

PLEASE NOTE: The following Recipient Agreement is by and among CDFG, National Fish and Wildlife Foundation and the recipient, and is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California, when and only when CDFG is a signatory agency. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum.

(Template Version Date: July 25, 2011)
**LONG-TERM LAND MANAGEMENT FUNDING
RECIPIENT AGREEMENT**

This Long-Term Land Management Funding Recipient Agreement ("Recipient Agreement") is entered by and among the California Department of Fish and Game, an agency of the State of California (the "CDFG"), the National Fish and Wildlife Foundation (the "Foundation") and **[insert name of Bank Property Owner as the funds recipient]** (the "Recipient") (together, the "Parties," and individually, a "Party"), as of the date of the signature of the last Party to sign (such date, the "Effective Date").

WHEREAS, CDFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802, and other provisions of California law.

WHEREAS, the Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 *et seq.*, as amended, and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code.

WHEREAS, the Recipient is the sole owner in fee simple of certain real property containing approximately **[insert number of acres]** acres located in _____ County, State of California, commonly known as **[insert name of bank]** and generally shown on the map attached as **Exhibit A-1** and legally described in **Exhibit A-2** attached hereto and incorporated by this reference (the "Bank Property").

[Modify this recital as appropriate when USFWS, USEPA, USACE, or NMFS is not a signatory to the BEI or CBEI.] WHEREAS, the Recipient is responsible to protect and manage for conservation purposes the Bank Property in accordance with the 1) **[insert appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]**, by and between **[insert Bank Sponsor's full legal name(s)]** ("Bank Sponsor"), Recipient, and **[insert Region name]**, CDFG, the **[insert Field Office Name]** United States Fish and Wildlife Service ("USFWS"), the **[insert District Name]** District of the United States Army Corps of Engineers ("USACE"), Region IX of the United States Environmental Protection Agency ("USEPA"), and **[insert NMFS Office or Region]** of the National Marine Fisheries Service ("NMFS") entered into concurrently with this Recipient Agreement, and the Long-term Management Plan created under the **[insert BEI or CBEI]** and 2) a perpetual conservation easement to be executed and recorded over the Bank Property (the "CE"). **[Remove reference to any agency that is not a party to the BEI or CBEI]** CDFG, USFWS, USACE, USEPA and NMFS are together referred to in this Recipient

[Insert Bank Name] Land Management Funding Agreement

Bank RA Template 07252011

Agreement as the [*insert appropriate term*: Interagency Review Team (the “IRT”) or Conservation Bank Review Team (the “CBRT”)].

WHEREAS, the Long-term Management Plan identifies specific land management activities that are required to be performed on the Bank Property to improve, conserve, and/or protect the habitat values of the Bank Property (together, the “Land Management Activities”). The Long-term Management Plan is **Exhibit B** attached hereto and incorporated by this reference.

WHEREAS, a “Property Analysis Record” or equivalent endowment analysis for the Bank Property created by or on behalf of Bank Sponsor and approved by [*insert appropriate term*: IRT or CBRT] (the “Endowment Analysis”) calculated the amount of money (the “Endowment Amount”) necessary to provide a source of perpetual funding for the Land Management Activities. The Endowment Analysis is **Exhibit C** attached hereto and incorporated by this reference.

WHEREAS, the Bank Sponsor has deposited or will deposit (or cause to be deposited) the Endowment Amount with the Foundation, to be managed and administered in accordance with the Master Mitigation Account Memorandum of Agreement (“MOA”) entered between CDFG and the Foundation as of November 23, 2010.

WHEREAS, the Parties intend that the Recipient will perform the Land Management Activities on the Bank Property in accordance with the [*insert appropriate term*: BEI or CBEI], CE, Long-term Management Plan, and the Endowment Analysis, using funds provided by the Foundation from the Endowment Amount in accordance with the terms of this Recipient Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Performance of Land Management Activities**. The Recipient hereby agrees to perform the Land Management Activities on the Bank Property, upon the terms and conditions set forth below. The Recipient also agrees to immediately notify the Foundation in writing upon any amendment or any other change to the Long-term Management Plan approved by the [*insert appropriate term*: IRT or CBRT] that changes the Land Management Activities that are identified in the Endowment Analysis. If this occurs, the Recipient must transmit to the Foundation as soon as practicable an amended Endowment Analysis, approved by the [*insert appropriate term*: IRT or CBRT], that reflects such changes. The amended Land Management Activities (and associated costs) set forth in the amended Endowment Analysis approved by the [*insert the appropriate term*: the IRT or the CBRT] shall upon receipt by the Foundation supersede and replace their original counterparts, and shall thereafter govern as the “Land Management Activities” and “Endowment Analysis” under this Recipient Agreement.

