

**AGREEMENT BETWEEN
[LAND TRUST NAME] AND
THE SACRAMENTO AREA FLOOD CONTROL AGENCY
REGARDING THE BEACH STONE LAKES MITIGATION AREAS**

THIS AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2020, by **[LAND TRUST NAME]**, a California non-profit public benefit corporation (“**Land Trust**”), and the SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint exercise of powers agency established pursuant to the laws of the State of California (“**SAFCA**” or “**Land Manager**”). Land Trust and SAFCA, and each of their respective successors and assigns, are sometimes hereinafter referred to collectively as “**Parties**” and individually as “**Party**.”

RECITALS

WHEREAS, SAFCA is a joint powers agency authorized under the laws of the State of California to hold title to real property, to take actions to protect life, property, watercourses, watersheds, and highways from damage from flood and storm waters, and to carry out its responsibilities in a manner that provides for the optimum protection of the natural environment, especially riparian habitat and natural stream channels suitable for native plant and wildlife habitat and public recreation; and

WHEREAS, in concert with the U.S. Army Corps of Engineers (USACE) and the California Department of Water Resources (“**State**”), SAFCA has contributed to the implementation of the American River Common Features (ARCF) 2016 and South Sacramento County Streams projects (collectively “**Projects**”)so as to reduce the risk of uncontrolled flooding that would cause substantial property damage in south Sacramento and pose a serious threat of loss of life and injury; and

WHEREAS, SAFCA has accepted responsibility for providing compensatory mitigation for the environmental impacts of the Projects; and

WHEREAS, the Land Trust has the expertise, capacity, and interest in monitoring habitat features on conservation lands; and

WHEREAS, to offset unavoidable impacts to riparian and other habitats within the footprint of the Projects, SAFCA has agreed to protect the Beach Lake (Site B-1) and Stone Lakes (Site B-2) (each a “**Conservation Area**”, collectively “**Conservation Areas**”) forever in their natural, restored, or enhanced condition prescribed in a conservation easement (“**Conservation Easement**”, collectively “**Conservation Easements**”) for each Area. Each Conservation Easement incorporates a Long-term Management Plan (“**LTMP**”) further specifying the care of each Area; and

WHEREAS, in order to facilitate the protection of the Conservation Areas, SAFCA in 2020 issued a Request for Proposals (RFP) to Hold Conservation Easements on the Beach Stone Lakes Mitigation Areas. Land Trust submitted a proposal and was

subsequently selected by SAFCA to Conservation Easements on each Area; and

WHEREAS, SAFCA Resolution 2020-XXX, authorizes the Executive Director to enter into an Agreement with the Land Trust.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. RECITALS. The recitals set forth above are hereby incorporated by this reference.
2. PURPOSE OF AGREEMENT. The purpose of this Agreement is to set forth the responsibilities of the Parties with respect to the creation, management and maintenance of the Conservation Areas and to serve as a framework for creating the implementing agreements and other documents that are needed to carry out these responsibilities. The RFP and submitted Proposal are by this reference incorporated in and made a part of this Agreement.
3. RESPONSIBILITIES OF THE PARTIES FOR THE CONSERVATION AREAS. As set forth in the LTMPs, SAFCA shall be responsible for securing the real estate rights necessary to support each Conservation Area; implementing the site specific improvements, enhancement, and management of these Areas; ensuring that these improvements achieve the performance criteria set forth therein; and establishing the long-term funding mechanisms necessary to cover the cost of Land Trust's long-term management, monitoring and administrative responsibilities pursuant to the Conservation Easements. Land Trust shall be responsible for accepting and executing the Conservation Easements, monitoring and reporting on compliance with the Conservation Easements, and carrying out such administrative tasks as may be necessary to support these monitoring and reporting efforts.
4. EASEMENTS. The real estate rights necessary to protect and support each Conservation Area are set forth in a site-specific Conservation Easement prepared by SAFCA and approved by Land Trust and third-party beneficiary agencies. Each Conservation Easement identifies the land comprising the subject Conservation Area, describes the uses of the land that will be permitted and prohibited consistent with the habitat conservation purposes, and identifies the rights and obligations of the Parties and of the Approving Agencies with respect to the Conservation Area.
5. PAYMENT.

[Payment will be by one of the following two methods, to be determined prior to execution. The inapplicable method will be deleted from the agreement prior to execution.]

5.1 Endowment. An endowment (“**Endowment**”) will be funded by SAFCA, to fund the Land Trust’s responsibilities. The amount of the Endowment will be determined pursuant to a detailed Property Analysis Record (PAR) or similar approach conducted by Land Trust for each Conservation Area and acceptable to both parties. The Endowment shall be determined to cover, in perpetuity, all Land Trust costs associated with holding the applicable Conservation Easement, including, without limitation, compliance monitoring and reporting for the Conservation Area, enforcing the provisions of the Conservation Easement, reviewing reports prepared by the Land Manager regarding the Condition of the Conservation Area, and all communications necessary to accomplish these tasks. Investment and management of the Endowment is the sole responsibility of Land Trust. SAFCA will have no other responsibility for expenses incurred by the Land Trust in the execution of its duties pursuant to the Conservation Easements.

