

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sacramento County Regional Sanitation District
10060 Goethe Road, Sacramento, CA 95827
Attn: _____

Portion of APN: 119-0190-015

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
BEACH LAKE, SITE B-1**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of _____, 2020, by the Sacramento County Regional Sanitation District ("SCRSD" or "Grantor"), in favor of the ACCREDITED LAND TRUST successors and assigns, (collectively "Grantee"). Grantor and *Grantee*, and each of their respective successors and assigns are hereinafter referred to collectively as "Parties" and individually as a "Party."

RECITALS

A. Grantor is the sole owner in fee simple of certain real property, located in the City and County of Sacramento to the east of Interstate 5, south of Cosumnes River Blvd of State, and to the west of the Unionhouse Creek confluence, which is comprised of one parcel containing approximately 117 acres, designated Assessor's Parcel Numbers (APN) 119-0190-015 (the "Conservation Site"). Grantor, by this Easement, is conveying to Grantee this Conservation Easement over a 9.69 +/- acre portion of APN 119-0190-015 (the "Conservation Area"), which is legally described in **Exhibit A** and shown in Exhibit B attached to this Conservation Easement and incorporated herein by this reference.

B. The Conservation Site possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Conservation Site will provide high quality natural, restored and/or enhanced riparian habitat for valley elderberry longhorn beetle (VELB), which is protected under the federal Endangered Species Act, 16 U.S. section 1531 et seq. ("ESA") and contains, or will contain riparian and woodland habitat. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Conservation Site.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat

necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold conservation easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(C)(3) of the Internal Revenue code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

F. This Conservation Easement is being established by Grantor and Grantee knowingly and voluntarily as a means to provide advanced mitigation for the Sacramento Area Flood Control Agency's efforts related to high hazard tree removal that would be addressed in a future Streambed Alteration Agreement with CDFW, as well as and the potential removal of elderberry shrubs as part of routine operations covered under Biological Opinion, USFWS File No. 08ESMF00-2018F-3132-2, issued by the Sacramento Fish and Wildlife Office.

G. A Long-term Management Plan ("LTMP") has been prepared that contains provisions specifically applicable to the Conservation Site in order to satisfy the anticipated requirements of a future Streambed Alteration Agreement, as well as the potential removal of elderberry shrubs addressed in the USFWS BO.

A final approved copy of the LTMP and any amendments thereto, shall be kept on file at the respective offices of CDFW and USFWS. If Grantor, or any successor or assign, requires an official copy of the LTMP, it should request a copy from CDFW or USFWS at its address for notices listed in Section 22 of this Conservation Easement.

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

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a

conservation easement in perpetuity over the Conservation Site.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Conservation Site will be retained forever in its natural, restored, or enhanced condition as contemplated in the LTMP, and to prevent any use of the Conservation Site that will impair or interfere with the Conservation Values of the Conservation Site. Grantor intends that this Conservation Easement will confine the use of the Conservation Site to activities that are consistent with such purposes, as set forth in the LTMP, including, without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats implemented in accordance with the LTMP.

2. Grantee's Rights.

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

- (a) To preserve and protect the Conservation Values of the Conservation Site.
- (b) To enter the Conservation Site at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement and the LTMP, and to implement at Grantee's sole discretion the LTMP activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Conservation Site.
- (c) To prevent any activity on or use of the Conservation Site that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Conservation Site that may be damaged by any act, including but not limited to flood events; failure to act; or any use or activity that is inconsistent with the purposes of this Conservation Easement.
- (d) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Conservation Site shall remain a part of and be put to beneficial use upon the Conservation Site, consistent with the purposes of this Conservation Easement.
- (e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Conservation Site; such rights are hereby terminated and extinguished and may not be used on or transferred to any portion of the Conservation Site, nor any other property adjacent or otherwise.

3. Third-Party Beneficiary.

Grantor and Grantee acknowledge that the agencies that will be third-party beneficiaries: CDFW and USFWS (the "Third-Party Beneficiaries") are third party beneficiaries

of this Conservation Easement with the right of access to the Conservation Site and the right to enforce all of its provisions and all other rights and remedies of the Grantee under this Conservation Easement.