2. **Funding for Land Management Activities**. The Foundation hereby agrees to provide funds from the Endowment Amount to the Recipient for its performance of the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.

3. **Scope of Services to be Performed.** The Recipient will perform the Land Management Activities as set forth in the Long-term Management Plan and the Endowment Analysis with funds provided under this Recipient Agreement for the Land Management Activities; hereafter reference to the Long-term Management Plan and/or the Endowment Analysis shall include any amendment thereto. The Parties agree and acknowledge that the Long-term Management Plan and the Endowment Analysis were created by or on behalf of the Bank Sponsor and approved by [*insert appropriate term*: IRT or CBRT]. The Foundation is expressly entitled to rely on the validity of the [*insert appropriate term*: IRT or CBRT] approval and the accuracy of the Long-term Management Plan and the Endowment Analysis without independent verification. The Foundation shall not be liable in any respect to CDFG, the Recipient, the [*insert appropriate term*: IRT/CBRT], or to any other party, for errors, omissions, inaccuracies, or other elements of the Long-term Management Plan or the Endowment Analysis, whether contained therein or omitted therefrom. The Parties agree and acknowledge that the scope of services the Recipient is required to perform under this Recipient Agreement is limited to the Land Management Activities on the Bank Property to the extent funds are made available under this Recipient Agreement to pay for such Land Management Activities. In addition, in the event an amendment is made to the Long-Term Management Plan that changes the Land Management Activities identified in the Endowment Analysis, thereby requiring an amendment to the Endowment Analysis, the Foundation shall not be liable to CDFG, [*insert the appropriate term*: the IRT or the CBRT], or to any other party for any decision by CDFG or the [*insert the appropriate term*: IRT or CBRT], to amend the Endowment Analysis in any way that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities or the Bank Property.

4. **Term.** This Recipient Agreement shall be effective from the Effective Date until the date (if any) that a successor Recipient approved by [*insert appropriate term*: the IRT or CBRT] becomes obligated to perform the Land Management Activities.

5. **General Financial Provisions.** The Endowment Amount will be invested and otherwise managed financially by the Foundation in accordance with the terms of the MOA. The Recipient shall have no right or responsibility with respect to the investment or financial management of the Endowment Amount under this Recipient Agreement or otherwise. The Land Management Activities addressed under this Recipient Agreement shall be considered "Endowment Measures" for purposes of the MOA unless specified otherwise by CDFG in a written notice delivered to the Foundation.

6. **Payment.**

a. **Payment in the Ordinary Course.**

(1) As a condition precedent to disbursements from the Endowment Amount by the Foundation to the Recipient, CDFG (after consultation with the [*insert appropriate term*: IRT or CBRT]) must confirm in writing that performance standards have been attained and the Endowment Amount has been fully funded for [*insert appropriate number of years and the word year or years*] as specified in the [*insert BEI or CBEI*]. In consideration of the Land Management Activities to be performed by the Recipient, the Foundation shall disburse to the Recipient from the Endowment Amount annual, advance payments (each such

payment, an “Endowment Payment”) which the Recipient shall use to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Foundation is directed otherwise in writing by CDFG, each Endowment Payment will be made in the amount requested by the Recipient in a written payment request (hereinafter, a “Payment Request”) submitted to the Foundation pursuant to this Section 6. Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities for the applicable calendar year as set forth in the Endowment Analysis adjusted by a measure of inflation over the period of time since the Endowment Analysis was completed (such measure of inflation to be determined and applied by the Foundation in consultation with the CDFG).

(2) The Recipient must submit to the Foundation CDFG's written confirmation specified in Section 6(a)(1) with its first Payment Request. The Recipient must submit to the Foundation a Payment Request between July 1 and November 15 in order to receive an Endowment Payment to fund Land Management Activities in the next calendar year. Absent the express written direction of CDFG, the Recipient will not be eligible to receive an Endowment Payment for a forthcoming calendar year in which the Recipient has failed to submit to the Foundation a Payment Request between July 1 and November 15. The Foundation will disburse Endowment Payments in December for Payment Requests properly submitted to the Foundation in the prior July-November.