[if an endowment is not created, substitute paragraphs 5.1-5.4]

5.1 Invoicing and Payment. Land Trust shall submit periodic invoices, at least annually but not more frequently than monthly, for the services rendered during the preceding period. Land Trust shall reference the contract number on all invoices. Land Trust shall use the format, content, and support documentation for invoices specified by SAFCA to identify the actual level of work effort, including the hours actually worked by each classification or employee name, and the actual expenditures on tasks and subtasks and/or project status with respect to any work product, milestone, or other events required by this Agreement. The detail in the monthly invoice shall inform SAFCA of both the nature and progress of work.

5.2 SAFCA shall approve or disapprove said invoice or billing within ten (10) days following receipt thereof, and shall pay, within thirty (30) days of approval, all approved invoices and billings. SAFCA reserves the right to withhold payment of disputed specific items and shall give notice to the Land Trust, pursuant to Section 7 herein, of all such disputed specific items within ten (10) days following receipt of billing or invoices. The parties shall exercise good faith and diligence in the resolution of any disputed invoiced amounts.

5.3 Land Trust shall notify SAFCA’s Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two percentages, and an assessment of the cost of the remaining work to be performed.

[Following paragraph is number 5.2 if an endowment is created]

5.4 Books and Records. Land Trust hereby agrees to maintain accurate books and records with respect to each Conservation Area. Land Trust hereby acknowledges and agrees that each Conservation Area shall have its own income and expenses statement and project-related overhead statement and Land Trust’s records shall be kept such that the expenses for each Conservation Area shall be readily identifiable. Land Trust hereby agrees to provide SAFCA copies of any invoices, reconciliations or

agreements relating to any Conservation Area within a reasonable period of time (no more than twenty (20) days) after SAFCA's written request therefor.

6. INDEMNIFICATION.

6.1 SAFCA Indemnification. SAFCA shall defend, indemnify and hold harmless Land Trust and its officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the breach of this Agreement by SAFCA.

6.2 Land Trust Indemnification. Land Trust shall defend, indemnify and hold harmless SAFCA and its officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the breach of this Agreement by Land Trust.

6.3 Survival. The indemnifications set forth in this Section 6 shall survive the expiration or termination of this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 Notice. Any notice, demand, request, consent, communication, or approval given pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, postage prepaid, addressed as follows:

SAFCA: SAFCA
Attn: Executive Director
1007 7th Street, 7th Floor
Sacramento, California 95814
Facsimile No.: (916) 874-8289

With a copy to: SAFCA
Attn: Agency Counsel
1007 7th Street, 7th Floor
Sacramento, California 95814
Facsimile No.: (916) 874-8289

Land Trust: _____

Attn: _____
Facsimile No.: _____

Either Party may change the address to which subsequent notice and/or other communications should be sent by giving written notice designating a change of address

to the other Party, which shall be effective upon receipt.

7.2 Compliance with Laws. Land Trust and SAFCA shall observe and comply with all applicable laws, regulations and ordinances.

7.3 Governing Laws and Jurisdiction. This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California and applicable Federal laws. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

7.4 Amendment and Waiver. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both Parties. Waiver by either Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

7.5 Successors. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Land Trust and SAFCA in the same manner as if they were expressly named. The obligations under this Agreement may not be assigned without the express written consent of the other Party.

7.6 Interpretation. This Agreement shall be deemed to have been prepared equally by both of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

7.7 Partial Invalidity. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

7.8 Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of SAFCA shall be personally liable to Land Trust, its successors and assigns, in the event of any default or breach by SAFCA or for any amount which may become due to Land Trust, its successors and assigns, or for any obligation of SAFCA under this Agreement. Likewise, notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of Land Trust shall be personally liable to SAFCA, its successors and assigns, in the event of any default or breach by Land Trust or for any amount which may become due to SAFCA, its successors and assigns, or for any obligation of Land Trust under this Agreement.

7.9 Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both Parties.

7.10 Authority to Execute. Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the Parties to this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder has been duly authorized.

7.11 Incorporation of Recitals and Introductory Section. The Recitals contained in this Agreement and the introductory section preceding the Recitals are hereby incorporated into this Agreement as if fully set forth herein.

7.12 Further Assurances. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

Land Trust:

SAFCA:

_____, a California non-profit mutual benefit corporation

SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint exercise of powers agency

By: _____

By: _____

Name: _____

Richard M. Johnson,
Executive Director

Title: _____

APPROVED AS TO FORM:

By: _____

Agency Counsel