The Sacramento Area Flood Control Agency (SAFCA) is requesting proposals from qualified land trusts or other organizations to manage open space land in Sacramento. SAFCA has recently acquired four parcels totaling 42.52 acres in the floodplain of Magpie Creek near Raley Boulevard. The purchase was funded by a California Department of Water Resources (DWR) Flood Corridor Program (FCP) grant. As a condition of the grant, DWR requires SAFCA to convey a conservation easement over the property to a third party. Through this request for proposals (RFP), SAFCA is seeking an accredited land trust to hold that easement.

SUBMITTAL INSTRUCTIONS

Please submit proposals to SAFCA by 5:00 p.m. on October 23, 2020. Proposals shall be in a single PDF file of under 10 megabytes submitted by email to:

Request for Proposals (RFP) Coordinator:
KC Sorgen, Senior Natural Resources Specialist
sorgenk@saccounty.net

Please cc: herediaj@saccounty.net

Questions on this RFP may be submitted by email to the RFP Coordinator until October 9, 2020 at 5:00 p.m. Please contact the RFP Coordinator by email if you wish to receive responses to questions and other updates. SAFCA’s responses to all questions will be sent by email only to responding parties and will be posted on the SAFCA website at least five days prior to the proposal due date. All communications concerning this RFP must be directed to the RFP Coordinator at the provided email addresses. Unauthorized contact regarding the RFP with other SAFCA employees or contractors may result in disqualification. Any oral communications shall be considered unofficial and nonbinding on SAFCA.

The site will be open for an optional viewing by appointment on Tuesday October 6 from 9:00-11:00 only. Please RSVP to the RFP coordinator at the email address listed above. Visiting the site is not mandatory. To practice social distancing, there will be no presentation, tour, or question and answer session, but applicants with appointments will be able to park at the site entrance and walk on the site to view it. Compliance with the Order of the Health Officer of the County of Sacramento, August 31, 2020, or succeeding orders including wearing a face covering and maintaining a distance of 6 feet from any other site visitors is required. Any questions generated during the site visit should be submitted by email as described previously.
**SCHEDULE OF EVENTS**

<table>
<thead>
<tr>
<th>EVENT</th>
<th>DATE</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 SAFCA Issues RFP</td>
<td>September 18, 2020</td>
<td></td>
</tr>
<tr>
<td>2 Optional Site Visit By Appointment</td>
<td>October 6, 2020</td>
<td>9:00 AM to 11:00 AM</td>
</tr>
<tr>
<td>3 Deadline for Questions Submitted by Email</td>
<td>October 9, 2020</td>
<td>5:00 PM</td>
</tr>
<tr>
<td>4 SAFCA Issues Responses to Questions</td>
<td>October 16, 2020</td>
<td></td>
</tr>
<tr>
<td>5 Deadline for Applicants to Submit Proposals</td>
<td>October 23, 2020</td>
<td>5:00 PM</td>
</tr>
<tr>
<td>6 Interviews, If Required</td>
<td>October 28-30, 2020</td>
<td></td>
</tr>
<tr>
<td>7 Preliminary Selection</td>
<td>November 6, 2020</td>
<td></td>
</tr>
<tr>
<td>8 SAFCA Board Considers Contract Authorization</td>
<td>November 19, 2020</td>
<td></td>
</tr>
<tr>
<td>9 Initiate Scope of Services</td>
<td>By January 1, 2021</td>
<td></td>
</tr>
</tbody>
</table>

SAFCA reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. SAFCA may also amend this RFP at any time, including through response to questions received by email.

**BACKGROUND AND GRANT PROJECT DESCRIPTION**

The US Army Corps of Engineers (USACE) prepared the American River Common Features General Reevaluation Report (ARCF GRR), which described projects that were federally authorized on December 16, 2016 in the Water Resources and Development Act and are hereinafter referred to as ARCF WRDA 2016. Among the authorized projects are improvements to the Magpie Creek Diversion Channel (MCDC). These improvements, which may include raising a portion of the MCDC levee, would reduce the risk of floodwater flowing over the top of the levee or flowing around the end of the levee toward businesses and homes in the floodplain of historic Magpie Creek downstream of the MCDC. ARCF WRDA 2016 also proposes acquiring floodplain land upstream of the improved and new levees to preclude new development.

SAFCA applied for and received grant funding for the Magpie Creek Floodplain Conservation Project to help fund the floodplain acquisition. The awarded DWR FCP grant also funded construction of fencing around the eastern portion of the site and habitat improvements. The construction and planting activities have been completed.

As a condition of the grant, SAFCA is required to convey two easements over the project site prior to the close of the grant term on December 31, 2020: the conservation easement that is the...
subject of this RFP, and a floodplain preservation easement. The floodplain preservation easement for this project is more precisely described as a flood control flowage and works easement. It will have precedence over the conservation easement and will specifically allow the construction, operation, and maintenance of flood control works such as those that are part of the ARCF WRDA 2016. A form of the conservation easement is attached in Exhibit A to this RFP. A form of the flood control flowage and works easement is attached in Exhibit B to this RFP.

SAFCA’s goal in obtaining the grant and pursuing the project has been to facilitate regional flood protection. This may entail additional fee title or easement acquisitions near the site. Once the ARCF WRDA 2016 project is constructed and the easements for conservation and floodplain preservation and flood control works are conveyed, SAFCA may choose to divest itself of the fee title for the property.

**PROPERTY DESCRIPTION**

The site is within the Sacramento city limits adjoining both sides of Raley Boulevard in the vicinity of Magpie and Don Julio Creeks, as shown in the figure above. It consists of four parcels shown in the following table and figure.
### Assessor’s Parcel Number and Acreage

<table>
<thead>
<tr>
<th>Assessor’s Parcel Number</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>West of Raley Blvd.</td>
<td>4.54</td>
</tr>
<tr>
<td>215-0250-062</td>
<td>4.54</td>
</tr>
<tr>
<td>East of Raley Blvd.</td>
<td>37.98</td>
</tr>
<tr>
<td>215-0244-009</td>
<td>5.00</td>
</tr>
<tr>
<td>215-0244-021</td>
<td>14.32</td>
</tr>
<tr>
<td>215-0271-011</td>
<td>18.66</td>
</tr>
<tr>
<td><strong>Total Acreage</strong></td>
<td><strong>42.52</strong></td>
</tr>
</tbody>
</table>

Topographic mapping of the eastern portion of the site indicates that it slopes gently from elevations reaching 53 feet above mean sea level (North American Vertical Datum of 1988 [NAVD 88]) near the eastern boundary to about 45 feet at Raley Boulevard in the west. SAFCA does not have current topographic mapping of the property west of Raley Boulevard, but it has the same sloping character and slightly lower elevation than the eastern property.

The site has signs of a remnant vernal pool and swale complex, creek channels and oxbows, and high water flow paths. The easternmost portion of the site was formerly in rice production, as evidenced by remnant berms of rice checks that meander through this area.
The site is mostly covered by annual grasslands. The site also includes a segment of Magpie Creek (~0.1 mile) and a segment of Don Julio Creek (~0.3 mile). Both creeks flow onto the property from the McClellan Park West Nature Area east of the site. Magpie Creek has been straightened and channelized on the site. Prior to construction of the MCDC levee, the historic channel of Magpie Creek flowed westerly and southwesterly away from the site. The historic creek is still known as Magpie Creek, but the upper reach of Magpie Creek is captured by the levee and flows north in the MCDC rather than into lower Magpie Creek. Don Julio Creek converges with upper Magpie Creek just west of Raley Boulevard.