(3) Requests by the Recipient for non-annualized funds (i.e. funds for single or limited-occurrence expenses as set forth in the Endowment Analysis) shall be included with the Payment Request submitted prior to the calendar year in which use of such funds is scheduled in the Endowment Analysis. The Foundation will disburse non-annualized funds as a part of any December Endowment Payment for Payment Requests made in July-November.

(4) The Recipient shall submit all Payment Requests through the Foundation's electronic grant and contract management system (hereinafter, the “Easygrants System”), accessible to the Recipient through the following internet link: <http://www.nfwf.org/easygrants>. In the event the Easygrants System is inaccessible to the Recipient for technical or other reasons beyond the Recipient's control, the Recipient must contact the Foundation to arrange to submit a Payment Request through alternate means. All Payment Requests must include a written statement by the Recipient that (i) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (ii) the Recipient reasonably expects the Land Management Activities specified in the Endowment Analysis for the applicable calendar year to be actually necessary in that year. CDFG may, upon coordination with the [*insert appropriate term*: IRT or CBRT] agencies, and at least thirty (30) days prior written notice to the Recipient and written instruction to the Foundation, modify the timing and frequency of Endowment Payments made to the Recipient by the Foundation. However, CDFG hereby acknowledges that any direction by CDFG under this subparagraph to modify the timing or frequency of Endowment Payments may impair or preclude the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFG, [*insert the appropriate term*: the IRT or the CBRT], or to any other party for any decision by CDFG or the [*insert the appropriate term*: IRT or CBRT] to modify the timing or frequency of an Endowment

Payment under this subparagraph (4) that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property.

b. Suspension or Reduction of Payments for Performance Reasons. In accordance with the terms of the [***insert appropriate term:*** BEI or CBEI] and/or CE, the [***insert the appropriate term:*** IRT or the CBRT] may conduct periodic site visits and/or other evaluations of the Bank Property in order to monitor the progress and effectiveness of Land Management Activities performed by the Recipient. If at any time [***insert appropriate term:*** the IRT or the CBRT] determines that the Land Management Activities are not being performed in a satisfactory manner (including, without limitation, that the Land Management Activities are not being performed in accordance with the Long-term Management Plan or applicable laws or regulations), CDFG may, after consultation with the [***insert appropriate term:*** IRT or CBRT agencies], issue a written stop-payment notice (hereinafter a “Stop Payment Notice”) to the Foundation. A Stop Payment Notice will instruct the Foundation either to suspend or reduce Endowment Payments to the Recipient until the Foundation is otherwise notified in writing by CDFG. The Foundation shall be entitled to rely on any Stop Payment Notice received from CDFG and shall be obligated to follow the directions contained therein. The Foundation shall not be liable in any manner to the Recipient or to any other person by virtue of following the direction of CDFG contained in any Stop Payment Notice.

c. Suspension or Reduction of Payments for Financial Reasons. From time to time the Foundation or its financial advisors may determine that the Endowment Amount has decreased to levels that threaten its continued existence as a source of perpetual funding for Land Management Activities, whether due to unexpected investment performance or otherwise. In such event, the Foundation shall notify CDFG of such determination. Upon receipt of such notice, CDFG will consult with the [***insert appropriate term:*** IRT or CBRT], the Foundation and the Recipient as to appropriate modifications to continued Endowment Payments and associated Land Management Activities in order to protect the long-term viability of the Endowment Amount. After such consultation, CDFG will promptly notify the Foundation and the Recipient of any measures, including but not necessarily limited to suspension or reduction of specified Land Management Activities and corresponding reduction or suspension of Endowment Payments, which must be implemented by the Foundation or the Recipient, as the case may be, to address the pertinent circumstances. The Foundation and the Recipient shall be entitled to rely on any such notice received from CDFG and shall be obligated to follow the directions contained therein. Neither the Foundation nor the Recipient shall be liable in any manner to CDFG, the [***insert appropriate term:*** IRT or CBRT] or any other person by virtue of following the direction of CDFG contained in any notice issued under this Subsection 6(c).

