

# East Contra Costa County In-Lieu Fee Program Enabling Instrument

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**Version: 12 June 2025**

**EAST CONTRA COSTA COUNTY**  
**IN-LIEU FEE PROGRAM ENABLING INSTRUMENT**

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## EAST CONTRA COSTA COUNTY

### IN-LIEU FEE PROGRAM ENABLING INSTRUMENT

This In-Lieu Fee Program Enabling Instrument (“**Instrument**”), dated this \_\_\_ day of \_\_\_\_\_, 2025, is made by and between the East Contra Costa County Habitat Conservancy (“**Program Sponsor**”), the Sacramento District of the U.S. Army Corps of Engineers (“**USACE**”), San Francisco District of the **USACE**, and Region IX of the U.S. Environmental Protection Agency (“**USEPA**”). The USACE and USEPA are referred to jointly as the “**Signatory Agencies.**” Program Sponsor and the Signatory Agencies are hereinafter referred to jointly as the “**Parties.**” This Instrument sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the East Contra Costa County In-Lieu Fee (“**ILF**”) Program (the “**Program**”).

#### RECITALS

- A. Program Sponsor is responsible for establishing and operating the Program.
- B. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- C. The Interagency Review Team “**IRT**” is the interagency group which reviews documentation for, and advises the District Engineer on, the establishment, use, operation, and maintenance of the Program. The IRT is composed of the Signatory Agencies and the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife, the Central Valley Regional Water Quality Control Board, the San Francisco Regional Water Quality Control Board, and the California State Water Resources Control Board. Non-signatory IRT members may participate on the IRT in an advisory capacity.
- D. Contra Costa County, the cities of Pittsburg, Brentwood, Clayton, and Oakley, the Contra Costa County Flood Control and Water Conservation District, the East Bay Regional Park District, and Program Sponsor have established the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (“**HCP/NCCP**”). The HCP/NCCP is a comprehensive conservation plan for sensitive plants and wildlife in east Contra Costa County. The HCP/NCCP and the Program jointly comprise an integrated local natural resource conservation program.
- E. The primary goal of the Program is to provide effective Compensatory Mitigation for the Functions and Services of Waters of the U.S. lost through authorized Impacts.
- F. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee projects (“**ILF Projects**”) that will meet current and expected demand for Credits in the Program area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. Part 332; (3) provide ILF Projects that meet current and expected demand for Credits; (4) achieve ecological success on a watershed-basis by siting ILF Projects using the best available decision support tools; and (5) coordinate implementation of the Program with implementation of the HCP/NCCP such that both programs can be

implemented as a consistent, cohesive, and efficient local natural resource conservation program.

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **AGREEMENT**

### **SECTION I: PURPOSE AND AUTHORITIES**

#### *A. Purpose*

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Program and to coordinate implementation of the Program with implementation of the HCP/NCCP. The Program will be used for Compensatory Mitigation for (1) unavoidable Impacts to Aquatic Resources that result from activities authorized under section 404 of the Clean Water Act and section 401 of the Clean Water Act water quality certifications; and (2) completed enforcement actions under section 404 and 401 of the Clean Water Act; and (3) unavoidable impacts to non-federal Waters of the State that result from activities authorized under the Porter-Cologne Water Quality Control Act. Implementation of the Program will be coordinated with HCP/NCCP implementation as described in **Exhibit J**.

#### *B. Authorities*

The establishment, use, operation and maintenance of the Program will be carried out in accordance with the following authorities, as applicable:

##### 1. Federal Authorities

- a. Clean Water Act (33 U.S.C. § 1251, et seq.)
- b. Rivers and Harbors Act (33 U.S.C. § 403)
- c. National Environmental Policy Act (42 U.S.C. § 4321, et seq.)
- d. Endangered Species Act (16 U.S.C. § 1531, et seq.)
- e. Fish and Wildlife Coordination Act (16 U.S.C. § 661, et seq.)
- f. National Historic Preservation Act (54 U.S.C. § 306101, et seq.)
- g. Regulatory Program of the U.S. Army Corps of Engineers (33 C.F.R. Parts 320-332)
- h. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230)
- i. Executive Order 11990 - Protection of Wetlands
- j. Executive Order 11988 - Floodplain Management
- k. Memorandum of Agreement between the U.S. Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) Guidelines (February 6, 1990), as amended

## 2. State Authorities

- a. California Environmental Quality Act (CEQA) (Public Resources Code § 21000, et seq.) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3)
- b. California State Office of Historical Preservation (Public Resources Code § 5020, et seq.) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097, et seq.) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1)
- c. Conservation of Wildlife Resources (Fish and Game Code § 1800, et seq.)
- d. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600, et seq.)
- e. Porter-Cologne Water Quality Control Act (Water Code § 13000, et seq.)

## SECTION II: DEFINITIONS

The initially-capitalized terms used and not defined elsewhere in this Instrument are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the USACE in discussion with the Program Sponsor based upon Annual Report results and USACE review of overall Program performance and compliance.
2. “Advance Credits” means any Credits of the Program that are available for sale prior to being Fulfilled in accordance with an approved Mitigation Plan.
3. “Annual Report” means the annual report provided by Sponsor pursuant to Section VII.A of this Instrument.
4. “Aquatic Resources” mean Waters of the U.S.; Waters of the State; and sensitive riparian habitats, including upland components that are supported by stream hydrology.
5. “Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances Aquatic Resource functions associated with wetlands, rivers, stream, and lakes from disturbances associated with adjacent land uses.
6. “Closure” means termination of the Program as provided in Section VIII.D.
7. “Compensatory Mitigation” means the Restoration, Establishment, or Enhancement of Aquatic Resources for the purposes of offsetting unavoidable Impacts which remain after all appropriate and practicable avoidance and minimization measures have been achieved.
8. “Compensation Planning Framework” means the document established in Section III.B and attached as **Exhibit B**.