Most of the site is within the 100-year floodplain, and water goes over the creek bank and flows over portions of the site and even Raley Boulevard in moderate flood events (i.e. far more frequently than in the 100-year event). East of Raley Boulevard, 1.42 acres of non-wetlands waters of the United States have been mapped in association with the two creeks and a beaver pond on Don Julio Creek at the northeastern corner of the site. In addition, 4.35 acres of wetlands, mostly vernal pools, have been mapped east of Raley Boulevard. Some of these wetlands host sensitive vernal pool invertebrates. SAFCA does not have recent wetlands mapping for the portion of the site west of Raley Boulevard, but Don Julio Creek flows out of bank during moderate events, and wetlands may occur in that parcel.

Soil samples taken from the project site by the consulting firm Kleinfelder found instances of elevated levels of metals as well as dichlorodiphenyltrichloroethane (DDT), and polychlorinated biphenyls (PCBs). These may be associated with past activities on-site and upstream, including agriculture and the former McClellan Air Force Base. Kleinfelder determined that the measured levels were compatible with trespass-recreational risk-based screening thresholds. A subsequent sample taken by ICF found an instance of metals at higher levels than measured by Kleinfelder. This sample was taken from where water may have flowed over the Magpie Creek bank or where creek dredging tailings may have been deposited.

In 2019, the eastern parcels were grazed by goats. Subsequently, an 18-acre area east of Raley Boulevard was drill-seeded with a mix of native grasses, including California brome, California barley, California melic, pine bluegrass, nodding needlegrass, and purple needlegrass. On 1.75 acres of the planting area, native forbs were added to the mix. These forbs included yarrow, gumplant, common madia, phacelia, tomcat clover, and Ithuriel’s spear. Acorns were seeded in 14 locations in steel hardware-cloth cages and willow plantings were installed in 17 locations in rigid poly mesh tubes.

Unpermitted camping has occurred on the portion of the site east of Raley Boulevard, and there has been a history of off-road vehicle use and illegal dumping on the site and the shoulders of Raley Boulevard. In 2019, SAFCA constructed 1,300 feet of tubular steel fencing along Raley Boulevard and 1,060 feet of chain-link fencing near the northern property boundary, connecting to existing fences to encircle the majority of the eastern site. The fences have gaps where they cross the creeks. The fence falls short of the property line in the northeastern corner of the site in order to avoid impacts to wetlands in this area, leaving approximately 2.6 acres of the site east of Raley Boulevard unfenced, as well as a strip along Raley Boulevard. “No Trespassing” and “Authorized Parking Only” signs are posted on fences and gates. In addition, there are private fences of varying styles around the remainder of the site perimeter. These include tubular steel
fence next to the industrial building north of the site, chain link fence with angled barbed tape along the eastern and part of the southern edge of the site, and slatted chain link fence along the western portion of the southern boundary. There is a 320-foot-long segment of the southern property boundary that is unfenced. However, continuous fences connect that segment to the remainder of the property’s perimeter fence, so it is not a likely source of entry to the site.

Three driveways are located on the east side of Raley Boulevard. Each consists of an asphalt apron contiguous with the road pavement, and a short drive and turnaround circle surfaced in crushed rock. Double gates span each driveway.

Camping has not been observed on the fenced portion of the site since the fences were built. However, some fence panels were stolen shortly after construction. They have since been replaced. The site should be considered at risk for illegal or nuisance activities associated with high visibility in an urban/rural interface.

The portion of the site west of Raley Boulevard is unfenced. Access, whether permitted or otherwise, is deterred in this area by obstacles parallel to Raley Boulevard including Don Julio Creek, topography, a roadside ditch, and concrete and cable barriers. A fence may be constructed in the future.

The Pacific Gas and Electric Company (PG&E) has a right for access from Raley Boulevard over the eastern part of the site to operate, maintain, repair, and replace high-voltage power transmission lines. The power lines run roughly north-south in a 75-foot easement near the eastern property line.

**SCOPE OF SERVICES**

The proposal should address the following tasks.

**Task 1: Accept and hold conservation easement**

Upon award, the successful applicant will enter into an agreement with SAFCA to perform the scope of services described herein. The successful applicant will be required to accept and execute a conservation easement over the conservation area, including parcels east and west of Raley Boulevard. As the easement grantee, the successful applicant will assume the right to monitor the site for compliance with the terms of the conservation easement and to enforce the easement. The easement will be in a form substantially similar to the one attached herein as Exhibit A.

Accepting the easement will entail that the applicant:

- Negotiate and enter into an agreement with SAFCA
- Review and maintain familiarity with the conservation easement and flood control flowage and works easement
- Coordinate with SAFCA to execute and record the conservation easement
- Become familiar with the site
- Monitor the easements for compliance with their terms
- Respond to violations as provided in the easements
- Annually report on easement monitoring
Other subtasks that the applicant feels are essential for accepting the easement should be identified in the proposal.

**Task 2: Ongoing easement monitoring**

The easement names DWR as a third-party beneficiary with the right to petition a court of competent jurisdiction to enforce this obligation. There is no other named third-party beneficiary. SAFCA will require at least an annual inspection and brief letter report confirming the inspection, describing site conditions observed, and indicating corrective actions. Ongoing easement monitoring may require occasional email or telephone communication with SAFCA, including those initiated by the easement holder and those initiated by SAFCA related to activities that may be constrained by the easements. Periodic communications with DWR may also be required.

**PROPOSAL CONTENTS**

All interested applicants should submit proposals pursuant to the submittal instructions at the beginning of this RFP. SAFCA will review the submitted proposals and evaluate them to determine which provides the best value and will optimize the achievement of land management objectives for the site. This analysis will be based on the degree to which the proposal clearly communicates superior team qualifications, approach, and cost.

Clarity is appreciated more than the length of the submittal; reviewers may not read the entirety of lengthy proposals.

**Transmittal Letter**

The proposal must include a transmittal letter signed by an official authorized by the organization to undertake projects and enter into contracts. The letter should include the name, title, address, email address, and phone number of the organization’s primary contact person. The primary contact person should be able to answer questions on the submittal, arrange an interview, and manage contract negotiations.

**Team Qualifications (no more than 4 pages)**

The organization must have the authority to hold conservation easements for the purposes described herein pursuant to California Civil Code Section 815 et seq. and must be accredited by the Land Trust Accreditation Commission. Include a statement in the proposal regarding compliance with these requirements. Describe whether the organization and proposal are compliant with Chapter 4.6 of Title 7 of the California Government Code (Sections 65965-65968).

Please describe the applicant organization’s experience enforcing and managing conservation easements and conservation values on grassland and wetland habitats in California’s Central Valley and the Sacramento region. Identify the project manager if different than the primary contact person. Provide a short (1 paragraph) biography of the project manager’s experience and expertise.
Identify three landowners on properties over which your organization holds conservation easements. Please provide contact information for those willing to provide a reference.

