

IMPLEMENTING AGREEMENT

for the

**YOLO HABITAT CONSERVATION PLAN/NATURAL COMMUNITY
CONSERVATION PLAN**

by and among

THE UNITED STATES FISH AND WILDLIFE SERVICE

THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

THE YOLO HABITAT CONSERVANCY

THE COUNTY OF YOLO

THE CITY OF DAVIS

THE CITY OF WEST SACRAMENTO

THE CITY OF WINTERS

AND

THE CITY OF WOODLAND

Final—April 2018

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1.0 PARTIES TO THIS AGREEMENT

The Parties to this Implementing Agreement (“Agreement”) are the Yolo Habitat Conservancy (“Conservancy”), the County of Yolo, the City of Davis, the City of West Sacramento, the City of Winters, and the City of Woodland (collectively referred to with the Conservancy as the “Permittees”), the California Department of Fish and Wildlife (“CDFW”), and the United States Fish and Wildlife Service (“USFWS”) (collectively with CDFW, the “Wildlife Agencies”).

2.0 RECITALS; PURPOSES OF THE AGREEMENT

2.1. Recitals

The Parties have entered into this Agreement in consideration of the following facts:

- (a) The Plan Area as defined below and as described in the Yolo Habitat Conservation Plan/Natural Community Conservation Plan (“Yolo HCP/NCCP” or “Plan”) has been determined to provide, or potentially provide, habitat for the Covered Species set forth in Appendix A (Covered Species Accounts) of the Plan; and
- (b) The Permittees have developed a series of conservation measures, described in the Yolo HCP/NCCP, to conserve, manage, avoid, minimize, and mitigate to the maximum extent practicable the effects of Take of Covered Species associated with and/or incidental to the Permittees’ Covered Activities. The same conservation measures also provide for the conservation and management of the Covered Species in the Plan Area.

2.2. Purposes

The purposes of this Agreement are:

- (a) To assure the conservation of Covered Species within the Plan Area by providing for actions that will be taken to conserve, manage, avoid, minimize, and mitigate the effects of Covered Activities on the Covered Species;
- (b) To ensure the efficient, timely, and successful implementation of the terms and conditions of the Yolo HCP/NCCP, this Agreement, and the Permits; and
- (c) To describe remedies and recourse should any Party fail to perform the obligations set forth in this Agreement.
- (d) To note the existence of long term assurances to the Permittees that, pursuant to the federal “No Surprises” provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and California Fish and Game Code section 2820, subdivision (f), as long as the terms and conditions of the Permits, the Yolo HCP/NCCP, and this Agreement are fully satisfied. The Wildlife Agencies will not require of the Permittees the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources, either to minimize and mitigate the impacts of Authorized Take, or to

provide for the conservation and management of the Covered Species in the Plan Area, except as provided in the Permits, the Yolo HCP/NCCP, and this Agreement.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in applicable federal or state statutes or the regulations adopted by USFWS and CDFW under those statutes will have the same meaning when used in this Agreement.

3.1. Agreement

“Agreement” refers to this Implementing Agreement.

3.2. Authorized Take

“Authorized Take” means the extent of incidental Take of Covered Species authorized by USFWS in the Federal Permit issued to the Permittees pursuant to Section 10(a)(1)(B) of the ESA, and the extent of Take of Covered Species authorized by CDFW in the State Permit issued to the Permittees pursuant to California Fish and Game Code section 2835.

3.3. CDFW

“CDFW” means the California Department of Fish and Wildlife, a department of the California Natural Resources Agency.

3.4. CEQA

“CEQA” means the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.) and all regulations promulgated thereunder.

3.5. Certificate of Inclusion

“Certificate of Inclusion” means a document executed by a Permittee and a third party that extends the incidental take authorization granted to Permittee to such third party for the purpose of carrying out a Covered Activity in the Plan Area. Execution of a Certificate of Inclusion by the third party places the third party under the legal control of Permittee for purposes of enforcing and implementing the Permits, including the HCP/NCCP and this Agreement. A Certificate of Inclusion template is included as Exhibit A hereto.

3.6. CESA

“CESA” means the California Endangered Species Act (Fish & Game Code §§ 2050 et seq.) and all regulations promulgated thereunder.

3.7. Changed Circumstances

“Changed Circumstances,” as defined in the “No Surprises” rule at 50 C.F.R. § 17.3, means changes in circumstances affecting a species or the geographic area covered by the Yolo

HCP/NCCP that have been reasonably anticipated by the Parties and that have been planned for in the Yolo HCP/NCCP. “Changed Circumstances” are defined under Fish & Game Code § 2805(c) to mean reasonably foreseeable circumstances that could affect a Covered Species or the Plan Area. Changed Circumstances and planned responses to those circumstances are described in Chapter 7 of the Yolo HCP/NCCP. Changes in circumstances that are not identified as Changed Circumstances will be treated as Unforeseen Circumstances.

3.8. Conservancy

“Conservancy” refers to the Yolo Habitat Conservancy, a joint powers agency organized under California law by the County of Yolo and the incorporated cities of Davis, Woodland, Winters, and West Sacramento.

3.9. Covered Activities

“Covered Activities” means the otherwise lawful activities and projects described in Chapter 3 of the Yolo HCP/NCCP that the Permittees or Third Party Participants may implement in the Plan Area for which incidental Take is authorized by the Wildlife Agencies pursuant to the Permits.

3.10. Covered Species

“Covered Species” means the species, listed and non-listed, which the Yolo HCP/NCCP has addressed in a manner sufficient to meet all criteria for issuing an incidental take permit under the ESA and a take permit under the NCCPA. Covered Species are listed in Chapter 1 of the Yolo HCP/NCCP and described in Appendix A to the Yolo HCP/NCCP.

3.11. Effective Date

“Effective Date” means the date of the first business day after all of the following have occurred: this Agreement has been fully executed by all Parties; issuance of both Permits; and all applicable implementing ordinances have been adopted by each of the Cities and County as provided in Section 7.4 of the Yolo HCP/NCCP.

3.12. ESA

“ESA” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C §§ 1531–1544) and all rules, regulations, policies, and guidelines promulgated pursuant to that Act.

3.13. Federal Permit

“Federal Permit” means the federal incidental Take permit issued by USFWS to the Permittees pursuant to Section 10(a)(1)(B) of the ESA.

3.14. Fully Protected Species

“Fully Protected Species” means any species identified in California Fish & Game Code sections 3511, 4700, 5050, or 5515 that occur within the Plan Area.

3.15. HCP

“HCP” means the habitat conservation plan prepared by the Permittees for the Plan Area and approved by the USFWS pursuant to Section 10 of the ESA. The HCP will be referred to in this document collectively with the NCCP as the Yolo HCP/NCCP.

3.16. Listed Species

“Listed Species” means a species (including a subspecies, or a distinct population segment of a species) that is listed as an endangered or threatened species under ESA or as an endangered, threatened or candidate species under CESA.

3.17. NCCP

“NCCP” means the natural community conservation plan prepared by the Permittees for the Plan Area and approved by CDFW pursuant to Section 2820 of the Fish & Game Code and the provisions of the NCCPA. The NCCP will be referred to in this document collectively with the HCP as the Yolo HCP/NCCP.

3.18. NCCPA

“NCCPA” means the California Natural Community Conservation Planning Act (Fish & Game Code §§ 2800 et seq.) and all regulations promulgated thereunder.

3.19. Neighboring Landowner

“Neighboring Landowner” means an owner of specific types of agricultural lands that are within a defined distance of suitable habitat for either Valley elderberry longhorn beetle, giant garter snake, western pond turtle, or California tiger salamander (set forth in Chapter 5, Section 5.4.4 of the Yolo HCP/NCCP) on lands included in the reserve system who has received a Certificate of Inclusion from the Yolo Habitat Conservancy pursuant to the Permits and the Yolo HCP/NCCP (see Section 7.3.3 of this Agreement) that extends Authorized Take coverage for one or more of these four Covered Species resulting from specified agricultural land uses.

3.20. NEPA

“NEPA” means the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.) and all rules, regulations, policies, and guidelines promulgated pursuant to that Act.

3.21. Non-listed Species

“Non-listed Species” means a species (including a subspecies, variety, or a distinct population segment) that is not listed as endangered or threatened under the ESA or listed as an endangered, threatened, or candidate species under the CESA.

3.22. Party or Parties

“Party” or “Parties” means any or all of the signatories to this Agreement.

3.23. Permits

“Permits” means the State Permit and the Federal Permit, which incorporate the Yolo HCP/NCCP by reference.

3.24. Permit Term

“Permit Term” shall mean the 50-year duration of the Permits, commencing upon the date the Permits are issued.

3.25. Permittees

“Permittees” means the Yolo Habitat Conservancy, the County of Yolo, and the cities of Davis, West Sacramento, Winters, and Woodland.

3.26. Plan

“Plan” refers to the Yolo HCP/NCCP.

3.27. Plan Area

“Plan Area” means the geographic area covered by the Yolo HCP/NCCP, as described in Chapter 1 (Introduction) and depicted in Figure 1-1 thereof. The Plan Area includes the County of Yolo in its entirety, consisting of approximately 653,549 acres and also includes 1,174 acres along the south bank of Putah Creek in Solano County designated the “Extended Plan Area for Riparian Restoration” in Figure 1-1. This area is included in the Plan Area only for the purpose of providing additional sites for riparian restoration to support the Covered Species.

3.28. Rough Proportionality

“Rough Proportionality” means implementation of Yolo HCP/NCCP conservation measures in a manner that is roughly proportional in time and extent to the impact on habitat or Covered Species authorized under the Yolo HCP/NCCP and as required by Fish & Game Code § 2820(b)(9).

3.29. Special Participating Entity

“Special Participating Entity” and “Special Participating Entities” are public entities or private individuals that may conduct projects or undertake other activities in the Plan Area that are Covered Activities in the Yolo HCP/NCCP and that may affect Covered Species and require Take authorization from USFWS or CDFW, but are not subject to the jurisdiction of one or more Permittees. These entities or individuals may pursue coverage under the Permits and the Yolo HCP/NCCP through the Special Participating Entity process defined in Chapter 4 (Section 4.2.1.3) and also described in Chapter 7 (Section 7.2.5).

3.30. State Permit

“State Permit” means the state Take permits issued to the Permittees pursuant to Section 2835 of the California Fish and Game Code.

3.31. Take

“Take” and “Taking” have the meaning set forth in the ESA and its implementing regulations. Take of listed plant species is not prohibited under the ESA; however, the plant species identified in the Yolo HCP/NCCP are listed on the Federal Permit as Covered Species in recognition of the conservation measures provided for such species under the Yolo HCP/NCCP and receive No Surprises Assurances under the Permit. For purposes of determining any outstanding mitigation owed upon termination of the Permit under Section 16, Take includes impacts to Covered plant species.

In the context of the Fish & Game Code Section 86 Take or Taking means to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.

3.32. Third Party Participants

“Third Party Participants” refers to any or all of the following: private project participants, Special Participating Entities, Neighboring Landowners, and any other person or entity that is not a Permittee and that receives Authorized Take coverage from a Permittee in accordance with the Permits, the Yolo HCP/NCCP and this Agreement.

3.33. Unforeseen Circumstances

“Unforeseen Circumstances” as defined in the “No Surprises” rule and codified at 50 C.F.R § 17.3, means, changes in circumstances affecting a Covered Species or the geographic area covered by the Yolo HCP/NCCP that could not reasonably have been anticipated by the Permittees, USFWS or CDFW during the development of the Yolo HCP/NCCP, and that result in a substantial and adverse change in the status of a Covered Species. In the context of the NCCPA, changes affecting one or more species, habitats, natural communities, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of Yolo HCP/NCCP development, and that result in a substantial adverse change in the status of one or more Covered Species (Fish & Game Code § 2805(k)).

3.34. USFWS

“USFWS” means the United States Fish and Wildlife Service.

3.35. Wildlife Agencies

“Wildlife Agencies” means USFWS and CDFW.

4.0 INCORPORATION

4.1 Incorporation of the Plan

The Yolo HCP/NCCP and each of its provisions are intended to be, and by this reference are, incorporated herein. Notwithstanding such incorporation, the Parties acknowledge that the Permittees drafted the Yolo HCP/NCCP and submitted it to the Wildlife Agencies to support their application for the Permits. Characterizations, analyses, and representations in the Yolo HCP/NCCP, in particular, those regarding Federal or State laws, regulations, policies, and guidance represent the views of the Permittees and shall not control the administration of the Permits by USFWS and CDFW in accordance with Federal and State laws, regulations, policies, and guidance. In the event of any direct contradiction, conflict or inconsistency between this Agreement, the Yolo HCP/NCCP, or the Permits, the terms of the Permits shall control.

Each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied in the Yolo HCP/NCCP, this Agreement, or the Permits.

5.0 IMPLEMENTATION ROLES AND RESPONSIBILITIES

The general roles and responsibilities of the Parties for the implementation of the Yolo HCP/NCCP are as follows.

5.1 Responsibilities of Permittees

Permittees will fully and faithfully perform all obligations assigned to them collectively, and to each of them individually, under the Permits, the Yolo HCP/NCCP, and this Agreement.

5.2 USFWS Cooperation and Assistance

USFWS will provide timely technical assistance and review, collaboration and consultation to the Permittees regarding implementation of the Yolo HCP/NCCP throughout the duration of the Federal Permit, to the extent appropriate funds are available for that purpose. Nothing in this Agreement shall require the USFWS to act in a manner contrary to the requirements of the Anti-Deficiency Act. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the United States Treasury.

5.3 CDFW Responsibilities

CDFW will provide timely technical assistance and review, collaboration and consultation to the Permittees regarding implementation of the Yolo HCP/NCCP, as provided in this Agreement and the Yolo HCP/NCCP, throughout the duration of the State Permit. CDFW will also use all reasonable efforts to assist the Permittees to achieve the Yolo HCP/NCCP biological goals and objectives for the Covered Species, as described in Yolo HCP/NCCP Chapter 6.

5.4. Role of Conservancy

The Permittees are individually and collectively responsible for compliance with all applicable terms and conditions of the Permits. As of the Effective Date of this Agreement, the Permittees have elected to assign primary responsibility for implementing the Yolo HCP/NCCP to the Conservancy on behalf of the other Permittees. The Conservancy may delegate the implementation of specific actions to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, university scientists, and contractors, but the Conservancy itself will remain responsible for ensuring overall implementation of the Yolo HCP/NCCP on behalf of the other Permittees in accordance with the Permits.

As further described in Chapter 7 (including but not limited to Section 7.3) of the Yolo HCP/NCCP, the Conservancy's responsibilities generally include, but are not necessarily limited to, implementation and management of all of the following elements of the Yolo HCP/NCCP:

Administration of the Yolo HCP/NCCP, including staffing, and providing necessary scientific, legal, and financial expertise and consulting services;

Oversight of Permit compliance and related implementation actions;

Creation of the reserve system;

Management, enhancement, and restoration of reserve system lands;

Monitoring, adaptive management, and efforts to address Changed Circumstances;

Securing necessary funding to implement the Yolo HCP/NCCP; and

Addressing reporting and information management requirements.