d. One-time Payments. CDFG, in accordance with the MOA and after consultation with the [***insert appropriate term:*** IRT or CBRT] agencies, may direct the Foundation in writing to disburse a specific amount of funding to the Recipient, whether requested by the Recipient or not, so that the Recipient may perform an activity, or activities, which CDFG determines to be appropriate with respect to the Bank Property. A one-time payment may fund, but is not necessarily restricted to, activities in response to a catastrophic event (e.g., recovery after a fire). Upon receipt of such one-time payment, the Recipient shall, without delay, perform whatever activity, or activities, the one-time payment is intended to fund as

directed by CDFG. CDFG hereby acknowledges that any direction by CDFG under this Subsection 6(d) for the disbursement of a one-time payment not contemplated by the Long-term Management Plan or Endowment Analysis may impair or preclude the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFG, the **[insert appropriate term: IRT or CBRT]**, or to any other party for any decision by CDFG or the **[insert appropriate term: IRT or CBRT]** to direct a one-time payment under this Subsection 6(d) that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property.

e. **Overages in Payments.** Any overages in payments resulting from discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period, shall be maintained and accounted for by the Recipient. The overages shall be used for costs of future Land Management Activities.

7. **Review and Reporting Requirements.** The Recipient shall submit to the Foundation, to CDFG and the other **[insert appropriate term: IRT or CBRT agencies]** an annual funding report ("Annual Funding Report") for each calendar year this Recipient Agreement is in effect. Each Annual Funding Report shall be submitted by the Recipient between January 1 and January 31, or at least thirty (30) days prior to the effective date of termination of this Recipient Agreement. The Annual Funding Report shall (i) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or in the event of termination the current calendar year (collectively the "Reporting Period"); (ii) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period; (iii) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Long-term Management Plan and the Endowment Analysis and the Land Management Activities actually performed during the Reporting Period; and (iv) describe any discrepancy between the costs of Land Management Activities as modeled in the Endowment Analysis and the costs of Land Management Activities actually performed during the Reporting Period.

8. **Notices.** Any notice, demand, request, consent, approval, or other communication that the Parties desire or is required to give the other shall be in writing, with a copy to each of the **[insert appropriate term: IRT or CBRT]** agencies, and served personally or sent by recognized overnight courier that guarantees next day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

Foundation Primary: National Fish and Wildlife Foundation
Senior Manager, Impact-Directed Environmental Accounts (IDEA)
90 New Montgomery Street, Suite 1010
San Francisco, CA 94105

Recipient: Name
 Title
 Organization
 Address

City, State, Zip

CDFG: Name
Title
California Department of Fish and Game
Address
City, State, Zip

[Remove/ modify the following blocks as appropriate when USFWS, USACE, USEPA, NMFS are not signatories to the BEI or CBEI]

USFWS: Title
Organization
Address
City, State, Zip

USACE: Title
Organization
Address
City, State, Zip

USEPA: Title
Organization
Address
City, State, Zip

NMFS: Title
Organization
Address
City, State, Zip

Each Party agrees to notify the other promptly, and in any event no later than thirty (30) days after any change in address or other contact information.

9. **Transfer and Assignment**. The Recipient may not transfer or assign this Recipient Agreement, in whole or in part, to any other individual or legal entity without the prior written consent of the CDFG, in consultation with the **[insert appropriate term: IRT or CBRT]**, which consent may be withheld. The Foundation may not assign this Recipient Agreement, in whole or in part, to any other individual or entity.

10. **Amendments**. Except as provided in Section 1 with respect to amendments to the Long-term Management Plan and the Endowment Analysis, this Recipient Agreement may be amended only by a written amendment, signed by the Parties. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Recipient Agreement may not be amended via electronic mail.

11. **Termination.**

a. **Termination by CDFG.** CDFG (only after consultation with the [*insert appropriate term*: IRT or CBRT] agencies) may terminate this Recipient Agreement if the Recipient is in default of this Recipient Agreement. Failure by the Recipient to comply with any material term of this Recipient Agreement, as determined by CDFG shall be deemed to be a default of this Recipient Agreement and shall constitute cause for CDFG to terminate this Recipient Agreement. The CDFG shall provide the other Parties written notice of termination at least ninety (90) days prior to termination becoming effective. The CDFG in the termination notice may provide the Recipient an opportunity to cure its default. Unless otherwise specified in writing by CDFG, upon receipt of a notice of termination the Recipient shall promptly return to the Foundation any unspent and unobligated portion of any Endowment Payment.