Please include a statement indicating that the organization and the identified team members have sufficient capacity to undertake the proposed tasks for the site and maintain communications with SAFCA as needed.

**Approach (no more than 4 pages)**

Please briefly describe your organization’s understanding of the project. Describe your organization’s approach to completing the identified tasks. If you hold conservation easements or manage land in the site vicinity or have other connections or organization objectives that provide special familiarity with site conditions or that will facilitate regular observation of or response to site conditions, please describe those links. Indicate whether the terms of the conservation easement in Exhibit A, as influenced by the flood control flowage and works easement in Exhibit B, are suitable for your organization’s purposes. If there are any conflicts or challenges posed by these authorities, please discuss your organization’s recommended approach to resolving them.

If there are additional tasks that your organization believes are important for project success that are not addressed in this RFP, please identify them and describe them as optional, recommended tasks. Alternatively, these may be addressed as questions pursuant to the submittal instructions in this RFP.

**Cost**

Provide a cost for completing the scope of services. Show the cost in two alternative ways: first as a lump-sum cost that includes an endowment to cover ongoing expenses in perpetuity, and secondly as an estimated annual cost if an endowment is not available. Provide Property Analysis Record (PAR) supporting documentation for this cost, identifying component costs for initially accepting the endowment and the annual costs thereafter. Identify how the annual amount and lump-sum principal amount are calculated. Describe how endowment funds will be invested and the projected annual returns to cover the annual stewardship costs of the property in perpetuity.

**Legal Issues and Potential Conflict of Interest**

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in SAFCA’s contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or California law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with SAFCA or in the employment practices of SAFCA’s contractors. Accordingly, all organizations entering into contracts with SAFCA shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
Responding organizations represented by personnel with a disability may receive accommodation regarding the means of communicating this RFP and participating in this procurement process. Responding Firms represented by personnel with a disability should contact the RFP Coordinator as provided in submittal instructions to request reasonable accommodation no later than the deadline for questions detailed in the Schedule of Events.

The proposals must list any investigations of the organization and any enforcement, settlements, or disciplinary actions taken within the past five years by any regulatory body. Any potential conflicts of interest should also be identified.

**SELECTION**

SAFCA will select the most qualified applicant that proposes to complete the requested scope of services at the best value. SAFCA may request interviews with, or supplementary information from, all or a subset of the applicants if a meeting would enable a more complete evaluation of otherwise closely-ranked submittals or if an elucidation of responses would help with the selection. The proposals will be scored using the contents of the proposal as described above and other information such as might be provided during interviews if they are held.

Scoring criteria and weighting are listed below.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Weighting</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Team Qualifications – the ability, capacity and skill of the applicant.</td>
<td>45 points</td>
<td></td>
</tr>
<tr>
<td>Approach – the degree to which the proposal and interviews reflect a clear understanding of SAFCA’s needs and a product that meets those needs.</td>
<td>45 points</td>
<td></td>
</tr>
<tr>
<td>Cost – the degree to which the proposal represents the lowest-cost means of achieving the project objectives while fully considering the ramifications of the project’s perpetual responsibilities.</td>
<td>10 points</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100 points</td>
<td></td>
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</table>

SAFCA reserves the right to reject any proposals received for any reason, to negotiate and enter an agreement with any qualified applicant, or to cancel the process. All proposals and material submitted to SAFCA will become the property of SAFCA and subject to public disclosure, and submittal of a proposal will be considered proof of consent to disclosure. SAFCA is not liable for any costs incurred in the preparation and submittal of a proposal.
SAFCA reserves the right to award all, part, or none of this work at its sole discretion.

**AGREEMENT**

The selected organization will be required to execute an agreement with SAFCA in substantially the form attached hereto as Exhibit C.
EXHIBIT A: CONSERVATION EASEMENT
CONSERVATION EASEMENT DEED
MAGPIE CREEK PROPERTY

The Sacramento Area Flood Control Agency (hereafter “SAFCA” or “Grantor”), a joint powers agency authorized under the laws of the State of California to hold title to real property, does hereby grant, convey, and dedicate to the ____________ (hereafter, the “Grantee” or “_____”) a perpetual conservation easement covering the real property situated in the County of Sacramento, State of California, and more particularly described in Exhibit "A" and identified as "Easement Area" on Exhibit "B", both attached hereto (hereafter, the “Conservation Area” or the “Property”), as follows:

**Recitals**

A. Grantor acquired fee title to the Property, in part, through grants of funding provided by the State of California (“State”), specifically, the California Department of
Water Resources ("DWR") through SAP Contract No. 4600010144. DWR awarded funds to SAFCA pursuant to Public Resources Code Section 75001, et seq., the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, specifically Public Resources Code Section 75032.5; and/or Public Resources Code Section 5096.800 et seq., the Disaster Preparedness and Flood Prevention Bond Act of 2006, specifically Public Resources Code 5096.825, to acquire real estate interests on selected properties in the Magpie Creek watershed in the County of Sacramento and to manage these same properties with activities that may include maintenance, monitoring, ecosystem restoration, and disaster preparedness. DWR determined fee title acquisition and easement conveyances would implement the purposes of SAFCA and DWR by (1) protecting floodplain areas from inappropriate or incompatible development (2) maintaining the floodplain's availability for flood management purposes and (3) providing opportunities to preserve and restore habitat.

B. DWR determined that acquisition of the Property by Grantor, allowing Grantor's long-term management and use of the floodplain of Magpie Creek as a transient floodwater storage area and corridor for floodwater overflow and conveyance from Magpie and Don Julio creeks and for wildlife habitat purposes will preserve land, protect wildlife habitat, and protect the floodplain area from inappropriate or incompatible development and maintain its availability for flood management purposes, consistent with the purposes of the Flood Protection Corridor Program described in Water Code Section 79035 et seq.

C. A grant of easement for flood control flowage and works has been recorded on the property (Sacramento County Document #________________) and this conservation easement shall be subject to its terms.

D. The contractual agreement which provides for the transfer of grant funds by DWR to SAFCA acknowledges the multiple and complementary benefits which the Property provides to the State of California (hereafter "Multiple and Complementary Benefits") for: (1) wildlife habitat protection; (2) protection of a floodplain area from potential inappropriate and incompatible development; and (3) potential role in future flood management and water management improvements.

E. Grantor and Grantee further acknowledge that the US Army Corps of Engineers (USACE) evaluated the need for floodplain and floodway improvements in the Magpie Creek watershed in the American River Common Features General Reevaluation Report (GRR) and has included certain improvements in the American River Common Features Water Resources Development Act of 2016 (ARCF WRDA 2016). Implementation of those improvements may be funded or carried out in part by the State and SAFCA as non-federal sponsors and may entail the use of the Property or changes in floodwater storage volumes, frequency or duration affecting the Property.
F. The Property possesses floodplain corridor, wildlife, scenic, open space, and recreational values of importance to Grantor, Grantee, the people of the City of Sacramento, the people of Sacramento County and the people of the State of California. The Property provides habitat for migratory and riparian birds, mammals, amphibians, reptiles, fish and plants native to the area, some of which may be endangered or threatened species.