4. Prohibited Uses.

Any activity on or use of the Conservation Site that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

- (a) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Conservation Site or otherwise interfere with the purposes of this Conservation Easement, except as specifically provided in the LTMP; and
- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, and except as specifically required for maintenance activities (e.g. mowing equipment) and as provided in the LTMP; and
- (c) Agricultural activity of any kind; and
- (d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, except occasional passive recreational/educational activities (e.g. wildlife viewing) that have been coordinated and approved by the Grantor, Grantee, and Land Manager; and.
- (e) Non-agricultural commercial, industrial, residential, or institutional structures or uses; and
- (f) Any legal or de facto division, subdivision or partitioning of the Conservation Site, including a request for a certificate of compliance pursuant to the California Subdivision Map Act (California Government Code Section 66499.35); and
- (g) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, billboard or sign, or any other structure or improvement of any kind; and
- (h) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials; and
- (i) Planting, introduction, or dispersion of non-native or exotic plant or animal species; and
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling,

removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Conservation Site, or granting or authorizing surface entry for any of these purposes; and

(k) Altering the surface or general topography of the Conservation Site, including but not limited to any alterations to habitat, building roads or trails, or paving or otherwise covering any portion of the Conservation Site with concrete, asphalt or any other impervious material; and

(l) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in accordance with a plan approved in writing by CDFW and USFWS for (i) fire breaks, (ii) maintenance of existing roads, or (iii) prevention or treatment of disease; or (iv) except as specifically provided in the LTMP; or (v) except in order to maintain an effective wind wave buffer for flood control purposes; and

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Conservation Site, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and

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

(o) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Conservation Site, or the use or activity in question.

5. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at least annually, compliance monitoring inspections of the Conservation Site, consistent with the LTMP; and

(2) Prepare written reports on the results of the compliance monitoring inspections and provide these reports to the USFWS, CDFW, the Grantor, and the Land Manager as defined in the LTMP, on an annual basis.

(b) In the event the Grantee's interest in this Conservation Easement reverts to or is transferred to the State of California, CDFW will carry out the tasks specified in Section 5(a) to the extent that funds and staff are available for that purpose. If CDFW determines that it cannot carry out the specified tasks, the Third Party Beneficiaries may identify a replacement Grantee, acceptable to all, as well as CDFW and USFWS, and subject to obtaining all necessary approvals, will transfer this Conservation Easement to the identified replacement Grantee in compliance with Section 20(a) of this Conservation Easement.

6. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Conservation Site or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the LTMP.

7. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Conservation Site, including the right to engage in or permit or invite others to engage in all uses of the Conservation Site that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

8. Grantee's Remedies.

(a) If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Notice shall be provided according to Section 22 of this Conservation Easement.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Conservation Site; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Conservation Site to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Site.

(c) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Conservation Site, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Grantee shall notify the Grantor, CDFW, and USFWS within 30 days of such an occurrence.

(d) Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.*

(e) If Grantor receives a Notice of Violation with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict ("Notice of Conflict") to Grantee and the Third-Party Beneficiaries (as defined in Section 24(m)). In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon giving a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities that gave said conflicting Notices of Violation give revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in Section 8(b). The failure of Grantor to give a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

9. Costs of Enforcement.

Grantor shall bear all costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor. These costs include, but are not limited to, the following: costs of suit and attorneys' and experts' fees, and any costs for restoration necessitated by Grantee's negligence or breach of this Conservation Easement.

10. Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent

breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

11. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Site resulting from (a) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Site resulting from such causes; or (b) acts by Grantee or its employees.

12. Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries. These enforcement rights are in addition to, and do not limit, the rights of enforcement under the LTMP. If at any time in the future Grantor or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Conservation Site for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the Third-Party Beneficiaries has standing as an interested party in any proceeding affecting this Conservation Easement.

13. Reversion.

If the CDFW and USFWS determines that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the LTMP then, pursuant to California Government Code Section 65965(d), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the USFWS.

14. Access.

This Conservation Easement does not convey a general right of access to the public.

15. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Conservation Site. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Conservation Site, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from

risks relating to conditions on the Conservation Site. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, codes, ordinances, rules, regulations, orders and requirements.

16. Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Conservation Site by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Conservation Site free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement, as provided in Section 24(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Conservation Site.

