California Winter Rice Habitat Incentive Program

# Proposal Solicitation Notice

Fiscal Year 2020-21

Application Deadline: **September 25, 2020**

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# BACKGROUND

## 1.1 Overview

In response to the recent decline of winter-flooded rice fields in the Central Valley and the ecological importance of this habitat base for wildlife, the California Legislature passed Assembly Bill 2348 in September of 2018. AB 2348 established the California Winter Rice Habitat Incentive Program (Section 3469, Fish and Game Code), which is designed to continue, and further encourage the winter-flooding of harvested rice fields in the Central Valley of California. Approximately 75% of the energetic needs of dabbling ducks, and a significant portion of the energetic needs of migrating shorebirds utilizing the Sacramento Valley are provided by winter-flooded rice fields.

The California Winter Rice Habitat Incentive Program (CWRHIP) provides economic incentives to land owners or lessees who agree to manage their properties in accordance with a management plan developed by biologists from the California Department of Fish and Wildlife's Comprehensive Wetland Habitat Program (hereinafter referred to as CDFW) in consultation with the landowner/lessee. Management plans will require participants to flood harvested rice fields for a minimum of 70 continuous days during the winter months (October-March). Properties that can maintain water during critical months (January through middle of March) will be given additional points in the ranking process. Properties located within five miles of an active airstrip on a military base or international airport will not be considered for enrollment under this program (see Appendix C for maps and descriptions of closure boundaries).

The program pays participants an annual incentive of $15/acre for the winter-flooding of harvested rice fields. The CWRHIP Standard Agreement (i.e. a State contract) is a non-negotiable contract that must be signed by all program participants. The management requirements of the program will start after the 2020 harvest and continue through early 2022.

**The Management Plan**

Upon enrollment of each property, CDFW will develop a management plan for each property. These plans, based on a management "framework", provide both immediate and long-term direction for management on the property by specifying the current acreage requirement, flooding duration, and depth required.

CDFW biologists will monitor compliance by using a combination of site visits (participants must allow access), high elevation aerial monitoring via fixed wing aircraft, and real-time satellite imagery. Landowners/lessees determined to be in compliance will receive an incentive payment after submitting an invoice for the time-period of management activities as outlined in their contract. Areas prioritized for funding and subsequent management of winter-flooded rice fields within each region are guided by goals outlined in the most recent implementation plan of the Central Valley Joint Venture (CVJV 2006). The CVJV (http://centralvalleyjointventure.org) is a coalition of 21 state and federal agencies, and private conservation organizations. This partnership directs efforts toward the common goal of providing for the habitat needs of migrating and resident birds in the Central Valley of California. The regional implementation of objectives outlined by the CVJV is designed to contribute to large-scale goals identified by continental and nationwide conservation plans such as the North American Waterfowl Management Plan (https://www.fws.gov/birds/management/bird-management-plans/north-american-waterfowl-management-plan.php), and the US Shorebird Conservation Plan (https://www.shorebirdplan.org/plan-and-council/). Utilizing the CVJV implementation plan as a guiding document ensures program priorities are consistent with state policy, current CVJV objectives, and the goals outlined in continental scale conservation plans. The CVJV Implementation plan is currently under revision. If a new plan is adopted during the terms of this program, the revised plan will help guide program priorities.

A competitive ranking process will be used to determine which properties are enrolled in the program (see Appendix B). CDFW was allocated $5 million to implement this program. A total of up to $4,058,220 of CWRHIP funds will be available for new agreements under this proposal solicitation notice (up to $2,029,110/year). The remaining funds will be used to meet the obligations of existing agreements, and to administer and monitor the program.

## 1.2 Solicitation Schedule

The timeline for implementation appears in Table 1. Applicants should anticipate a Project start date no sooner than November 15th, 2020, with flooding and other management activities to begin after the 2020 harvest.

**Table 1: Proposal Solicitation Schedule**

| Activity | Schedule |
|---|---|
| **Draft Solicitation released for public comment** | July 29, 2020 |
| **Solicitation Released** | Aug 13, 2020 |
| **Proposals due by 4:00 PM (Pacific Daylight Time)** | September 25, 2020 |
| **Committee review and selection** | September 28 – October 1, 2020 |
| **Award notifications distributed** | October 2, 2020 |

## 1.3 Eligible Entities

Private landowners or lessees who have grown rice on their property and are willing to flood harvested fields for a minimum of 70 days between October 15 and March 15, are eligible for funding under this program. Lessees applying for the program must provide a letter from the landowner approving participation in the program for the duration of the agreement. Participants have the option of rotating flooded acres on an annual basis within their property, so long as the acreage flooded annually is consistent with the acreage enrolled in the program. Eligible land must be over 40 acres in size and must not fall within a five-mile radius of an active military or international airport airstrip. Properties located within five miles of an active airport operation area on a military base or international airport will not be considered for enrollment under this program (see Appendix C for maps and descriptions of exclusion areas). This exclusion also includes properties within five miles of the airport operations area surrounding Travis Air Force Base in Solano County that are not specifically referenced in Appendix C, should rice ever be grown in that area. Proposals from federal agencies or other public entities are not eligible.

Private landowners who submit proposals must also not be listed on either the Top 500 Sales & Use Tax Delinquencies in California list or the Top 500 Delinquent Taxpayers list pursuant to Section 7063 or 19195 of the Revenue and Taxation Code.

## FOCUS

All Projects funded by CDFW under this solicitation must fall within the list of priorities

described below.

## 2.1 Priorities for Funding

CDFW is soliciting proposals from eligible landowners and land managers who grow rice in the Sacramento and San Joaquin valleys and who are willing and able to flood during the winter months after harvest. A scoring worksheet will be used to select properties for enrollment in the program (see Appendix B). Properties will be selected based upon ability to perform management actions that contribute to conservation priorities identified by CDFW. Properties best able to contribute to CDFW goals will be prioritized for funding under this solicitation.

# SUBMITTAL REQUIREMENTS

All proposals received must meet the requirements listed below.

## 3.1 Proposal Application

All information identified in the application form and instructions (Appendix A) is mandatory. Proposals shall include a complete application form and field map of the parcels to be flooded. Applicants that wish to rotate flooded parcels annually within a larger property must provide a map that outlines the extent of the area to be flooded (e.g. property boundary; see application form for details). All lessees shall include a signed letter from the landowner approving participation in the program for the duration of the agreement. Applicants must also note in their application the time-period during which they are willing to flood the proposed acres.

## 3.2 Proposal Submittal

The due date to submit proposals for this program is Monday, **September 25, 2020**. Applications may be submitted by email to CWHP@wildlife.ca.gov with the subject line title of "2020 CWRHIP Application". Hard copy applications shall be addressed to:

California Department of Fish and Wildlife
Wildlife Branch
ATTN: 2020 CWRHIP Proposal
P.O. Box 944209

Sacramento, CA 94299-0002

All hard-copy applications must have a U.S. POSTAL SERVICE POSTMARK dated no later than **September 25, 2020**. Proposals delivered by any other means (FEDEX, U.P.S., etc.) including hand delivery must be received at the above address no later than **4:00 p.m. September 25, 2020.** Hand delivered applications shall be taken to 1010 Riverside Pkwy, West Sacramento, CA, 95605. For questions regarding this PSN, please email Jeff Kohl at Jeffrey.Kohl@Wildlife.ca.gov , or Kelsey Navarre at Kelsey.Navarre@Wildlife.ca.gov, or call (916) 373-6610.