G. Grantee is a publicly supported, tax exempt nonprofit organization and a qualified organization under Sections 501(c) (3) and 170 (h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively the “Internal Revenue Code”). Grantee’s primary purpose is the preservation, protection or enhancement of land and its natural, ecological, environmental, agricultural and wildlife features. Grantee is authorized to hold conservation easements for the purposes set forth herein as identified in California Civil Code Section 815 et seq.

NOW, THEREFORE, for good and valuable consideration provided in whole or in part by DWR, the receipt and sufficiency of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a perpetual “conservation easement” as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code Section 815 et seq.), in, over and across the Property (“the Conservation Easement”), subject to the terms and conditions hereinafter set forth describing the uses which may be made of the Property, and the Parties agree as follows:

1. Purposes. The Property possesses significant open space, ecological and habitat values, and agricultural production capacity for grazing only (collectively, the “Conservation Values”). These Conservation Values are of great importance to Grantor and Grantee, as well as to the people of the State of California. The purpose of this Conservation Easement is to retain the Property in a condition that serves to protect the Conservation Values (the “Conservation Purpose”). Grantor and Grantee agree that conversion of some or all of the Property from existing uses to wildlife habitat, whether terrestrial or aquatic, or use of the Property for public recreational purposes approved by Grantor, shall not be deemed to be inconsistent with the Conservation Purpose. Grantor and Grantee further agree that the Conservation Purpose shall be pursued in a manner that is consistent with the use of the Property for transitory storage and conveyance of floodwaters and other flood control purposes and improvements in accordance with ARCF WRDA 2016 and the Flood Control Flowage and Works Easement (the “Flood Control Uses”).

2. Grantee’s Rights and Obligations. The rights conveyed by this Conservation Easement to Grantee include, but are not limited to, the following:

2.1 Grantee may identify, monitor, research, and preserve and shall protect forever the natural, ecological, environmental, agricultural and wildlife features of the Property, to effect the Conservation Purpose. Grantee shall have the rights of access, for itself and its agents and contractors to enter upon the Property, using appurtenant easements and rights of way, if any, and may enter upon the Property at
any and all reasonable times, upon providing at least 48-hours prior notice to Grantor, to inspect, study and make scientific and engineering observations of the Property, to the extent reasonably necessary to monitor Grantor’s compliance with the terms hereof.

2.2 Grantee shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its successors in interest, and Grantor’s guests, invitees, licensees, lessees, tenants and permittees and any other legally recognized occupants of the Property including pre-existing easement holders such as utility companies and the grantee of the flood control flowage and works easement.

2.3 Grantee may enjoin any activity or use of the Property that is inconsistent with the Conservation Purpose, and may enforce the restoration of such areas or features of the Property that may be damaged by any such activity or use of the Property.

2.4 In furtherance of the Multiple and Complementary Benefits, the above-described rights shall be exercised in a way which is in harmony with, and does not materially interfere with, any of the Multiple and Complementary Benefits.

3. **Grantor’s Rights and Obligations; Prohibited Uses.**

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

3.2 Grantor shall be permitted to conduct, and to allow others to conduct, agricultural practices which shall be limited to grazing, habitat development, and passive recreation on the Property in a manner consistent with the Conservation Purpose. Future construction of a multipurpose trail on one side of Magpie Creek for the furtherance of passive recreation on the site is expressly permitted consistent with the City of Sacramento 2035 General Plan adopted March 3, 2015. Notwithstanding the foregoing, Grantor may, without obtaining the consent of the Grantee, discontinue grazing, fallow areas within the Property consistent with sound agricultural practices or convert formerly agricultural land to wildlife habitat, whether terrestrial or aquatic.

3.3 Grantor shall comply with all applicable federal, State and local laws, statutes, rules, regulations and ordinances (collectively, the “Laws”) that apply to Grantor respecting Grantor’s acquisition, ownership and operation of the Property and obtain any other permits, approvals, and licenses that Grantor is required to obtain under any Law that is applicable to Grantor respecting Grantor’s acquisition, ownership and operation of the Property.

3.4 Grantor shall not erect any building or other structure on the Property except as is consistent with ARCF WRDA 2016. Grantor and Grantee agree that the
requirements for Grantor to install and maintain fences to control public access, as provided in Subsection 6.2 below, and signs affixed to those fences, are consistent with the foregoing restrictions, as is maintenance or improvement of existing access roads and culverts on the Property.

3.5 Grantor shall not engage in any dumping, releasing or other disposal of noncompostable refuse or trash or unsightly, toxic or other hazardous material on the Property.

3.6 Grantor shall not explore for or extract minerals, hydrocarbons, soils, or other materials on or below the surface of the property, and shall not change the topography of the Property, without first obtaining Grantee’s approval; provided, that any topographical changes resulting from any permitted agricultural activities conducted on the Property, from permitted wildlife habitat enhancement activities on the Property, or from permitted or emergency flood management and flood works improvement activities shall not require further approval from Grantee. Soil or water sampling or boring for research purposes shall not require further approval from Grantee.

3.7 Grantor may conduct, and allow others to conduct, activities in furtherance of the Flood Control Uses including, without limitation, the rights and obligations conveyed in the Flood Control Flowage and Works Easement. Grantor may not conduct activities on the Property to manipulate, divert, or otherwise control or alter the natural watercourses on the Property, except in connection with any permitted channel maintenance or flood control improvements or activities conducted by or on behalf of Grantor, the City of Sacramento, the American River Flood Control District, the State of California, the federal government, or the current holder of the Flood Control Flowage and Works Easement; agricultural activities conducted on the Property by or on behalf of Grantor; or permitted wildlife habitat enhancement activities on the Property conducted by or on behalf of Grantor. Grantor may not engage in any activity on the Property that would pollute or degrade the surface or subsurface waters.

3.8 Grantor may allow the City of Sacramento to maintain, reconstruct, or improve Raley Boulevard within 60’ of the Raley Boulevard centerline and may grant an easement to do so.

3.9 Grantor shall be permitted to apply herbicides, pesticides or fungicides on the Property in connection with permitted agricultural uses, invasive plant removal and wildlife habitat enhancement activities conducted by or on behalf of Grantor on the Property in full compliance with all laws and consistent with good land management practices.

3.10 Grantor reserves all rights respecting the Property that are not expressly prohibited by this Conservation Easement and which are not inconsistent with the Conservation Purpose.
3.11 Grantor shall not subdivide the Property.

4. NOTICE AND APPROVAL

4.1 Requirement and Purpose for Notice. Grantor shall notify Grantee of Grantor's intention to undertake activities permitted under this Conservation Easement. The purpose of requiring Grantor to notify Grantee prior to undertaking such activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the Conservation Purpose. No notice shall be required for entering and traversing the site, conducting research and surveys that do not alter the topography of the site, maintaining habitat enhancements implemented by Grantor, installing and maintaining fences and signage, or conducting vegetation management or debris removal consistent with Chapter 8.28 of the Sacramento City Code.

4.2 Notice Of Intention To Undertake Actions. Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its compliance with the Conservation Purpose.