At any time during the Permit Term, the Permittees may elect to create a different or additional implementing entity to assume some or all of the responsibilities of the Conservancy with respect to implementing the Yolo HCP/NCCP and ensuring compliance with this Agreement and the Permits. In such event, the Permittees shall notify the Wildlife Agencies of their intentions and the Parties shall meet and confer in good faith to determine whether an amendment to this Agreement is required.

5.5. Yolo HCP/NCCP Implementation Key Deadlines for Compliance

The Parties' agreement about how key elements of the Yolo HCP/NCCP will be implemented over time is summarized in the implementation compliance deadlines set forth in Table 7-2 of the Yolo HCP/NCCP and further explained in Chapter 7 of the Yolo HCP/NCCP. The Parties recognize that, under certain circumstances, it might be reasonable and appropriate to modify one or more of the deadlines by modifying or amending the Permits, the Yolo HCP/NCCP, or this Agreement, as provided in Section 15 of this Agreement. However, absent such a modification or amendment, the Conservancy, on behalf of the Permittees, will meet the implementation deadlines set forth in Table 7-2 of the Yolo HCP/NCCP. If a changed or unforeseen circumstance occurs, that inhibits the ability to meet the implementation deadlines set forth in Table 7-2 of the Yolo HCP/NCCP, the Conservancy will follow the procedures set forth in Section 7.7.1 of the Yolo HCP/NCCP.

5.6. Duty to Enforce

The Permittees shall undertake all necessary action to enforce all applicable terms of the the Permits, the Yolo HCP/NCCP, and this Agreement as to itself and Third Party Participants over which Permittees have committed to enforce the terms of the Permits, the Yolo HCP/NCCP, and this Agreement. Any non-compliance by a Permittee or a Third Party Participant with applicable terms of the Permits, the Yolo HCP/NCCP, or this Agreement may be deemed by either wildlife agency a violation of the Permit by Permittee. In addition, any failure by Permittee to enforce the applicable provisions of the Permits, the Yolo HCP/NCCP, or this Agreement against itself, a Third Party Participant may be deemed by either wildlife agency a non-compliance by Permittee with the Permit, the `Yolo HCP/NCCP, or this Agreement and a violation of the Permit by Permittees. Wildlife agencies shall take into account all efforts undertaken by Permittees to enforce the terms of the Permits, the Yolo HCP/NCCP, and this Agreement as to itself, the Third Party Participant and all actions taken by Permittees to redress the effects of such non-compliance, particularly the enforcement efforts and redress actions specifically described in the Yolo HCP/NCCP.

6.0 COLLABORATION AND DISPUTE RESOLUTION

6.1. Collaboration

The Parties agree that successful collaboration among them is important to the success of the Yolo HCP/NCCP. Notwithstanding any other provision of the Permits, the Yolo HCP/NCCP, or this Agreement, each Party will make a reasonable effort to: meet and confer with any other Party upon the request of that Party to address matters pertaining to the Permits, the Yolo HCP/NCCP, or this Agreement; provide relevant, non-proprietary, non-confidential information pertaining to the Yolo HCP/NCCP upon the request of any Party; and provide timely responses to requests from any Party for advice, concurrence, or review and comment on reports, surveys or other documents relating to the Permits, the Yolo HCP/NCCP, or this Agreement.

6.2. Dispute Resolution

The Parties recognize that disputes concerning implementation of, compliance with, or termination of the Permits, the Yolo HCP/NCCP, or this Agreement may arise from time to time.

The Parties intend to resolve most disputes at the staff or field personnel level. However, the Parties recognize that some disputes might not be resolved at the staff or field personnel level. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this Section. Any Party may seek any available remedy without regard to this Section if the Party concludes, in its reasonable judgment, that the circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

6.2.1 Notice of Dispute; Meet and Confer

If one or both Wildlife Agencies objects to any action or inaction by the Conservancy or any Permittee on the basis that the action or inaction is inconsistent with the Permits, the Yolo HCP/NCCP, or this Agreement, it will provide written notice to the Conservancy, the Permittee(s), and both Wildlife Agencies, unless providing written notice would preclude a necessary, immediate response to circumstances which may appreciably reduce the likelihood of survival and recovery of a species in the wild as reasonably determined by a Wildlife Agency. The notice shall identify the objection(s) of the Wildlife Agencies and adequately explain the basis thereof.

The Conservancy or a Permittee, as appropriate, will respond in writing to the notice within thirty (30) days of receipt. The response shall describe actions that the Conservancy or Permittee proposes to take to resolve the objection or, alternatively, the response may explain why the objection is unfounded. If the response resolves the objection to the satisfaction of the Wildlife Agencies, the agency will so notify other recipients of the original notice of objection and, in turn, the Conservancy or Permittee will implement any actions proposed in the response.

If the response does not resolve the objection to the Wildlife Agency's satisfaction, the Wildlife Agency will notify the Conservancy or Permittee and any other recipients of the original notice. The Wildlife Agencies, Conservancy, and any relevant Permittee will then meet and confer to attempt to resolve the dispute. The meeting will occur within a reasonable time designated by the Wildlife Agencies, taking all relevant circumstances into account. Generally, unless the circumstances require otherwise, the meeting shall occur within 30 days after the Conservancy and affected Permittee(s) receive the Wildlife Agencies response, but it may also occur at a later time if the Wildlife Agencies, Conservancy, and relevant Permittee agree. A Conservancy representative will take notes at the meeting, summarize the outcome, and distribute meeting notes to each Party in attendance.

If a dispute among the Parties pertains to a specific project, the proponent of the project shall be allowed to provide input into the dispute resolution process by reviewing the initial notice from one or both Wildlife Agencies and submitting its own response and, if applicable, by participating in the meeting referenced above. For purposes of this provision, a dispute pertains to a specific project if USFWS and/or CDFW objects to an action or inaction by a Permittee with regard to a specific project, such as the Permittee's determination of appropriate mitigation requirements for the project, or a Permittee objects to an action or inaction by the USFWS or CDFW with regard to a specific project.

The Conservancy or any other Permittee will use the same procedure to raise and resolve objections to any action or inaction of a Wildlife Agency, and the Wildlife Agency will respond in the same manner to notices delivered by any Permittee. If a dispute arises among the Permittees regarding the action or inaction of a Permittee, the Permittees shall use the same procedure to raise and to resolve objections to the Permittee's action or inaction, but shall not be required to provide notice to the Wildlife Agencies, and the Wildlife Agencies shall not be required to meet and confer with the Permittees.

6.2.2 Elevation of Dispute

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 6.2.1, above, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, "chief executive" means the Conservancy Executive Director, the city manager of a city, the county administrator of the County, the CDFW Regional Manager, and the USFWS Field Supervisor. Each Party will be represented by its chief executive in person or by telephone at the meeting, and the meeting will occur within 45 days of a request by any Party following completion of the dispute resolution procedure.

7.0 TAKE AUTHORIZATIONS

As described in this Section, commencing upon issuance of the Permits, the Permittees and certain authorized third parties are granted Take authorization under the Permits. The Take authorization is for Covered Activities including all activities identified as such in Chapter 3 of the Yolo HCP/NCCP. The Permits do not authorize Take resulting from other projects or activities that are not identified as Covered Activities in Chapter 3.

7.1. Permit Coverage; Training

The Permittees' Take authorization covers all of their respective elected officials, officers, directors, employees, agents, subsidiaries, contractors, and other acting on their behalf in performing any Covered Activity. Each Permittee will be responsible for supervising compliance with the relevant terms and conditions of the Permits by those acting on its behalf, and any contracts between a Permittee and any such person or entity regarding the implementation of a Covered Activity will require compliance with the Permits.

Within one year of issuance of the Permits, the Conservancy will develop an implementation handbook and other materials that it believes will assist the other Permittees in complying with the Permits, the Yolo HCP/NCCP, and this Agreement. Among other things, the implementation handbook will describe the permit application process and provide illustrative examples. Additionally, to help ensure continued compliance with the Permits, the Conservancy will periodically train staff of each Permittee of the requirements of the Permits and any related matters. In this context, "periodically" means at least once every five years or sooner if at least 50% of the relevant staff positions within a Permittee agency (as determined by each Permittee) have new personnel.

7.2. Compliance Procedures and Actions for Permittees

Each Permittee will ensure that the implementation of its public projects that constitute Covered Activities will comply with the Permits. As further described in Chapter 4 (Section 4.2) and depicted in Figures 4-1 of the Yolo HCP/NCCP, each Permittee will follow a defined process for project compliance with the Permits. Conservancy staff will provide technical assistance as necessary to ensure accurate completion of all required application documentation and similar materials.

Each Permittee will also document its compliance with the Permits, and provide a copy of that documentation to the Conservancy for tracking, reporting, and related purposes. To the extent a Permittee pays any fees pursuant to the funding strategy described in Chapter 8 of the Yolo HCP/NCCP, such fees shall be paid in the same amount and time as fees paid by private project participants. Other alternative compliance actions, such as land dedications in lieu of fee payment, shall be handled in the manner described in Chapter 7 (including but not limited to Section 7.5.9) of the Yolo HCP/NCCP.

7.3. Extension of Take Authorization to Third Party Participants

As set forth in the Yolo HCP/NCCP, various third party participants may receive Take coverage in appropriate instances. Such participants include private project participants, Special Participating Entities, and neighboring landowners. The Permittees may extend Authorized Take coverage to “Third Party Participants” and will be responsible for determining whether applicants from potential Private Project Participants comply with all such terms and conditions and will make findings supporting such a determination before extending Authorized Take coverage.

7.3.1 Private Project Participants

The County and the Cities will each require proponents of private projects that are subject to their land use or other regulatory authority and fall within the categories of projects and activities described in Chapter 3 of the Yolo HCP/NCCP to comply with all applicable terms and conditions of the Permits, and will extend Authorized Take coverage to such projects as provided in Chapter 4 (Section 4.2.1.1 and 4.2.1.2) and depicted in Figure 4-2 of the Yolo HCP/NCCP. The Permittee with jurisdiction over a private project, the lead agency Permittee under CEQA) shall be responsible for determining whether applications and other materials and actions are sufficient to comply with all applicable terms and conditions of the Permits.

7.3.1.1. Implementing Ordinances

The HCP/NCCP review process will be integrated into the established project planning, environmental review, and entitlement processes of the County and the Cities. Before the Effective Date, the Cities and the County will each consider the adoption of an implementing ordinance substantively similar to the model ordinance attached to this Agreement as **Exhibit B** that sets forth the application process for potential private project participants. The implementing ordinance will, among other things: provide for the imposition of plan fees, as provided in Section 8.2 of this Agreement and further described in Chapter 8 (Section 8.4.1) of the Yolo HCP/NCCP; establish the jurisdiction’s procedure for extending Authorized Take coverage to

private project participants, as provided in Section 7.3.1 of this Agreement; and provide for the conveyance of land in lieu of fees, in accordance with Section 9.3.2 of this Agreement and Chapter 7 (Section 7.5.9) of the Yolo HCP/NCCP. The Cities and the County may extend Authorized Take coverage to Third Party Participants only after adopting an implementing ordinance in accordance with this Section. In addition, the Permittees recognize that the Wildlife Agencies' findings regarding the adequacy of funding for Yolo HCP/NCCP implementation will be based, in part, on the expectation that the Cities and the County will adopt implementing ordinances that require the payment of Yolo HCP/NCCP fees and that failure by a City or the County to adopt an implementing ordinance will prevent the Permits from taking effect.

The model ordinance in **Exhibit B** is intended to exemplify the necessary substantive terms of an implementing ordinance; it is not intended to dictate the precise terms of each such ordinance. The County and each City may each adapt the model ordinance to reflect its independent findings, to maximize administrative efficiency, or for other reasons, provided the substance of the operative terms in the model ordinance is reflected in each implementing ordinance.

7.3.2 Special Participating Entities

The Conservancy may extend Take authorization to Special Participating Entities pursuant to a contractual agreement that defines any and all planning, implementation, management, enforcement and funding responsibilities necessary for the entity to comply with the Permits, the Yolo HCP/NCCP and this Agreement. Chapter 4 (Section 4.2.1.3) describes the application, review, and approval process for Special Participating Entities to be covered under the Permits and the Yolo HCP/NCCP. The Conservancy shall be responsible for determining if applications or requests from Special Participating Entities comply with all applicable authorities. Initially, the Conservancy must determine the eligibility of a proposed Special Participating Entity to receive coverage (i.e., whether it qualifies as such an entity) pursuant to factors described in Chapter 7 (Section 7.2.5). For Special Participating Entities deemed eligible, the Conservancy will enter into a contract with the entity with the provisions described in Chapter 4 (Section 4.2.1.3), receive an application package, notify the affected jurisdiction(s), and take other steps culminating in the issuance of a Certificate of Inclusion. The Conservancy shall enforce the terms of the Permit, the Yolo HCP/NCCP and this Agreement with regard to any such Special Participating Entity and shall withdraw the Certificate of Inclusion and terminate any Take authorization extended to the Special Participating Entity if the Special Participating Entity fails to comply with such terms.

7.3.3 Neighboring Landowners

The Conservancy may extend Authorized Take coverage to landowners who are engaged in normal agricultural and rangeland activities (described in Appendix M, Yolo Agricultural Practices) for lands located within a defined distance of land acquired for or enrolled in the Yolo HCP/NCCP reserve system, as further described in Chapter 3 (Section 3.5.6), Chapter 5 (Section 5.4.4), and Chapter 7 (Section 7.7.7.1) of the Yolo HCP/NCCP. Take Authorization is available to qualified landowners only for four Covered Species: California tiger salamander, valley elderberry longhorn beetle, giant garter snake, and western pond turtle. The process for extending Authorized Take coverage to such landowners is entirely voluntary, and landowners may elect to participate in their sole discretion. Interested landowners must prepare an

HCP/NCCP enrollment application package consisting of baseline surveys, an identification of ongoing and expected future agricultural and rangeland activities on the property, and the payment of a fee to cover enrollment costs. The Conservancy may approve applications that meet all the requirements of the Yolo HCP/NCCP, including but not limited to a landowner commitment to implement avoidance and minimization provisions regarding Take of the applicable Covered Species (see Chapter 4, Section 4.3 of the Yolo HCP/NCCP).

If approved, the Conservancy will extend Authorized Take of one (or more) of the four Covered Species through issuance of a Certificate of Inclusion. Take extended through issuance of a Certificate of Inclusion will only include the take of populations or occupied habitat above baseline conditions. The Conservancy may add conditions to a certificate of inclusion for the sake of ensuring that these and other related goals and objectives are met. Certificates of inclusion are personal to a landowner and do not transfer in the event of a change of ownership.

7.3.4 Liability for Actions of Third Party Participants

The Wildlife Agencies shall enforce this Agreement by ensuring that the Permittees comply with all terms and conditions of the Permits, the Yolo HCP/NCCP and this Agreement. The Permittees shall be responsible for complying with all applicable terms and conditions of this Agreement and shall enforce this agreement by ensuring that all Third Party Participants comply with all applicable terms and conditions of the Permit, the Yolo HCP/NCCP and this Agreement.