## REVIEW PROCESS

An administrative review will determine if the proposal package is complete and meets all the requirements for submittal (Table 2). This review will use a "Pass/Fail" scoring method. Those proposals which receive a rating of "Fail" (in any category), will be considered incomplete and will not be considered for funding under the program.

**Table 2: Administrative Review Criteria**

| Criteria | Score |
|---|---|
| **All components are included and completed in the required formats (□ application, □ map, □ water rights/district).** | Pass/Fail |
| **Applicant is an eligible entity (see eligibility above).** | Pass/Fail |
| **If lessee, letter from landowner approving participation is included.** | Pass/Fail |
| **Proposal is received by the deadline.** | Pass/Fail |
| **Proposed location is outside of exclusion areas** | Pass/Fail |

## 4.1 Technical Review and Selection

Following administrative review, technical reviewers will evaluate each proposal based on the Criteria in Appendix B. Each criterion is scored by at least two technical reviewers consisting of, but not limited to; CDFW Comprehensive Wetland Habitat Program (CWHP) staff and CDFW Waterfowl Program staff. The final score for each proposal will be based on the total of the criterion scores.

## ADDITIONAL INFORMATION IF FUNDED

### 5.1 Awards

Successful applicants will receive an award letter notifying them of their proposal selection and the agreement amount.

**Agreement**

Development of contracts will begin following the announcement of awards. Contracts are not considered executed until signed by both the authorized representative of the recipient and CDFW. Work performed prior to the start date of an agreement will not be reimbursed.

This Proposal Solicitation Notice (PSN) includes a Sample Standard Agreement (Sample Standard Agreement STD 213) for review (see Appendix D). The Sample Standard Agreement contains language that the CDFW expects to utilize for contracts awarded under this PSN.

The State does not accept alternate contract language from a prospective Contractor. Proposals with such alternate language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions are not negotiable.

Please note that successful applicants will also be required to complete, sign, and return the following additional forms when projects are approved for funding. **Do not submit these forms with your initial proposal**. These additional forms may include, but not necessarily be limited, to the following:

- Payee Data Record form (STD. 204)
- Contractor Certification Clauses (CCC 307)
- California Civil Rights Certification Attachment

**Responsibility of the Recipient**

Successful applicants will be responsible for carrying out the terms of the contract, and invoicing CDFW for payments.

**Invoicing and Payments**

Payments will be made in arrears on an annual basis, contingent upon the completion of work as outlined in the management plan. Once work has been completed, and CDFW

has confirmed performance, landowners may invoice the department for the full payment.

For all required invoicing and payment requirements please refer to Exhibit B within Appendix D, Budget Detail and Payment Provisions, which have been attached as part of the Sample STD 213 Standard Agreement.

**Loss of Funding**

Circumstances that may lead to suspension or cancellation of a contract include, but are not limited to:

- Lack of appropriated funds;
- Executive order directing suspension or cancellation of projects;
- Failure to complete the management actions as outlined in contract or management plan;
- Failure to comply with pertinent laws relative to implementation of this program

**References**

CENTRAL VALLEY JOINT VENTURE. 2006. Central Valley Joint Venture Implementation Plan – Conserving Bird Habitat. United States Fish and Wildlife Service. Sacramento, California, USA.

## Appendix A: California Winter Rice Habitat Incentive Program Application Form

### CALIFORNIA WINTER RICE HABITAT INCENTIVE PROGRAM

**Application Form**
Applicants must complete each section of the application, except where noted. Please use the format below for submittal. **Applicants shall attach a detailed map of acres proposed for enrollment *and* provide a copy of the water rights associated with proposed property. If water rights are consistent with rights of a water district, please list water district below.** CDFW requests that the field map be illustrated as necessary to delineate the perimeter of the property being proposed and explain the current water conveyance system in place on the property. **If interested in submitting more than one property for the program (i.e. parcels that are not contiguous), please use a separate application for each property**. **All lessees shall include a signed letter from the landowner approving participation in the program for the duration of the agreement.**

Date: _____

Property Name: _____

Property Owner(s)/ Lessees: _____

Total Acreage of proposed property:
_____

Water district of proposed property:
_____

Are you the Landowner or Lessee? **If lessee, be sure to include letter from landowner approving participation in program for duration of agreement.**

☐ Landowner ☐ Lessee

Time of year you are willing to flood harvested rice fields during the winter (check all that apply):

☐ Oct 1 – Jan 31 ☐ Dec 1 – Feb 15 ☐ Dec 15 – Feb 28 ☐ Jan 1 – Mar 15

Are you willing to **NOT** incorporate stubble in harvested fields via discing/chiseling prior to flooding?

☐ Yes ☐ No

Are you willing to stomp flooded fields?

☐ Yes ☐ No

County(ies) of

Property:_____

Legal Description: Section(s)_____ Township_____ Range_____

Assessor's Parcel Number (APN)_____

Participation in Other Programs or Partnerships (please list):

_____

Name of Person Designated to Sign Contract: _____

Title (President, Secretary, Owner, etc.): _____

Address: _____

_____

_____

Phone #: _____

E-mail address: _____

Type of Ownership (Partnership, Corporation, Sole Owner, Etc.): _____

Name of Contact for property (if different than above):

_____

Address: _____

_____

_____

Phone #: _____

☐ Please check if interested in learning more about CDFW's **Shared Habitat Alliance for Recreational Enhancement (SHARE)** program. This program compensates landowners up to $30/acre (in addition to CWRHIP payment) and provides liability protection to those who are willing to allow restricted public access for wildlife-dependent recreation (e.g. hunting and birdwatching).

☐ Please check if you would like your contact information to be forwarded to the California Rice Commission for other possible conservation program funding opportunities.

☐ Please check if interested in learning more about opportunities to improve winter water conveyance to your property.

