

**MITIGATION BANK ENABLING INSTRUMENT
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BANK ENABLING INSTRUMENT
SOQUEL CANYON MITIGATION BANK

This Bank Enabling Instrument (“BEI”), dated this 15 day of December, 2014, is made by and among Land Veritas Corp. (“Bank Sponsor”), Land Veritas I, LLC (“Property Owner”), and the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), California Regional Water Quality Control Board, Region 8 (“Santa Ana Regional Water Board”), and the California Department of Fish and Wildlife (“CDFW”) South Coast Region. These agencies comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Bank Sponsor, Property Owner, and the IRT are hereinafter referred to jointly as the “Parties.” This BEI sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Soquel Canyon Mitigation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsor is responsible for establishing, operating, and maintaining the Bank in accordance with this BEI.
- B. The Property Owner is the owner of real property containing approximately 313 acres (the “Property”), 306 acres of which are located in the City of Chino Hills, San Bernardino County, State of California, designated Assessor’s Parcel No(s). 1033-021-07-0-000, 1033-131-04, 1033-011-02, 1033-011-03, 1033-011-04, 1033-131-03, 1033-021-04-0-000, 1033-021-02-0-000 and 7 acres of which are located in unincorporated Orange County, State of California, designated Assessor Parcel No. 312-051-02. The Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached to and made a part of this BEI.
- C. Bank Sponsor and Property Owner desire to create the Bank over the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached to and made a part of this BEI. The Bank Property is to be conserved and managed in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V and VIII.
- D. 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 § 1802 and other provisions of California law.
- E. USEPA and USACE have jurisdiction over Waters of the U.S., defined in Section II, pursuant to the Clean Water Act, 33 U.S.C § 1251, *et seq.*
- F. Santa Ana Regional Water Board has jurisdiction over Waters of the State, defined in Section II, pursuant to the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*

- G. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.
- H. The goals and objectives for the Bank are set forth in the Development Plan (**Exhibit C**) and the Bank Management and Operation Documents (**Exhibit D**) attached to and made a part of this BEI.
- I. Initially-capitalized terms used and not defined elsewhere in this BEI are defined in Section II.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this BEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and conserve and protect, Waters of the U.S and Buffers, Waters of the State, and Covered Habitat. The Bank Sponsor and Property Owner shall Preserve, Restore, and/or Enhance and then manage and maintain Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat in accordance with this BEI, the Development Plan, Interim Management Plan and Long-term Management Plan.

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

- a. Clean Water Act (33 U.S.C. § 1251, et seq.);
- b. National Environmental Policy Act (42 U.S.C. § 4321, et seq.);
- c. National Historic Preservation Act (16 U.S.C. § 470);
- d. Regulatory Programs of the U.S. Army Corps of Engineers (33 C.F.R. Parts 320-332);
- e. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230);
- f. Executive Order 11990 - Protection of Wetlands;
- g. Executive Order 11988 - Floodplain Management; and
- h. Memorandum of Agreement between the U.S. Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) Guidelines (February 6, 1990), as amended.

2. State

- a. California Endangered Species Act (“CESA”) (Fish and Game Code § 2050, *et seq.*);
- b. California Natural Community Conservation Planning (“NCCP”) Act (Fish and Game Code § 2800, *et seq.*);
- c. California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000, *et seq.*) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3);
- d. California State Office of Historical Preservation (“SHPO”) (Public Resources Code § 5020, *et seq.*) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097, *et seq.*) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1);
- e. Conservation of Wildlife Resources (Fish and Game Code § 1800, *et seq.*);
- f. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600, *et seq.*);
- g. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly;
- h. Supplemental Policy Regarding Conservation Banks within the NCCP Area of Southern California, January 24, 1996, by U.S. Fish and Wildlife Service and California Department of Fish and Game;
- i. Porter-Cologne Water Quality Control Act of 1969 (California Water Code §13000, *et seq.*); and
- j. Conservation Bank and Mitigation Bank Applications and Fees (Fish and Game Code § 1797, *et seq.*).

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this BEI are defined for purposes of this BEI as set forth below.

“Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Bank Sponsor and/or the Property Owner, as appropriate, based upon Bank annual report results and IRT review of overall Bank performance and compliance.

“Bank Establishment Date” is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.

“Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

“Catastrophic Event” shall mean an unforeseen event including, without limitation, natural or manmade fire, flood, storm, terrorist acts, criminal acts, and earth movements, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsor nor the Property Owner has control.

“Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit E-4** attached to and made a part of this BEI.

“Construction Security” means the financial assurance specified in Section VI.A. and **Exhibit C-2**, to be provided by the Bank Sponsor to guarantee the completion of construction and planting to Restore and/or Enhance Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan.

“Covered Habitat” means habitat of concern or that the IRT determines will be adequately conserved as a result of implementation of this BEI. Covered Habitat Credits are a component of the Waters of U.S. and Buffer Credits and are identified in **Exhibit F-1** attached to and made a part of this BEI.

“Credits” are units of measure representing the accrual, attainment, or protection of aquatic functions and/or the Covered Habitat on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit F-1**.

“Credit Release” means an action by the appropriate agency that has jurisdiction over specified Credits available for Transfer pursuant to this BEI.

“Development Plan” means the document attached as **Exhibit C-1** that is the overall plan governing construction and Restoration and Enhancement activities the Bank Sponsor is required to conduct on the Bank Property to establish Credits.

“Endowment Agreement” means the agreement, attached as **Exhibit D-3** (which serves as a mitigation agreement within the meaning of Government Code § 65965(f)(1)), which establishes the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Fund and disperse funds to the Property Owner.

“Endowment Amount” is the amount determined in **Exhibit D-2** that is required to be provided in accordance with Section VI.E, by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund.

“Endowment Deposit” is the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Fund.

“Endowment Fund” is a sum of money in a long-term stewardship account, held in trust in a fund designated in the Endowment Agreement. The Endowment Fund is to be maintained and managed in perpetuity in strict accordance with Government Code § 65965-69568, Probate Code § 18501-18510, the BEI, and the Endowment Agreement to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. The term “Endowment Fund” as used in this BEI shall include the Endowment Deposits, and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto.

“Endowment Holder” is the entity qualified to hold the Endowment Fund pursuant to Government Code § 65965-65968.

“Enhance” or “Enhancement” means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource present on the Bank Property to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in another aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area and functions.

“Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which neither the Bank Sponsor nor the Property Owner has control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where "flood" refers to a runoff event; (iii) an earthquake shall constitute an event of Force Majeure only if the ground motion it generates at the Bank Property is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.

“Grantee” means the entity authorized to hold the Conservation Easement pursuant to Civil Code § 815.3 and Government Code § 65966 and 65967.

“Implementation Fee” is the fee the Fish and Game Code § 1799(e)(2) requires CDFW to collect to pay for all or a portion of its bank implementation and compliance costs.

“Interim Management Period” means the period from the Bank Establishment Date until the Performance Standards in the Development Plan have been met and the third anniversary of the full funding of the Endowment Amount has occurred.

“Interim Management Plan” is incorporated into the Development Plan (**Exhibit C-1**) and describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsor during the Interim Management Period.

“Interim Management Security” is the financial assurance specified in Section VI.C and **Exhibit D-1**, to be provided by the Bank Sponsor to guarantee the implementation of the Interim Management Plan.

“Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored and maintained by the Property Owner pursuant to the Long-term Management Plan.