4.3 Grantee’s Approval. Where Grantee’s approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor’s written request therefore. Grantee’s approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Conservation Purpose and with the Flood Control Uses. A lack of written response by the close of the thirty (30) day period will be considered approval of the request.

5. ENFORCEMENT; REMEDIES

5.1 Notice Of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall first give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where an asserted violation has resulted in injury to the Property, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

5.2 Right To Cure. It shall not be a violation of the provisions of this Conservation Easement if Grantor cures the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, begins curing such violation within the thirty (30) day period and continues diligently to cure such violation until finally cured. If Grantor notifies Grantee within thirty (30) days of
receiving notice of a violation that the violation cannot be cured within sixty (60) days of the notice due to Grantor’s lack of adequate maintenance resources at the time, Grantee will make a reasonable effort to assist with resolution of any violation depending upon its resources at that time. Grantee will not be required to spend any of its funds, including but not limited to operating funds, grant funds, or endowment funds to cure any violation. Grantee shall not be barred from applying for reimbursement from Grantor, provided Grantor has been notified of Grantee’s plan and the estimated cost to restore the Property to the condition that existed prior to any injury and that the same has been approved. Grantor shall be required to state when it reasonably believes the violation will be cured and why maintenance resources are unavailable at that time.

5.3 Privity Of Contract. This Conservation Easement shall not be unenforceable by reason of lack of benefit to particular land or because it is not expressed in the instrument creating it as running with the land.

5.4 Injunctive Relief. An actual or threatened violation of the terms of this Conservation Easement may be prohibited or restrained, or the interest intended for protection by this Conservation Easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the Grantor or Grantee.

5.5 Damages. In addition to the remedy of injunctive relief, Grantee shall be entitled to recover money damages for any injury to the interests being protected by this Conservation Easement for violation of the terms of this Conservation Easement. In assessing such damages, there may be taken into account, in addition to the costs of restoration and other usual rules of the law of damages, the loss or damage to the Conservation Values.

5.6 Emergency Enforcement. The notice requirements of Paragraphs 2.1 and 5.1, above, and the right to cure provisions of Paragraph 5.2 above, shall not bar application for injunctive relief in the case of circumstances which require immediate action to prevent or mitigate significant damage to the Conservation Values.

5.7 Costs Of Enforcement. In any action or other proceedings at law or equity, including any action for declaratory relief, brought by either party to enforce or interpret the provisions of this Conservation Easement, the prevailing party in any such action or proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys’ and experts’ fees and costs.

5.8 Statutory Remedies. Grantor and Grantee shall have the foregoing rights and any other rights allowed by California Civil Code Section 815.7, or any successor statute thereto, as the same may be amended from time to time.
5.9 **Scope Of Relief.** Grantee’s remedies described in this Section 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law.

5.10 **Forbearance.** Enforcement of the terms of this Conservation Easement shall be at the discretion of the respective Parties. Forbearance by Grantee or Grantor of the exercise of its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor or Grantee shall not be deemed or construed to be a waiver by Grantee or Grantor of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee’s or Grantor’s rights under this Conservation Easement. No delay or omission by Grantee or Grantor in the exercise of any right or remedy upon any breach by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.

5.11 **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 Values resulting from causes beyond Grantor’s reasonable control, including without limitation, fire, flood, storm, and earth movement, and acts of trespassers that Grantor could not reasonably have anticipated and prevented, or from any prudent action undertaken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property or other properties resulting from such causes.

To the extent authorized by applicable law, in the event the terms of this Conservation Easement are violated by acts of trespassers, Grantor agrees, at Grantee’s option, to join in an appropriate action or to assign, at no cost to the Grantor, the Grantor’s right of action to Grantee for the purpose of pursuing enforcement action against the trespassing parties.

6. **PUBLIC ACCESS AND FENCE MAINTENANCE**

6.1 **Public Access.** Nothing contained in this Conservation Easement shall be deemed to be a dedication of any portion of the Conservation Area for use by the general public. This instrument does not convey any general or specific right of access to the public. Grantor retains the right to allow public access to the Property directly or by separate agreement with the Grantee or others.

6.2 **Fence Installation and Maintenance.** Grantor has built or installed fences and gates on the Property to restrict public access to and on the Property. Grantor shall maintain such fences, signs, and gates in working order.

7. **COSTS, LIABILITIES, TAXES AND ENVIRONMENTAL COMPLIANCE**

7.1 **Costs, Legal Requirements And Liabilities.** Except as set forth in this Conservation Easement or a separate agreement, Grantor retains all responsibilities
and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor remains responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use not prohibited by this Conservation Easement. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

7.2 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description (collectively “taxes”) properly levied on or assessed against the Property by competent authority, 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.

7.3 Disclosure. Grantor agrees to disclose and provide copies to Grantee of the following information, to the extent the same is within Grantor’s possession and to the extent of the actual knowledge thereof by the Grantor: reports, notices, claims, demands or orders received by Grantor in the course of acquiring the Property concerning the environmental condition of the Property.

7.4 Remediation. If, at any time, Grantor, its board members, officers, employees, agents, lessees, contractors or any other person or entity employed by or acting on its behalf causes or has caused a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment (“Hazardous Substance”), Grantor agrees to take the steps required by law to assure its containment and remediation, including any cleanup that may be required.

7.5 Environmental Liability and Indemnification.

7.5.1 Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of the Grantor’s activities on the Property. The parties agree that they do not intend, and this Conservation Easement shall not be construed, for this easement to create any obligations on the part of Grantee: (a) as an owner or operator, as those words are defined in any federal, State or local statute, regulation, ordinance, order or requirement relating to environmental conditions or hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Sections 9601, et seq.) and in the Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health and Safety Code section 25300, et seq (collectively, “Environmental Law”); (b) as a person described in 42 U.S.C. 9607(a)(3); (c) as purchaser, with any obligation to investigate or remediate any hazardous materials associated with the Property; or (d) as a person with any control over Grantor’s ability to investigate and remediate any
hazardous materials associated with the Property. For the purposes of this Conservation Easement, the term "hazardous materials" shall mean any flammable, explosive or radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in any Law.

7.5.2 Grantor’s Obligations. Grantor and Grantor’s successors in interest shall indemnify, protect and defend with counsel acceptable to Grantee, and hold harmless Grantee, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (collectively the "Grantee Indemnified Parties") from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the claimed presence or Release (as defined below) of any Hazardous Substance, affecting the air, soil, surface water or groundwater of or at the Conservation Area; (ii) any violation or alleged violation of Environmental Law affecting the Conservation Area, whether occurring prior to or during Grantor's ownership of the Conservation Area and whether caused or permitted by Grantor or any person other than Grantor; or (iii) any claim or defense by Grantor or any third party that any of the Grantee Indemnified Parties is liable as an “owner” or “operator” of the Conservation Area under any Environmental Law. The foregoing indemnity obligations shall not apply with respect to any Hazardous Substance released or deposited as a result of action by the Grantee Indemnified Parties on or about the Conservation Area. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Grantor to the Grantee Indemnified Parties pursuant to this Subsection 7.5 shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by Grantee. In considering any such request, Grantee may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. Grantee’s consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

7.5.3 Grantee’s Obligations. Grantee and Grantee’s successors in interest shall indemnify, protect and defend with counsel acceptable to Grantor, and hold harmless Grantor and its Board members, director, officers, employees, agents, lessees, and contractors as well as each of their heirs, personal representatives, successors, and assigns (collectively, the “Grantor Indemnified Parties”) from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), remedial action, compliance requirements, enforcement and clean-up
actions of any kind, interest or losses, attorneys’ fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with the release of any Hazardous Substance on or about the Conservation Area as the result of action by any of the Grantee Indemnified Parties.