## Appendix B: California Winter Rice Habitat Incentive Program Scoring Worksheet

**California Winter Rice Habitat Incentive Program Scoring Worksheet**
(To be completed by CDFW personnel upon review of application)

**Date:** _____

**Property Name:** _____

**County:** _____

**Contact Name & Phone #:** _____

**Total Acreage proposed:** _____

**Evaluator:** _____

| *No.* | *Factor* | *Max. Pts.* | *Score* |
|---|---|---|---|
| 1. | Consistency w/ CWRHIP Goals | Pass/Fail | |
| 2. | Winter water reliability and availability | 20 | |
| 3. | Connectivity with surrounding habitat | 20 | |
| 4. | Compatibility with adjacent lands | 20 | |
| 5. | Proximity to protected sanctuary | 20 | |
| 6. | Basin/County priority | 30 | |
| 7. | Timing of water on landscape | 30 | |
| 8. | Post-harvest manipulation | 30 | |
| | **TOTAL** | **170** | |

**Final Score:** _____

**1. Consistency with the goals of the California Winter Rice Habitat Incentive Program (Pass/Fail):**

| | |
|---|---|
| ☐ Pass | Property was farmed for rice and has the potential to be flooded during the winter in proposed timing window. |
| ☐ Fail | Property was not farmed for rice and/or does not have potential to be flooded during the winter in proposed timing window. |

**2. Winter Water Reliability and Availability (max. 20 points):**

| | |
|---|---|
| ☐ 20 points | Property is within a water district (or has property specific water rights) that will allow it to be flooded during proposed timing window most years. |
| ☐ 0 points | Property is within a water district (or has property specific water rights) that will allow it to be flooded most years, but inadequate conveyance or restrictions on timing of delivery decreases likelihood of rice being flooded during proposed timing window, or property is reliant on groundwater for winter-flooding. |

**3. Connectivity with Surrounding Habitat(s) (max. 20 points):**

| | | | | | |
|---|---|---|---|---|---|
| Natural habitat (20 pts.) | X | ____ | % border | = | ____ pts. |
| Rice/Corn (20 pts.) | X | ____ | % border | = | ____ pts. |
| Other (0 pts.) | X | ____ | % border | = | ____ pts. |

**4. Compatibility of Property with Adjacent Land Use(s) (max. 20 points):**

| | |
|---|---|
| ☐ 20 points | Anticipated habitat management will be compatible with current surrounding land use. |
| ☐ 0 points | Anticipated habitat management may potentially conflict with current surrounding land use (e.g. urban centers or incompatible agriculture such as alfalfa, winter wheat, or potatoes). |

**5. Proximity to Permanently Protected Wetland that is Managed as a Sanctuary/Closed Area with Maintenance-only Disturbance (max. 20 points):**

| | |
|---|---|
| ☐ 20 points | Property is located within 5 miles of permanently protected wetland that is managed as a sanctuary/closed area. |
| ☐ 10 points | Property is located within 5 miles of permanently protected wetland that has maintenance-only levels of disturbance outside of waterfowl season. |
| ☐ 0 points | Property is located greater than 5 miles from permanently protected wetland that is managed as a sanctuary/closed area. |

**6. Basin/County Priority (max. 30 points):**

| | |
|---|---|
| ☐ 30 points | Property is located within a county that has been documented to have <50% of harvested rice fields flooded during winter months*. |
| ☐ 15 points | Property is located within a county that has been documented to have 50-75% of harvested rice fields flooded during winter months*. |
| ☐ 0 points | Property is located within a county that has been documented to have >75% of harvested rice fields flooded during winter months*. |

* Based upon mean numbers from Matthews et al. (2018).

**7. Timing of Water on Landscape (max. 30 points):**

| | |
|---|---|
| ☐ 30 points | Landowner is willing and able to flood some or all of proposed acreage for 70 days between Jan 1st and March 15th. |
| ☐ 20 points | Landowner is willing and able to flood some or all of proposed acreage for 70 days between Dec 15th and March 1st. |
| ☐ 10 points | Landowner is willing and able to flood some or all of proposed acreage for 70 days between Dec 1st and Feb 15th. |
| ☐ 0 points | Landowner is not willing to flood some or all of proposed acreage for 70 days between Dec 1st and March 15th. |

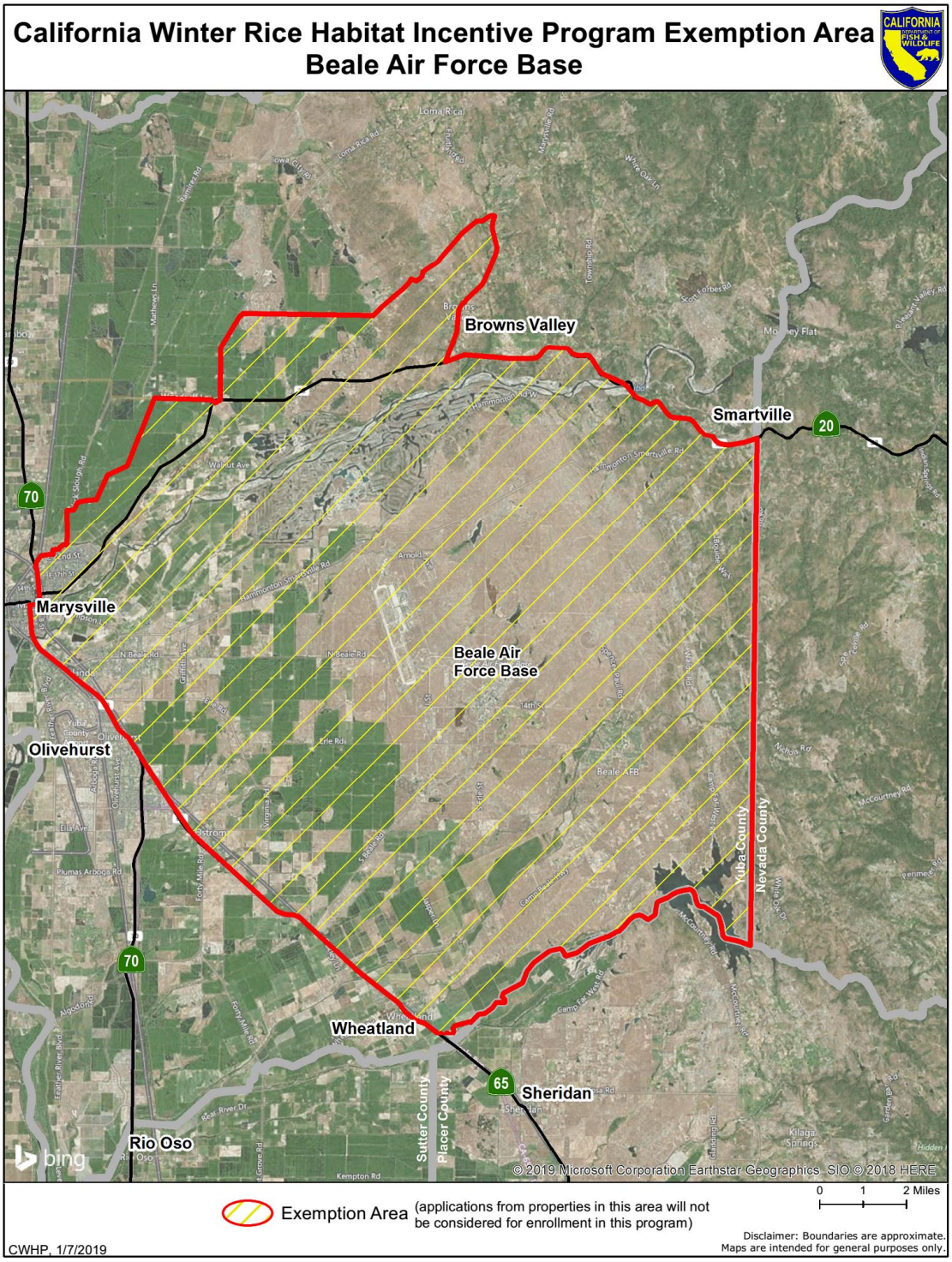
**8. Post-harvest manipulation (max. 30 points):**

| | |
|---|---|
| ☐ 15 points | Landowner is willing to flood some or all of proposed parcel(s) without incorporating stubble via discing/chiseling. |
| ☐ 15 points | Landowner is willing to stomp flooded fields. |
| ☐ 0 points | Landowner is not willing to flood parcel(s) without incorporating stubble via discing/chiseling, and is not willing or able to stomp. |