“Long-term Management Plan” means the document attached as **Exhibit D-5** that provides measures intended to ensure the Bank Property is managed, monitored and maintained in

perpetuity to conserve and protect its Waters of the U.S and Buffers, Waters of the State, and Covered Habitat.

“NCCP” means a Natural Community Conservation Plan created pursuant to Fish and Game Code § 2800, *et seq.*

“Performance Security” means the financial assurance specified in Section VI.B. and **Exhibit C-3**, to be provided by the Bank Sponsor to guarantee that the Performance Standards are met and all Remedial Action(s) required under Section VIII.F is completed through Bank closure.

“Performance Standards” means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat.

“Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.

“Preserve” or “Preservation” means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

“Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owner and attached as **Exhibit E-2**.

“Property Owner” means the owner(s) of fee simple title to the Bank Property.

“Remedial Action” means any corrective measures which the Bank Sponsor or Property Owner is required to take to ameliorate any injury or adverse impact to the Bank Property or as a result of a failure to achieve the Performance Standards.

“Re-establish” or “Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a net gain in aquatic resource area.

“Restore” or “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

“RIBITS” means the Regulatory In-lieu Fee and Bank Information Tracking System.

“Service Area” means the geographic area(s) within which impacts to Waters of the U.S., Waters of the State, or Covered Habitat that occur may be mitigated or compensated through Transfer of Credits from the Bank.

“Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.

“Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsor.

“Unlawful Act” shall mean the act of any person or entity including the Bank Sponsor or Property Owner, or anyone acting on behalf or under the control of either Bank Sponsor or Property Owner, on or affecting the Bank Property in violation of any applicable law, statute, regulation, code, order, ordinance, requirement or permit, including without limitation, an event or series of events, such as the release or discharge of any Hazardous Substance.

“Waters of the State” means any surface or groundwater, including saline waters, within the boundaries of the State of California.

“Waters of the U.S.” means all waters and wetlands over which the USACE and the USEPA are granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, and for which Credits have been allocated as set forth in **Exhibit F-1**. This definition encompasses the term “waters of the United States” as defined in 33 C.F.R. Part 328.

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Development Plan (**Exhibit C-1**) and the Biological Resources Survey (**Exhibit H**) attached to and made a part of this BEI.

B. Disclaimer

This BEI does not in any manner limit the legal authorities or responsibilities of the IRT or of any IRT agency.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this BEI:

1. “Exhibit A” - Bank Location Maps

A-1 General Vicinity Map

A-2 Map of Property and Bank Property

A-3 Map of Conserved Areas in Bank Property Vicinity

2. “Exhibit B” - Service Area Maps and Descriptions

B-1 Maps of the Bank’s Service Areas

- B-2 Narrative Descriptions and Justification of the Bank's Service Areas
- 3. "Exhibit C" - Development Plan
 - C-1 Development Plan and Interim Management Plan
 - C-2 Construction Security Analysis and Schedule
 - C-3 Performance Security Analysis and Schedule
- 4. "Exhibit D" - Bank Management and Operation Documents
 - D-1 Interim Management Security Analysis and Schedule
 - D-2 Endowment Fund Analysis and Schedule
 - D-3 Endowment Agreement, Instructions and Forms for Submission or Disbursement of Endowment Funds
 - D-4 Long-Term Management Plan
 - D-5 Bank Closure Plan
- 5. "Exhibit E" - Real Estate Records and Conservation Easement
 - E-1 Property Assessment and Warranty
 - E-2 Plat Maps
 - E-3 Conservation Easement approved as to form
 - E-4 Title Insurance Policy, once received
- 6. "Exhibit F" - Bank Credits and Credit Transfers
 - F-1 Credit Evaluation and Credit Table
 - F-2 Credit Purchase Agreement and Payment Receipt Templates
 - F-3 Credit Transfer Ledger Template
 - F-4 Implementation Fee Schedule
- 7. "Exhibit G" - Phase I Environmental Site Assessment
- 8. "Exhibit H" - Biological Resources Survey
- 9. "Exhibit I" - Waters of U.S. Jurisdictional Determination and Delineation
- 10. "Exhibit J" - Cultural, Historical, Archeological, and Native American Resources ("Cultural Resources").
 - J-1 Identification, Inventory and Evaluation
- 11. "Exhibit K" - Other Documentation, Permits, and Amendments

Section IV: Bank Evaluation and Development

A. Bank Site Assessment by the IRT

Representatives of the IRT have inspected the Bank Property and evaluated the Bank's proposed development of Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat and have agreed upon the assignment of Credits set forth in **Exhibit F-1**.

B. Bank Sponsor's Responsibilities for Bank Development

The Bank Sponsor agrees to perform all necessary work, in accordance with the provisions of this BEI, to Restore, Enhance, monitor, and maintain the Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat, as described in the Development Plan, on the Bank Property until the Bank Sponsor has demonstrated to the satisfaction of the IRT that the Bank complies in all respects with all requirements of this BEI pertaining to Bank development.

C. Phase I Environmental Site Assessment

The Property Owner has provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit G**, showing that the Bank Property is not subject to any recognized environmental conditions (as defined by the applicable ASTM Standard). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Property Owner represents and warrants to the IRT that all appropriate assessment, clean-up, remedial or removal action has been completed. Thereafter, the Property Owner shall submit to the IRT an updated Phase 1 Environmental Site Assessment that concludes no recognized environmental conditions are present on the Bank Property.

D. Approvals

The Bank Sponsor will obtain all permits, authorizations, and other approvals necessary or appropriate to construct, operate, and maintain the Bank, including those of any IRT agency. This BEI does not constitute or substitute for any such approval.

E. Subsequent Phases

If the Bank is to be established in phases, the Bank Sponsor shall submit a written request to the IRT for approval of each phase. Subsequent phases will need to comply with IRT documentation requirements in effect on the date of submission of the complete documentation for the proposed phase. Establishment of each phase must be approved in writing by the IRT.

F. Additional Mitigation Bank Sites

The Bank Sponsor may request approval of additional mitigation bank sites. Additional mitigation bank sites must be solely owned by the Property Owner. As additional sites are selected, the BEI must be amended, using the procedures found at 33 C.F.R. 332.8(g)(1) and Fish and Game Code § 1797 et seq.

G. Modification of the Development Plan

In the event that after the BEI is signed by the Parties, the Bank Sponsor and the IRT determine that modifications must be made to the Development Plan (**Exhibit C-1**) the

Parties shall meet to discuss the modifications, and the Bank Sponsor shall submit a written request for approval of such modifications to the IRT within 60 days of the meeting. Upon agreement of the Parties, the Bank Sponsor shall then implement all approved modifications.

H. Property Assessment and Warranty

Property Owner is responsible to ensure that the Property Assessment and Warranty (**Exhibit E-2**) is true, complete, and correct as of the date of this BEI. Should Property Owner become aware of any errors or omissions in the Property Assessment and Warranty after the date of this BEI, Property Owner shall notify the IRT agencies in writing. Following receipt of any such notice, the IRT shall evaluate any impacts of the errors or omissions on the Bank, Bank Property, and the Grantee's interest in the Conservation Easement or Bank Property, and the IRT may reduce the number of available Credits as a result of such impacts according to the policies of the IRT agencies in effect at the time of notice to the IRT.