7.4 Ongoing Role of Wildlife Agencies

As of the Effective Date, the Permittees may implement Covered Activities and extend Authorized Take coverage to Third Party Participants in accordance with the Permits without the prior approval of the Wildlife Agencies, except as provided in Section 7.3, above. As further described in Chapter 7 of the Yolo HCP/NCCP, the Wildlife Agencies will monitor implementation of the Yolo HCP/NCCP to ensure overall compliance with the Permits. To ensure the Wildlife Agencies are adequately informed about the Permittees' use and extension of Authorized Take coverage, the Permittees will provide copies of any application and supporting information required in Chapter 4 of the Yolo HCP/NCCP for any Covered Activity upon the request of any Wildlife Agency.

As further described in Chapters 6 and 7 of the Yolo HCP/NCCP, the Wildlife Agencies' approval is required for certain components of the conservation strategy and specific administrative tasks or procedures. For example, the Wildlife Agencies will be third party beneficiaries on conservation easements recorded on reserve system lands, as further described in Chapter 7 of the Yolo HCP/NCCP. The Wildlife Agencies will also participate in implementation of the Yolo HCP/NCCP adaptive management program, as further described in Chapter 6 of the Yolo HCP/NCCP.

7.5 The Migratory Bird Treaty Act

The Federal Permit will constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for the Take of migratory birds protected by the MBTA that are Covered Species and that are also listed under the ESA as threatened or endangered. The Federal Permit will specify the amount and/or number of any listed Covered bird, subject to all of the terms and conditions of those authorities. The

Special Purpose Permit will be valid for three years and will be renewed by USFWS pursuant to the MBTA provided the Permittees are in compliance with the Federal Permit. Each renewal of the Special Purpose Permit shall be for a period of three years, or more if the permit duration is extended by law, provided that the Federal Permit remains in effect for such period.

If and when any other Covered Species that is a migratory bird becomes a Listed Species under the ESA, the Federal Permit will also constitute a Special Purpose Permit for that species as of the date the Federal Permit becomes effective as to such species, as provided in Section 17.1, below.

7.6 Take Authorizations for Fully Protected Species

CDFW acknowledges and agrees that the Yolo HCP/NCCP includes measures that are intended to conserve and manage white-tailed kite, a Covered Species and a Fully Protected Species, as a result of the implementation of Covered Activities. However, if implementation of Covered Activities causes the take of white-tailed kite, CDFW acknowledges and agrees that the take is authorized under the State Permit, pursuant to Fish & Game Code § 2835.

7.7 Take Authorizations for Plant Species Under the ESA

The take of Covered Species that are federally listed plants is not prohibited under the ESA except on federal land or in violation of state law. The palmate-bracted bird's beak is included on the list of Covered Species and the Federal Permit in recognition of the benefits provided for that species under the Yolo HCP/NCCP and in the event palmate-bracted bird's beak becomes subject to the same take prohibitions in the ESA as listed wildlife species.

8.0 CONDITIONS ON COVERED ACTIVITIES; FEES

Chapter 6 of the Yolo HCP/NCCP presents the Conservation Strategy. The Conservation Strategy identifies the intended biological outcomes of Yolo HCP/NCCP implementation and describes the means by which these outcomes will be achieved. The Conservation Strategy includes specific and measurable biological goals and objectives and includes a comprehensive set of conservation measures designed to conserve Covered Species and the natural communities upon which they depend.

As discussed in this Section, the Conservation Strategy works in coordination with Conditions on Covered Activities described in Chapter 4 (Section 4.3), defined below, that appropriately avoid and minimize the impacts of the Covered Activities on the biological resources addressed in the Yolo HCP/NCCP. The Conservation Strategy also provides for the establishment of monitoring and adaptive management programs to ensure that the Yolo HCP/NCCP conservation measures can evolve as new data and information become available. Additionally, the payment of certain fees for implementation of the Yolo HCP/NCCP, as described in Chapter 8 thereof, is also a key component of the Yolo HCP/NCCP's overall approach to achieving its objectives. Finally, the Yolo HCP/NCCP outlines the requirements of the Permittees and Third Party Participants for implementation of the Conservation Strategy.

In this Section and in Section 9, below, this Agreement addresses key aspects of implementation of the Conservation Strategy. This Section focuses on describing various strategies intended to

avoid, minimize, and mitigate impacts to Covered Species and natural communities resulting from Covered Activities. Such strategies include, among other things, the avoidance and minimization measures described in Chapter 4 of the Yolo HCP/NCCP, the Conservation Strategy set forth in Chapter 6 of the Yolo HCP/NCCP, as well as application and survey requirements described in various Yolo HCP/NCCP chapters. The avoidance and minimization measures described in Chapter 4 of the Yolo HCP/NCCP are referred to herein and in the Yolo HCP/NCCP as “Conditions on Covered Activities” or “Conditions.” Most of these Conditions apply to specific types of Covered Activities; no individual Covered Activity is anticipated to need to comply with all Conditions. The Permittees will ensure that all applicable Conditions are incorporated in Covered Activities, as provided in this Section.

8.1 Avoidance and Minimization of Impacts

As noted above, Chapter 4 of the Yolo HCP/NCCP includes Conditions to avoid, minimize, and mitigate the Take of Covered Species resulting from Covered Activities. These Conditions are designed to form a countywide program that will be implemented systematically to: prevent Take of individuals of certain Covered Species; avoid impacts to Covered Species to the maximum extent practicable; minimize adverse effects on Covered Species and natural communities to the maximum extent practicable; and avoid and minimize direct and indirect impacts on wetlands and streams. Each Permittee will incorporate all applicable Conditions within all Covered Activities that it implements. In addition, the County and the Cities will require all applicable Conditions as conditions of approval for all other projects that they approve, and the Conservancy will ensure that the Conditions are incorporated in all Special Participating Entity Covered Activities. Local implementing ordinances, addressed briefly in Section 7.3.1.1, above, will be adopted by the County and each City to assist in achieving these requirements.

8.1.1 Avoidance and Minimization of Impacts to Species Protected Under Laws Other Than the ESA or CESA

All Covered Species that are birds are protected under the Migratory Bird Treaty Act. As provided in Section 7.6, above, the Federal Permit will be a Special Purpose Permit under the Migratory Bird Treaty Act for the least Bell’s vireo and western yellow-billed cuckoo, which are each a Listed Species under the ESA. However, unless and until the western burrowing owl, Swainson’s hawk, white-tailed kite, bank swallow or the tricolored blackbird become Listed Species under the ESA and the Federal Permit becomes a Special Purpose Permit for those species. The Migratory Bird Treaty Act prohibits killing or possessing birds or their young, nests, feathers, or eggs; therefore, the Special Purpose Permit only addresses harm and harassment in the form of habitat loss.

The Permits authorize Take of Covered Species only. Covered Activities affecting other species that are not Covered Species must comply with applicable state and federal laws that protect such species.

8.1.2 Exemptions from Conditions to Avoid and Minimize Impacts

Certain Covered Activities will not disturb the ground or will have little measurable impact on Covered Species or natural communities. These Covered Activities will receive the same

Authorized Take coverage as other Covered Activities. However, as further described in Chapter 4 (Section 4.5) of the Yolo HCP/NCCP, some or all conditions on Covered Activities described Chapter 4, including the process for project compliance described therein, will not apply to these Covered Activities.

8.2 Yolo HCP/NCCP Fees

As provided in this Section and further described in Chapter 8 of the Yolo HCP/NCCP, the Conservancy will use revenues generated from certain fees placed on Covered Activities to fund the implementation of the conservation strategy described in Chapter 6 of the Yolo HCP/NCCP and various other implementation activities set forth in Chapter 7 thereof. Such actions include, but are not limited to creation of the reserve system, management of reserve system lands, monitoring of and reporting on Yolo HCP/NCCP implementation, adaptive management, responses to Changed Circumstances, and related planning and administrative costs. These actions, together with the avoidance and minimization measures provided for in Section 8.1, above, will fulfill all requirements under the ESA and the NCCPA to conserve, manage, avoid, minimize and mitigate the impacts of Covered Activities on Covered Species and provide for the conservation of the Covered Species in the Plan Area.

The Yolo HCP/NCCP includes several types of fees which are referred to collectively in this Agreement as the “Yolo HCP/NCCP Fees.” The Yolo HCP/NCCP Fees, exemptions from the fees, fee credits, and the method of calculating the fees is further described in Chapter 8 of the Yolo HCP/NCCP. The Conservancy will administer the Yolo HCP/NCCP Fees in accordance with the text of Chapter 8 and this Agreement.

8.2.1 Fee Exemptions

Certain Covered Activities will have little or negligible adverse effects on Covered Species or natural communities, have primarily or entirely beneficial effects, or will be difficult and expensive to track and report. As further described in Chapter 8 (Section 8.4.1.1) of the Yolo HCP/NCCP, the requirement to pay Yolo HCP/NCCP fees does not apply to these Covered Activities. These Covered Activities will receive the same Authorized Take coverage as other Covered Activities, and Take from these Covered Activities will be tracked and reported in the same way as Authorized Take from other Covered Activities. Covered Activities that are exempt from Yolo HCP/NCCP Fees are identified in Chapter 8, Section 8.4.1.1, and these exemptions overlap with exemptions from Conditions on Covered Activities referenced in Section 8.1.2, above.

8.2.2 Fee Collection and Payment

The Permittees will ensure that all applicable Yolo HCP/NCCP Fees are paid, and all applicable fee credits are applied, for all Covered Activities, as further described in Chapter 8 of the Yolo HCP/NCCP. The County and the Cities will make payment of all applicable Yolo HCP/NCCP Fees a condition of final approval for private project participant Covered Activities; the Conservancy will require payment of all applicable Fees for Special Participating Entity Covered Activities; and the Permittees will pay all applicable Fees for Covered Activities that they implement. The Conservancy may require Special Participating Entities to pay additional amounts as described in Chapter 8 (Section 8.4.1.9), including an amount in addition to

applicable Fees to reimburse the Conservancy for costs associated with extending take coverage to Special Participating Entities and to help fund conservation actions intended to contribute to the conservation of Covered Species.

The Cities and the County will collect fee payments from private project participants and provide the fee revenues to the Conservancy at least quarterly. The Conservancy will comply with all provisions of the Mitigation Fee Act (Gov. Code §66000, et seq.) to the extent those provisions are applicable the deposit, accounting, expenditure and reporting of such fee revenues.

8.2.3 Fee Adjustments

As further described in Chapter 8 (Section 8.4.1.6) of the Yolo HCP/NCCP, the Conservancy will use two mechanisms for adjusting Yolo HCP/NCCP Fees: automatic adjustments that occur annually; and periodic adjustments that occur following an assessment process every five years. The annual adjustments will proceed in accordance with the indices and procedures generally depicted in Table 8-10 of the Yolo HCP/NCCP and related text in Chapter 8 (Section 8.4.1.6.1). The Conservancy's governing board will determine the date of the annual adjustments within six months of the Effective Date.

In addition, the Conservancy will conduct a periodic assessment every five years to review the costs and underlying assumptions used in developing the original funding strategy (or any updates to those assumptions, if appropriate). Each assessment shall also include an evaluation of the remaining costs to implement the Yolo HCP/NCCP. Other factors set forth in Chapter 8 (Section 8.4.1.6.2) may also be considered by the Conservancy in conducting the periodic assessment. Within a reasonable time after completing the periodic assessment, the Conservancy will adopt any fee adjustments necessary based on the assessment to ensure full funding of the mitigation share of remaining Yolo HCP/NCCP implementation costs, as well as the endowment contribution and Yolo HCP/NCCP Preparation fees. The five-year timeframe shall be calculated starting with the first full calendar year after the Effective Date. Automatic annual increases will resume and build on the results of the periodic assessment and any related fee adjustments.

8.2.4 Fee Credits

As further described in Chapters 7 (Section 7.5.9) and 8 (Section 8.4.1.8) of the Yolo HCP/NCCP, the Conservancy may approve fee credits for the conveyance of lands that are added to the reserve system. The fee credits may be used for some of the Yolo HCP/NCCP Fees that apply to one or more Covered Activities. Fee credits do not have any value except as credits for Yolo HCP/NCCP Fees incurred during the Permit Term. Fee credits remaining after the Permit Term will have no value, and no payment or "refund" will be made.

The procedures for requesting a fee credit and for all Conservancy actions relating to such requests are set forth in the above-referenced Chapters of the Yolo HCP/NCCP. The Conservancy will follow those procedures in deciding fee credit requests. Among other things, it will prepare a written determination stating whether any proposed fee credit meets the requirements of the Yolo HCP/NCCP and this Agreement, and whether, or to what extent, the credit is approved by the Conservancy. The written determination will include the amount of any approved credit. The amount of an approved fee credit may be deducted from the Yolo HCP/NCCP Fees that apply to any Covered Activity implemented by the Permittee, private

project proponent, or Special Participating Entity that received the approved credit. In some instances, the Conservancy may not approve a proposed fee credit (as set forth in Chapter 8, Section 8.4.1.8). Additionally, the Conservancy may disapprove a requested fee credit on a case-by-case basis in its sole discretion.

8.2.5 Fee Payment Timing

All applicable Yolo HCP/NCCP Fees, subject to any fee credits, will be collected before implementation of the Covered Activity for which the fees are required. The County and the Cities will require private project participants to pay all applicable fees before or concurrent with the issuance of a grading permit for each private project proponents' Covered Activity. If a grading permit is not required for the Covered Activity, payment of the fees will be required before the first building or other construction permit is issued. The Conservancy will require Special Participating Entities to pay all applicable fees before initiating ground-breaking activities for their Covered Activities, and the Permittees will pay all applicable fees before implementing any Covered Activity.

9.0 CREATION OF RESERVE SYSTEM

The creation and management of a Yolo HCP/NCCP reserve system is one of three primary elements of the Conservation Strategy. The Conservancy will establish the reserve system as provided in Chapter 6 (Section 6.4.1) of the Yolo HCP/NCCP and this Agreement. The reserve system will include select protected areas existing at time of Yolo HCP/NCCP approval (called "pre-permit reserve lands" and defined below) as well as the permanent protection of additional lands to be acquired in accordance with the Yolo HCP/NCCP. Reserve system lands will be actively managed and enhanced for the benefit of Covered Species and, in some instances, the Conservancy will also implement natural community restoration and creation actions.

The Yolo HCP/NCCP includes certain deadlines for the completion of the reserve system assembly and other actions described in Chapter 6 of the Yolo HCP/NCCP as part of Conservation Measure 1. The Conservancy will assemble the reserve system in accordance with the schedule set forth in Table 7-2, which is based on the "stay-ahead" provision described in Chapter 7 (Section 7.5.3.3) of the Yolo HCP/NCCP. Restoration and creation actions included in Conservation Measure 2 (Chapter 6, Section 6.4.2) of the Yolo HCP/NCCP will occur prior to natural community losses and consistent with the stay-ahead provision, as well as the biological objectives included in Table 6-8 of the Yolo HCP/NCCP. Management and enhancement actions described in Conservation Measure 3 will occur through the Permit Term.

9.1 Criteria for Reserve System Lands

As described in Chapter 6 (Section 6.4.1) of the Yolo HCP/NCCP, the Conservancy will follow certain reserve design assembly principles—including specific siting, design, and prioritization criteria—in establishing the reserve system. Additionally, the Conservancy will meet the land acquisition and pre-acquisition assessment requirements set forth in Sections 6.4.1.5 and 6.4.1.6 of Chapter 6.