7.6 Liability and Indemnification General.

7.6.1 Grantor’s Obligations. Grantor shall and hereby agrees to hold harmless, indemnify, protect, and defend the Grantee Indemnified Parties from and against all liabilities, penalties, costs, losses, orders, liens, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys’ and experts’ fees, arising from or in any way connected with: (a) 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 Area, including but not limited to any such act, omission, condition or other matter occurring in connection with the presence of the general public on the Conservation Area, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties; (b) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or any party other than one of the Grantee Indemnified Parties acting upon permission from Grantor, in any way affecting, involving or relating to the Conservation Easement Conservation Area; or (c) the breach by Grantor of any of its obligations set forth in this Conservation Easement.

7.6.2 Grantee’s Obligations. Grantee shall hold harmless, indemnify, and defend the Grantor Indemnified Parties from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys’ and experts’ fees, arising from or in any way connected with any 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 Area to the extent caused by the negligence or willful misconduct of Grantee Indemnified Parties.

7.7 Insurance. Grantor shall maintain a commercial general liability policy insuring against bodily injury and property damage on the Conservation Area in the amount of not less than five (5) million dollars ($5,000,000); provided, Grantor may self-insure to the extent reasonably approved by Grantee. The original Grantor (Sacramento Area Flood Control Agency) is pre-approved by Grantee to be self-insured. Grantee shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantee. Grantor waives all rights of subrogation against Grantee and its agents, representatives, officers, directors, contractor and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Grantor shall furnish Grantee with certificate(s) of insurance, executed by a duly authorized
representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days’ written notice to Grantee prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantee to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantee to identify a deficiency from evidence that is provided shall not be construed as a waiver of Grantor’s obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

8. NOTICES

Any notice, demand, request, consent, approval, or communication given pursuant to this Conservation Easement shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

Executive Director
Sacramento Area Flood Control Agency
1007 7th St, 7th Floor
Sacramento, CA 95814

To Grantee: _____________________
_____________________
_____________________
_____________________

or to such other address or the attention of such other officer as from time to time a listed entity may designate by written notice to the other.

9. RECORDATION

Grantor shall promptly record this Conservation Easement in the official records of the County of Sacramento, State of California. Grantee and Grantor may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

10. ASSIGNMENT AND TRANSFER

10.1 This Conservation Easement is transferable, but Grantee shall give Grantor and DWR at least thirty (60) days’ prior written notice of the transfer. Grantee may assign its rights and obligations under this Conservation Easement only to an organization or entity that is: (1) approved in writing by Grantor and DWR, and in that regard, Grantor and DWR shall not unreasonably withhold such approval and are deemed to have approved such organization if Grantor and DWR fail to give
notice of an objection in writing within thirty (60) days of receiving notice of such
assignment; and (2) a qualified organization at the time of transfer under Section
170(h) of the Internal Revenue Code of 1954, as amended (or any successor
provision then applicable), and the applicable regulations promulgated thereunder;
and (3) authorized to acquire and hold conservation easements under California Civil
Code section 815 et seq. (or any successor provision then applicable).

10.2 If Grantee ever ceases to exist, or no longer qualifies to hold this
Conservation Easement under Section 170(h) of the U.S. Internal Revenue Code (or
any successor provision then applicable), or under California Civil Code section 815
et seq. (or any successor provision then applicable), then Grantor shall petition a
court of competent jurisdiction to transfer this Conservation Easement to an
organization that meets those statutory qualification criteria.

10.3 If the interest granted under this Conservation Easement is ever deemed
by Grantor, Grantee or a court of competent jurisdiction to be merged into the fee
interest in any portion of the Conservation Area, then the fee owner of such portion of
the Conservation Area shall thereupon be obligated to grant to a qualified holder, in
accordance with the qualification requirements in Subsection 10.1 above, a
replacement grant of conservation easement in form and substance identical to this
Conservation Easement. Grantor and Grantee intend that DWR be a third party
beneficiary with respect to this obligation, and thereby DWR shall have the right to
petition a court of competent jurisdiction to enforce this obligation.

10.4 Upon the occurrence of a merger of interests and continuing until the
granting of a replacement conservation easement as provided in Subsection 10.3,
above, all terms and conditions of this Conservation Easement shall be deemed
covenants and restrictions upon the affected portion of the Conservation Area, and
shall be enforceable by DWR.

11. SUBSEQUENT TRANSFERS

Grantor agrees to incorporate the terms of this Conservation Easement by reference
in any future deed or other future legal instrument by which Grantor divests itself of
any interest in all or a portion of the Property subsequent to the date of this
Conservation Easement, including, without limitation, a leasehold interest. Grantor
further agrees to give written notice to Grantee at least thirty (60) days prior to the
date of any such transfer. The failure of Grantor to perform any act required by this
paragraph shall not impair the validity of this Conservation Easement or limit its
enforceability in any way.

12. ESTOPPEL CERTIFICATES

Upon request by Grantor, Grantee shall within twenty (20) days, execute and deliver
to Grantor any document, including an estoppel certificate, which certifies, to the best
of Grantee’s knowledge, Grantor compliance with any obligation of Grantor contained
in this Conservation Easement and otherwise evidences the status of this
Conservation Easement, as may be requested by Grantor. Such certification shall be limited to the condition of the Property as of Grantee’s most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor’s expense, within (30) days of Grantor’s written request therefor.

13. GENERAL PROVISIONS

13.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.

13.2 Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be construed in favor of the grantee to effect the Purpose of this Conservation Easement and the policy and purpose of California Civil Code Section 815 et seq., or any successor statute thereto or any amendment thereof, or any other California statute(s) relating to conservation easements substantially similar to the Conservation Easement conveyed herein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Conservation Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid. Any ambiguities or questions concerning the validity of specific provisions are to be resolved so as to give maximum effect to the Conservation Purpose.

13.3 Severability. If any portion of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

13.4 Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, except for the funding agreement between DWR and SAFCA dated August 15, 2013 by which funds were provided for Grantor’s acquisition of the Conservation Area.

13.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor’s title in any respect.

13.6 Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms “Grantor” and “Grantee,” wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above named Grantor and its personal representatives, heirs, successors, and assigns, and the above named Grantee and its personal representatives, heirs, successors, and assigns.
13.7 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 Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

13.8 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 construction and interpretation.

13.9 Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

13.10 Cooperation. Grantor and Grantee agree to work together to accomplish the protection of the Conservation Area in accordance with the provisions of this Conservation Easement.

13.11 The terms “Grantor”, “Grantee” and “DWR,” whenever used herein, and any pronouns used in place thereof, shall be held to mean and include the above-named Grantor, its successors, heirs and assigns, Grantee and its successors, heirs, and assigns, and DWR, its successors and assigns.