17. Hold Harmless.

(a) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation Site, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence or willful misconduct of Grantee; (2) the obligations specified in Sections 6, 15 and 16; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(b) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation

Site, regardless of cause. *Provided, however,* that the indemnification in this Section 17 (b) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 17 (b) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

18. Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can be terminated or extinguished, in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

19. Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is "property appropriated to public use" as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610 of Chapter 3 of Title 7 of the California Code of Civil of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Conservation Site, if at all, only as provided in code of Civil Procedure section 1240.005. If any person seeks to acquire the Conservation Site for public use, Grantee shall provide notice to the USFWS and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with California Government Code Section 65966(j).

20. Transfer of Conservation Easement or Conservation Site.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of CDFW and USFWS, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor, CDFW, and USFWS, at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable), or the laws of the United States and otherwise reasonably acceptable to CDFW and USFWS. Grantee shall require the assignee to record the assignment in the county where the Conservation Site is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this

Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 20.

(b) Conservation Site.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Conservation Site, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the LTMP, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee, CDFW, and USFWS of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee, CDFW, or USFWS shall have the right to prevent any subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 20.

21. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Conservation Site become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, CDFW, and USFWS otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Conservation Site.

22. Notices.

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

To Grantor: Sacramento County Regional Sanitation District
10060 Goethe Road,
Sacramento, CA 95827
Attn: _____

To Grantee: **ACCREDITED LAND TRUST**
Street Address
City, State Zip Code

To CDFW: California Department of Fish and Wildlife
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
Attn: Regional Manager

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

or to such other address as a party or CDFW or USFWS shall designate by written notice to Grantor, Grantee, CDFW, and USFWS. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

23. Amendment.

This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and written approval of CDFW and USFWS, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Conservation Site is located, and Grantor and Grantee shall promptly provide a conformed copy of the recorded amendment to CDFW and USFWS.

24. Additional Provisions.

(a) Controlling Law.

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

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

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

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

(d) Entire Agreement.

This instrument (including its exhibits and the LTMP incorporated by reference in this document) sets forth the entire agreement of Grantor, Grantee, CDFW, and USFWS with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of such parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 23.

(e) No Forfeiture.

Without limiting the provisions of Section 13,] nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

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

(g) Termination of Rights and Obligations.

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

(h) Captions.

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

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Conservation Site, or transported to or from or affecting the Conservation Site.

(2) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 17(a)) from and against any and all Claims (defined in Section 17(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Conservation Site at any time, except any Hazardous Materials placed, disposed or released by

Grantee. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 17(b)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Conservation Site at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

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

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

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

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

(D) The right or duty to investigate and remediate any Hazardous Materials associated with the Conservation Site; or

(E) Any control over Grantor's ability to investigate, remove,

remediate or otherwise clean up any Hazardous Materials associated with the Conservation Site.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

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

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Conservation Site. Grantor also represents and warrants that, except as specifically disclosed to and approved by CDFW and USFWS pursuant to the Conservation Site Assessment and Warranty signed by Grantor and attached as an exhibit to the Conservation Site is not subject to any other conservation easement and there are no outstanding mortgages, liens, encumbrances or other interests in the Conservation Site (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a recorded Subordination Agreement approved by Grantee, CDFW, and USFWS.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Conservation Site (other than a security interest that is expressly subordinate to this Conservation Easement), or grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Conservation Site, without first obtaining the written consent of Grantee, CDFW, and USFWS. Such consent may be withheld if Grantee, CDFW, or USFWS determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Conservation Site. This Section 24(k) shall not limit the provisions of Section 2(d) or 4(n), nor prohibit transfer of a fee or leasehold interest in the Conservation Site that is subject to this Conservation Easement and complies with Section 20. Grantor shall

provide a certified copy of any recorded or unrecorded grant or Transfer document to the Grantee, CDFW and USFWS.

(l) Recording.

Grantee shall record this Conservation Easement in the official records of the county in which the Conservation Site is located and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Funding.

Funding for the perpetual management, maintenance and monitoring of the Conservation Site is specified in and governed by the LTMP.

25. Exhibits.

The following Exhibits referenced in this Conservation Easement are attached to and incorporated by reference herein:

Exhibit A – Legal Description

Exhibit B - Map of Conservation Site

Exhibit C – Long-term Management Plan

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed as of the day and year first above written.