Section V: Bank Establishment Date

The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:

1. The BEI has been fully executed by all of the Parties,
2. The Conservation Easement has been (i) accepted by a Grantee approved by the IRT and (ii) recorded in the Official Records of the counties in which the Bank Property is located,
3. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI, and

Within 30 days of the Bank Establishment Date, the Bank Sponsor shall upload the final, signed BEI including all of its Exhibits, to RIBITS and provide an electronic copy to each member of the IRT.

Section VI: Financial Assurances

The Bank Sponsor is responsible for providing financial assurances for the performance and completion of Bank construction, management, monitoring, and Remedial Action in accordance with this BEI, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII.E. The Bank Sponsor shall provide written confirmation from the agency and Endowment Holder, as applicable, that the requirement was completed to each member of the IRT in accordance with Section XII.K. upon furnishing each of the following financial assurances:

A. Construction Security

Prior to the first Credit Release, the Bank Sponsor shall furnish to USACE Construction Security in the amount of a reasonable third party estimate or contract to Restore or Enhance Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan in the amount in **Exhibit C-2**. The Construction Security shall be in the form of two letters of credit. The Bank Sponsor shall ensure that each letter of credit shall remain in effect in the full amount required by this BEI, throughout the implementation of the specific

construction and planting activities covered by that letter of credit as outlined in **Exhibit C-2** of this BEI, to Restore or Enhance Waters of the U.S. and Buffers, Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan. *Provided, however,* that if all such construction and planting is completed in accordance with the Development Plan prior to the date on which Bank Sponsor would otherwise be required to furnish the Construction Security then no Construction Security shall be required.

B. Performance Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Performance Security in the amount of 20% of the Construction Security in the amount in **Exhibit C-3** or 20% of the Endowment Fund Analysis and Schedule in the amount in **Exhibit D-2**, whichever is higher. The Performance Security shall be in the form of a letter of credit. The Bank Sponsor shall ensure that the Performance Security shall remain in effect in the full amount required by this BEI in accordance with Section VIII.E.1.b. until the IRT determines that all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required to satisfy a Remedial Action plan under Section VIII.F are met.

C. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Interim Management Security in the amount in **Exhibit D-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Plan during the first three years of the Interim Management Period, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit D-1**). The Interim Management Security shall be in the form of a letter of credit. The Bank Sponsor shall ensure that the Interim Management Security shall remain in effect in the full amount required by this BEI in accordance with Section VIII.E.1.c. until the end of the Interim Management Period.

D. Letters of Credit

Letters of credit shall be submitted to and approved by USACE before they satisfy any financial assurance requirement. The USACE shall be the beneficiary of the letter of credit. Any letter of credit shall be issued for a period of at least one year, and shall provide that the expiration date will be automatically extended for at least one year on each successive expiration date unless, at least 120 days before the current expiration date Bank Sponsor and the USACE have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The letter of credit shall provide that any unused portion shall be available for 120 days after the date Bank Sponsor and the USACE have received such notice, as shown on the signed return receipts. If the issuer elects to not extend the expiration date of any letter of credit, Bank Sponsor shall provide the USACE with replacement security in the form of a letter of credit, within 60 days after receiving notice of the issuer's decision not to extend the expiration date. If Bank Sponsor does not provide such replacement security on or before the expiration of the 60-day period, then the USACE shall have the right to immediately draw upon the letter of credit for which the replacement security was required.

E. Endowment Fund

1. The Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan and the Endowment Fund Analysis and Schedule (**Exhibit D-2**). The Bank Sponsor shall fund the Endowment Fund through Endowment Deposits according to the schedule below:
 - a. A minimum of 15% of the Endowment Amount shall have been deposited with the Endowment Holder prior to the earliest of: 1) the second Waters of the U.S and Buffer Credit Release; or 2) the second Waters of the State Credit Release; or 3) the second Covered Habitat Credit Release;
 - b. A minimum of 40% of the Endowment Amount shall have been deposited with the Endowment Holder prior to the earliest of: 1) the third Waters of the U.S. and Buffer Credit Release; or 2) the third Waters of the State Credit Release; or 3) the third Covered Habitat Credit Release;
 - c. A minimum of 70% of the Endowment Amount shall have been deposited with the Endowment Holder prior to the earliest of: 1) the fourth Waters of the U.S. and Buffer Credit Release; or 2) the fourth Waters of the State Credit Release; or 3) the fourth Covered Habitat Credit Release;
 - d. 100% of the Endowment Amount shall have been deposited with the Endowment Holder prior to the earliest of: 1) the fifth Waters of the U.S. and Buffer Credit Release; or 2) the fifth Waters of the State Credit Release; or 3) the fifth Covered Habitat Credit Release.
2. Each year the Endowment Fund is not 100% funded, the Endowment Amount in **Exhibit D-2** shall be increased (but not decreased) to account for inflation. The Bank Sponsor must make this adjustment on or before March 1 of each year ("Adjustment Year") based upon the change in the Consumer Price Index for California, All Urban Consumers, All Items ("Index") published by the California Department of Industrial Relations, Division of Labor Statistics and Research (<http://www.dir.ca.gov/OPRL/CAPriceIndex.htm>). The Bank Sponsor shall determine the change in the Index by comparing the Index published in February of the Adjustment Year to the Index published in February of the year in which this BEI is fully executed. The Endowment Amount in Exhibit D-2 shall be increased by the present change in the Index and the product shall be the Endowment Amount in the Adjustment Year. If the percentage change in the Index is less than or equal to zero for any Adjustment Year, then no adjustment will be made for that year.
3. Bank Sponsor shall notify each member of the IRT of each Endowment Deposit made, within 30 days of such deposit using the Endowment Deposit Form provided in **Exhibit D-3**.

Section VII: Credit Release

Each Credit Release must be requested in writing by the Bank Sponsor and must be approved in writing by the IRT agency(ies) under whose jurisdiction the Credits reside. The Bank Sponsor may request that a portion of the anticipated Credit Release be released and not the entirety. The percentage of the anticipated Credit Release requested by the Bank Sponsor must be included in the written Credit Release request to the IRT. Credits not requested by the

Bank Sponsor during a specific Credit Release can subsequently be requested and shall not be considered retired.

A. Waters of the U.S. and Buffer Credit Releases

1. Upon Bank Sponsor's compliance with all applicable requirements set forth in this Section VII.A, Waters of the U.S and Buffer Credits as described in the Credit Table (**Exhibit F-1**) may be released for Transfer, as described below. Monitoring for Performance Standards for Credit Releases is for a minimum of five years. The actual number of Credits released shall be determined in writing by the USACE, in consultation with the other members of the IRT, based upon as-built conditions, extent of Waters of the U.S. delineated on the Bank Property, attainment of the Performance Standards, funding of the Endowment Fund in accordance with Section VI.E, and compliance with requirements of this BEI and any associated authorization. Upon each Credit Release, USACE shall enter the number of Credits released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred. Credits may be released as follows:
 - a. Release 1: Up to 15% of the total anticipated Waters of the U.S and Buffer Credits upon the Bank Establishment Date.
 - b. Release 2: Up to an additional 25% of the total anticipated Waters of the U.S and Buffer Credits (40% cumulative total) when: i) the Bank Sponsor has submitted as-built drawings to the IRT pursuant to Section VII.A.2, ii) the USACE has approved the as-built condition in writing, and iii) the Bank Sponsor has funded a minimum of 15% of the Endowment Amount per Section VI.E.1.a. Release 1 is a prerequisite for Release 2.
 - c. Release 3: Up to an additional 15% of the total anticipated Waters of the U.S and Buffer Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained or as determined by the USACE herein, and iii) the Bank Sponsor has funded a minimum of 40% of the Endowment Amount per Section VI.E.1.b. Release 2 is a prerequisite for Release 3. CRAM will be conducted within the same assessment area in year 3 following implementation of the Enhancement activities. Due to limitations in the way CRAM is scored, there is the potential for measurable improvements in the Enhanced habitats to not be adequately reflected in the CRAM scores. To ensure changes in Enhanced habitats are captured, and measured, alternate Uniform Performance Standards have been established for each CRAM metric. The Enhanced habitats will be considered as meeting their Performance Standards when they have met both the Uniform Performance Standards and the Target CRAM scores. If the Target CRAM score is not met for any metric during year 3, the Uniform Performance Standards may be used by the USACE to determine if and to what degree the Enhanced habitats are meeting the Performance Standards. In such an event, the USACE would also make a case-by-case determination if full, partial, or no release of Credits is warranted.
 - d. Release 4: Up to an additional 15% of the total anticipated Waters of the U.S and Buffer Credits (70% cumulative total) when: i) the Bank Sponsor

