed or released by Grantor Indemnified Parties, or their employees or agents. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any *Easement Area/Property*; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Grantor Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Grantor Indemnified Party.

Despite any contrary provision of this Agriculture Easement, Grantor and Grantee do not intend this Agriculture Easement to be, and this Agriculture Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

(a) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

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(b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(c) The obligations of a responsible person under any applicable Environmental Laws; or

(d) The right or duty to investigate and remediate any Hazardous Materials associated with the *Easement Area/Property*; or

(e) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the *Easement Area/Property*.

The term “**Hazardous Materials**” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.; hereinafter “**RCRA**”); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.; hereinafter “**HTA**”); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.; hereinafter “**HCL**”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.; hereinafter “**HAS**”), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Agriculture Easement.

The term “**Environmental Laws**” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that all activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

19. Representations and Warranties.

(a) Authority.

Grantor has good and sufficient title to the *Easement Area/Property* (including all appurtenances thereto, including, without limitation, [*all minerals and mineral rights and all water and water rights*]), and Grantor has full right and authority to grant the Agriculture Easement to Grantee. There are no monetary liens and encumbrances recorded against the *Easement Area/Property* except as expressly identified in **Exhibit E**. All deeds of trust and mortgages recorded against the *Easement Area/Property*, or any portion thereof, are and shall continue to be subordinated to this Agriculture Easement; documentation of such subordinations are contained in Exhibit E.

(b) Compliance with Laws.

Grantor has not received notice of, and has no knowledge of, any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the *Easement Area/Property* [except as disclosed in the Report]. [Insert site-specific conditions, if applicable.]

(c) No Litigation.

There is no action, suit or proceeding which is pending or threatened against the *Easement Area/Property* or any portion thereof relating to or arising out of the ownership or use of the *Easement Area/Property*, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. General Provisions.

(a) Controlling Law.

The interpretation and performance of this Agriculture Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law.

(b) Liberal Construction.

It is the intent of this Agriculture Easement to preserve the condition of the *Easement Area/Property* and each of the Conservation Values protected thereon, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Agriculture Easement shall be liberally construed to effectuate the purposes of the Agriculture Easement and to allow Grantor's use and enjoyment of the *Easement Area/Property* to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Agriculture Easement in perpetuity, notwithstanding changed conditions of any kind. The Agriculture Easement created by this Agriculture Easement is the intended best and most productive use of the *Easement Area/Property*. No remedy or election given by any provision in this Agriculture Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. Grantor and Grantee acknowledge that each and its counsel have had the opportunity to review and revise this Agriculture Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agriculture Easement. In the event of any conflict between the provisions of this Agriculture Easement and the provisions of any use and zoning restrictions of the State of California, the county in which the *Easement Area/Property* is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Agriculture Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision

of this Agriculture Easement, such action shall not affect the remainder of this Agriculture Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agriculture Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This instrument sets forth the entire agreement of Grantor and Grantee with respect to the Agriculture Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agriculture Easement. No alteration or variation of this Agriculture Easement shall be valid or binding unless contained in an amendment in accordance with Section 16.

(e) No Forfeiture.

Nothing contained in this Agriculture Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Agriculture Easement shall be binding upon, and inure to the benefit of, Grantor and Grantee and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the *Easement Area/Property*.

(g) Termination of Rights and Obligations.

Each of Grantor and Grantee's rights and obligations under this Agriculture Easement terminate upon transfer of its interest in the Agriculture Easement, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) Additional Easements.

Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Agriculture Easement), or grant or otherwise abandon or relinquish any mineral, air, or water right or agreement relating to the Property, without first obtaining the written consent of Grantee. Grantee may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Agriculture Easement or will impair or interfere with the Conservation Values. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subordinate to this Agriculture Easement and complies with Section 14. Grantor shall provide a copy of any grant or Transfer document to the Grantee.

(j) Recording.

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Grantee shall record this Agriculture Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Agriculture Easement.

(k) Counterparts.

Grantor and Grantee may execute this Agriculture Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF Grantor and Grantee have executed this Agriculture Easement the day and year first above written.

Grantor:

Name: _____

Title: _____

Grantee:

[Placer Conservation Authority, a California Joint Powers Authority]

By: _____

Name: _____

Title: _____

EXHIBITS:

Exhibit A -- Legal Description of the *Easement Area/Property*

Exhibit B -- Map of the *Easement Area/Property*

Exhibit C -- Initial Conservation Values

Exhibit D -- Allowed Uses

Exhibit E -- Title Encumbrances