**References**

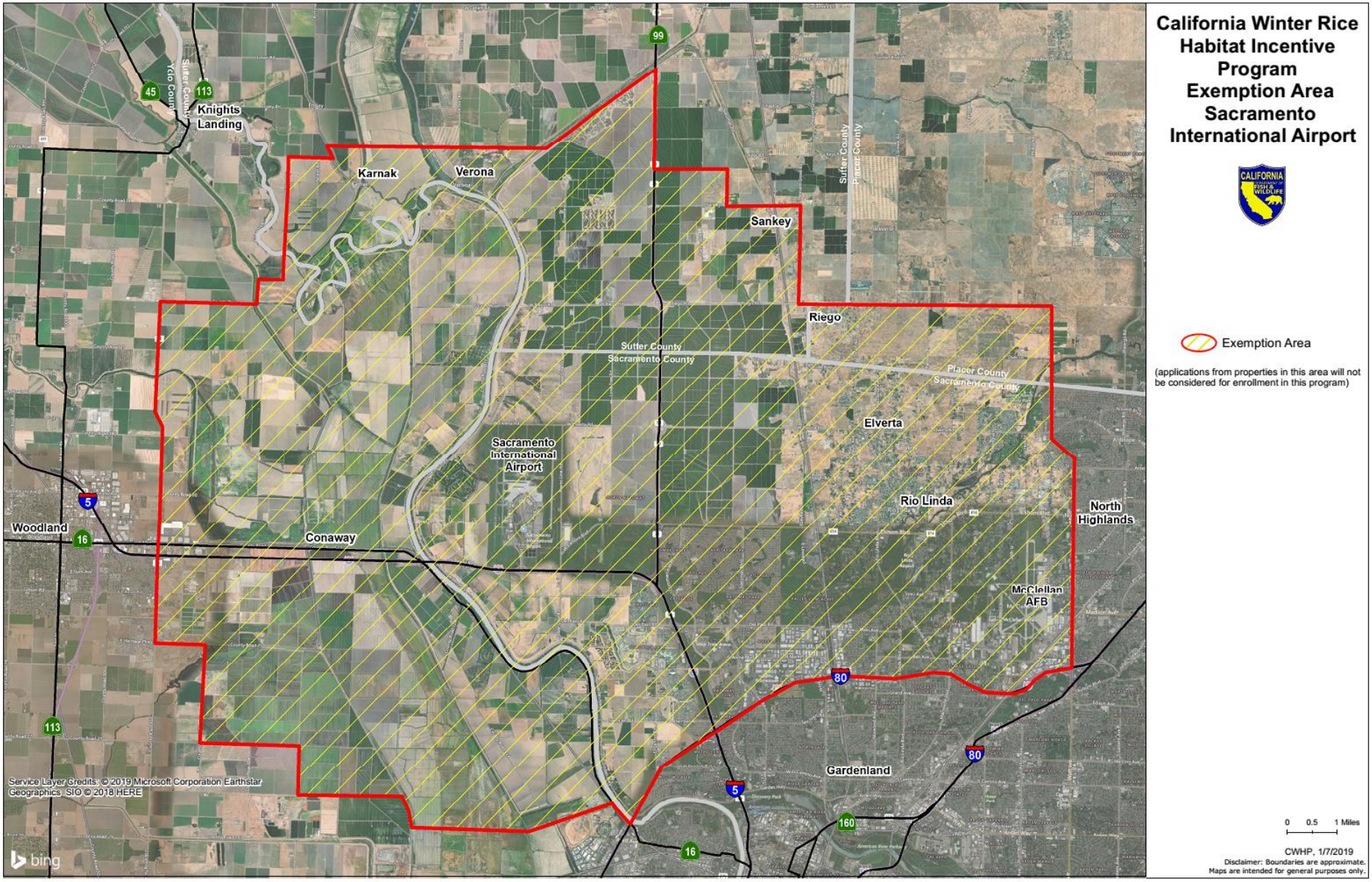
Luke Matthews., John Eadie., Mark Petrie (2018) *The Role of Agricultural Habitats in Meeting Waterfowl Foraging Needs in the Central Valley: An Evaluation of Food Availability and Post-harvest Treatments in Rice and Corn.* A Final Report for the Central Valley Joint Venture and Ducks Unlimited.

## Appendix C: Exclusion areas around Beale AFB and Sacramento International Airport



**Description of exclusion area around Beale AFB**

Landowners within the following area around Beale AFB are not eligible to enroll in the program: Starting at intersection of B St and Hwy 70 in Marysville, north along Hwy 70 to intersection of East 24th St, northeast on East 24th St to Sampson St, north on Sampson St to 25th St, east on 25th St to Covillaud St, north on Covillaud St to E 26th St, north on E 26th St to Jack Slough Rd, northeast on Jack Slough Rd to Kimball Ln, east-northeast along Kimball Ln to Woodruff Ln, east on Woodruff Ln to Hwy 20, east on Hwy 20 to Loma Rica Rd, north on Loma Rica Rd to Las Quintas Way, east on Las Quintas Way to intersection of Las Quintas Way and Miller Ln, directly east from intersection of Las Quintas Way and Miller Lane to Spring Valley Rd, northeast along Spring Valley Rd to Marysville Rd, south on Marysville Rd to Hwy 20, east on Hwy 20 to Yuba/Nevada county line, south along Yuba/Nevada county line to Yuba/Placer county line, west along Yuba/Placer county line to Hwy 65, north on Hwy 65 to Hwy 70, north on Hwy 70 to starting point (intersection of B St and Hwy 70 in Marysville).


California Winter Rice Habitat Incentive Program Exemption Area Sacramento International Airport
Exemption Area
(applications from properties in this area will not be considered for enrollment in this program)
Knights Landing
Karnak
Verona
Sankey
Riego
Sutter County
Sacramento County
Placer County
Elverta
Sacramento International Airport
Rio Linda
North Highlands
Woodland
Conaway
McClellan AFB
Gardenland
Yolo County
Sutter County
Placer County
Service Layer Credits: © 2019 Microsoft Corporation Earthstar Geographics SIO © 2018 HERE
bing
0 0.5 1 Miles
CWHP, 1/7/2019
Disclaimer: Boundaries are approximate. Maps are intended for general purposes only.