13.12 Effective Date. The effective date of this Conservation Easement shall be the date on which it is recorded in the Official Records of the County of Sacramento, State of California (the “Effective Date”).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the undersigned have executed this Conservation Easement as of the dates set forth beside such Party’s respective name.

GRANTOR:
Sacramento Area Flood Control Agency

Date: _________________  By: _________________
Richard M. Johnson, Executive Director

GRANTEE:

Date: _________________  By: _________________

Approved as to Form:

Jeremy D. Goldberg, Agency Counsel

Exhibit A:  Legal Description of Property with acreage
Exhibit B:  Plat of Property
RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

SACRAMENTO AREA FLOOD CONTROL AGENCY
1007 7TH STREET, 7TH FLOOR
SACRAMENTO, CA 95814
MAIL CODE: 30-001

WITH A CONFORMED COPY TO:

DEPARTMENT OF WATER RESOURCES
Division of Land and Right of Way
Real Estate Branch
1416 9th Street, Room 425
Sacramento, California 95814

NO FEE DOCUMENT
PER GOV. CODE 6103

Portion of Assessor’s Parcel Nos.:

215-0244-009
215-0244-021
215-0250-062
215-0271-011

Project: Magpie Creek Floodplain Conservation Project
County of Sacramento

THIS SPACE FOR RECORDER’S USE ONLY

GRANT DEED OF EASEMENT
FOR
FLOOD CONTROL FLOWAGE AND WORKS

This Grant of Easement for Flood Control Flowage and Works (“Easement”) is made, in gross, this ____ day of __________, 2020 by the Sacramento Area Flood Control Agency, a joint exercise of powers agency established pursuant to the laws of the State of California (“SAFCA” or “Grantor”), in favor of _____________ (“_____” or “Grantee”). Grantor and Grantee are sometimes hereinafter referred to collectively as “Parties” and individually as “Party.”

Recitals
A. The rights and responsibilities of SAFCA's member agencies, are set forth in the SAFCA Joint Exercise of Powers Agreement ("JPA Agreement").

B. Under the authority of the JPA Agreement and SAFCA's enabling legislation, SAFCA has accepted a grant from the State of California Department of Water Resources (the “DWR”) under Public Resources Code Section 75001, et seq., the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, specifically Public Resources Code Section 75032.5; and Public Resources Code Section 5096.800 et seq., the Disaster Preparedness and Flood Prevention Bond Act of 2006, specifically Public Resources Code 5096.825.

C. Grantor acquired fee title to the Property, in part, through grants of funding provided by the DWR to SAFCA to acquire fee title, conservation easement and flood easement interests on selected properties in the Magpie Creek watershed in the County of Sacramento and to carry out stewardship and management activities on these same properties, including maintenance, monitoring, ecosystem restoration, wildlife-friendly farming practices, and passive recreational activities. The DWR determined that SAFCA’s fee title acquisition coupled with the grant of this easement to the Grantee would implement the purposes of SAFCA and the DWR by (1) protecting floodplain areas from inappropriate or incompatible development, (2) maintaining the floodplain's availability for flood management purposes, and (3) providing opportunities to preserve and restore riparian habitat, which purposes are consistent with the purposes of the Flood Protection Corridor Program described in Water Code Section 79035 et seq.

D. Grantor and Grantee further acknowledge that the US Army Corps of Engineers (USACE) has been authorized to construct floodplain and floodway improvements in the Magpie Creek watershed as part of the American River Common Features project in the Water Resources Development Act of 2016 (ARCF WRDA 2016). Implementation of those improvements may be funded or carried out in part by the State of California and SAFCA as non-federal sponsors and may entail the use of the Property for facilities construction, for operation and maintenance, and for changes in floodwater storage volumes, frequency or duration.

TERMS

In consideration of the above recitals (which the Parties agree are true and correct) as well as other valuable consideration, Grantor hereby grants to Grantee a perpetual, non-exclusive easement for the uses and according to the terms described herein over, under, across, upon and through certain real property situated in the City of Sacramento, County of Sacramento, State of California (“Easement Area”), which Easement Area is described in Exhibit “A” and identified as “Easement Area” on Exhibit “B”, both attached hereto and incorporated by this reference. This Easement shall entitle Grantee to exercise the following rights, privileges, and prohibitions in the Easement Area:

1. Rights and Privileges.
a. Grantee shall have the unrestricted right to:

(1) Flow over, upon, and across, without recourse by Grantor for compensation for past, present or future damage therefrom, any and all waters which may, as the result of any present or future flood control project, from time to time inundate the Easement Area.

(2) Conduct geotechnical, survey, and environmental investigations.

(3) Ingress and egress for the purpose of exercising the above described rights and privileges.

b. Grantee may, without compensation to Grantor:

(1) Construct, reconstruct, repair, operate and maintain flood control works, including without limitation, any levees, embankments, canals, and other drainage or water control or delivery facilities, and any appurtenant structures, fences, and gates (collectively “Flood Control Works”) in conformity with State of California, U.S. Army Corps of Engineers and local standards.

(2) Clear, modify, and remove any or all natural or artificial obstructions, improvements, trees and vegetation exclusive of fences and signage.

(3) Place or deposit earth, sediment, or other material, excluding hazardous or toxic waste materials.

(4) Excavate and remove earth, sediment, or other material including that placed or deposited as above. Any earthen material removed from Don Julio Creek or Magpie Creek shall be disposed of off site.

(5) Locate or relocate public utility facilities.

(6) Plant and maintain trees, shrubs and other vegetation.

(7) Construct, reconstruct, repair, and maintain access, maintenance, and levee patrol roads.

(8) Construct and maintain wetlands and other natural habitat features.

(9) Ingress and egress for the purpose of exercising and performing all of the above-described rights and privileges.

c. The rights granted in paragraph 1.b shall be exercised only in a manner that preserves or enhances the wildlife value of the real property, in accordance with California Water Code Section 79037(b)(4).

d. Grantee shall provide Grantor with 30 days’ notice of its intent to undertake any of the
activities described and authorized above, except in emergencies. In emergency circumstances, Grantee shall make a reasonable effort to notify Grantor and [INSERT NAME OF HOLDER OF CONSERVATION EASEMENT] prior to initiating any such activities. Fax, e-mail, or phone notification, with written follow-up, will be deemed adequate.

e. Grantee shall not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor, its successors in interest, and Grantor’s guests, invitees, licensees, lessees, tenants, easement-holders and permittees and any other legally-recognized occupants of the Property. This easement agreement shall not be construed to prevent the ordinary use of the Property by Grantor and its tenants or easement-holders for habitat management activities including grazing.

2. Grantor’s Rights and Obligations

a. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the flood control purposes of this agreement.

b. Grantor shall be permitted to conduct, and to allow others to conduct, agricultural practices, habitat development and passive recreation on the Property in a manner consistent with the flood control purposes. Notwithstanding the foregoing, Grantor may, without obtaining the consent of the Grantee, fallow or discontinue grazing areas within the Property consistent with sound agricultural practices.

c. Grantor shall not erect any building or other structure, exclusive of fencing and signage, or improvements consistent with ARCF WRDA 2016, on the Property except with the prior approval of Grantee pursuant to paragraph 3(b) of this agreement.

d. Grantor reserves all rights respecting the Property that are not expressly prohibited by this Easement and which are not inconsistent with the flood control purposes of this agreement. Grantor expressly may allow the City of Sacramento to maintain, reconstruct, or improve Raley Boulevard within 50’ of the Raley Boulevard centerline and may grant an easement to do so.