9.2 Permanent Protection of Reserve System Lands

The Conservancy may use various mechanisms to achieve the conservation acreages required by the Yolo HCP/NCCP (see Table 6-2(a)). Such mechanisms include: acquiring land in fee title and conserving it with a permanent conservation easement; acquiring a permanent conservation easement; the preservation of fee title or permanent conservation easement interests by a conservation organization; and the purchase of mitigation credits from private mitigation or conservation banks. The Conservancy will use each of these mechanisms in compliance with certain requirements set forth in the Yolo HCP/NCCP, including but not limited to Chapters 6 (Section 6.4.1.3) and 7 (Section 7.5.5).

Additionally, the Conservancy will also enroll baseline public and easement lands—as described in Section 6.4.1.7 of Chapter 6 and Section 7.5.11 of Chapter 7 of the Yolo HCP/NCCP—in the reserve system as “pre-permit reserve lands” if certain requirements are met (i.e., the Wildlife Agencies have each approved incorporation of these lands into the Reserve system).

9.2.1 Conservation Easements

The Conservancy expects to rely extensively on the purchase of conservation easements to assemble the reserve system. Conservation easements are the preferred habitat protection method for actively cultivated lands, as certain ongoing agricultural uses support achievement of the Yolo HCP/NCCP biological goals and objectives. Procedures and requirements for conservation easements are described in several sections of the Yolo HCP/NCCP, including but not limited to: Section 7.5.5 (Conservation Easements) and Section 7.5.10 (Use of Mitigation Banks). While the Conservancy will itself acquire conservation easements in the course of assembling the reserve system, the Yolo HCP/NCCP also specifically authorizes conservation easements acquired by other qualified easement holders, as defined in California Civil Code section 815 *et seq.*, to assemble the reserve system.

Section 7.5.5 of Chapter 7 of the Yolo HCP/NCCP describes the minimum requirements of a conservation easement under the Yolo HCP/NCCP for inclusion in the reserve system.

For purposes of lands added to the Reserve System, the Conservancy will use a conservation easement template agreed to by the Parties (Appendix K of the Yolo HCP/NCCP). Reasonable variations from the template may be needed to address site-specific constraints. Both Wildlife Agencies, along with the Conservancy, must review and approve any modifications to the template easement prior to its execution.

9.3 Stay-Ahead or Rough Proportionality Requirement

Under Fish & Game Code § 2820(b)(3)(B), the conservation strategy of an NCCP must be implemented at or faster than the rate of loss of natural communities or habitat for Covered Species. To assist in applying this requirement to implementation of the Yolo HCP/NCCP, the Plan includes schedules and procedures referenced in Chapter 7 (Section 7.5.3).

9.3.1 Failure to Stay Ahead or to Maintain Rough Proportionality

If rough proportionality is not being maintained pursuant to Chapter 7 (including Section 7.5.3.1) of the Yolo HCP/NCCP, the Conservancy and the Wildlife Agencies will meet and confer to determine a plan of action that will remedy the situation and achieve compliance. The plan of action may include any of the solutions identified in Section 7.5.3.3 of Chapter 7 of the Yolo HCP/NCCP, or it may include other strategies developed by the Parties.

If the Conservancy is unable to achieve compliance after the exercise of all available authority and use of all available resources, the Wildlife Agencies will reevaluate the Permits, relevant components of the Yolo HCP/NCCP, and this Agreement. The Wildlife Agencies may advise the Conservancy on a potential modification or amendment that would address the compliance situation or, if no such strategy appears viable, the Wildlife Agencies may suspend or revoke their Permits, in whole or in part. All Parties acknowledge that failure to fulfill the requirements of the Yolo HCP/NCCP and the Permits would constitute a violation of the Permits and the Wildlife Agencies will take appropriate responsive actions to address any such violation in accordance with the ESA and NCCPA, which could include suspension or revocation of the Permits, in whole or in part. The partial suspension or revocation may include removal of one or more Covered Species or reduction in the scope of the Take Authorizations.

9.3.2 Conveyance of Land in Lieu of Yolo HCP/NCCP Fees to Maintain Rough Proportionality

As set forth in Chapter 8 (Section 8.4.4.2), if the Conservancy determines it is at risk of failing to meet the stay-ahead provision for land acquisitions as described in Chapter 7 of the Yolo HCP/NCCP, after consultation with the Wildlife Agencies it may notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying all or a portion of the Yolo HCP/NCCP fee.

9.4 Additional Criteria for Lands Conveyed in Lieu of Fee Payment

As set forth in other Sections of this Agreement, under certain circumstances lands may be conveyed to the reserve system in lieu of payment of some (or rarely, all) applicable Yolo HCP/NCCP fees. Chapter 7 (Section 7.5.9.1) describes the process for including these conveyances in the reserve system and counting them toward the reserve system requirements of the Yolo HCP/NCCP. Additionally, Section 7.5.9.1 of Chapter 7 sets forth three criteria that any such conveyance must satisfy in order to be eligible for credit:

The land must satisfy the criteria for reserve lands in Chapter 6 of the Yolo HCP/NCCP, as demonstrated by a field assessment conducted by the project proponent and verified in the field by the Conservancy;

The land must be within a priority acquisition area, or the unique and high values of the land must justify its inclusion in such an area; and

The Conservancy and the Wildlife Agencies must approve the transaction consistent with applicable requirements in the Yolo HCP/NCCP, including but not limited to Chapter 7, Section 7.5 (Land Acquisition, Step 12).

9.5 Lands Conveyed by Entities other than Permittees

Lands acquired through partnerships with non-Permittees can be counted toward reserve system requirements if such lands meet the criteria for reserve lands described in Chapter 6 of the Yolo HCP/NCCP, and the additional criteria described in Chapter 7.5 of the Yolo HCP/NCCP.

9.6 Lands in Private Mitigation Banks

Lands in private mitigation banks within the Plan Area can be counted toward the reserve system requirements of the Yolo HCP/NCCP as described in Chapter 7 (Section 7.5.10) of the Plan. Banks approved following the Effective Date must be consistent with the conservation, monitoring, adaptive management, and other relevant provisions of the Yolo HCP/NCCP. A Permittee or Third Party Participant may purchase credits at a private mitigation bank to fulfill the requirements of the Yolo HCP/NCCP only if the bank occurs within the Plan Area and meets all relevant standards pertaining to the reserve system, habitat enhancement, adaptive management, and monitoring described in Chapters 6 and 7 of the Plan.

9.7 Gifts of Land

The Conservancy may accept lands in fee title, or conservation easements on lands, as a gift or charitable donation. Such lands may be added to the reserve system only if they meet the criteria for reserve lands in Chapter 6 and the nature of the real property interest is consistent with the requirements of Chapter 7. The Conservancy may sell or exchange lands it receives as a gift or donation that do not meet the requirements of Chapters 6 or 7 of the Plan.

10.0 MANAGEMENT OF RESERVE SYSTEM LANDS

10.1 Reserve Management Plans

As provided in Conservation Measure 3 (Chapter 6, Section 6.4.3), all reserve system lands will be managed in perpetuity in accordance with one or more management plans. The Conservancy will update management plans from time to time according to the process as set forth in Chapter 6 (Section 6.4.3.3).

10.1.1 Role of the Wildlife Agencies in Preparation of Reserve Unit Management Plans

As indicated in Section 10.1, above, the Wildlife Agencies must approve all reserve unit management plans.

The Conservancy will incorporate comments submitted by the Wildlife Agency in the revised draft Reserve Unit Management Plan to the extent that the Conservancy determines the comments can be incorporated. In the event that the Conservancy determines that some or all of

the Wildlife Agency comments cannot be incorporated, it will notify the Wildlife Agency of its determination and the basis for such. The Conservancy will then work with the Wildlife Agency to determine if other measures can be developed that adequately address the Wildlife Agency's concerns. All changes to Reserve Unit Management Plans require Wildlife Agency review and approval.

The same Wildlife Agency review procedure will apply to all revisions to reserve unit management plans. These Wildlife Agency review procedures will also apply to site-specific management plan revisions in situations where the requested revision is not consistent with the applicable reserve unit management plan or an applicable reserve unit management plan has yet to be established.

11.0 MONITORING, ADAPTIVE MANAGEMENT AND CHANGED CIRCUMSTANCES

The Conservancy will implement the Yolo HCP/NCCP monitoring and adaptive management program as provided in this Section and further described in Chapter 6 (Section 6.5) of the Plan. The overarching purpose of the Yolo HCP/NCCP monitoring and adaptive management program is to inform and—in some instances—refine Plan implementation to ensure compliance with Plan requirements and continually improve outcomes for covered species and natural communities. The scope of the monitoring and adaptive management program is limited by the assurances provided by the Wildlife Agencies, under applicable law (see Section 12, below). These assurances include the commitment that if Unforeseen Circumstances arise, the Permittees will not be required to provide additional land, water, or financial obligation beyond the obligations of the Yolo HCP/NCCP.

11.1 Monitoring

The Conservancy will conduct three main types of monitoring, as further described in Chapter 6 (Section 6.5.3) of the Plan:

Compliance Monitoring—Compliance monitoring will track the status of Yolo HCP/NCCP implementation and verify that the Conservancy is meeting the requirements of the Plan and terms and conditions of the Permits.

Effectiveness Monitoring—Effectiveness monitoring assesses the biological success of the Plan—specifically, it evaluates the implementation and success of the conservation strategy described in Chapter 6 thereof.

Targeted Studies—Targeted studies will identify the best methodologies for monitoring, provide information about the efficacy of reserve system management techniques, and resolve critical uncertainties in order to improve reserve system management.

The Conservancy will provide the results of all monitoring annually in the annual report described in Section 14.1, below. As noted in Section 5.4, above, the Conservancy may delegate monitoring responsibilities and other tasks to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, university scientists, and consultants.

11.2 Adaptive Management

The Conservancy will implement the adaptive management program described in Chapter 6 (Section 6.5) of the Yolo HCP/NCCP. Generally, the purpose of adaptive management is to adapt the design and management of the reserve system to maximize the likelihood of the successful implementation of the conservation strategy. The Conservancy will have ultimate responsibility for implementing the adaptive management program and will ultimately decide what adaptations will be made in the management of reserve system lands. However, as briefly set forth below, the Conservancy will consider the advice of the Wildlife Agencies, science advisors, other land management agencies, and the public, as provided in this Section and as further described in Section 6.5 of Chapter 6 of the Plan.

11.2.1 Role of Wildlife Agencies

The Wildlife Agencies will provide biological expertise and policy-level recommendations to the Conservancy regarding potential changes to the design and management of the reserve system based on the results of monitoring and the advice of science and technical advisors (see Section 11.2.2, below). The Conservancy will confer with the Wildlife Agencies before initiating adaptations to the design or management of the reserve system. The Conservancy and Wildlife Agencies will attempt in good faith to reach agreement regarding any such adaptations or alternative adaptations that the Wildlife Agencies may propose. If they cannot reach agreement, any of them may initiate the dispute resolution procedure provided in Agreement Section 6.2.

11.2.2 Role of Science and Technical Advisors

The Conservancy will consult with science and technical advisors regarding the scientific aspects of Plan implementation through a Science and Technical Advisory Committee. This consultation effort is detailed in Chapter 7 (Section 7.2.4.2) of the Yolo HCP/NCCP. The Conservancy will select advisors with input from the Wildlife Agencies. As may be appropriate, the Conservancy will incorporate recommendations provided by these advisors into Yolo HCP/NCCP implementation, if agreed to by the Wildlife Agencies.

11.2.3 No Increase in Take

Neither Section 11.2 nor any other Section of this Agreement authorizes changes in the design or management of the reserve system, or any other aspect of the Plan, that would increase the amount and nature of the Take of Covered Species, or increase the impacts of the Take of Covered Species, beyond that analyzed in the Yolo HCP/NCCP, any amendments thereto, or included on the Permits. Any such change must be reviewed as a Permit amendment under Section 15.4 of this Agreement.

11.3 Changed Circumstances

In the event a Changed Circumstance identified in Chapter 7 of the Yolo HCP/NCCP occurs, the Conservancy will implement the remedial measures or actions prescribed in Chapter 7 (Section 7.7.1) for that Changed Circumstance. Eight Changed Circumstances are listed in Section 7.7.1.2 and are as follows: new species listings; climate change; wildfire; non-native invasive species or disease; flooding; drought; earthquakes; and loss of Swainson's hawk habitat and populations declining below the threshold. Neither the Conservancy nor any other Permittee or Third Party Participant will be required to take any additional action to respond to a Changed Circumstance (i.e., any action not otherwise required by the Permits), except as described in Chapter 7 (Section 7.7.1) of the Yolo HCP/NCCP.

Changed Circumstances are provided for in the Yolo HCP/NCCP and therefore are not Unforeseen Circumstances. The Yolo HCP/NCCP describes the Permittees' responses to Changed Circumstances, as well as the funding to assure that the responses are implemented. Therefore, Changed Circumstances and the remedial actions in response to Changed Circumstances do not require an Amendment of the Yolo HCP/NCCP or the Permits. The Parties agree that Chapter 7 (Section 7.7.1) of the Yolo HCP/NCCP identifies all Changed Circumstances and describes appropriate and adequate responses for them. Other changes not identified as Changed Circumstances will be treated as Unforeseen Circumstances, as provided in Chapter 7 (Section 7.7.1) and Section 12.4, below.

11.3.1 Initiating Responses to Changed Circumstances

The Conservancy will immediately notify the Wildlife Agencies after learning that any of the Changed Circumstances listed in Chapter 7 (Section 7.7.1.2 and thereafter) of the Yolo HCP/NCCP has occurred. The Conservancy will respond to Changed Circumstances as described in Chapter 7 of the Yolo HCP/NCCP, including by taking the actions identified in connection with each of the specific changed circumstances described therein.

If a Wildlife Agency determines that a Changed Circumstance has occurred and that the Conservancy has not responded as described in Chapter 7 of the Yolo HCP/NCCP, the Wildlife Agency will notify the Conservancy, specifically identifying the Changed Circumstance and will direct the Conservancy to make the appropriate changes. Within 30 days after receiving such notice, the Conservancy will make the appropriate changes and report to the Wildlife Agency on its actions. Such changes are provided for in the Yolo HCP/NCCP, and hence do not constitute Unforeseen Circumstances or require an amendment of the Permits or Yolo HCP/NCCP.

After it has initiated remedial measures to a Changed Circumstance as described in Chapter 7, the Conservancy will promptly inform the Wildlife Agencies of its actions. The Conservancy will continue implementation of any such remedial measures to completion and will describe in its Annual Report for that year the Changed Circumstance and the remedial measures implemented. Subsequent Annual Reports will track the response of the reserve system and the Covered Species to evaluate whether remedial measures implemented as a result of Changed Circumstances have been effective.

12.0 REGULATORY ASSURANCES AND PROTECTIONS

The ESA regulations and provisions of the NCCPA provide for regulatory and economic assurances to parties covered by approved HCPs or NCCPs concerning their financial obligations under a plan. Specifically, these assurances are intended to provide a degree of certainty regarding the overall costs associated with mitigation and other Conservation Measures, and add durability and reliability to agreements reached between permit holders and Wildlife Agencies. That is, if Unforeseen Circumstances occur that adversely affect species covered by an HCP or an NCCP, the Wildlife Agencies will not require of the permit holder any additional land, water, or financial compensation nor impose additional restrictions on the use of land, water, or other natural resources without their consent.