**Description of exclusion area around Sacramento International Airport**

Landowners within the following area around Sacramento International Airport are not eligible to enroll in the program: Starting at intersection of County Rd 102 and I-5 in Woodland, north along County Rd 102 to County Rd 16, east along County Rd 16 to lat 38.748606, long -121.692770, north from this location to lat 38.756079, long -121.692520, east from this location to lat 38.755897, long -121.683260, north from this location to the intersection of Gifford and Karnak Rd, east from this location to intersection of Karnak and Reclamation Rd, north on Reclamation Rd to lat 38.795426, long -121.667517, east from this location to intersection with Howsley Rd, northeast along Howsley Rd to intersection of Howsley Rd and Hwy 99, south along Hwy 99 to lat 38.790431, long -121.543709, east from this location to lat 38.790743, long -121.516103, south from this location to Sankey Rd (lat 38.779899, long -121.516117), east along Sankey Rd to Pleasant Grove Rd, south on Pleasant Grove Rd to West Riego Rd/Baseline Rd, east on West Riego/Baseline Rd to Watt Ave, south on Watt Ave to I-80, west on I-80 to Harbor Blvd, north on Harbor Blvd to Tule Jake Rd, SW on Tule Jake Rd to lat 38.594522, long -121.586753, west from this location to 38.595072 (Levee Rd), north along Levee Rd to lat 38.604024, long -121.634957, west from this location to lat 38.604068, long -121.674340, north from this location to lat 38.618418, long -121.674104, west from this location to intersection of County Rd 27 and County Rd 103, north on County Rd 103 to County Rd 25, west on County Rd 25 to County Rd 102, and north and County Rd 102 to starting point (intersection of County Rd 102 and I-5 in Woodland).

## Appendix D: Example of Standard Agreement

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1. XXXXXXXXX (Contractor) agrees to provide to the California Department of Fish and Wildlife (CDFW) habitat management as described herein:

The CDFW will assist with the enhancement of wildlife habitat on private lands by providing private landowners with annual incentive payments in return for carrying out habitat management in accordance with detailed habitat management and enhancement plans developed by CDFW biologists.

2. These services shall be performed on landowner's property, located in XXXX County, California.

3. The services shall be provided as determined by the CDFW Contract Manager.

4. The Project Officials during the term of this Agreement will be:

| **CDFW Contract Manager:** | | **Contractor Project Director:** | |
|---|---|---|---|
| Name: | Brian Olson | Name: | XXXXXXXX |
| Section/Unit: | Wildlife Branch | Section/unit: | XXXXXXXX |
| Address: | P.O. Box 944209 | Address: | XXXXXXXX |
| | Sacramento, CA 94244 | | XXXXXXXXXXX |
| Phone: | (916) 445-3486 | Phone: | XXXXXXXXXX |
| Fax: | (916) 445-4058 | Fax: | XXXXXXX |
| E-mail: | Brian.Olson@wildlife.ca.gov | E-mail: | XXXXXXX |

Direct all inquiries to:

| **CDFW Contracts Coordinator:** | | **Contractor:** | |
|---|---|---|---|
| Section/Unit: | Wildlife Branch | Section/unit: | XXXXXXXX |
| Attention: | Sarah Edmonds | Attention: | XXXXXXXX |
| Address: | P.O. Box 944209 | Address: | XXXXXXXX |
| | Sacramento, CA 94244 | | XXXXXXXXXXX |
| Phone: | (916) 373-6617 | Phone: | XXXXXXXX |
| Fax: | (916) 445-4058 | Fax: | XXXXXXXX |
| E-mail: | Sarah.Edmonds@wildlife.ca.gov | E-mail: | XXXXXXXX |

CDFW project officials may be changed by providing 10 (ten) days' written notice to the Contractor.

5. Scope of Work

## Background and Objectives

Section 3469 of the Fish and Game Code authorizes the Director of the CDFW to enter into contracts with nonpublic entities which are owners of record, or with lessees who have the owners of record execute the contract, of land determined by the Director to be important for the conservation of waterfowl.

The Contractor is entering into an Agreement with the CDFW to manage its lands for the common purpose of enhancing the value of harvested rice fields for the conservation of waterfowl and other species utilizing this habitat. The lands will be managed in accordance with a management plan that has been developed by the CDFW specifically for said property. The management plan will ensure that high-quality habitat is developed and maintained on this property consistent with Section 8 of Article XIII of the California Constitution.

## Work to be Performed

The Contractor is the tenant or owner in fee simple of certain real property hereinafter described, situated in the County of XXXX, State of California;

The Contractor's property supports or will support habitat of particular importance to waterfowl and other wildlife species;

The Contractor is willing to enter into this Agreement with the CDFW over said property, thereby restricting and limiting the use of land and contiguous water areas of said property, on the terms and conditions and for the purposes hereinafter set forth.

The Contractor and CDFW recognize the value to waterfowl and other wildlife provided by the property in its present and/or planned state as winter-flooded rice habitat, and have, by entering into this Agreement, the common purpose of enhancing the wildlife habitat values of said property, and preventing the use or development of said property for any purpose or in any manner which would conflict with the maintenance of those habitat values referred to above.

For valuable, adequate and sufficient consideration and in further consideration of mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Contractor hereby agrees to manage those lands described in Attachment 1 (a plat map and field map), for the benefit of waterfowl and other species utilizing winter-flooded rice.

1. The terms "Contractor" and "CDFW", wherever used herein, and any pronouns used in place thereof, shall be held to mean and include the above-named Contractor, its agents, officers, employees, successors, assigns, and lessees, and the above-named State, its officers, employees, successors, and assigns. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon and inure to the benefit of the Contractor and the CDFW.

2. The Contractor's subject property shall henceforth be referred to as the "Agreement lands".

3. This Agreement shall become effective on **XXXXX, 2020** (or upon approval by the CDFW), and shall remain in full force and effect through **XXXXX, 2022.**

4. The Contractor and the CDFW have cooperatively developed a Management Plan designed specifically for the Agreement lands, as indicated in Attachment 1 (Field Map) of Exhibit A. The Management Plan constitutes Attachment 2 of Exhibit A, which is attached and hereby made a part of this Agreement. The Management Plan contains various habitat management strategies that are intended to result in the enhancement of habitat for waterfowl and other wetland dependent wildlife on the Agreement lands. The Management Plan defines those specific management activities (timing, duration, and depth of water) required to be completed in that calendar year to achieve the quality and type of habitat required by CDFW.

5. The Contractor agrees to properly implement each element of habitat maintenance and enhancement as defined in the Management Plan so long as this Agreement remains in effect.

6. In the event that a property adjacent to the Agreement lands is damaged due to water seepage as a result of water management on the Agreement lands pursuant to and consistent with the Management Plan, the Contractor shall be solely responsible for taking immediate action to remedy the problem, compensate the affected party(ies) if necessary, and effect whatever measures may be necessary to prevent future damage while continuing to properly implement the Management Plan.

7. In the event that the Agreement lands are determined to be a public nuisance by a local mosquito abatement or vector control district, the Contractor shall be solely responsible for taking immediate action to remedy the problem, compensate the affected parties if necessary and

effect whatever measures may be necessary to alleviate the problem while continuing to properly implement the Management Plan.