has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained or as determined by the USACE herein, and iii) the Bank Sponsor has funded a minimum of 70% of the Endowment Amount per Section VI.E.1.c. Release 3 is a prerequisite for Release 4. CRAM will be conducted within the same assessment area in year 4 following implementation of the Enhancement activities. Due to limitations in the way CRAM is scored, there is the potential for measurable improvements in the Enhanced habitats to not be adequately reflected in the CRAM scores. To ensure changes in Enhanced habitats are captured, and measured, alternate Uniform Performance Standards have been established for each CRAM metric. The Enhanced habitats will be considered as meeting their Performance Standards when they have met both the Uniform Performance Standards and the Target CRAM scores. If the Target CRAM score is not met for any metric during year 4, the Uniform Performance Standards may be used by the USACE to determine if and to what degree the Enhanced habitats are meeting the Performance Standards. In such an event, the USACE would also make a case-by-case determination if full, partial, or no release of Credits is warranted.

- e. Release 5: Up to an additional 15% of the total anticipated Waters of the U.S and Buffer Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fifth Year Monitoring Report as required by the Development Plan, ii) Year 5 Performance Standards have been attained or as determined by the USACE herein, iii) submittal of a Waters of the U.S. jurisdictional determination and delineation for the Bank Property by the Bank Sponsor to the USACE, and iv) the Bank Sponsor has funded 100% of the Endowment Amount per Section VI.E.1.d. Release 4 is a prerequisite for Release 5. CRAM will be conducted within the same assessment area in year 5 following implementation of the Enhancement activities. Due to limitations in the way CRAM is scored, there is the potential for measurable improvements in the Enhanced habitats to not be adequately reflected in the CRAM scores. To ensure changes in Enhanced habitats are captured, and measured, alternate Uniform Performance Standards have been established for each CRAM metric. The Enhanced habitats will be considered as meeting their Performance Standards when they have met both the Uniform Performance Standards and the Target CRAM scores. If the Target CRAM score is not met for any metric during year 5, the Uniform Performance Standards may be used by the USACE to determine if and to what degree the Enhanced habitats are meeting the Performance Standards. In such an event, the USACE would also make a case-by-case determination if full, partial, or no release of Credits is warranted.
- f. Final Release: Any remaining balance of Waters of the U.S and Buffer Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained. Release 5 is a prerequisite for the final Release.

2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the Enhanced Waters of the U.S. and Buffers to the IRT no later than 90 calendar days following completion of construction associated with the Enhancement of the Waters of the U.S. and Buffers on the Bank Property. The as-built drawings shall consist of full size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.
3. Each Waters of the U.S. and Buffer Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B., and a USACE site visit at the appropriate time of year, as determined by the USACE.
4. Any modification or unapproved deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Waters of the U.S. and Buffer Credits available for release as determined by the USACE, in consultation with the other IRT agencies. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by USACE to reflect any reduction in the available Waters of the U.S. and Buffer Credits.

B. Waters of the State Credit Release

1. Credits for Waters of the State shall be determined and released as described in this Section VII.B and the Credit Table (**Exhibit F-1**). Anticipated Waters of the State Credits have been assigned to the Bank based upon Credit methodologies developed by CDFW.
2. Upon the Bank Sponsor's submittal of all documentation required under this BEI, and approval by the CDFW, CDFW will release Credits for Waters of the State as described below. The actual number of Credits Released shall be determined by CDFW, in coordination with the IRT, based upon attainment of the Performance Standards (if applicable) and upon funding of the Endowment Amount in accordance with Section VI.E. No Credit Transfer shall occur until the applicable Credit Release has occurred.
 - a. Release 1: 15% of the total anticipated Waters of the State Credits upon the Bank Establishment Date.
 - b. Release 2: Up to an additional 25% of the total anticipated Waters of the State Credits (40% cumulative total) when: i) Bank Sponsor has submitted as-built drawings pursuant to Section VII.A.2, ii) the CDFW has approved the as-built condition in writing, and iii) the Bank Sponsor has deposited a minimum of 15% of the Endowment Amount per Section VI.E.1.a. Release 1 is a prerequisite for Release 2.
 - c. Release 3: Up to an additional 15% of the total anticipated Waters of the State Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Second Year Monitoring Report as required by the Development Plan, ii) Year 2 Performance Standards have been attained, and iii) the Bank Sponsor has deposited a minimum of 40% of the Endowment Amount per Section VI.E.1.b. Release 2 is a prerequisite for Release 3.

- d. Release 4: Up to an additional 15% of the total anticipated Waters of the State Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained, and iv) the Bank Sponsor has deposited a minimum of 70% of the Endowment Amount per Section VI.E.1.c. Release 3 is a prerequisite for Release 4.
 - e. Release 5: Up to an additional 15% of the total anticipated Waters of the State Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained, and iii) the Bank Sponsor has deposited 100% of the Endowment Amount per Section VI.E.1.d. Release 4 is a prerequisite for Release 5.
 - f. Final Release: Any remaining balance of Waters of the State Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained. Release 5 is a prerequisite for the final Release.
3. Each Waters of the State Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B, and a CDFW site visit at the appropriate time of year, as determined by the CDFW.
 4. Any deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Waters of the State Credits available for release as determined by CDFW, in coordination with the IRT. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by CDFW, to reflect any reduction in the available Waters of the State Credits.
 5. Each CDFW approved Credit Release is also contingent upon the Bank Sponsor's payment of the Implementation Fee to CDFW. Pursuant to Fish and Game Code 1799(e)(2), CDFW shall collect an Implementation Fee per Bank, which may be apportioned by an amount that equals the ratio of the number of CDFW Credits released to the total number of CDFW Credits in the Bank. The payments shall be submitted following each CDFW Credit Release and no later than the time of the submission of the Bank's annual report. The CDFW may require the Bank Sponsor to cease selling CDFW Credits and may stop CDFW Credit Releases until these fees are paid in full. The Credit Release Fee shall be paid in full by the Bank closure date. The CDFW shall assess a penalty of 10 percent of the amount of fees due if there is a failure to remit the amount payable when due.