GRANTOR: [*Notarization Required*]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 2020, to the, Grantee, is hereby accepted by the undersigned officer on behalf of the Grantee.

GRANTEE:

By: _____

Title: _____
Authorized Representative

Date: _____

DRAFT

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sacramento Area Sewer District
10060 Goethe Road, Sacramento, CA 95827
Attn: _____

Portions of APN: 119-0020-049 and 119-0020-048

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
STONE LAKES, SITE B-2**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of _____, 2020, by the Sacramento Area Sewer District ("SASD" or "Grantor"), in favor of the **ACCREDITED LAND TRUST** successors and assigns, (collectively "Grantee"). Grantor and Grantee, and each of their respective successors and assigns are sometimes hereinafter referred to collectively as "Parties" and individually as a "Party."

RECITALS

A. Grantor is the sole owner in fee simple of certain real property, located in the City and County of Sacramento to the west of Interstate 5, east of State Route 160, and to the north of Morrison Creek, which comprises two tracts of land of approximately 161 acres, designated Assessor's Parcel Numbers (APN) 119-0020-049 and 119-0020-048 (the "Conservation Site"). Grantor, by this Easement, is conveying to Grantee this Conservation Easement over a 17 +/- acre portion of APN 119-0020-049 and over an 8 +/- acre portion of APN 119-0020-048 (the "Conservation Area"), which Conservation Area is legally described in Exhibit A and shown in Exhibit B attached to this Conservation Easement and incorporated herein by this reference.

B. The Conservation Site possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Conservation Site will provide high quality natural, restored and/or enhanced riparian and woodland habitat for valley elderberry longhorn beetle (VELB) and yellow-billed cuckoo, which are protected under the federal Endangered Species Act, 16 U.S. section 1531 et seq. ("ESA"). Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Conservation Site.

C. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for

biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

D. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(C)(3) of the Internal Revenue code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

E. This Conservation Easement is being established by Grantor and Grantee knowingly and voluntarily as a means to implement certain agreed upon conservation measures as described in the Biological Opinion, USFWS File No. 08ESMF00-2014-F-0518, issued by the Sacramento Fish and Wildlife Office. These conservation measures were proposed by the United States Army Corps of Engineers (“USACE”) as a means of minimizing the effects of the American River Common Features 2016 Project (“ARCF 2016”), on the VELB and yellow-billed cuckoo, federally listed as threatened under the ESA. To fully implement these conservation measures a Long-term Management Plan (LTMP) has been developed and is incorporated by this reference into this Conservation Easement as fully set forth herein.

F. A Long-term Management Plan (“LTMP”) has been prepared that contains provisions specifically applicable to the Conservation Site in order to satisfy the requirements of the USFWS Biological Opinion.

A final approved copy of the LTMP, and any amendments thereto approved by the USFWS, shall be kept on file at the Sacramento Fish and Wildlife Office of the USFWS. If Grantor, or any successor or assign, requires an official copy of the LTMP, it should request a copy from the USFWS at its address for notices listed in Section 22 of this Conservation Easement.

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

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Conservation Site.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Conservation Site will be retained forever in its natural, restored, or enhanced condition as contemplated in the

LTMP, and to prevent any use of the Conservation Site that will impair or interfere with the Conservation Values of the Conservation Site. Grantor intends that this Conservation Easement will confine the use of the Conservation Site to activities that are consistent with such purposes, as set forth in the LTMP including, without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats implemented in accordance with the LTMP.

2. Grantee's Rights.

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

(c) To preserve and protect the Conservation Values of the Conservation Site.

(d) To enter the Conservation Site at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement and the LTMP, and to implement at Grantee's sole discretion the LTMP activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Conservation Site.

(e) To prevent any activity on or use of the Conservation Site that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Conservation Site that may be damaged by any act, including but not limited to flood events; failure to act; or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(f) To require that all mineral, air and water rights as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Conservation Site shall remain a part of and be put to beneficial use upon the Conservation Site, consistent with the purposes of this Conservation Easement.

(g) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Conservation Site; such rights are hereby terminated and extinguished and may not be used on or transferred to any portion of the Conservation Site, nor any other property adjacent or otherwise.