8. The Contractor, its agents, officers, employees, successors, assigns and lessees shall not engage in and shall not permit or condone any activities which result in or could result in a diminishment of waterfowl and wildlife habitat values on the Agreement lands, or prevent or inhibit the implementation of those habitat management practices specified in Attachment 2.

9. Reserved Rights. The Contractor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Agreement lands, including the right to engage in or permit or invite others to engage in all uses of the Agreement lands that are not prohibited herein and are not inconsistent with the purpose of this Agreement.

10. In each year of this Agreement, following a determination by the CDFW that the Contractor has fulfilled its obligations under this Agreement regarding habitat management practices, as described in Attachment 2 and the Annual Work Plan, for the preceding (12) twelve month period, the State shall remit payment to the Contractor of **$15.00** for each of the **XXX** acres of the Agreement lands for a total annual payment not to exceed **$XXXXX**. The maximum amount payable under the terms of this Agreement shall not exceed **$XXXXXX** including all applicable taxes and expenses.

11. To receive payment, the Contractor shall annually submit a signed invoice containing the Agreement number of this contract within 10 (ten) days of the anniversary date of this Agreement to the California Department of Fish and Wildlife, Wildlife Branch, P.O. Box 944209, Sacramento, CA 94299-0002 (Attention: Contract Manager). The obligation of the State to render said payment shall be limited by the availability of sufficient funds.

12. The CDFW shall monitor compliance with the Management Plan, or contract with other appropriate agency(s), entity(s), or person(s) to monitor compliance with the Management Plan.

13. The CDFW, or its officers, employees, assigns or successors, reserves the right to enter the Agreement lands, across the Contractor's fee if necessary, for the purpose of inspecting said agreement lands to determine if the Contractor, or its agents, officers, employees, successors, assigns and lessees are in compliance with the terms, conditions,

covenants, restrictions, and purposes of this Agreement. This Agreement does not convey a general right of access to the public.

14. Costs of Enforcement. Any costs incurred by the CDFW in enforcing the terms of this Agreement against the Contractor including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by the Contractor's breach or negligence under the terms of this Agreement shall be borne by the Contractor.

15. State's Discretion. Enforcement of the terms of this Agreement shall be at the discretion of the CDFW, and any forbearance by the CDFW to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by the Contractor shall not be deemed or construed to be a waiver by the CDFW of such term or of any subsequent breach of the same or any other term of this Agreement or of any of the CDFW's rights under this Agreement. No delay or omission by the CDFW in the exercise of any right or remedy upon any breach by the Contractor shall impair such right or remedy or be construed as a waiver.

16. In the event the State of California or federal government prohibits the hunting of waterfowl in California for a period of three consecutive years, the Contractor may apply to the CDFW for termination of the Agreement. Such notification shall be made in writing to the CDFW on or after February 15 following the third waterfowl season during which the Contractor was legally prohibited from hunting waterfowl on the subject property. If the CDFW agrees to terminate the Agreement, the Contractor shall not be obligated to refund past management payments, nor shall the CDFW be responsible for remitting any future management payments.

17. In the event the CDFW acquires a perpetual conservation easement over the Agreement lands, this Agreement shall be terminated on the day that escrow closes. The Contractor shall be paid a pro rata portion of the management payment earned by and due to the Contractor for work completed during the then current anniversary year prior to the closure of escrow. The Contractor shall not be obligated to refund past management payments, nor shall the CDFW be responsible for remitting any future management payments.

18. The CDFW shall reduce the amount of any payment to the Contractor made under this Agreement by an amount equal to the portion of any annual payment made to the Contractor from any additional incentive program which the CDFW determines to be in compensation for essentially

the same obligations undertaken by the Contractor pursuant to this Agreement.

19. The Contractor agrees that this Agreement shall run with the land and further agrees to provide actual notice of the existence of this Agreement in any subsequent agreement or conveyance by which the contractor divests them of either the fee title to or their possessory interest in the Agreement lands.

20. If during the term of the Agreement the Contractor is divested of the use of the Agreement lands, the Contractor shall notify the CDFW, in writing, concurrent with that divestment. Any unearned payment shall not be paid to the Contractor by the CDFW. If the Contractor divests himself of the use of the Agreement lands by sale or otherwise, the person succeeding to that use is subject to all of the terms and conditions of this Agreement.

21. If any provision of this Agreement or the application thereof to any persons or circumstances is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances other than those that were found to be invalid shall not be affected thereby.

22. Costs of Liabilities. The Contractor retains all responsibilities and shall bear all cost and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Agreement lands.

23. Taxes. The Contractor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Agreement lands by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish the CDFW with satisfactory evidence of payment upon request.

24. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

25. The Contractor shall obtain any and all required local, state and federal permits prior to the initiation of construction activities necessary for implementation of the Management Plan.

26. The CDFW intends to implement this Agreement through a single administrator, herein called the Contract Manager. The Contract Manager shall make all determinations and take all actions as appropriate under this

Agreement, subject to the limitations of State administrative regulations. No decisions of persons other than the Contract Manager, unless expressly delegated in writing, shall be binding on the Contract Manager or the CDFW.

## Invoicing and Payment

A. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

B. The Contractor shall be paid **annually** in arrears, upon submission of an original and two copies of the invoice, which properly details all charges, expenses, direct and indirect costs. Invoices shall be submitted to:

| | |
|---|---|
| Contract Manager: | **Brian Olson** |
| Region / Division: | **California Department of Fish and Wildlife, Wildlife Branch** |
| Address: | **PO Box 944209, Sacramento, CA 94299-0002** |

C. The original and one (1) approved copy of the invoice will be forwarded to the California Department of Fish and Wildlife's Accounting Claims Section by the CDFW Contract Manager. Payment of any invoice will be made only after receipt of a complete, supported, documented and accurately addressed invoice. Failure to use the address exactly as provided above may result in the return of the invoice to the Contractor. All invoices must be approved by the Contract Manager.

D. The invoice shall contain the following information:

1. The word "Invoice" should appear in a prominent location at the top of the page(s);

2. Printed name of the Contractor;

3. Business address of the Contractor including P.O. Box, City, State, and Zip Code;

4. Name of the Region/Division of the California Department of Fish and Wildlife being billed;

5. The date of the invoice and the time period covered;

6. The number of the agreement upon which the claim is based, and;

7. An itemized account of the services for which the California Department of Fish and Wildlife is being billed. Include all of the following:

   a. The time period covered by the invoice, i.e., the term "from" and "to";

b. A description of the services performed;

c. The method of computing the amount due based on a line item budget/cost reimbursement method. Payments will be made by the State to the Contractor, in arrears, upon receipt of an itemized invoice showing the time period covered and the work items accomplished.

d. The total amount due should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Contractor under the terms of this agreement; and

e. The original signature of the Contractor (not required of established firms or entities using preprinted letterhead invoices).

8. The Contractor agrees to accept payment only in the form of a warrant issued by the California State Controller's Office (SCO). No other payment method shall be made in the payment of these invoices.