b. **Termination by the Recipient.** The Recipient may, with or without cause, terminate this Recipient Agreement by providing at least one hundred and twenty (120) days' prior written notice to both CDFG and the Foundation. Regardless of the date that notice of termination is provided and the passage of the intervening one hundred and twenty (120) days notice period, termination is not effective unless and until the Recipient has returned to the Foundation any unspent and unobligated portion of any Endowment Payment.

c. **Termination by the Foundation.** The Foundation may, with or without cause, terminate this Recipient Agreement by providing at least ninety (90) days prior written notice to both CDFG and the Recipient. Regardless of the date that notice of termination is provided and the passage of the intervening ninety (90) day notice period, termination is not effective unless and until the Foundation has transferred in an orderly fashion the custody, control or other power necessary for the investment, management, and administration of the Endowment Amount to an entity identified in writing by CDFG.

d. **Termination of the MOA.** This Recipient Agreement shall terminate, as to all the Parties, concurrently with termination of the MOA. A copy of any notice of termination issued in accordance with the MOA shall be provided to the Recipient by the terminating party (i.e. CDFG or the Foundation) at the same time it issues the original notice of termination. Unless otherwise specified in writing by CDFG, upon receipt of a notice of termination of the MOA the Recipient shall promptly transfer to CDFG any unspent and unobligated portion of any Endowment Payment.

12. **Additional Support.** By entering into this Recipient Agreement, neither CDFG nor the Foundation assumes any obligation to provide funding or support (whether financial or otherwise) to the Recipient beyond Endowment Payments in accordance with this Recipient Agreement.

13. **Choice of Law.** This Recipient Agreement shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Recipient Agreement, the Recipient and the Foundation agree to submit to the jurisdiction of the courts of the State of California.

14. **Compliance with Laws; Indemnification.**

a. In conducting the Land Management Activities and performing its obligations under this Recipient Agreement, the Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits, approvals, and consents.

b. The Foundation and Recipient shall indemnify and hold harmless each other, CDFG and their respective officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with any breach by the indemnifying Party of its obligations under this Recipient Agreement (including, in the case of the Recipient, of its obligation to perform the Land Management Activities).

c. CDFG shall be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by the Foundation. CDFG shall also be free of liability to the Foundation for any default or non-performance of this Recipient Agreement or Land Management Activities by the Recipient. The Foundation shall be free of liability to CDFG for any default or non-performance of this Recipient Agreement by the Recipient, and the Foundation shall also be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by CDFG.

d. The terms of this Section will survive termination of this Recipient Agreement.

15. **Disclaimers.** Payments made to the Recipient under this Recipient Agreement do not by direct reference or implication convey the Foundation's or CDFG's endorsement of the Land Management Activities or any deliverables provided pursuant to this Recipient Agreement.

16. **Access to Recipient Records.** CDFG, the Foundation, or the Comptroller General of the United States, or any of their duly authorized representatives, shall, upon three days prior notice, have access to any books, documents, papers and records of the Recipient that are directly pertinent to this Recipient Agreement for purposes of making audits, examinations, excerpts or transcription. The Recipient shall keep all books, documents, papers, or records for at least five years after their preparation.

17. **Severability.** Each provision of this Recipient Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

18. **MOA Conflicts.** In the event a conflict arises between the terms of this Recipient Agreement and the MOA, the Parties will meet and confer to resolve the issue to the mutual satisfaction of the Parties.

19. **Conflict with [insert appropriate term: BEI or CBEI] or the CE.** In the event a conflict arises between the terms of this Recipient Agreement and the [*insert appropriate term*: BEI or CBEI], or the CE, CDFG, the Foundation, and the [*insert appropriate term*: IRT or CBRT] will meet and confer to resolve the issue to the mutual satisfaction of the CDFG, Foundation and the [*insert appropriate term*: IRT or CBRT].

20. **Counterparts.** This Recipient Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Recipient Agreement, intending to be bound legally.

Recipient (Property Owner)

_____ Date:

Name
Title:
Tax Identification Number:

National Fish and Wildlife Foundation

_____ Date:

Name
Title: Vice President, Impact-Directed Environmental Accounts

California Department of Fish and Game

_____ Date:

Name
Title:

EXHIBIT A-1
Map of Bank Property

EXHIBIT A-2
Legal Description of Bank Property

EXHIBIT B
Long-term Management Plan for Bank Property

EXHIBIT C
Endowment Analysis for Bank Property