The assurances provided under the ESA and the NCCPA do not prohibit or restrain USFWS, CDFW, the Permittees or any other public agency from taking additional actions to protect or conserve species covered by an NCCP or HCP. The State and federal agencies may use a variety of tools at their disposal and take actions to ensure that the needs of species affected by unforeseen events are adequately addressed.

12.1 ESA Regulatory Assurances: The “No Surprises” Rule

The “No Surprises” regulation at 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5), apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. Pursuant to the “No Surprises” regulation, USFWS shall not require the Permittees to provide additional land, water or other natural resources, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the Yolo HCP/NCCP.

12.2 NCCPA Regulatory Assurances

Provided that the Yolo HCP/NCCP is being implemented consistent with the substantive terms of this Agreement, the Plan, and the State Permit, CDFW shall not require the Permittees to provide additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources during the term of the State Permit without the consent of Permittees. Adaptive management modifications and Plan responses to Changed Circumstances are provided for under the Yolo HCP/NCCP, as set out in Chapters 6 and 7 thereof. Accordingly, the resources identified to support such modifications and planned responses, together with the other resources commitments of the Permittees reflected in the Yolo HCP/NCCP, constitute the extent of the obligations of the Permittees pursuant to the assurances provided for in the NCCPA. Section 2823 of the Fish & Game Code provides, however, that CDFW shall suspend or revoke any permit, in whole or in part, issued for the take of a species subject to Section 2835 if the continued take of the species would result in jeopardizing the continued existence of the species. Responses to a jeopardy determination are addressed in Section 16 of this Agreement.

12.3 Assurances for Third Party Participants

Pursuant to the “No Surprises” regulations described in Agreement Section 12.1, in the event of a finding of Unforeseen Circumstances, USFWS cannot require the commitment of additional land, water or financial compensation without the consent of the affected Permittee or Third Party Participant, provided that the Permittees have complied with their obligations under the Federal Permit. Likewise, as provided in Agreement Section 12.2, CDFW will not require any Permittee or Third Party Participant to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Covered Species with respect to Covered Activities, even in the event of Unforeseen Circumstances, provided the Permittees are properly implementing the State Permit, the Yolo HCP/NCCP, and this Agreement. If there are Unforeseen Circumstances, additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources will not be required of a Third Party Participant without its consent for the term of this Agreement, unless CDFW determines that the Yolo HCP/NCCP is not being implemented consistent with the substantive terms of the State Permit, the Plan, and this Agreement.

Nothing in this Agreement will preclude the Permittees from imposing on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by the Permits for impacts other than impacts of Covered Activities on Covered Species. Such other impacts may include, but are not limited to, impacts on parks, recreational facilities, and agriculture.

12.4 Unforeseen Circumstances

12.4.1 USFWS Determination of Unforeseen Circumstances

If USFWS believes an Unforeseen Circumstance exists, it shall provide written notice of its finding of Unforeseen Circumstances to the Conservancy. The USFWS shall clearly document the basis for the finding regarding the existence of Unforeseen Circumstances pursuant to the requirements of 50 C.F.R. §§ 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C). Within thirty (30) days of receiving such notice, the Executive Director (and/or any other Permittee) and the USFWS shall meet and confer to consider the facts cited in the notice and potential changes to the Conservation Strategy.

If such a finding is made and additional measures are needed, the Permittees will work with the Wildlife Agencies to appropriately and voluntarily redirect resources to address the Unforeseen Circumstances, consistent with the intent of the Yolo HCP/NCCP.

12.4.2 CDFW Determination of Unforeseen Circumstances

If CDFW believes an unforeseen circumstance exists, it shall provide written notice of its proposed finding of unforeseen circumstances to the Conservancy. CDFW shall clearly document the basis for the proposed finding regarding the existence of Unforeseen Circumstances. Within thirty (30) days of receiving such notice, the Executive Director (and/or any other Permittee) and CDFW shall meet and confer to consider the facts cited in the notice and potential changes to the Conservation Strategy.

Thereafter, CDFW may make an Unforeseen Circumstances finding, if appropriate, based on the best scientific evidence available. If such a finding is made and additional measures are needed, the Permittees will work with the Wildlife Agencies to appropriately and voluntarily redirect resources to address the Unforeseen Circumstances, consistent with the intent of the Yolo HCP/NCCP.

12.4.3 Interim Obligations Upon a Wildlife Agency Proposed Finding of Unforeseen Circumstances

If a Wildlife Agency finds that an Unforeseen Circumstance has occurred with regard to a Covered Species and that additional measures are required for the Covered Species as a result, during the period necessary to determine the nature, scope and location of any additional measures, the Permittees will avoid causing an appreciable reduction in the likelihood of the survival and recovery of the affected species. The Permittees will not be responsible for implementing any additional measures unless the Permittees consent to do so.

12.4.4 Land Use and Regulatory Authority of the County and Cities

The Parties acknowledge that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and other land use and regulatory ordinances, and the granting of land use entitlements or other regulatory permits by the County or Cities are matters within the sole discretion of the County or Cities and will not require amendments to the Permits, or the approval of other Parties to this Agreement. However, no such action by the County or Cities will alter or diminish their obligations under the Permits, the HCP/NCCP, or this Agreement.

13.0 FUNDING

The Permittees warrant that they will expend such funds as may be necessary to fulfill their obligations under the Yolo HCP/NCCP. The Permittees will promptly notify the Wildlife Agencies of any material change in the Permittees' financial ability to fulfill their obligations. The Permittees do not intend to use, nor are they required to use, funds from their respective general funds to implement the Yolo HCP/NCCP. Instead, they intend to fund all actions required by the Permits, the Yolo HCP/NCCP and this Agreement through a comprehensive funding strategy further described in Chapter 8 of the Plan and summarized in Table 8.6 thereof.

13.1 Plan Funding Strategy

The Permittees intend to obtain sufficient funds through a comprehensive strategy further described in Chapter 8 of the Plan that includes: (1) HCP/NCCP fees, including public and private sector development effect fees and related charges that will adjust over time as provided in Chapter 8 (Section 8.4.1.6) of the Plan; (2) local funding from Permittees, other local government agencies, and private foundations described in Chapter 8 (Section 8.4.2) of the Plan; (3) interest income from the Yolo HCP/NCCP endowment and revenues not yet spent described in Chapter 8 (Section 8.4.2.5) of the Plan; and (4) state and federal funding, including but not limited to grant programs and other sources described in Chapter 8 (Section 8.4.3) of the Plan. All funds acquired for Plan implementation and related costs must be expended in a manner consistent with applicable laws and regulations. Generally, the HCP/NCCP fees constitute the

primary source of funding for the mitigation component of the Plan, and the other funding categories set forth above will contribute to the conservation component of the Plan (or, in the case of interest income on the Yolo HCP/NCCP endowment, to post-permit costs as set forth in Section 13.3, below).

The Permittees will adhere to all timing and other requirements described in Chapter 8 of the Plan in the course of administering the funding strategy set forth therein. The Permittees may use or establish other funding sources during the course of implementing the Yolo HCP/NCCP, including but not limited to utility surcharges, special taxes or assessments, or bonds, to the extent allowed by law.

As further provided in Section 18.9, below, this Agreement does not require the obligation, appropriation, or expenditure of any money without express authorization by, as applicable, the governing boards of any Permittee.

13.2 State and Federal Funding

As further described in Chapter 8 (Section 8.4.3) of the Plan, funding may be provided by one or more state and federal programs. Neither state nor federal funds can be guaranteed and the state or federal government may contribute less than the estimates in the Yolo HCP/NCCP. These funds could only be utilized to assist in meeting the conservation components of the Yolo HCP/NCCP and these funds are not required to satisfy the issuance criteria for the ESA and NCCPA. The Yolo HCP/NCCP has estimated that state or federal funds could be sufficient to acquire 11,464 acres of land to the reserve system (based on an average cost of \$6,821/acre to acquire contribution easements). This acreage represents 34 percent of the total reserve system of 33,362 acres and, in monetary terms, constitutes 21 percent of total Plan costs because funding is restricted to acquisition alone. If the state or federal government contribute only a portion of the total cost of acquiring a conservation easement, the Conservancy will measure the contribution of the state or federal government to that transaction as a percentage share of the overall amount of land acquired in proportion to the overall cost of the acquisition.

State and federal funding sources for land acquisition could come from a variety of sources, including those listed in Table 8-11 of the Plan. If state and federal funds are unable to contribute the estimated amounts, the Permittees and Wildlife Agencies will follow the approach set forth in Section 13.4, below. If necessary or appropriate, the Parties will reevaluate the Yolo HCP/NCCP and work together to develop or identify an alternative funding mechanism.

13.3 Funding for Management and Monitoring in Perpetuity

As described in Chapter 8 (Section 8.4.4.5) of the Plan, after expiration of the Permits, the Permittees are obligated to continue to protect, manage, and maintain the reserve system. Funding provided by interest on the Yolo HCP/NCCP endowment is expected to fully fund all post-permit costs. The Permittees' obligations with regard to Yolo HCP/NCCP requirements other than reserve management requirements will terminate upon expiration of the Permits.

13.4 Effect of Funding Shortfalls

If overall HCP/NCCP fee revenues fall short of expectations, such as if fewer Covered Activities are implemented than projected by the Plan and less HCP/NCCP fees are collected, the resulting shortfall in Plan funding could prevent or constrain the Permittees' ability to fully implement the Yolo HCP/NCCP. As set forth in Chapter 8 (Section 8.4.4.3) of the Plan, if fee revenues do not keep pace with reserve system operation and management needs, the Permittees will consider various options in consultation with the Wildlife Agencies. Any shortfall in non-fee revenues, such as local, state or federal agency contributions, will be treated similarly, with the Conservancy first making reasonable adjustments to expenditures to reduce costs while continuing to meet Plan obligations. If such adjustments are inadequate, the Conservancy will consult with the Wildlife Agencies to determine the best course of action.

In any circumstance where consultation occurs, the ultimate course of action will vary depending upon a full consideration of relevant factors. Such factors may include, but are not limited to, the rate of acquisition of reserve system lands or whether the amount and rate of Take is less than anticipated in the Plan. If it appears that the level of Authorized Take by the Permits will not be used during their term, substantially reducing HCP/NCCP fee revenues, the Parties anticipate that the Permittees will apply for an amendment to extend the Permits in accordance with Section 17.3, below, to allow the full use of Authorized Take and full implementation of the Yolo HCP/NCCP. Alternatively, the Permittees may apply for a Permit modification or amendment in accordance with Section 15 of this Agreement to reduce the amount of Authorized Take and related obligations in the Permits. Any such application will be treated as a request for a major amendment and processed in accordance with Chapter 7 of the Plan.

14.0 REPORTING AND INFORMATION MANAGEMENT

The Conservancy, on behalf of all Permittees, will report on and manage information regarding Plan implementation as provided in this Section and as further described in the Yolo HCP/NCCP, including but not limited to Chapters 6-7 thereof. The main elements of the Conservancy's reporting and information management obligations are set forth in this Section.

14.1 Annual Report; Related Documents

The Conservancy will prepare an annual report on Plan implementation and related matters, as summarized in Chapter 7 (Sections 7.9.1 and 7.9.3) of the Plan. The Conservancy will also prepare an annual work plan and budget and, every ten years, a comprehensive review document. The annual report will summarize actions taken to implement the Yolo HCP/NCCP during the previous calendar year. All annual reports, work plans and budgets, and ten-year review documents will have a standardized format developed by the Conservancy and will be submitted to the Wildlife Agencies, made available to interested members of the public, and maintained on the Conservancy website. The required contents and timeframes for submittal of the annual report, annual work plan and budget and ten-year review documents are set forth in Chapter 7 (Sections 7.9.1 through 7.9.4) of the Plan.

14.2 Compliance Tracking

As provided in Chapter 7 of the Plan (Section 7.9.2), the Conservancy will track all aspects of compliance with the Permits, the Yolo HCP/NCCP, and this Agreement. It will maintain related information and data of various types, all as set forth in Section 7.9.2 of Chapter 7, to track progress toward successful implementation of the conservation strategy. This information and data will be linked to supporting information that documents Plan compliance and, where feasible, will be stored and archived electronically.

The database developed for Plan compliance tracking must be compatible with the HabiTrak system developed by CDFW. The Conservancy's database will be developed to assemble, store, and analyze all monitoring data in the database, including but not limited to data from the monitoring and adaptive management program described in Chapter 6 of the Plan. The Conservancy will make the database available to CDFW and the other Parties. All recipients of sensitive species information will keep such information confidential to the extent permitted by the Freedom of Information Act, the California Public Records Act, or other applicable laws. The Conservancy may determine, in its sole discretion, whether to provide any information in the database to third parties, including but not limited to Third Party Participants.

15.0 MODIFICATIONS AND AMENDMENTS

The Parties may from time to time modify or amend the Yolo HCP/NCCP, this Agreement, or the Permits, in accordance with this Section and the requirements of the ESA, CESA, NCCPA, NEPA, and CEQA. Three types of modifications are recognized in Chapter 7 (Section 7.8) of the Plan. In order of significance, the three types of modifications and related procedural and substantive requirements are as follows:

15.1 Administrative Changes

The Parties understand that ordinary administration and implementation of the Yolo HCP/NCCP will require minor variations in the way certain conservation actions are implemented. Such administrative changes, as described in Chapter 7 (Section 7.8.1) of the Plan, will not require modification or amendment of the Permits, the Plan, or this Agreement. Administrative changes to the Plan that may be approved pursuant to this Section include, but are not limited to, the examples described in Chapter 7 (Section 7.8.1) of the Plan.

15.2 Minor Modifications

The Conservancy, USFWS, or CDFW may propose minor modifications, defined in Chapter 7 (Section 7.8.2) of the Plan, by providing written notice to all of the other Parties. Such notice will include the information required by Section 7.8.2.1 of Chapter 7, including a statement of the reason for the proposed modification and an analysis of its environmental effects, if any, including any effects on Covered Species. The Conservancy, USFWS, and CDFW may submit comments and indicate approval/disapproval of the proposed minor modification within 60 days of receiving notice from the Party proposing the modification. Proposed modifications will become effective upon written approval of the Conservancy, USFWS, and CDFW. All decisions to approve or deny a proposed minor modification shall be supported by a written explanation.

The Wildlife Agencies may not propose or approve as a Minor Modification any revision to the Permits, the Yolo HCP/NCCP or this Agreement if either of the Wildlife Agencies determines that such amendment would result in adverse effects on the environment that are new or significantly different from those analyzed in connection with the original Yolo HCP/NCCP, or additional Take not analyzed in connection with the original Yolo HCP/NCCP.

If any Party does not concur with a proposed minor modification for any reason, it will not be incorporated into the Yolo HCP/NCCP. Additionally, if the Wildlife Agencies do not concur that a proposed modification meets the requirements for a minor modification set forth in the Plan, the proposal may be submitted as a request for an amendment pursuant to Section 15.4, below. The dispute resolution process set forth in Section 6, above, is available to resolve disagreements regarding proposed minor modifications.

15.3 Amendment of this Agreement

This Agreement may be amended only by a written agreement executed by the authorized representatives of all Parties.