C. Covered Habitat Credit Release

1. Upon Bank Sponsor's compliance with all applicable requirements set forth in this Section VII.B., Covered Habitat Credits as described in the Credit Table (**Exhibit F-1**) may be released for Transfer, as described in the Covered Habitat Credit Release Schedule below. The actual number of Credits released shall be determined in writing by CDFW, in consultation with the other members of the IRT,

based upon existing and as-built conditions, extent of appropriate habitat enhanced or re-established, attainment of the Performance Standards, funding of the Endowment Fund in accordance with Section VI.E, and compliance with requirements of this BEI and any associated authorization. Upon each Credit Release, the appropriate IRT agency shall enter the number of Credits released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred.

- a. Release 1: 15% of the total anticipated Covered Habitat Credits upon the Bank Establishment Date.
 - b. Release 2: Up to an additional 25% of the total anticipated Covered Habitat (40% cumulative total) when: i) Bank Sponsor has submitted as-built drawings to the CDFW pursuant to Section VII.C.4, ii) the CDFW has approved the as-built condition in writing, and iii) the Bank Sponsor has deposited a minimum of 15% of the Endowment Amount per Section VI.E.1.a. Release 1 is a prerequisite for Release 2.
 - c. Release 3: Up to an additional 15% of the total anticipated Covered Habitat Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Second Year Monitoring Report as required by the Development Plan, ii) Year 2 Performance Standards have been attained, and iii) the Bank Sponsor has deposited a minimum of 40% of the Endowment Amount per Section VI.E.1.b. Release 2 is a prerequisite for Release 3.
 - d. Release 4: Up to an additional 15% of the total anticipated Covered Habitat Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained, and iv) the Bank Sponsor has deposited a minimum of 70% of the Endowment Amount per Section VI.E.1.c. Release 3 is a prerequisite for Release 4.
 - e. Release 5: Up to an additional 15% of the total anticipated Covered Habitat Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained, and iii) the Bank Sponsor has deposited 100% of the Endowment Amount per Section VI.E.1.d. Release 4 is a prerequisite for Release 5.
 - f. Final Release: Any remaining balance of Covered Habitat Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained. Release 5 is a prerequisite for the final Release.
2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the constructed habitats, to the CDFW no later than 90 calendar days following

completion of construction associated with the constructed habitats on the Bank Property. The as-built drawings shall consist of full size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any unapproved deviation from the Development Plan.

3. Each Covered Habitat Credit Release, with the exception of the first and second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B., an IRT site visit at the appropriate time of year, as determined by the CDFW, and the payment of CDFW Implementation Fees, as appropriate.
4. Any modification or unapproved deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Covered Habitat Credits available for release as determined CDFW, in consultation with the other IRT agencies. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by CDFW, to reflect any reduction in the available Covered Habitat Credits.

Section VIII: Operation of the Bank

A. Service Area

The Service Areas for different Bank Credits and justification are described and shown in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon the Bank Establishment Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum Credit unit that may be Transferred is 0.01 Credit.
2. In no case shall the number of Credits of any particular type Transferred exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval by the IRT agency(ies) under whose jurisdiction the Credits reside.
3. No use of Credits from the Bank to mitigate or compensate for impacts to Waters of the U.S., Waters of the State, or Covered Habitat is allowed until confirmation by the appropriate IRT agency or agencies on a case-by-case basis has occurred.
4. Bank Sponsor shall notify all members of the IRT upon any Credit Transfer in accordance with Section IX.C. of this BEI. Upon Transfer of Credits, the Bank Sponsor shall enter the Credit Transfer into RIBITS.
5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs any or all Waters of the U.S., Buffers, Waters of the State, or Covered Habitat on such damaged Bank Property, then the IRT may, at its discretion, direct Bank Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the IRT.

6. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of **Exhibit F-2**.
7. This BEI applies only to those Credits assigned by USACE and CDFW as set forth in **Exhibit F-1**.
8. Following release of Credits by USACE and/or CDFW, the Santa Ana Regional Water Board may authorize use of Waters of the U.S. or Waters of the State Credits from the Bank to mitigate for impacts to resources under Santa Ana Regional Water Board jurisdiction within the Service Area.

C. Interim and Long-term Management and Monitoring

1. Interim Management and Monitoring

Bank Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan included in the Development Plan (**Exhibit C-1**) until the end of the Interim Management Period.

2. Long-term Management and Monitoring

At the end of the Interim Management Period, the Property Owner shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owner shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this BEI, the Conservation Easement and the Long-term Management Plan (**Exhibit D-5**). Such activities shall be funded through the Endowment Fund according to Section VIII.E.2.b. Property Owner and the IRT shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan and Endowment Analysis and Schedule (**Exhibit D-2**) which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period, Property Owner shall be responsible for submitting annual reports to each member of the IRT in accordance with Section IX.B of this BEI. The Property Owner shall upload annual reports into RIBITS.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon written approval of the IRT following occurrence of all of the following:
 - a. All Performance Standards have been met and all Remedial Action required under Section VIII.F has been completed as evidenced by 1) timely submission of all required annual reports in accordance with Section IX.B; 2) the third anniversary of the completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s); 3) an on-site inspection by the IRT; 4) written approval from the IRT; and
 - b. Either:
 - 1) The last authorized Credit has been Transferred; or

- 2) The Bank Sponsor requests Bank closure by written notice to the IRT and the IRT provides written approval of the closure; and
- c. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Amount for not less than three years, and payment of all CDFW Implementation Fees.

E. Financial Operations

1. Securities

a. Construction Security

- 1) The USACE, as the holder of the security, shall be entitled to draw upon the Construction Security if:
 - a) any Transfer of Credits has been made; and
 - b) either (i) at any time after the Bank Establishment Date, but no later than the first full growing season after the date of the first Credit Transfer, the USACE, in coordination with CDFW, determines that the Bank Sponsor has not initiated construction and planting in accordance with the Development Plan, or (ii) two years has elapsed since the Bank Sponsor has initiated implementation of the Development Plan, and construction and planting in accordance with the Development Plan is not complete; and
 - c) Prior coordination with the IRT.
- 2) If any portion of the Construction Security is drawn upon pursuant to this Section, then the Bank Sponsor shall replenish the Construction Security in the amount specified in **Exhibit C-2** within 90 days after written notice from USACE.
- 3) Each letter of credit comprising the Construction Security shall be cancelled by USACE only after the Bank Sponsor completes the activities covered by that letter of credit, as outlined in **Exhibit C-2**, and in accordance with the Development Plan, as demonstrated by:
 - a) Bank Sponsor's submission of as-built drawings in accordance with Section VII.A.2 and VII.C.4;
 - b) An on-site inspection and confirmation by the IRT of satisfactory completion of construction and planting activities in accordance with the Development Plan; and
 - c) Prior coordination with the IRT.

b. Performance Security

- 1) The USACE, as the holder of the Performance Security, in coordination with the IRT, shall be entitled to draw upon the Performance Security in accordance with this Section.