3. Prohibitions.

a. No residential, commercial, or industrial building or structure shall be erected, constructed, or maintained in the Easement Area.

b. No recreational or agricultural building or structure shall be erected, constructed, or maintained in the Easement Area without prior approval of Grantee pursuant to Paragraph 4.

c. No disposal of any waste shall be allowed in the Easement Area, with the exception of the temporary disposal of ordinary trash from recreational users in small garbage containers or larger waste receptacles used during site cleanup that shall be emptied and moved off-site on a regular basis.
d. The property encumbered by this Easement shall not be subdivided.

e. No commercial signs or billboards shall be erected, constructed or maintained in the Easement Area.

4. **Right to Review Proposed Activities.** Proposed uses or activities within the Easement Area shall be submitted to Grantee for approval, to ensure that the proposed use or activity will not negatively impact the flood conveyance or flood control works values of the property. Proposals shall be submitted in writing with sufficient detail to permit Grantee to evaluate the potential impact of such uses on (1) the floodwater storage and conveyance capacity of the properties or (2) the use of the properties for flood control works. Upon receipt, Grantee shall have 30 days to review the proposed use, evaluate its hydraulic effects, and determine whether the proposed use would be detrimental to the floodwater storage and conveyance capacity of the property or the use of the property for flood control works. Grazing activities and recreational or educational activities that do not result in the construction or placement of permanent structures in the floodplain, as well as planting of non-woody native species, are exempt from this review requirement.

In the event Grantee withholds approval, it shall provide Grantor with a written summary of the rationale for its decision including supporting modeling data or other engineering information. In such cases, Grantee shall cooperate with Grantor in identifying alternatives that would achieve the habitat, recreational or agricultural purpose(s) of the proposed use or activity without adversely affecting the floodwater storage and conveyance capacity of the property or use of the property for other flood control purposes.

5. **Enforcement; Remedies**

   a. **Notice Of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall first give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where an asserted violation has resulted in injury to the Property, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

   b. **Right To Cure.** It shall not be a violation of the provisions of this Easement if Grantor cures the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, begins curing such violation within the thirty (30) day period and continues diligently to cure such violation until finally cured. Grantor shall be required to state when it reasonably believes the violation will be cured and why maintenance resources are unavailable at that time. If Grantee has notified Grantor that emergency circumstances exist, no extension of the initial 30-day period for curing such violation shall be permitted.

   c. **Acts Beyond Grantor’s Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the flood control purposes of this agreement resulting from causes beyond Grantor’s reasonable control, including without limitation, fire, flood, storm, and earth movement, and acts of trespassers that Grantor could not reasonably have anticipated or prevented, or from any prudent action undertaken
by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. **No Waiver.** Nothing herein shall be considered a waiver of the State Reclamation Board’s power under sections 8700-8723 of the California Water Code or of Title 23 of the California Code of Regulations, or of the police power of the State of California or City of Sacramento, or of the authority vested in SAFCA and the City of Sacramento by law. The exercise of the rights and privileges granted herein shall be subject to applicable Federal and State regulations, including those for the encroachment upon, and operation and maintenance of, flood control works.

7. **Claims for Compensation.** Grantor does hereby waive all claims for any and all compensation for and on account of the location, establishment, construction, reconstruction, repair, operation and maintenance of flood control works or the exercise of Grantee’s rights and privileges in the Easement Area in accordance with the provisions hereof.

8. **Costs of Enforcement.** If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Easement, each party to the action shall bear its own attorney’s fees and costs.

9. **Hold Harmless.** Each Party (“Indemnifying Party”) shall hold harmless, indemnify, and defend (with counsel approved by the Party to be defended, which approval shall not be withheld unreasonably) the other Party, its council or board members, directors, officers, employees, agents, lessees, and contractors as well as each of their heirs, personal representatives, successors, and assigns, and the State of California (collectively “Indemnified Party”) from and against all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney’s fees (collectively “Liabilities”), resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area and caused by the negligence of the Indemnifying Party, its board or council members, officers, employees, agents, lessees, contractors, or any other person or entity employed by or acting on its behalf.

10. **Recordation.** Grantor shall promptly record this Easement in the official records of the County of Sacramento, State of California, and may re-record it at any time as may be required to preserve its rights under this Easement.

11. **Amendment.** This Easement may be amended only with the express written consent of Grantor and Grantee. Any amendment to this Easement shall be recorded in the official records of the County of Sacramento, State of California.

12. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California and applicable Federal laws.

13. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
14. **Entire Agreement.** This instrument sets forth the entire agreement of Grantor and Grantee with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.

15. **Successors.** The terms of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns. The terms “SAFCA” and “Grantee,” wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named SAFCA and its successors and assigns, and the above-named Grantee and its successors and assigns.

16. **Termination of Rights and Obligations.** A Party’s rights and obligations under this Easement terminate upon transfer of the Party’s interest in the Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17. **Captions.** The captions in this Easement are provided solely for convenience of reference and are not part of this Easement and shall have no effect on its construction or interpretation.

-- The remainder of this page has been intentionally left blank --
IN WITNESS WHEREOF, the undersigned have executed this Flood Control Works Easement as of the date set forth beside such Party’s respective name.

GRANTOR:
Sacramento Area Flood Control Agency, a joint exercise of powers agency

Date: ____________________  By: ____________________

Richard M. Johnson, Executive Director

GRANTEE:

Date: ____________________  By: ____________________

Approved as to form and content:

Jeremy D. Goldberg, Agency Counsel

Approved as to form and content:

Exhibit A: Legal Description of Easement Area
Exhibit B: Plat of Easement Area
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF __________________________)
COUNTY OF __________________________)

On __________________________ before me, __________________________________________,
date   name of notary officer
personally appeared ___________________________________________________________,
name(s) of signer(s)
___________________________________________________________________________,
OR
proved to me on the basis of satisfactory evidence to be
the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

_______________________________________________
Signature of Notary

OPTIONAL SECTION:
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove
invaluable to persons relying on the document.

☐ INDIVIDUAL
☐ CORPORATE OFFICER(S)
   Title(s)
☐ PARTNER(S)
☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _________________________

SIGNER IS REPRESENTING:
Name of Person(s) or entity(ies)

OPTIONAL SECTION:

TITLE OR TYPE OF DOCUMENT: ________________________________________________
DATA REQUESTED HERE IS NOT REQUIRED BY LAW.

SIGNER(S) OTHER THAN NAMED ABOVE

CERTIFICATE OF ACCEPTANCE

TO BE INSERTED
EXHIBIT C: SAFCA AGREEMENT
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:**

___________, a California non-profit mutual benefit corporation

By:______________________________

Name:______________________________

Title:______________________________

**SAFCA:**

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

By:______________________________

Richard M. Johnson,
Executive Director

APPROVED AS TO FORM:

By:______________________________

Agency Counsel