15.4 Amendment of the Yolo HCP/NCCP and the Permits

Any proposed changes to the Yolo HCP/NCCP that do not qualify for treatment as administrative actions or minor modifications, as set forth above, will require an amendment to the Plan. Revisions of the Plan that would require an amendment of one or more of the Permits include, but are not limited to, the examples described in Chapter 7 (Section 7.8.3) of the Plan. A Plan amendment will also require corresponding amendments to the Permits. The Permittees may submit a formal application, consistent with the requirements of Chapter 7 (Section 7.8.3), for an amendment to the Plan and the Permits. The Permittees will provide written notice to all of the other Parties of any proposed Permit amendment. The Wildlife Agencies shall process any such application in accordance with all applicable laws and regulations, including but not limited to the ESA, CESA, NEPA, NCCPA and CEQA.

Each Wildlife Agency will review and approve or disapprove the proposed Plan and Permit amendment with detailed written findings, commensurate with the level of environmental review appropriate to the magnitude of the proposed amendment.

16.0 REMEDIES AND ENFORCEMENT

Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of the Permits, the Yolo HCP/NCCP, and this Agreement and to seek remedies for any breach hereof. Notwithstanding the foregoing, however, none of the Parties shall be liable in damages to the other Parties or to any other person or entity, including Third Party Participants, for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. In the event of any dispute that may entitle a Party to seek remedies or enforcement action pursuant to this Section, the dispute resolution procedures of Section 6, above, are available to resolve any disagreements.

16.1 Injunctive and Temporary Relief

The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement. Nothing in this Agreement is intended to limit the authority of the federal and state governments to seek civil or criminal penalties or otherwise fulfill their enforcement responsibilities under the ESA, CESA, or other applicable laws.

16.2 Federal Permit

16.2.1 Permit Suspension or Revocation

USFWS may suspend or revoke the Federal Permit for cause in accordance with the laws and regulations in force at the time of such suspension. The regulations governing permit suspension and revocation are currently codified at 50 C.F.R. §§13.27 (suspension) and 13.28, 17.22(b)(8) and 17.32(b)(8). Suspension or revocation may apply to the entire Permit, or only to specified Covered Species, Covered Lands, or Covered Activities.

16.2.2 Reinstatement of Suspended Permit

In the event USFWS suspends the Federal Permit, in whole or in part, as soon as possible after such suspension, the USFWS will meet and confer with the Permittees concerning how the suspension can be lifted. After conferring with the Permittees, the USFWS shall identify reasonable, specific actions, if any, necessary to effectively redress the suspension. In making this determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Federal Permit and this Agreement, and any comments or recommendations received from the Permittees (during the meeting and confer process or otherwise). As soon as possible, but not later than 30 days after the conference, the USFWS shall send the Permittees written notice of any available, reasonable actions necessary to effectively redress the suspension. Upon performance of such actions, the USFWS shall immediately reinstate the Federal Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Federal Permit, all Parties shall act expeditiously and cooperatively to reinstate the Federal Permit.

16.3 State Permit

The following terms and conditions address the requirements of Fish & Game Code § 2820(b)(3), relating to suspension or revocation of the State Permit in whole or part, in the event of a violation or other occurrence within the scope of subsection (b)(3).

16.3.1 Permit Suspension

In the event of any material violation of the State Permit or material breach of this Agreement by the Permittees, CDFW may suspend the State Permit in whole or in part; provided, however, that it will not suspend the State Permit until it has: (1) pursued dispute resolution in accordance with Section 6 of this Agreement; (2) requested that the Permittees take appropriate remedial actions; and (3) providing the Permittees with written notice of the facts or conduct which may warrant

the suspension, and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted. These actions may be taken concurrently or sequentially, as appropriate, in the sole discretion of the CDFW.

16.3.2 Reinstatement of Suspended State Permit

In the event CDFW suspends the State Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, CDFW shall confer with the Permittees concerning how the suspension can be lifted. After conferring with the Permittees, the CDFW shall identify reasonable, specific actions, if any, necessary to effectively redress the suspension. In making this determination, CDFW shall consider the requirements of the NCCPA, the conservation needs of the Covered Species, the terms of the State Permit and this Agreement, and any comments or recommendations received from the Permittees (during the meeting and confer process or otherwise). As soon as possible, but not later than 30 days after the conference, CDFW shall send the Permittees written notice of any available, reasonable actions necessary to effectively redress the suspension. Upon satisfactory performance of such actions as determined by the CDFW, the CDFW shall immediately reinstate the State Permit. It is the intent of the Parties that in the event of any total or partial suspension of the State Permit, all Parties shall act expeditiously and cooperatively to reinstate the State Permit.

16.3.3 Permit Revocation or Termination

Except as set forth in Section 16.3.4, below, CDFW agrees that it will revoke or terminate the State Permit, in whole or in part, only: (1) for a violation of the State Permit or breach of this Agreement by the Permittees where the Permittees fail to cure the violation or breach after receiving actual notice of it from CDFW and a reasonable opportunity to cure it, or CDFW determines in writing that such violation or breach cannot be effectively redressed by other remedies or enforcement action; or (2) where revocation of the State Permit, in whole or in part, is necessary to avoid the likelihood of jeopardy to a Listed Species.

CDFW agrees that it will not revoke or terminate the State Permit, in whole or in part, for a material violation of the State Permit or a material breach of this Agreement without first requesting the Permittees take appropriate remedial action, and providing the Permittees with notice in writing of the facts or conduct which warrant the partial or total revocation or termination and a reasonable opportunity, but not less than sixty (60) days, to demonstrate or achieve compliance with the NCCPA, the State Permit, and this Agreement. CDFW agrees that it will not revoke or terminate the State Permit, in whole or in part, to avoid the likelihood of jeopardy to a Listed Species, without first (1) notifying the Permittees of those measures, if any, that the Permittees may undertake to prevent jeopardy to the Listed Species and maintain the State Permit, and (2) providing a reasonable opportunity to implement such measures.

16.3.4 Rough Proportionality

As provided in Section 9.4.2, above, in the event that CDFW has determined that the Permittees have failed to meet the rough proportionality standard provided in Section 9.4.2 of this Agreement, and if the Permittees have failed to cure the default or entered into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFW shall

suspend the State Permits in whole or in part in accordance with California Fish and Game Code section 2820.

16.4 Obligations in the Event of Suspension or Revocation

In the event of revocation or termination of a Permit, or of suspension of a Permit pursuant to Sections 16.2 or 16.3, above, consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and 17.22(b)(7), the Permittees remain liable for all incidental take of Covered Species that occurred prior to revocation and shall fully implement all measures required under the Yolo HCP/NCCP to minimize and mitigate for such take until the applicable Wildlife Agency determines that all Take of Covered Species that occurred under the Permit has been mitigated to the maximum extent practicable in accordance with the Yolo HCP/NCCP. Regardless of whether the Permit is terminated, suspended, or revoked, the Permittees acknowledge that lands added to the reserve system must be protected, managed and monitored in perpetuity.

16.5 Inspections by Wildlife Agencies

The Wildlife Agencies may conduct inspections and monitoring of the site of any Covered Activity, and may inspect any data or records required by the Permits, in accordance with applicable law and regulations. The Wildlife Agencies will also have reasonable access, as set forth in the Conservation Easement Templates included as Appendix K to the Plan, to conduct inspections of the reserve system.

17.0 TERM OF AGREEMENT

17.1 Effective Date

This Agreement shall be effective the date of the first business day after all of the following have occurred: this Agreement has been fully executed by all Parties; issuance of both Permits; and all applicable implementing ordinances have been adopted by each of the Cities and County as provided in Section 7.4 of the Yolo HCP/NCCP.

17.2 Initial Term

This Agreement, the Yolo HCP/NCCP, and the Permits will remain in effect for a period of 50 years, unless extended, from issuance of the original Permits, except as provided below in Section 17.4, or unless all Permits are permanently terminated pursuant to Section 16 above.

17.3 Extension of the Permits

Upon agreement of the Parties and compliance with all applicable laws, the Permits may be extended beyond the initial term in accordance with regulations of the Wildlife Agencies in force on the date of such extension. If Permittees desire to extend the Permits, they will so notify the Wildlife Agencies at least 180 days before the term is scheduled to expire. Extension of the Permits constitutes extension of the Yolo HCP/NCCP and this Agreement for the same amount of time, subject to any modifications that the Wildlife Agencies may require at the time of extension.

17.4 Withdrawal of the State and Federal Permit

Upon ninety (90) days written notice to the Wildlife Agencies, the Conservancy, and all other Permittees, any Permittee, except for the Conservancy, may unilaterally withdraw from the Permits by surrendering the Permits to the USFWS and CDFW in accordance with the regulations in force on the date of such surrender. As a condition of withdrawal, the Permittee will remain obligated to ensure implementation of all existing and outstanding minimization and mitigation and conservation measures required under the Permits for any Take that the Permittee itself caused and any Take by private project participants for which the Permittee extended Authorized Take coverage prior to withdrawal. If a Permittee withdraws before causing or extending any Authorized Take coverage under the Permits, the Permittee will have no obligation to ensure implementation of any minimization or mitigation measures. Surrender of the Permits constitutes a surrender of the Permittee's Authorized Take coverage under the Permits.

Withdrawal by a Permittee shall not diminish or otherwise affect the obligations of the remaining Permittees under the Permits, the Yolo HCP/NCCP, or this Agreement. The Permittees acknowledge that if one or more Permittees withdraws from the Permits and, as a result of the withdrawal, it is no longer feasible or practicable to implement the Permits and the Yolo HCP/NCCP successfully, it may be necessary to modify the Plan or to amend the Permit, or both, in response to the withdrawal.

Within forty-five (45) days after receiving written notice of withdrawal from a Permittee, the Wildlife Agencies, the Conservancy and all Permittees will meet to discuss and evaluate whether the Yolo HCP/NCCP can be successfully implemented without the participation of the withdrawing Permittee. Relevant factors in this evaluation include but are not limited to whether, without the participation of the withdrawing Permittee, Yolo HCP/NCCP implementation will continue to be adequately funded, whether the Permittees can continue to comply with the stay-ahead requirement, whether all required conservation actions can be implemented, and whether the overall Conservation Strategy can be implemented consistent with the Yolo HCP/NCCP. Based on this meeting or meetings, and based on any other relevant information provided by the Conservancy or the remaining Permittees, the Wildlife Agencies will determine whether it is necessary to modify the Yolo HCP/NCCP or amend the Permits, or both, in response to the withdrawal.

Upon ninety (90) days written notice to USFWS and CDFW, the Permittees collectively may withdraw from the Permits by surrendering the Permits. As a condition of such withdrawal, the Permittees will be obligated to ensure implementation of all existing and outstanding minimization, mitigation, and conservation and management measures required under the Permits for any Take that occurred prior to such withdrawal, to the maximum extent practicable pursuant to 50 C.F.R. 17.22(b)(7) and 17.32(b)(7) for the Federal Permit, and pursuant to Fish and Game Code sections 2820, 2821 and 2834 for the State Permit, until:

- (1) The applicable Wildlife Agencies determine that all Take of Covered Species that occurred under the Permits has been addressed in accordance with the Yolo HCP/NCCP, which determination the Wildlife Agencies will make as soon as reasonably possible. The conservation measures required for Take that occurred prior to withdrawal are the same as the conservation measures required to comply with the rough proportionality requirement,

in accordance with Agreement Section 9.3 and Chapter 7 (Section 7.5.3) of the Plan, with regard to Take that occurred prior to withdrawal; and

(2) The Wildlife Agencies, the Conservancy and all Permittees meet to identify and evaluate activities that could voluntarily be undertaken or continued in support of the Conservation Strategy notwithstanding the collective withdrawal.

If the Permittees collectively notify USFWS in writing that they plan to withdraw from the Permits or to discontinue the Covered Activities, they will surrender: (1) the Federal Permit issued by that agency pursuant to the requirements of 50 C.F.R 13.26; and (2) the State Permit pursuant to Fish and Game Code section 2835 including but not limited to the assurances or authorization for any Take that has not occurred at the time of withdrawal. Additionally, the Permittees will provide a status report detailing the nature and amount of any incidental take of the Covered Species, the minimization and mitigation measures provided for take up through the date of early surrender, and the status of compliance with all other terms of the Permits and Yolo HCP/NCCP. Within 90 days after receiving the surrendered Permits and a status report meeting the requirements of this paragraph, USFWS will use reasonable efforts to give written notice to the Permittees identifying all required outstanding mitigation and minimization measures.

Regardless of withdrawal and surrender of the Permits, the Permittees acknowledge that lands in the reserve system must be protected, managed and monitored in perpetuity.

18.0 MISCELLANEOUS PROVISIONS

18.1 Calendar Days

Throughout this Agreement and the Yolo HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified

18.2 Response Times

Except as otherwise set forth herein or as statutorily required by CEQA, NEPA, CESA, ESA, NCCPA or any other laws or regulations, the Wildlife Agencies and the Permittees will use reasonable efforts to respond to written requests from a Party in a timely manner and generally within a forty-five (45) day time period, unless another time period is required by the Permits, the Yolo HCP/NCCP or this Agreement. The Parties acknowledge that the Cities and the County are subject to the Permit Streamlining Act and that nothing in this Agreement will be construed to require them to violate that Act. In addition, the Wildlife Agencies will provide timely review of proposals for Covered Activities to be implemented directly by the Permittees, where such review is required by the Permits.

18.3 Notices

The Conservancy will maintain a list of individuals responsible for ensuring Plan compliance for each of the Parties, along with addresses at which those individuals may be notified (“Notice List”). The Notice List as of the Effective Date is provided below. Each Party will report any changes of names or addresses to the Conservancy and the other Parties in writing.

Any notice permitted or required by the Permits, the Yolo HCP/NCCP, or this Agreement will be in writing, and delivered personally, by overnight mail, or by United States mail, postage prepaid. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery will be to the name and address of the individual responsible for each of the Parties, as stated on the most current Notice List.

Notices will be transmitted so that they are received within deadlines specified in this Agreement, where any such deadlines are specified. Notices delivered personally will be deemed received on the date they are delivered. Notices delivered via overnight delivery will be deemed received on the next business day after deposit with the overnight mail delivery service. Notices delivered via noncertified mail will be deemed received seven (7) days after deposit in the United States mail. Notices delivered by e-mail or other electronic means will be deemed received on the date they are received.