- 2) If any portion of the Performance Security is drawn upon pursuant to this Section, then the Bank Sponsor shall replenish the Performance Security to the amount specified in **Exhibit C-3** within 90 days after written notice from USACE.
 - 3) The Performance Security shall be cancelled after all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required to satisfy such Remedial Action plan(s) under Section VIII.F are met.
- c. Interim Management Security
- 1) The USACE, as the holder of the security, in coordination with other members of the IRT, shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the USACE determines that during the Interim Management Period the Bank Sponsor has not performed all tasks as required under the Interim Management Plan.
 - 2) In the event that the Interim Management Security is drawn upon pursuant to this Section, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in **Exhibit D-1** within 90 days after written notice from USACE.
 - 3) Provided that the Bank Property has been managed in accordance with the Interim Management Plan, the Interim Management Security shall be cancelled by USACE within 90 days of the end of the Interim Management Period.
2. Endowment Fund
- a. Endowment Fund Deposits
- 1) In accordance with the Endowment Agreement, the Endowment Deposits the Endowment Holder receives are to be deposited into a fund held in trust and designated in the Endowment Agreement (**Exhibit D-3**).
- b. Endowment Fund Management
- 1) Notwithstanding Probate Code sections 18501-18510, the Endowment Amount should not decrease in value through expenditure or investment strategy. The Endowment Amount is intended to increase in value to keep up with inflation. A portion of the interest and earnings on the Endowment Amount balance shall be reinvested by the Endowment Holder into the Endowment Fund in accordance with the Endowment Agreement. After the Endowment Fund is fully funded, no additional Endowment Fund monies will be required from the Bank Sponsor.
 - 2) The Parties anticipate that any Endowment Fund earnings beyond those necessary to provide for growth of the Endowment Fund commensurate with inflation will be made available by the Endowment Holder to the Property Owner to fund annual

management of the Bank Property in accordance with the Endowment Agreement.

- 3) In accordance with the Endowment Agreement, any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Fund is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property are to be retained in the Endowment Fund by the Endowment Holder and may be made available by the Endowment Holder to the Property Owner to fund unexpected expenses and Adaptive Management needs.
- 4) Property Owner shall invoice the Endowment Holder for management activities following the invoicing instructions in **Exhibit D-3**.
- 5) Notwithstanding Probate Code sections 18501-18510, if there is insufficient funding available from the Endowment Fund interest and earnings or if Long-term Management expenses exceed those estimated in the Endowment Fund Analysis and Schedule (**Exhibit D-2**), the Property Owner shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available. Property Owner shall submit a proposed revised Long-term Management Plan and Endowment Fund Analysis and Schedule in writing to the IRT within 60 days after completion of Property Owner's consultation with the IRT. Upon written approval of the IRT, and any required notification to the Endowment Holder, in accordance with the Endowment Agreement, the Property Owner shall implement the approved revised management measures and tasks. Should sufficient funding become available from the Endowment Fund to fund originally anticipated annual long-term management costs, the original Long-term Management Plan shall be restored in full force and effect.

3. Financial Records and Auditing

The Bank Sponsor and/or Property Owner, as appropriate, are required to maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board. At the request of the IRT, no more frequently than annually, the Bank Sponsor and/or Property Owner, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the IRT upon completion.

The IRT or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this BEI. Bank Sponsor and Property Owner agree to maintain such records for possible audit for a minimum of three years after Bank closure, or three years after the date of performance, whichever is later. Bank Sponsor and Property Owner agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably

have information related to such records. Further, Bank Sponsor and Property Owner agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this BEI.

F. Remedial Action Plan

1. Prior to Bank closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the Bank Property as Preserved, Restored, or Enhanced, the Party making the discovery shall notify the other Parties. The IRT may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.B. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.
2. Within 60 days of the date of written notice from the IRT, the Bank Sponsor shall develop a Remedial Action plan and submit it to each member of the IRT for written approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or remedy injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Bank Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the IRT deems necessary.
3. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) where a Remedial Action plan is agreed upon and implemented, but the conditions have not improved or continue to deteriorate two years after the IRT approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the IRT deemed necessary, then the USACE may draw upon the Performance Security to undertake Remedial Action on the Bank Property.
4. If the IRT determines that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this BEI), then the IRT shall notify the Bank Sponsor. Upon the IRT giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The IRT will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

By March 1st of each year following the Bank Establishment Date and until the Endowment Amount is 100% funded, the Bank Sponsor shall report to the IRT and the Endowment Holder, in hard copy and in editable electronic format, the following values:

1. The adjusted Endowment Amount determined in accordance with Section VI.E.3; and
2. The resulting adjusted Endowment Deposit amounts.

B. Annual Report

Bank Sponsor or Property Owner, as appropriate, shall submit an annual report to each member of the IRT, in hard copy and in editable electronic format, on or before August 15th of each year following the Bank Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the current year (the "Reporting Period"). Prior to Bank closure, the Bank Sponsor shall be responsible for reporting Bank development and Interim Management tasks described below, and Property Owner shall be responsible for reporting Long-term Management tasks described below. After Bank closure, the Property Owner shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Bank Development

The annual report shall document the degree to which the Bank is meeting the Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

The Development and Long-term Management Plans contain reporting requirements that are separate from, and in addition to, the requirements listed below for the annual report.

The annual report shall contain an itemized account of the management tasks and any Remedial Actions conducted during the Reporting Period in accordance with the Development Plan or Long-term Management Plan, including the following:

- a. The time period covered, i.e. the dates "from" and "to";
- b. A description of each management task conducted, the dollar amount expended and time required;
- c. The total dollar amount expended for management tasks conducted during the Reporting Period;
- d. A description of the management and maintenance activities proposed for the next reporting year; and
- e. A description of the overall condition of the Bank, including photos documenting the status of the Bank and a map documenting the location of the photo points.

3. Transfer of Credits

The annual report shall include an updated Credit Transfer ledger (**Exhibit F-3**) showing all Credits Transferred since the Bank Establishment Date and an accounting of remaining Credits.

4. Implementation Fee payment status, if applicable.

C. Credit Transfer Reporting

Upon the Transfer of each and every Credit the Bank Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the fully executed Credit purchase agreement in the form provided at **Exhibit F-2**; and
2. An updated Credit Transfer ledger, in hard copy and in editable electronic format in the form provided at **Exhibit F-3**.

D. Reporting Compliance Measures

If the Bank Sponsor fails to submit complete reports in a timely manner the IRT shall have the right to suspend all Credit Transfers or decrease the number of Credits to be released.

1. Extension requests

Requests to extend report deadlines shall be submitted to the IRT no later than 30 days prior to the original deadline. The IRT will have 15 calendar days to approve or deny the extension request.

2. Reports not received by the IRT in a timely manner

Missing annual reports will result in automatic Credit Transfer suspension beginning at 0800 hours on the 30th day that the report is past due. The suspension will be lifted within 5 days after the IRT receives a complete annual report.

3. Incomplete reports

The IRT will notify the Bank Sponsor, or Property Owner, as appropriate, within 30 days after the due date that an annual report is incomplete, in which the Bank Sponsor or Property Owner will be given a new deadline for complying with the requirements set forth in this BEI. This deadline is at the discretion of the IRT. If the Bank Sponsor has not been notified of incompleteness on or prior to the date that is 30 days after the report due date, the report shall be deemed complete.

Section X: Responsibilities of the Bank Sponsor and Property Owner

1. Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owner each hereby agrees and covenants that:
 - a. If the entity proposed to hold the Conservation Easement is not a member of the IRT, Bank Sponsor and Property Owner shall, prior to the execution of the Conservation Easement at **Exhibit E-4** hereof, provide the IRT with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is authorized to do so pursuant to California Civil Code § 815.3 and Government Code § 65966-65967, has a primary purpose of long-term land stewardship for conservation purposes

consistent with the purposes of the Bank, and has agreed to hold the Conservation Easement.