**Contract Written Prior To Approval Of The Budget Act**

E. It is mutually understood between the parties that this Agreement may have been written prior to approval of the Budget Act for the mutual benefit of both parties in order to avoid program and fiscal delays.

F. This Agreement is valid and enforceable only if sufficient funds are made available by the Budget Act for the Fiscal Year(s) involved for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Bill or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this Agreement in any manner.

G. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any additional provisions of this Agreement.

H. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to the Contractor to reflect the reduced amount.

## Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.

## Line Item Budget

The Contractor shall be reimbursed for actual services rendered as requested and approved by the CDFW Contract Manager. The Contractor shall be reimbursed at the unit rates identified below to a total cost that shall not exceed: TBD

| Year | Cost/Acre Fall & Winter | # of Acres | Total Cost per Year |
|---|---|---|---|
| Year 1 | $15 | # | $ |
| Year 2 | $15 | # | $ |

**Agreement Total: $TBD**

**1. LICENSES AND PERMITS (If Applicable) ~** The Contractor shall be an individual or firm licensed to do business in California and shall obtain, at his/her expense, all licenses and permits required by law for accomplishing any work required in connection with this Agreement.

If you are a Contractor located within the State of California, a business license from the City/County in which you are headquartered is necessary; however, if you are a corporation, a copy of your incorporation documents/letters from the Secretary of State's Office can be submitted. If you are a Contractor outside the State of California, you will need to submit to CDFW, a copy of your business license or incorporation papers for your respective State showing that your company is in good standing in that State.

In the event any licenses and/or permits expire at any time during the term of this Agreement, Contractor agrees to provide the California Department of Fish and Wildlife (CDFW) a copy of the renewed licenses and/or permits within thirty (30) days following the expiration date. In the event the Contractor fails to keep in effect, at all times, all required licenses and permits, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

**2. RIGHTS IN DATA ~** The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

**3. RIGHT TO TERMINATE ~** CDFW reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service.

**4. SETTLEMENT OF DISPUTES ~** Unless otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which cannot be resolved informally, shall be decided by the following two (2) step procedure:

**a.** The Contractor must provide written notice of the particulars of such disputes to the CDFW Contract Manager or appointed representative. The CDFW Contract Manager must respond, in writing, within ten (10) working days of receipt of the written notice of dispute.

Should the Contractor disagree with the CDFW Contract Manager's decision, the Contractor may appeal to the second level. Pending the decision on appeal the Contractor shall proceed diligently with the performance of this Agreement in accordance with the CDFW Contract Manager's decision.

**b**. The second level appeal must indicate why the CDFW Contract Manager's decision is unacceptable, attaching it to the Contractor's original statement of the dispute with supporting documents, and a copy of the CDFW Contract Manager's response. This letter of appeal shall be sent to the California Department of Fish and Wildlife, Deputy Director, or duly appointed representative. The second level appeal must be filed within fifteen (15) working days upon receipt of the CDFW Contract Manager's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such rights to an adjustment of this Agreement. The Deputy Director, or designee, shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director or designee, shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal. The decision of the Deputy Director, or designee, will be final.

**5. PROPERTY ACQUISITIONS ~** Property, as used in this section shall include:

**a. Equipment –** Tangible property (including furniture) with a unit cost of $5,000.00 or more, and a useful life of four (4) years or more. Actual costs include the purchase price plus all costs to acquire, install and prepare the equipment for its intended use.

**b. Furniture –** Standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc.

**c. Portable Assets –** Items considered 'highly desirable' because of their portability and value, e.g., calculators, typewriters, Dictaphones, cameras and microscopes, etc.

**d. Electronic Data Processing (EDP) Equipment –** All computerized and auxiliary automated information handling including system design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, and data communications, requisite system controls, simulation and all related interactions between people and machines.

The Contractor may purchase property under this Agreement only if specified in Exhibit B titled 'Budget Detail and Payment Provisions'. Any property purchased by the

Contractor, with funds provided under this Agreement, shall be the property of the State during the customary depreciable life thereof. The Contractor shall promptly report any such purchase to the CDFW Contract Manager and to the State's Property Officer. Should this Agreement be terminated for any reason, or upon expiration and failure to negotiate hereof, all such property shall be returned to the State within the timeframe negotiated between the Contractor and the State. Prior written authorization by the CDFW Contract Manager shall be required before the Contractor will be reimbursed for any property purchases not specified in the Budget. The Contractor shall provide to the CDFW Contract Manager, all particulars regarding the necessity for such property and the reasonableness of the cost.

Before property purchases made by the Contractor are reimbursed by CDFW, the Contractor shall submit paid vendor receipts identifying the Agreement number, purchase price, description of the item, serial number, model number, and location, including street address where property will be used during the term of this Agreement. Said paid receipts shall be attached to Contractors' invoices. The Contractor shall keep adequate and appropriate records of all property purchased with Agreement funds and at the time of purchase, prepare a Property Purchased with State Funds report and submit one (1) copy to the CDFW Contract Manager, and one (1) copy to the Property Officer; one (1) copy must be retained by the Contractor.

CDFW reserves the right, at any time, to evaluate the cost of property and reimburse at an amount equal to costs reflected in but not limited to Agreements the State Department of General Services, Procurement Division has negotiated with vendors who supply the same type of property. The Contractor shall tag all acquisitions. The purpose of tagging assets is to designate the assets as belonging to the State.

Upon termination, expiration or failure to negotiate renewal of this Agreement, all property purchased with Agreement funds shall promptly be returned to the State. The Contractor shall prepare an inventory of State Furnished Property report and submit to the State and shall at that time query the CDFW Contract Manager as to the State's requirements, including the manner and method, in returning said property to the State. Final disposition of such property shall be at State expense in accordance with instructions from the CDFW Contract Manager to be issued immediately after receipt of the final inventory.

**6. LOST, STOLEN or DESTROYED PROPERTY ~** The Contractor shall immediately report the loss, theft or destruction to the local law enforcement agency (or the California Highway Patrol {CHP} if the crime occurs on either state-owned or state leased property) and to the CDFW Contract Manager and prepare a Property Survey Report.

In the case of stolen property, the Contractor shall also complete a CHP Report of Crime on State Property (STD 99) form and obtain a copy of the law enforcement agency's report to submit to the CDFW Contract Manager. The Contractor shall adjust their property records and retain a copy of the Property Survey Report as documentation.

Losses of State property due to fraud or embezzlement shall be reported in the same manner as described above. The Contractor shall be charged with any loss and damages to State property due to the Contractor's negligence. The Contractor shall, at the request of the State, submit an inventory of property furnished or purchased under the terms of this Agreement. Such inventory will be required not more frequently than annually.

**7. INCOME RESTRICTIONS ~** The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDFW, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDFW under this Agreement.

**8. CONFIDENTIALITY OF DATA ~** The Contractor shall protect from disclosure all information made available by CDFW. The Contractor shall not be required to keep confidential any data or information which is publicly available, independently developed by the Contractor, or lawfully obtained from third parties. Written consent of CDFW must be obtained prior to disclosing information under this Agreement.