The following Notice List contains the names and notification addresses for the individuals currently responsible for overseeing and coordinating Plan compliance:

<p><u>County:</u> County Administrator – Patrick Blacklock; 625 Court Street, Room 202 Woodland, CA 95695; Patrick.blacklock@yolocounty.org; 530-666-8150</p>	<p><u>Davis:</u> Davis City Manager – Michael Webb; 23 Russell Blvd., Suite 1 Davis, CA 95616; cmoweb@cityofdavis.org; 530-757-5602</p>
<p><u>Woodland:</u> Woodland City Manager – Paul Navazio; 300 First Street Woodland, CA 95695; 530-661-5813</p>	<p><u>Winters:</u> Winters City Manager – John Donlevy, Jr.; 318 First Street Winters, CA 95694; john.donlevy@cityofwinters.org; 530-795-4910 x110</p>
<p><u>West Sacramento:</u> West Sacramento City Manager – Martin Tuttle; 1110 West Capitol Avenue West Sacramento, CA 95691; 916-617-4500</p>	<p><u>Conservancy:</u> Executive Director – Petrea Marchand; 611 North Street, Woodland CA 95695; 530-723-5504</p>

18.4 Entire Agreement

This Agreement, together with the Yolo HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has

been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

18.5 Defense

The USFWS and the Permittees acknowledge that the Permittees have a significant and independent interest in maintaining the validity and effectiveness of the Permit, the Yolo HCP/NCCP, and this Agreement, and supporting documentation, including documentation under NEPA and ESA, and that the Permittees' interests may not be adequately protected or represented in the event of a judicial challenge to the Permit unless some or all of the Permittees are able to participate in such litigation. Subject to Agreement Section 18.9 (Availability of Funds), the USFWS will, upon the request of the Permittees, and subject to the responsibilities of the U.S. Department of Justice in the conduct of litigation, use reasonably available resources to provide appropriate support to the Permittees in defending, consistent with the terms of the federal Permit, lawsuits against the Permittees arising out of the USFWS's approval of the federal Permit.

Upon request, CDFW will, to the extent authorized by California law, cooperate with the Permittees in defending, consistent with the terms of the Yolo HCP/NCCP, lawsuits arising out of the Permittees' adoption of this Agreement and the Plan.

18.6 Attorneys' Fees

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

18.7 Availability of Funds

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

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

Implementation of this Agreement and the Yolo HCP/NCCP by the Permittees is subject to the availability of their respective appropriated funds, including but not limited to any special purpose revenues dedicated to implement the Plan. Nothing in this Agreement will be construed

to require the obligation, appropriation, or expenditure of any money without express authorization by the County Board of Supervisors, appropriate City Councils and/or governing board of the Conservancy. Notwithstanding these requirements and limitations, to maintain the rights and assurances afforded by the Permits, the Yolo HCP/NCCP, and this Agreement the Permittees are required to fund their respective obligations under the Permits as provided in Section 13, above. The Parties acknowledge that if the Permittees fail to provide adequate funding for their respective obligations under the Permits, the Permits may be suspended or revoked in accordance with the Permits and applicable laws and regulations and summarized in Section 16, above.

18.8 Governing Law

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

18.9 Duplicate Originals

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

18.10 Relationship to the ESA, CESA, NCCPA and Other Authorities

The terms of this Agreement are consistent with and will be governed by and construed in accordance with the ESA, CESA, NCCPA and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of USFWS and CDFW to seek penalties or otherwise fulfill their responsibilities under the ESA, CESA and NCCPA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of USFWS as an agency of the federal government or CDFW as an agency of the State of California.

18.11 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to the ESA, CESA, NCCPA or other applicable law, this Agreement will not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor will it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries will remain as imposed under existing state and federal law.

18.12 References to Regulations

Any reference in the Permits, the Yolo HCP/NCCP, or this Agreement to any law, regulation, or rule of the Wildlife Agencies will be deemed to be a reference to such law, regulation, or rule in existence at the time an action is taken.

18.13 Applicable Laws

All activities undertaken pursuant to the Permits must be in compliance with all applicable local, state and federal laws and regulations.

18.14 Severability

In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one of the Federal or State Permits does not automatically cause revocation of the other. For example, if CDFW revokes the State Permit, it does not automatically cause revocation of the Federal Permit.

18.15 Due Authorization

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

18.16 Assignment

Except as otherwise provided herein, the Parties will not assign their rights or obligations under the Permits, the Yolo HCP/NCCP, of this Agreement to any other individual or entity.

18.17 Headings

Headings are used in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

18.18 Legal Authority of CDFW

CDFW enters into this Agreement pursuant to the NCCPA.

18.19 No Limitation on the Police Power of the Cities or the County


Nothing in the Permits, the Yolo HCP/NCCP, or this Agreement limits the exercise of or in any way surrenders the police power of the Cities or the County.

18.20 Agreement with USFWS not an Enforceable Contract.

Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the USFWS and Permittee under law with regard to the Permit or otherwise and neither Party to this Agreement shall be liable in damages to the other Party or any other third party or person for any

performance or failure to perform any obligation identified in this Agreement. The sole purposes of this Agreement as between the USFWS and Permittee are to clarify the provisions of the HCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP in accordance with the Permit and applicable Federal law.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY  Date October 10, 2018
Jennifer Norris, Ph.D., Field Supervisor
U.S. Fish and Wildlife Service, Region 8
Sacramento, California

BY _____ Date _____
[Title] _____
California Department of Fish and Wildlife
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title] _____
County of Yolo

BY _____ Date _____
[Title] _____
City of Davis

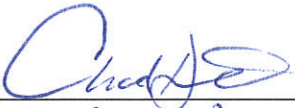
BY _____ Date _____
[Title] _____
City of West Sacramento

BY _____ Date _____
[Title] _____
City of Winters

BY _____ Date _____
[Title] _____
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY _____ Date _____
[Title] _____
U.S. Fish and Wildlife Service, Region 8
Sacramento, California

BY  _____ Date 1/10/19
[Title] Deputy Director, Ecosystem Conservation Division
California Department of Fish and Wildlife
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title] _____
County of Yolo

BY _____ Date _____
[Title] _____
City of Davis

BY _____ Date _____
[Title] _____
City of West Sacramento

BY _____ Date _____
[Title] _____
City of Winters

BY _____ Date _____
[Title] _____
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY _____ Date _____
[Title] _____
U.S. Fish and Wildlife Service, Region
8 Sacramento, California

BY _____ Date _____
[Title] _____
California Department of Fish and
Wildlife Sacramento, California

BY JP _____ Date 9-25-18
Jim Provenza, Chair
Yolo Habitat Conservancy Board of Directors

BY PK _____ Date 9-25-18
Patrick Blacklock, County Administrator
County of Yolo

BY _____ Date _____
[Title] _____
City of Davis

BY _____ Date _____
[Title] _____
City of West Sacramento

BY _____ Date _____
[Title] _____
City of Winters

BY _____ Date _____
[Title] _____
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY _____ Date _____
[Title] _____
U.S. Fish and Wildlife Service, Region 8
Sacramento, California

BY _____ Date _____
[Title] _____
California Department of Fish and Wildlife
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title] _____
County of Yolo

BY  Date 9/26/13
[Title] City Manager
City of Davis

BY _____ Date _____
[Title] _____
City of West Sacramento

BY _____ Date _____
[Title] _____
City of Winters

BY _____ Date _____
[Title] _____
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.


BY _____ Date _____
Assistant Regional Director
U.S. Fish and Wildlife Service, Region 8
Sacramento, California

BY _____ Date _____
Deputy Director
California Department of Fish and Wildlife
Ecosystem Conservation Division
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title]
County of Yolo

BY _____ Date _____
[Title]
City of Davis

BY  Date 5/23/18
[Title] City Manager
City of West Sacramento

BY _____ Date _____
[Title]
City of Winters

BY _____ Date _____
[Title]
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY _____ Date _____
Assistant Regional Director
U.S. Fish and Wildlife Service, Region 8
Sacramento, California


BY _____ Date _____
Deputy Director
California Department of Fish and Wildlife
Ecosystem Conservation Division
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title]
County of Yolo

BY _____ Date _____
[Title]
City of Davis

BY _____ Date _____
[Title]
City of West Sacramento

BY  _____ Date 6-12-18
[Title] Wade Cowan, MAYOR
City of Winters

BY _____ Date _____
[Title]
City of Woodland

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date described in Section 17.1 above.

BY _____ Date _____
Assistant Regional Director
U.S. Fish and Wildlife Service, Region 8
Sacramento, California

BY _____ Date _____
Deputy Director
California Department of Fish and Wildlife
Ecosystem Conservation Division
Sacramento, California

BY _____ Date _____
_____, Chair
Yolo Habitat Conservancy Board of Directors

BY _____ Date _____
[Title]
County of Yolo

BY _____ Date _____
[Title]
City of Davis

BY _____ Date _____
[Title]
City of West Sacramento

BY _____ Date _____
[Title]
City of Winters


BY  _____ Date 9/29/18
[Title] CITY MANAGER
City of Woodland

Exhibit A
YOLO HCP/NCCP
CERTIFICATE OF INCLUSION TEMPLATE

The United States Fish and Wildlife Service and the California Department of Fish and Wildlife have issued Permits pursuant to the federal Endangered Species Act and the California Natural Community Conservation Planning Act (collectively “Permits”) authorizing “Take” of certain species in accordance with the terms and conditions of the Permits, the Yolo Habitat Conservation Plan/Natural Community Conservation Plan (“Yolo HCP/NCCP”) and the associated Implementing Agreement. Under the Permits, certain third parties are eligible to receive “Take” coverage for certain species provided all applicable terms and conditions of the Permits, the Yolo HCP/NCCP, and the Implementing Agreement are met.

The third parties eligible to receive such coverage include:

Special Participating Entities pursuant to Section 7.3.2 of the Implementing Agreement and Chapter 4 (Section 4.2.1.3) and Chapter 7 (Section 7.2.5) of the Yolo HCP/NCCP. Special Participating Entities are defined in the Implementing Agreement (Section 3.29) as “public entities or private individuals that may conduct projects or undertake other activities in the Plan Area that are Covered Activities in the Yolo HCP/NCCP and that may affect Covered Species and require Take authorization from USFWS or CDFW, but are not subject to the jurisdiction of one or more Permittees.”

Neighboring Landowners pursuant to Section 7.3.3 of the Implementing Agreement and Chapter 3 (Section 3.5.6), Chapter 5 (Section 5.4.4), and Chapter 7 (Section 7.7.7.1) of the Yolo HCP/NCCP. “Neighboring Landowner” means an owner of specific types of agricultural lands that are within a defined distance of suitable habitat for either Valley elderberry longhorn beetle, giant garter snake, western pond turtle, or California tiger salamander (set forth in Chapter 5, Section 5.4.4 of the Yolo HCP/NCCP) on lands included in the reserve system who has received a Certificate of Inclusion from the Yolo Habitat Conservancy pursuant to the Permits and the Yolo HCP/NCCP (see Section 7.3.3 of the Implementing Agreement) that extends Authorized Take coverage for one or more of these four Covered Species resulting from specified agricultural land uses.

This Certificate of Inclusion is issued to _____, a *[specify Special Participating Entity or Neighboring Landowner]*.

For Special Participating Entities, use the following text:

This Certificate of Inclusion covers the project known and referred to as _____ . That project consists of *[briefly describe the nature of the project]*, as more fully set forth in the Special Participating Entity Agreement executed by and between the Conservancy and the _____ in connection therewith.

Coverage under the Permits will become effective upon receipt of the fully-completed and executed Certificate of Inclusion and Special Participating Entity Agreement by the Yolo Habitat Conservancy. The terms of the Permits, the Yolo HCP/NCCP and Implementing Agreement apply to the activities covered by this Certificate of Inclusion. Similarly, compliance with all material terms and provisions of the Special Participating Entity Agreement entered into concurrently herewith is required to maintain the Take coverage provided through this Certificate. The Conservancy will withdraw this Certificate and terminate the Take authorization extended hereunder if you fail to comply with such terms.

For Neighboring Landowners, use the following text:

As the owner/operator of the property described by Assessor’s Parcel Number (or address) and gross acreage on Exhibit 1 attached hereto and incorporated herein by this reference, you are entitled to the protection of the Permits to Take those species identified in Chapter 3 (Section 3.5.6) of the Yolo HCP/NCCP and Section 7.3.3 of the Implementing Agreement in connection with normal agricultural and rangeland activities (described in Appendix M, Yolo Agricultural Practices) occurring within a defined distance of land acquired for or enrolled in the Yolo HCP/NCCP pursuant.

In the event that the property depicted on Exhibit 1 is used for other purposes, Take Authorization under the Permits will automatically cease. Such authorization is provided as described in the Permits, the Yolo HCP/NCCP, and the Implementing Agreement. By signing this Certificate of Inclusion you signify your election to receive Take Authorization under the Permits in accordance with the terms and conditions thereof, including but not limited to your compliance with all applicable avoidance and minimization measures regarding Take of applicable Covered Species (see Chapter 4, Section 4.3 of the Yolo HCP/NCCP).

This Certificate of Inclusion does not give state and federal agencies additional regulatory control over the signatory nor require the signatory to provide additional information not called for in the Certificate of Inclusion, but instead ensures compliance with 50 Code of Federal Regulations, section 13.25(e). Coverage under the Permits will become effective upon receipt of the fully-completed and executed Certificate of Inclusion by the Yolo Habitat Conservancy. ***In the event that the subject property is sold or leased, buyer or lessee must be informed of these provisions and execute a new Certificate of Inclusion.*** Please note that the Take coverage extended through this Certificate of Inclusion includes only the Take of populations or occupied habitat above baseline conditions (as determined by reference to the baseline studies submitted with your Yolo HCP/NCCP enrollment package application).

Special Participating Entity/Owner

Yolo Habitat Conservancy

Signature

Signature

Date

Date

EXHIBIT B
Model Ordinance
Ordinance No. __ - __

An Ordinance of the [Council/Board] Providing for Implementation of the Yolo HCP/NCCP, Including Related Procedures and Fees

The [Council/Board] hereby ordains as follows:

1. Purpose, Findings, and Authority.

A. The Yolo Habitat Conservation Plan/Natural Communities Conservation Plan (“Yolo HCP/NCCP”) has been developed to provide for the conservation of 12 sensitive species and the natural communities and agricultural land on which they depend, and to provide a streamlined permitting process to address the effects a range of future anticipated activities on those species. The Yolo HCP/NCCP was developed by the County of Yolo and the cities of Davis, Woodland, Winters, and West Sacramento (with the University of California, Davis, in an *ex officio* capacity) through the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency, known and referred to informally as the Yolo Habitat Conservancy (“Conservancy”).

B. The purpose of this Ordinance is to provide for implementation of the Yolo HCP/NCCP in a manner that achieves, among other things, the following objectives:

- To protect, enhance, and restore natural communities and cultivated lands, including rare and endangered species habitat, and provide for the conservation of covered species within Yolo County;
- To replace the current system of separately permitting and mitigating individual projects with a conservation and mitigation program, set forth in the Yolo HCP/NCCP, that comprehensively coordinates the implementation of permit requirements through the development of a countywide conservation strategy, including identification of priority acquisition areas in riparian zones or other locations with important species habitat;
- To provide for additional habitat conservation that is otherwise unlikely to take place in Yolo County. Effects on natural resources and associated mitigation requirements for at-risk species are addressed more efficiently and effectively than the current piecemeal mitigation process. This approach benefits both listed species and project proponents; and
- To ensure that the Conservancy, in its capacity as the implementing entity for the Yolo HCP/NCCP, receives the local development mitigation fees necessary to assist with plan implementation and all of the related objectives set forth above.

C. In preparing the Yolo HCP/NCCP, the Conservancy worked in association with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife, as well as an advisory committee composed of local stakeholders from the agricultural, environmental, and development communities. This [Council/Board] adopted the Yolo HCP/NCCP on _____, 2018, and approved a revised and restated joint powers agreement for the Conservancy on _____, 2018 to address implementation of the Yolo HCP/NCCP.