- b. Bank Sponsor shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to construction, planting, Remedial Action, documentation, maintenance, management, monitoring, and reporting, until completion of the Interim Management Period.
 - c. Bank Sponsor shall assume responsibility for compensatory mitigation requirements for which it Transfers Credit(s) once a permittee has secured the appropriate number and type of Credits from the Bank Sponsor. Bank Sponsor shall provide the IRT with the written Credit purchase agreement (**Exhibit F-2**) that confirms that the Bank Sponsor has accepted the responsibility for the compensatory mitigation requirements.
 - d. It shall not discharge or release on, to or from the Bank Property, or knowingly permit others to discharge or release on, to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any federal, state, or local environmental law or regulation (each a "Hazardous Substance").
 - e. Property Owner shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and Warranty approved by the IRT, and Property Owner shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the IRT.
 - f. It shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is prohibited by, or not consistent with and in accordance with this BEI and its Exhibits.
 - g. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with the Development Plan, this BEI and its Exhibits.
 - h. Property Owner shall allow, or otherwise provide for, access to the Bank Property by Bank Sponsor, Grantee, and the IRT agencies and third parties, as described in the Conservation Easement.
 - i. Property Owner shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this BEI and its Exhibits.
 - j. Property Owner shall ensure that the Bank Property is managed and maintained in accordance with the Long-Term Management Plan, this BEI and its Exhibits.
2. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this BEI, or

changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this BEI or extensions for the performance of the requirements of this BEI.

3. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates.
4. The Property Owner shall retain the right to utilize additional benefits, if any, which may result from preservation of the Bank Property and that do not conflict with the BEI, Conservation Easement, the Long-term Management Plan, or diminish the conservation values or operation of the Bank. These benefits may include but are not limited to ground water recharge or greenhouse gas reduction.

Section XI: Responsibilities of the IRT

A. IRT Oversight

Subject to the Availability of Funds provision of this BEI, the IRT agrees to oversee the performance of this BEI.

B. IRT Review

The IRT will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 60 days from the date of receipt of complete submittal. If the IRT is unable to provide comments to proposed Remedial Action plans within the time specified in this Section, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsor.

C. Compliance Inspections

The IRT shall conduct compliance inspections after providing 24-hour advance notice by phone or email to the Property Owner, except in the case of emergencies, for any purpose(s) it determines necessary to assess compliance with this BEI.

Section XII: Other Provisions

A. Force Majeure, Catastrophic Events, or Unlawful Acts

1. Neither the Bank Sponsor nor the Property Owner shall be responsible for damage or non-compliance caused by Catastrophic Events, events of Force Majeure, or an Unlawful Act. In order for this exception to apply, the Bank Sponsor or Property Owner, as appropriate, shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsor, Property Owner, and any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants, could have reasonably foreseen or prevented such damage or non-compliance; and

- c. The period of damage or non-compliance was a direct result of the Catastrophic Event, Force Majeure event or Unlawful Act.
2. Bank Sponsor shall notify the IRT within 24 hours of occurrence or discovery of a Catastrophic Event, event of Force Majeure or Unlawful Act, and as promptly thereafter as reasonably possible, the Parties shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsor or Property Owner, as appropriate, shall continue to manage and maintain the Bank Property according to this BEI to the full extent practicable.

B. Dispute Resolution

1. The Parties agree to work together in good faith to resolve disputes concerning this BEI, but any of the Parties may seek any available remedy. Unless a Party has initiated legal action in connection with the particular dispute, any Party may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond to the electing Party. During this time, any such other Parties may seek clarification of the initial notice;
 - c. Within 30 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution; and
 - d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property or Other Interests

1. All transfers of any interest in the Bank Property are subject to the applicable provisions of the Conservation Easement.
2. The Property Owner shall have the right to sell, assign, transfer or convey (each a "transfer") its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this BEI must be made in accordance with this BEI and the Conservation Easement, and shall be subject to written concurrence by the IRT and Bank Sponsor, which concurrence shall not be unreasonably withheld. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owner's obligations pursuant to this BEI and the Conservation Easement. From and after the date of any transfer by Property Owner of its interest in the Bank Property in which the transferee has assumed and agreed in writing to observe and perform all of the transferor's obligations pursuant to this BEI, the transferor shall have no further obligations hereunder and all references to Property Owner in this BEI shall thereafter refer to such transferee, except that the transferor's liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owner's interest in the Bank Property made without the

prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.3.c.

3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that no uncured event of default exists, Bank Sponsor is in full compliance with all requirements of this BEI (including all financial assurance requirements), and subject to the prior written approval of the IRT. If any of the financial assurances required under this BEI are not completely funded (except for the Endowment Fund) at the time the Bank Sponsor requests IRT approval of a sale or conveyance, then the IRT shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances (except fully funding the Endowment Fund). In addition, prior to sale or conveyance, the Bank Sponsor shall provide to each member of the IRT a written agreement by the replacement Bank Sponsor, reasonably acceptable to the IRT in form and substance, in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsor under the BEI. Any such sale or conveyance made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.3.c.

D. Modification and Termination of the BEI

1. Amendment and Modification

This BEI, including its Exhibits, may be amended or modified only with the written approval of the Parties, which approval may be reasonably withheld. All amendments and modifications shall be fully set forth in a separate document signed by all Parties. Pursuant to Fish and Game Code 1798.6(a), any person seeking to amend the Bank shall submit to CDFW a complete bank amendment package containing each of the original Bank agreement package documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment, together with the applicable amendment fee.

2. If an NCCP is approved which covers all or any part of the Service Area, and that plan uses habitat categories different from those set forth in **Exhibit F-1**, then, at the request of the Bank Sponsor, the remaining Credits for Covered Habitat may be reallocated at the discretion of the IRT to conform to the habitat categories in the approved NCCP. Any such reallocation shall be set forth in a written amendment to this BEI.

3. Termination

- a. The Bank Sponsor and Property Owner may jointly withdraw the entire Bank Property and terminate this BEI at any time prior to the first Credit Transfer, provided that Waters of the U.S., Buffers, Waters of the State, and Covered Habitat values existing on the Bank Property prior to the initiation of any efforts to Restore or Enhance the Bank Property shall be Preserved in a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the Conservation Easement may require.

- b. In the event this BEI is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.
- c. The IRT may terminate this BEI if the Bank Sponsor or Property Owner sells or conveys the Bank or the Bank Property without the prior written concurrence of the IRT, as required by Section XII.C.
- d. USEPA and/or the Santa Ana Regional Water Board may withdraw from this BEI upon 30 days' written notice to all other Parties. This BEI shall continue in full force and effect as to the remaining Parties following any such withdrawal that involves fewer than all of the IRT agencies.
- e. The USACE and CDFW may each withdraw from this BEI upon 30 days' written notice to all other Parties, on the condition that each of the following has occurred:
 - 1) Bank Sponsor or Property Owner has defaulted on one or more covenants, terms or conditions set forth herein;
 - 2) Bank Sponsor and Property Owner has each received notice of such default from the withdrawing IRT agency in accordance with paragraph XII.B., if applicable, and XII.K.; and
 - 3) The defaulting party has failed to cure its default within 30 days after such notice from the withdrawing IRT agency; provided that in the event such default is curable in the judgment of the withdrawing IRT agency, but cannot reasonably be cured within such 30 day period, the IRT agency seeking withdrawal shall identify a reasonable period for completing the cure and, so long as Bank Sponsor or Property Owner has commenced the cure of such default and is diligently pursuing such cure to completion, shall not terminate this BEI prior to that established date.
- f. If any member of the IRT so requests, the member(s) of the IRT proposing to withdraw from the BEI agree to meet with the other IRT members to discuss the reason(s) for such withdrawal, prior to the withdrawal taking effect. Notice of a request for such meeting shall be made by the requesting IRT member(s) not later than 15 calendar days from receipt of the notice of withdrawal.
- g. Withdrawal by any member of the IRT from this BEI shall not terminate this BEI or affect the relationship between the remaining members of the IRT toward each other or the Bank Sponsor or Property Owner, under this BEI. Remaining Credits authorized under the authority of the withdrawing agency will no longer be available for Transfer.
- h. Nothing in this Section XII.D.3 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USACE, CDFW, EPA, and RWQCB in the event of a threatened or actual breach of this BEI.