3. Third-Party Beneficiary.

Grantor and Grantee acknowledge that the agencies that will be third-party beneficiaries: USFWS and USACE (the "Third-Party Beneficiaries") are third party beneficiaries of this Conservation Easement with the right of access to the Conservation Site and the right to enforce all of its provisions and all other rights and remedies of the Grantee under this Conservation Easement.

4. Prohibited Uses.

Any activity on or use of the Conservation Site that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

- (h) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Conservation Site or otherwise interfere with the purposes of this Conservation Easement, except for the use of herbicide and weed abatement activities that are specifically targeted at noxious weeds as specifically provided in the LTMP; and
- (i) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, and except as specifically required for maintenance activities (e.g. mowing equipment) and as provided in the LTMP; and
- (j) Agricultural activity of any kind; and
- (k) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, except occasional passive recreational/educational activities (e.g. wildlife viewing) that have been coordinated and approved by the Grantor, Grantee, and Land Manager; and
- (l) Non-agricultural commercial, industrial, residential, or institutional structures or uses; and
- (m) Any legal or de facto division, subdivision or partitioning of the Conservation Site, including a request for a certificate of compliance pursuant to the California Subdivision Map Act (California Government Code Section 66499.35); and
- (n) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, billboard or sign, or any other structure or improvement of any kind; and
- (o) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials; and
- (p) Planting, introduction, or dispersion of non-native or exotic plant or animal species; and
- (q) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Conservation Site, or granting or authorizing surface entry for any of these purposes; and
- (r) Altering the surface or general topography of the Conservation Site, including but not limited to any alterations to habitat, building roads or trails, or paving or

otherwise covering any portion of the Conservation Site with concrete, asphalt or any other impervious material; and

(s) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in accordance with a plan approved in writing by the USFWS for (i) fire breaks, (ii) maintenance of existing roads, or (iii) prevention or treatment of disease; or (iv) as specifically provided in the LTMP; or (v) in order to maintain an effective wind wave buffer for flood control purposes; and

(t) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Conservation Site, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters; and

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

(v) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Conservation Site, or the use or activity in question.

5. Grantee's Duties.

(w) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at least annually, compliance monitoring inspections of the Conservation Site, consistent with the LTMP; and

(2) Prepare written reports on the results of the compliance monitoring inspections and provide these reports to USFWS, the Grantor, and the Land Manager as defined in the LTMP, on an annual basis.

6. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the

Conservation Site or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the LTMP.

7. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Conservation Site, including the right to engage in or permit or invite others to engage in all uses of the Conservation Site that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

8. Grantee's Remedies.

(a) If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Notice shall be provided according to Section 22 of this Conservation Easement.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Conservation Site; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Conservation Site to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Site.

(c) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Conservation Site, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Grantee shall notify the Grantor and USFWS within 30 days of such an occurrence.

(d) Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available

legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.*

(e) If Grantor receives a Notice of Violation with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict ("Notice of Conflict") to Grantee and the Third-Party Beneficiaries (as defined in Section 24(m)). In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon giving a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities that gave said conflicting Notices of Violation give revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in Section 8(b). The failure of Grantor to give a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

9. Costs of Enforcement.

Grantor shall bear all costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor. These costs include, but are not limited to, the following: costs of suit and attorneys' and experts' fees, and any costs for restoration necessitated by Grantee's negligence or breach of this Conservation Easement.

10. Grantee's Discretion.

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

11. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Site resulting from (a) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Site resulting from such causes; or (b) acts by Grantee or its employees.

12. Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries. These enforcement rights are in addition to, and do not limit, the rights of enforcement under the LTMP. If at any time in the future Grantor or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Conservation Site for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the Third-Party Beneficiaries has standing as an interested party in any proceeding affecting this Conservation Easement.

13. Reversion.

If the USFWS determines that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the LTMP then, pursuant to California Government Code Section 65965(d), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the USFWS.

14. Access.

This Conservation Easement does not convey a general right of access to the public.

15. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Conservation Site. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Conservation Site, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Conservation Site. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, codes, ordinances, rules, regulations, orders and requirements.

16. Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Conservation Site by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of

payment upon request. Grantor shall keep the Conservation Site free from any liens (other than a security interest that is expressly subordinate to this Conservation Easement, as provided in Section 24(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Conservation Site.