D. On _____, 2018, the [Council/Board] considered the Final Environmental Impact Statement/Environmental Impact Report (“Final EIS/EIR”) prepared for the Yolo HCP/NCCP pursuant to the National Environmental Policy Act and the California Environmental Quality Act, adopted a Notice of Determination, and took certain related actions involving the Yolo HCP/NCCP. The [City/County] General Plan contemplates the adoption and implementation of the Yolo HCP/NCCP and includes specific goals and policies integral to its success, including:

- [Add any General Plan goals, policies, or other language demonstrating that Yolo HCP/NCCP implementation is consistent with the General Plan]

E. The California Constitution authorizes the [City/County] to adopt ordinances that protect the health, safety, and welfare of its citizens. Further, California Government Code § 66000 *et seq.* authorizes the Conservancy to impose fees and other exactions to provide necessary funding for conservation and other activities required to mitigate the adverse effect of development projects and other covered activities (as defined below) within Yolo County, including within the incorporated cities. In accordance with the Implementing Agreement, as set forth below, the Conservancy may authorize the [City/County] to collect such fees from project applicants on behalf of the Conservancy and remit them to the Conservancy.

2. Addition of Chapter { } to Title { } of the [City/County] Code.

Chapter __ is hereby added to Title __ of the [City/County] Code to read as follows:

TITLE/CHAPTER ____
YOLO HCP/NCCP

Sections:

- _____ **Purpose**
- _____ **Incorporation by Reference**
- _____ **Definitions**
- _____ **Application to Covered Activities**
- _____ **Mitigation Fees**
- _____ **Authorized Take Coverage**
- _____ **Service Fees**
- _____ **Guidelines**
- _____ **Interpretation**
- _____ **Operative Date**

Section _____ Purpose.

The Yolo Habitat Conservation Plan/Natural Communities Conservation Plan (“Yolo HCP/NCCP”) has been developed to provide for the conservation of 12 sensitive species and the natural communities and agricultural land on which they depend, and to provide a streamlined permitting process to address the effects a range of future anticipated activities on those species. The Yolo HCP/NCCP was developed by the County of Yolo and the cities of Davis, Woodland, Winters, and West Sacramento (with the University of California, Davis, in an *ex officio* capacity) through the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency, known and referred to informally as the Yolo Habitat Conservancy (“Conservancy”)

The purpose of this Ordinance is to provide for implementation of the Yolo HCP/NCCP in a manner that achieves, among other things, the following objectives: (a) To protect, enhance, and restore natural communities and cultivated lands, including rare and endangered species habitat, and provide for the conservation of covered species within Yolo County; (b) To replace of the current system of separately permitting and mitigating individual projects with a conservation and mitigation program, set forth in the Yolo HCP/NCCP, that comprehensively coordinates the implementation of permit requirements through the development of a countywide conservation strategy, including identification of priority acquisition areas in riparian zones or other locations with important species habitat; (c) To provide for additional habitat conservation that is otherwise unlikely to take place in Yolo County and benefit both listed species and project proponents by ensuring a more efficient, effective approach to mitigation; and (d) to ensure that the Conservancy, in its capacity as the implementing entity for the Yolo HCP/NCCP, collects the local development mitigation fees necessary to assist with plan implementation and all of the related objectives set forth above.

Section _____ Incorporation by Reference.

The Yolo HCP/NCCP is incorporated by reference as though fully set forth herein. Complete copies of the Yolo HCP/NCCP and related documents are available at the offices of the Conservancy (as of the adoption of this ordinance, *[insert]*), and online at www.yolohabitatconservancy.org. *[Insert any additional references that may be appropriate, such as availability at City/County offices and websites.]*

Section _____ Definitions.

The definitions set forth in this Section shall govern the application and interpretation of this *[Title/Chapter]*. Words and phrases not defined in this Section shall be interpreted so as to give this *[Title/Chapter]* its most reasonable application.

A. “Building Permit” includes, in connection with a Covered Activity only, a full structural building permit as well as a partial permit, such as a foundation-only permit, grading permit, or any other permit or approval authorizing a ground-disturbing activity in furtherance of a Covered Activity.

B. “Conservancy” refers to the Yolo Habitat Conservancy, a joint powers agency consisting of the County of Yolo and the cities of Davis, Woodland, Winters, and West

Sacramento (with the University of California, Davis, in an *ex officio* capacity). The formal, legal name of the joint powers agency is the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency.

C. “Covered Activity” and “Covered Activities” mean the activities and projects described in Chapter 3 of the Yolo HCP/NCCP proposed for implementation within the Plan Area and not otherwise exempted from the requirements of the Yolo HCP/NCCP.

D. “Covered Species” means the species, listed and non-listed, which are identified in Chapter 1 of the Yolo HCP/NCCP and described in Appendix A to the Yolo HCP/NCCP. Covered Species are those at-risk species that are covered by the Take Permits issued by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.

E. “Implementing Agreement” means that agreement made and entered into by and between the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, the Conservancy, the County of Yolo, and the cities of Davis, West Sacramento, Winters, and Woodland, that defines the parties’ respective roles and responsibilities and provides a common understanding of the actions that will be undertaken to implement the HCP/NCCP.

F. “Mitigation Fees” means any fees adopted by the Conservancy, and any amendments thereto, that apply (unless exempted) to Covered Activities within the Plan Area in accordance with Chapter 8 of the Yolo HCP/NCCP and documents cited or relied on therein.

G. “Plan Area” means the geographic area covered by the Yolo HCP/NCCP, as described in Chapter 1 (Introduction) and depicted in Figure 1-1 thereof. The Plan Area includes the County of Yolo in its entirety, consisting of approximately 653,549 acres and also includes 1,174 acres along the south bank of Putah Creek in Solano County designated as the “Extended Plan Area for Riparian Restoration” in Figure 1-1. This area is included in the Plan Area only for the purpose of providing additional sites for riparian restoration to support the Covered Species.

H. “Planning Permit(s)” means any discretionary permit that authorizes a ground-disturbing activity for a Covered Activity, including but not limited to *[list each agency’s common discretionary land use approvals here, such as a tentative map, parcel map, conditional use permit, development agreement]*, or any other discretionary permit, excluding actions of general application such as general plan amendments, zoning and rezoning, annexation, specific plans, and other area or regional land use actions.

I. “Project Applicant(s)” means a person or entity applying for a Planning Permit for a project authorizing a ground-disturbing activity for a Covered Activity, including any person or entity that is a “Third Party Participant” within the meaning of Section 3.32 of the Implementing Agreement.

J. “Take” has the meaning set forth in the federal Endangered Species Act and its implementing regulations, as well as impacts to plants identified as Covered Species. “Take” shall also have the meaning set forth in California Fish & Game Code Section 86 (i.e., to hunt pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill).

K. “Take Permits” means the federal Incidental Take Permit issued by the U.S. Fish and Wildlife Service to the Conservancy, the County, and each of the four cities based on the Yolo HCP/NCCP pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act, and shall also include related state permits and approvals provided for in Section 86 of the California Fish & Game Code with regard to activities subject to the California Endangered Species Act (Fish & Game Code § 2050 *et seq.*) and the California Natural Community Conservation Planning Act (Fish & Game Code §§ 2800-2835).

L. “Yolo HCP/NCCP” shall mean the Yolo Habitat Conservation Plan/Natural Communities Conservation Plan.

Section _____ Application to Covered Activities.

As set forth in Section 8.1 of the Implementing Agreement, all Project Applicants for Covered Activities within the Plan Area shall comply with the conditions set forth in Chapter 4 of the Yolo HCP/NCCP to avoid, minimize, and mitigate the Take of Covered Species resulting from Covered Activities. Each Planning Permit application for a Covered Activity within the Plan Area shall include details on the manner and timing for project compliance with the Yolo HCP/NCCP in the form and manner required by the Director of *[Name of Administering Department]*. Applicable conditions of approval on Covered Activities from Chapter 4 of the Yolo HCP/NCCP as well as other measures required to implement the Yolo HCP/NCCP conservation strategy shall be included in each Planning Permit approval for a Covered Activity.

Section _____ Mitigation Fees.

A. As a condition of each approval for a Covered Activity, the Mitigation Fees shall be paid in full by the Project Applicant to the *[City/County]* no later than the date of issuance by the *[City/County]* of a Building Permit. The Mitigation Fees paid by Project Applicants shall be transferred (along with Mitigation Fee payments provided for public agency projects) to the Conservancy on a quarterly basis, or more frequently if requested by the Conservancy. Mitigation fees shall be paid to the *[City/County]* at the time of issuance of the first Building Permit if more than one Building Permit is required for the project.

B. If the Conservancy, pursuant to the terms of the Yolo HCP/NCCP, authorizes another manner of compensation in lieu of the Mitigation Fees (such as a conveyance of land in lieu of Mitigation Fees pursuant to the Implementing Agreement and the Yolo HCP/NCCP), the Project Applicant shall provide the *[City/County]* with written documentation from the Conservancy of compliance with such alternative manner of payment and the dollar equivalent amount of such alternative manner of compensation.

C. In the event the *[City/County]* determines a project requiring a Planning Permit is exempt from payment of the Mitigation Fees, whether because it is not a Covered Activity or for other appropriate reasons described in the Yolo HCP/NCCP, no Mitigation Fees shall be required for the project. Notwithstanding the applicability of an exemption, if appropriate based on facts and circumstances relevant to the project, the *[City/County]* shall advise the applicant of the

potential need for any federal, state, or other permits or approvals relating to rare species or associated habitats.

D. The [City/County] may collect the Mitigation Fees on behalf of the Conservancy if authorized to do so by the Conservancy. Any appeals relating fee determinations shall be heard by the [City/County] pursuant to the process established for hearing appeals of the Planning Permit associated with the fee determination.

E. On at least a quarterly basis through and including December of each calendar year, the [City/County] shall provide the Conservancy with information regarding applications and approvals for Take authorization under the Yolo HCP/NCCP, including Take associated with projects that are exempt from the fees and/or conditions of the Yolo HCP/NCCP. The quarterly reporting shall also include the same information regarding public agency projects and associated Take.

Section _____ Service Fees.

The [City/County] may collect duly adopted service fees from Project Applicants to compensate for the [City/County]'s costs associated with its administration and implementation of the Yolo HCP/NCCP and related permitting process. Any such fees shall be in addition to, and not a deduction from, the Mitigation Fees adopted by the Conservancy.

Section _____ Authorized Take Coverage.

Upon payment in full of the Mitigation Fees and approval of Planning Permits incorporating all applicable Yolo HCP/NCCP conditions of approval, the Project Applicant shall receive authorized Take coverage for the Covered Activity in accordance with the terms of the Take Permits, the Yolo HCP/NCCP, and the Implementing Agreement.

Section _____ Guidelines.

The [insert designee department head or other individual] may adopt guidelines to assist with the implementation and administration of all aspects of this [Title/Chapter].

Section _____ Interpretation.

In the event of a conflict between any term or requirement of this [Title/Chapter], the Take Permits, the Yolo HCP/NCCP, and the Implementing Agreement, the term or requirement of the Take Permits shall govern.

Section _____ Operative Date.

This [Title/Chapter] shall be operative upon the occurrence of all of the following: The Conservancy's adoption of the Mitigation Fees; the full execution of the Implementing Agreement; the adoption of the Yolo HCP/NCCP and implementing ordinances by each of the

Cities and the County; and the issuance of the Take Permits by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.

3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is held by court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this Ordinance. The [Council/Board] hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

4. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once in the [insert preferred newspaper], a newspaper of general circulation, printed and published in the County of Yolo, with the names of the Board/Council members voting for and against the Ordinance.

PASSED AND ADOPTED by the [Council/Board] of the [Jurisdiction], this __ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

[Include agency-specific signature blocks]

ERRATA TO THE IMPLEMENTING AGREEMENT

for the

YOLO HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

The California Department of Fish and Wildlife has prepared this Errata sheet to correct information in the Implementing Agreement for the Yolo Habitat Conservation Plan/Natural Community Conservation Plan by and among the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, the Yolo Habitat Conservancy, the County of Yolo, and the Cities of Davis, West Sacramento, Winters, and Woodland. The information corrected in this Errata sheet is not significant to warrant an amendment to the Implementing Agreement and does not constitute new information.

The following changes do not constitute significant new information nor create significant new impacts. The following changes correct cross references and clarify the parties' intent to sign the same version of the Implementing Agreement in counterparts, despite amendments each party made to their respective signature blocks upon signing.

CHANGES TO THE IMPLEMENTING AGREEMENT

Revisions to the Implementing Agreement are shown below as excerpts from the sections of the Implementing Agreement. Added or modified text is underlined (example), while deleted text will have a strikethrough (~~example~~) through the text.

Section 9.3.2, Conveyance of Lands in Lieu of Yolo HCP/NCCP Fees to Maintain Rough Proportionality

The following section is corrected as follows:

As set forth in Chapter 8 (~~Section 8.4.4.2~~) (8.4.5.2), if the Conservancy determines it is at risk of failing to meet the stay-ahead provision for land acquisitions as described in Chapter 7 of the Yolo HCP/NCCP, after consultation with the Wildlife Agencies it may notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying all or a portion of the Yolo HCP/NCCP fee.

Section 13.4, Effect of Funding Shortfalls

The following section is corrected as follows:

If overall HCP/NCCP fee revenues fall short of expectations, such as if fewer Covered Activities are implemented than projected by the Plan and less HCP/NCCP fees are collected, the resulting shortfall in Plan funding could prevent or constrain the Permittees' ability to fully implement the Yolo HCP/NCCP. As set forth in Chapter 8 (~~Section 8.4.4.3~~) (Section 8.4.5.3) of the Plan, if fee revenues do not keep pace with reserve system operation and management needs, the Permittees will consider various options in consultation with the Wildlife Agencies. Any shortfall

in non-fee revenues, such as local, state or federal agency contributions, will be treated similarly, with the Conservancy first making reasonable adjustments to expenditures to reduce costs while continuing to meet Plan obligations. If such adjustments are inadequate, the Conservancy will consult with the Wildlife Agencies to determine the best course of action.

In any circumstance where consultation occurs, the ultimate course of action will vary depending upon a full consideration of relevant factors. Such factors may include, but are not limited to, the rate of acquisition of reserve system lands or whether the amount and rate of Take is less than anticipated in the Plan. If it appears that the level of Authorized Take by the Permits will not be used during their term, substantially reducing HCP/NCCP fee revenues, the Parties anticipate that the Permittees will apply for an amendment to extend the Permits in accordance with Section 17.3, below, to allow the full use of Authorized Take and full implementation of the Yolo HCP/NCCP. Alternatively, the Permittees may apply for a Permit modification or amendment in accordance with Section 15 of this Agreement to reduce the amount of Authorized Take and related obligations in the Permits. Any such application will be treated as a request for a major amendment and processed in accordance with Chapter 7 of the Plan.

Section 16.3.4, Rough Proportionality

As provided in ~~Section 9.4.2~~ Section 9.3.1, above, in the event that CDFW has determined that the Permittees have failed to meet the rough proportionality standard provided in ~~Section 9.4.2~~ Section 9.3.1 of this Agreement, and if the Permittees have failed to cure the default or entered into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFW shall suspend the State Permits in whole or in part in accordance with California Fish and Game Code section 2820.

SIGNATURE BLOCKS

In executing the final version, each signatory reviewed and signed the same version of the Implementing Agreement, but modified their signature blocks to include the identity of the signatory.