E. Non-Compliance

1. Notice of Non-Compliance. In the event that Bank Sponsor and/or Property Owner are in non-compliance with a term or condition of this BEI that does not involve a failure to achieve Performance Standards or an injury or adverse impact to Bank Property for which a Remedial Action Plan is prescribed in Section VIII.F (Remedial Action Plan), any Party may demand the cure of such non-compliance. In such a case, the Party shall issue a written notice to Bank Sponsor and/or Property Owner, as appropriate (hereinafter "Notice of Non-compliance") informing Bank Sponsor and/or Property Owner of the actual or threatened acts constituting non-compliance and demanding a cure.
2. Time to Cure. Bank Sponsor and/or Property Owner, as appropriate, shall have (30) days from the date of receipt of said written Notice of Non-compliance to cure the noticed non-compliance. If said cure reasonably requires more than thirty (30) days, Bank Sponsor and/or Property Owner, as appropriate, shall, within the thirty (30) day period, submit to the Parties for review and approval a plan and time schedule to diligently complete a cure. Bank Sponsor and/or Property Owner, as appropriate, shall complete such cure in accordance with the approved plan. If Bank Sponsor and/or Property Owner, as appropriate, disputes the Notice of Non-compliance, it shall invoke the Dispute Resolution procedures of Section XII.B within thirty (30) days of receipt of the Notice of Non-compliance.
3. Failure to Cure. If Bank Sponsor and/or Property Owner fails to cure the non-compliance within the time period(s) described in Section XII.E. 2. or as determined by the IRT following resolution of a dispute (a "default"), the IRT may take appropriate action. Such actions may include, but are not limited to, suspending Credit sales, Adaptive Management, decreasing available Credits, making a demand on the financial assurance, or terminating the BEI.
4. Any delay or failure of Bank Sponsor and/or Property Owner, as appropriate, to comply with the terms of this BEI shall not constitute default if and to the extent that such delay or failure arises from any Force Majeure, Unlawful Act, or Catastrophic Event in accordance with Section XII.A. Bank Sponsor and/or Property Owner shall give written notice to the other Parties if the performance of its obligations is affected by any such event in accordance with Section XII.A.

F. Controlling Language

The Parties intend the provisions of this BEI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this BEI conflicts with specific language in any document that is incorporated into this BEI by reference, the specific language within the BEI shall be controlling. The captions and headings of this BEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This BEI, and all exhibits, appendices, schedules and agreements referred to in this BEI, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this BEI or incorporated herein by reference, shall be binding or valid, with respect to the subject matter hereof. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII.D.1. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this BEI, whenever this BEI requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This BEI and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this BEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this BEI to be invalid or unenforceable, in whole or in part, for any reason or as to any Party, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this BEI would be defeated by loss of the invalid or unenforceable provision or its invalidity or unenforceability as to any Party.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this BEI shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Notice to the IRT shall be provided by giving notice to each member of the IRT at the addresses below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsor:

Land Veritas Corp
1001 Bridgeway #246
Sausalito, CA 94965
Attn: H. Tracey Brownfield, President
Telephone: (415) 729-3734

Property Owner:

Land Veritas I, LLC
1001 Bridgeway #246
Sausalito, CA 94965
Attn: Land Veritas Corp, Manager
Telephone: (415) 729-3734

IRT Members:

Department of the Army
Los Angeles District, U.S. Army Corps of Engineers
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90053
Attn: Regulatory Division, CESPL-RG
Telephone: 213-452-3412

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division
Telephone: (415) 947-8707

California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager
Telephone: (858) 467-4201

California Regional Water Quality Control Board
Santa Ana Regional Board, Region 8
3737 Main Street, Suite 500
Riverside, CA 92501
Attn: Executive Director
Telephone: (951) 782-4130

L. Counterparts

This BEI may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This BEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for

personal injuries, property damage or enforcement pursuant to the provisions of this BEI. The duties, obligations and responsibilities of the Parties to this BEI with respect to third parties shall remain as otherwise provided by law in the event this BEI had never been executed.

N. Availability of Funds

Implementation of this BEI by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this BEI may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this BEI to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

O. No Partnerships

This BEI shall not make or be deemed to make any Party to this BEI an agent for or the partner or joint venturer of any other Party.

P. Governing Law

Between the Bank Sponsor, Property Owner and the Federal agencies, the applicable statutes, regulations, policies, directives, and procedures of the United States will govern this BEI and all documents and actions pursuant to it. Between the Bank Sponsor, Property Owner and the State of California agencies, this BEI shall be governed by and construed in accordance with the laws of the State of California, including but not limited to the Fish and Game Code, Porter Cologne Water Quality Control Act, and other applicable State of California laws and regulations.

Q. No Contract

USACE approval of the BEI constitutes the regulatory approval required for the Bank to be used to provide compensatory mitigation for Department of Army permits pursuant to 33 C.F.R. § 332.8(a)(1). The BEI is not a contract between the Bank Sponsor and Property Owner and USACE or any other agency of the federal government. Any dispute arising under this BEI will be resolved solely pursuant to Paragraph XII.B and will not give rise to any claim by the Bank Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the BEI to the contrary.

R. Credit Release

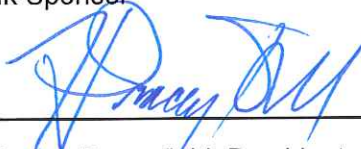
The IRT agencies agree that the release of Credits shall promptly occur according to the schedule contained in Section VII of this BEI.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this BEI. This BEI shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this BEI as follows:

Bank Sponsor

By:  12/8/14
Date
H. Tracey Brownfield, President
Land Veritas Corp, a CA corporation

Property Owner

By:  12/8/14
Date
Land Veritas I, LLC, a CA limited liability company
BY: Land Veritas Corp, its Manager
BY: H. Tracey Brownfield, President

U.S. Army Corps of Engineers, Los Angeles District

By: David J. Castanon 12-8-14

David J. Castanon
Chief, Regulatory Division

Date

U.S. Environmental Protection Agency, Region IX

By: Jane Diamond 12/15/14

FR Jane Diamond
Director, Water Division

Date

California Department of Fish and Wildlife, South Coast Region

By:  12-3-14

Edmund Pert

Regional Manager

Date

California Regional Water Quality Control Board, Region 8

By: kt Bltlf 12/15/14

Kurt Berchtold
Executive Officer

Date