17. Hold Harmless.

(a) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation Site, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence or willful misconduct of Grantee; (2) the obligations specified in Sections 6, 15 and 16; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(b) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation Site, regardless of cause. *Provided, however,* that the indemnification in this Section 17 (b) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 17 (b) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

18. Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can be terminated or extinguished, in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

19. Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is "property appropriated to public use" as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610 of Chapter 3 of Title 7 of the California Code of Civil of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Conservation Site, if at all, only as provided in code of Civil Procedure section 1240.005. If any person seeks to acquire the Conservation Site for public use, Grantee shall provide notice to the USFWS and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with California Government Code Section 65966(j).

20. Transfer of Conservation Easement or Conservation Site.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the USFWS, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the USFWS at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable), or the laws of the United States and otherwise reasonably acceptable to the USFWS. Grantee shall require the assignee to record the assignment in the county where the Conservation Site is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 20.

(b) Conservation Site.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Conservation Site, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the LTMP, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the USFWS of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the USFWS shall have the right to prevent any subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the

terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 20.

21. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Conservation Site become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the USFWS otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Conservation Site.

22. Notices.

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

To Grantor: Sacramento Area Sewer District
10060 Goethe Road,
Sacramento, CA 95827
Attn: _____

To Grantee: ACCREDITED LAND TRUST
Street Address
City, State Zip Code
Attn: name

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

or to such other address as a party or the USFWS shall designate by written notice to Grantor, Grantee and the USFWS. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

23. Amendment.

This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and written approval of the USFWS, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Conservation Site is located, and Grantor and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the USFWS.

24. Additional Provisions.

(n) Controlling Law.

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

(o) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(p) Severability.

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

(q) Entire Agreement.

This instrument (including its exhibits and the LTMP incorporated by reference in this document) sets forth the entire agreement of Grantor, Grantee and the USFWS with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements of such parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section [23](#).

(r) No Forfeiture.

Without limiting the provisions of Section 13, nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(s) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective

personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Conservation Site.

(t) Termination of Rights and Obligations.

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

(u) Captions.

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

(v) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Conservation Site, or transported to or from or affecting the Conservation Site.

(2) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 17(a)) from and against any and all Claims (defined in Section 17(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Conservation Site at any time, except any Hazardous Materials placed, disposed or released by Grantee. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 17, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 17(b)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Conservation Site at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party

Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

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

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

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

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

(D) The right or duty to investigate and remediate any Hazardous Materials associated with the Conservation Site; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Conservation Site.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

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

all Environmental Laws.

(w) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Conservation Site. Grantor also represents and warrants that, except as specifically disclosed to and approved by the USFWS pursuant to the Conservation Site Assessment and Warranty signed by Grantor and attached as an exhibit to the Conservation Site is not subject to any other conservation easement and there are no outstanding mortgages, liens, encumbrances or other interests in the Conservation Site (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the USFWS.

(x) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Conservation Site (other than a security interest that is expressly subordinate to this Conservation Easement), or grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Conservation Site, without first obtaining the written consent of Grantee and the USFWS. Such consent may be withheld if Grantee or the USFWS determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Conservation Site. This Section 24(k) shall not limit the provisions of Section 2(d) or 4(n), nor prohibit transfer of a fee or leasehold interest in the Conservation Site that is subject to this Conservation Easement and complies with Section 20. Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to the Grantee and USFWS.

(y) Recording.

Grantee shall record this Conservation Easement in the official records of the county in which the Conservation Site is located and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(z) Funding.

Funding for the perpetual management, maintenance and monitoring of the Conservation Site is specified in and governed by the LTMP.

25. Exhibits.

The following Exhibits referenced in this Conservation Easement are attached to and incorporated by reference herein:

Exhibit A – Legal Description

Exhibit B - Map of Conservation Site

Exhibit C – Long-term Management Plan

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed as of the day and year first above written.

GRANTOR: [Notarization Required]

BY: _____

NAME: _____

TITLE: _____

DATE: _____

DRAFT

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 2020, to the, Grantee, is hereby accepted by the undersigned officer on behalf of the Grantee.

GRANTEE:

By: _____

Title: _____
Authorized Representative

Date: _____

DRAFT