**9. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENTS ~** The Contractor agrees to use DVBE subcontractors or suppliers originally identified by the Contractor, unless the Contractor requests substitution, in writing beforehand to the CDFW Contract Manager and the CDFW Contract Manager has approved such substitution. At a minimum, the request must include:

**a.** A written explanation of the reason for the substitution; and

**b.** The identity of the person or firm substituted.

The request and the CDFW Contract Manager's approval is not to be construed as an excuse for noncompliance with any other provision of law, including but not limited to the subletting and subcontracting Fair Practices Act or any other Agreement requirements relating to the substitution of subcontractors. Failure to adhere to at least the level of participation for DVBE proposed by the Contractor may be cause for Agreement termination and recovery of damages under the rights and remedies due the State.

**10. DISCLOSURE REQUIREMENTS ~** Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with CDFW. The disclosure statement shall include the Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.

If the Contractor or subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports. The Contractor shall include in each of its subcontracts for work under this Agreement, a provision which incorporates the requirements stated within this section.

**11. USE OF SUBCONTRACTOR(S)** ~ If the Contractor desires to accomplish part of the services through the use of one (1) or more subcontractors, the following conditions must be met:

**a.** The Contractor shall submit any subcontracts to the State for approval prior to starting any of the work;

**b.** The Agreement between the primary Contractor and the subcontractor must be in writing;

**c.** The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and

**d.** Upon termination of any subcontract, the State shall be notified immediately, in writing.

Further, any subcontract in excess of $100,000 entered into as a result of this Agreement shall contain all applicable provisions stipulated in this Agreement.

**12. POTENTIAL SUBCONTRACTOR(S) ~** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractor(s) and no subcontract shall relieve the primary Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractor(s) is an independent obligation from the State's obligation to make payments to the primary Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

**13. TRAVEL AND PER DIEM ~** The Contractor agrees that all travel and per diem paid its employees under this Agreement shall be at rates not to exceed those amounts paid to the nonrepresented/excluded State employees. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from CDFW.

**14. NOVATION ~** If the Contractor proposes any Novation Agreement, CDFW shall act upon the proposal within sixty (60) days after receipt of the written proposal.

The State may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection may be made orally within the sixty (60) day period and confirmed in writing within five (5) days. No Novation Agreement shall become operative or otherwise binding on the State pursuant to this paragraph in the absence of a formal Novation Agreement amendment which has been approved in accordance with all applicable State policy, laws and procedures.

**15. INSURANCE ~** When the Contractor submits a signed Agreement to CDFW, the Contractor shall also furnish, either proof of self-insurance or certificate(s) of insurance, showing that the required insurance is presently in effect. Contractor agrees to make complete copies of applicable insurance policies available to CDFW upon request. The State will not be responsible for any premiums or assessments on the policy.

**General Provisions Applying to All Policies**

**1)** Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.

**2)** Policy Cancellation / Termination & Notice of Non-Renewal –Contractor shall provide to the State within two business days a copy of any notice of Cancellation/Termination or Non-renewal received by contractor for any of the required insurance policies. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

**3)** Deductible – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.

**4)** Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.

**5)** Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

**6)** Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management. In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of insurance to the State equal to policies, coverages and limits required of Contractor.

**7)** Inadequate Insurance – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.

**Provider hereby represents and warrants that Provider is currently and shall remain, for the duration of this Agreement at Provider's own expense, insured against:**

**1)** Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than $1,000,000.00 per occurrence for bodily injury and property damage liability combined with a $2,000,000.00 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

**The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..**

**2)** Automobile Liability – (If applicable) Contractor shall maintain motor vehicle liability with limits not less than $1,000,000.00 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

**The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..**

**3)** Aircraft Liability – (If applicable) When aircraft are used in the performance of agreement work contractor, or its subcontractor, shall maintain aircraft liability with limits of not less than $10,000,000.00 each accident.

**The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract.**

**4)** Watercraft Liability – (If applicable) When watercraft are used in the performance of agreement, the work contractor or its subcontractor, shall maintain watercraft liability with limits of not less than $1,000,000.00 each accident. When watercraft is used in performance of work on or over navigable waters of the United States, contractor's workers' compensation policy shall be endorsed to include the United States Longshore and Harbor Workers' Compensation Act coverage. The coverage applies to work on or over navigable waters of the U.S.

**The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract.**

**5)** Professional Liability – (If applicable) Contractor shall maintain

professional liability covering any damages caused by a negligent error, act or omission with limits of not less than $1,000,000.00 per occurrence and $3,000,000.00 policy aggregate. The policy's retroactive date must be shown on the certificate of insurance and must be before the date this contract was executed or before the beginning of contract work.

**6)** Pollution Liability – (If applicable) Contractor shall maintain pollution liability with Limits no less than $1,000,000 each occurrence and $2,000,000 aggregate.

**The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract.**

**7)** Workers Compensation and Employers Liability – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of $1,000,000.00 are required.

When work is performed on State owned or controlled property the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided.

When watercraft is/are used in performance of agreement work contractor's workers' compensation policy shall be endorsed to include applicable special coverage extensions where applicable.

**16. COMPUTER SOFTWARE (IT SERVICES) ~** The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**17. INSPECTION ~** The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the State of the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require their subcontractor(s) to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

**18. FORCE MAJEURE ~** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by 'Force Majeure'. As used in this section, 'Force Majeure' is defined as follows: Acts of war, acts of God such as

earthquakes, floods, and other natural disasters such that performance is impossible.

**19. FORCED, CONVICT AND INDENTURED LABOR ~** No foreign-made equipment, materials, or supplies furnished to the State pursuant to this Agreement may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a purchase order, the Contractor agrees to comply with this provision of the Agreement. This requirement does not apply to public works (construction) Agreements.

**20. CONTRACT STAFF REQUIREMENTS ~** The Contractor represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with the California State Department of Fish and Wildlife or any other governmental entity.

**21. EVALUATION OF CONTRACTOR (CONSULTANT AGREEMENTS ONLY) ~** Performance of the Contractor, under this Agreement, will be evaluated. The evaluation shall be prepared on a Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file.

If the Contractor did not satisfactorily perform the work or service, a copy of the negative evaluation form will be submitted to the Contractor and the Department of General Services, Legal Division, within fifteen (15) days of the completion of the evaluation. The Contractor will have thirty (30) days to prepare and send statements defending its performance under the Agreement. The evaluation of the Contractor shall not be a public record.

**22. REQUIREMENTS FOR LEGAL AGREEMENTS ONLY ~** In accordance with Public Contract Code § 10353.5, the Contractor shall:

- Agree to adhere to legal costs and billing guidelines designated by the State;
- Adhere to litigation plans designated by the State;
- Adhere to case phasing of activities designated by the State;
- Submit and adhere to legal budgets as designated by the State;
- Maintain legal malpractice insurance in an amount not less than the amount designated by the State;
- Submit to legal bills legal bill audits and law firm audits if requested by the State or by any legal cost control providers retained by the State for this purpose; and
- Submit to a legal cost and utilization review, as determined by the State.