9. "Conservation Easement" means a perpetual conservation easement, as defined by California Civil Code § 815.1, substantially in the form of **Exhibit G-1**.
10. "Covered Activities" mean activities covered by the HCP/NCCP, as described in Chapter 2 of the HCP/NCCP.
11. "Credit" is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at an ILF Project site(s). The measure of aquatic functions is based on the resources Restored, Established, or Enhanced.
12. "Credit Release" means an action by the USACE to release Credits available for Transfer pursuant to this Instrument, as set forth in Section VI: CREDIT ACCOUNTING.
13. "Endowment Account" means the account established to provide in-perpetuity funding for implementation of the Long-Term Management Plan for each ILF Project following the expiration of the HCP/NCCP. The Endowment Account, which also serves to provide in-perpetuity funding for management of the HCP/NCCP's Preserve System, was established in the East Contra Costa County HCP/NCCP Endowment Agreement attached hereto as **Exhibit C-3**.
14. "Enhance" or "Enhancement" means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s) but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in Aquatic Resource area.
15. "Establish" or "Establishment" means the manipulation of the physical, chemical, or biological characteristics present to develop an Aquatic Resource that did not previously exist at an upland site. Establishment results in a gain in Aquatic Resource area and Functions. "Creation" is also used interchangeably with Establishment.
16. "Fulfill" and "Fulfillment" mean application of Released Credits in accordance with a Credit Release schedule in an approved Mitigation Plan to satisfy the Compensatory Mitigation obligations represented by Advance Credits.
17. "Functions" mean the physical, chemical, or biological processes that occur in ecosystems.
18. "HCP/NCCP" means the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan.
19. "ILF Project" or "Project" means Compensatory Mitigation implemented by Program Sponsor, its designee, consultants or contractors, for the purpose of producing Credits for the Program in accordance with this Instrument.
20. "Impacts" mean adverse effects.
21. "Interim Management Period" means the period from the date of Mitigation Plan approval and Instrument amendment until all the Performance Standards in the approved Mitigation

Plan have been met; the final Credit Release has occurred in accordance with Section VI.C; and the Endowment Account is activated to provide funding for long-term management.

22. "Interim Management Plan" means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by Program Sponsor during the Interim Management Period subject to the terms and conditions of this Instrument. The Interim Management Plan is included as part of the Mitigation Plan.
23. "Long-term Management Period" means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF Project is to be managed, monitored, and maintained pursuant to the Long-term Management Plan. This Long-term Management Period includes the period beginning upon conclusion of the Interim Management Period and the period following expiration of the HCP/NCCP in perpetuity.
24. "Long-term Management Plan" means the document that identifies site-specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the ILF Project site. With USACE approval, an HCP/NCCP Preserve Management Plan can serve as the Long-term Management Plan for one or more ILF Project sites.
25. "Mitigation Plan" is the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each approved Mitigation Plan will be bound by the terms and conditions of the Instrument by reference. Each Mitigation Plan will include an Interim Management Plan and will either include a Long-term Management Plan or will identify the HCP/NCCP Preserve Management Plan that will serve as the Long-term Management Plan for the ILF Project site.
26. "Performance Standards" means the minimum standards set forth in a Mitigation Plan to define the successful Establishment and/or Restoration of Aquatic Resources.
27. "Preserve System" means the network of HCP/NCCP lands permanently preserved for the benefit of covered species, natural communities, biological diversity, and ecosystem function. These lands have been preserved in perpetuity with a Conservation Easement or Restrictive Covenant. In most cases, ILF Projects will be sited on lands that have already been acquired for the HCP/NCCP Preserve System.
28. "Program Account" means the account established by Program Sponsor at a financial institution that is a member of the Federal Deposit Insurance Corporation (FDIC) or any successor organization to the FDIC, and that is used by Program Sponsor for the purpose of receiving, managing, and administering funds received from credit sales to provide Compensatory Mitigation for Department of the Army permits, pursuant to this Program as provided in Exhibit C.

29. "Program Area" means the geographical boundary of the Program and the geographical Service Area for all Program Credits, as depicted in **Exhibit A**.
30. "Program Establishment Date" is the date determined pursuant to Section IV.D., when the Program is established and Transfer of Advance Credits may begin.
31. "Property Assessment" means the written ILF Project site evaluation signed by Program Sponsor, using the form attached in **Exhibit H**.
32. "Released Credits" means the Credits that have been generated by Program Sponsor's successful implementation of an ILF Project and have been authorized for Transfer by the USACE.
33. "Remedial Action" means a measure needed to remedy any failure to achieve an ILF Project's Performance Standards or any injury or adverse impact to an ILF Project site, as provided in Section V.B.4.
34. "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former Aquatic Resource. Re-establishment results in rebuilding a former Aquatic Resource and results in a gain in Aquatic Resource area, Functions and services.
35. "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded Aquatic Resource. Rehabilitation results in a gain in aquatic resource Function, but does not result in a gain in Aquatic Resource area.
36. "Restore" or "Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded Aquatic Resource.
37. "Restrictive Covenant" means a property use restriction recorded on the deed for an ILF Project site that protects Aquatic Resources on the site, substantially in the form of **Exhibit G-2** attached hereto and made a part of this Instrument.
38. "RIBITS" means the Regulatory In-lieu Fee and Bank Information Tracking System.
39. "Services" mean the benefits that human populations receive from Functions that occur in ecosystems.
40. "Service Area" means the geographic area(s) within which Impacts to Aquatic Resources that occur may be compensated through Credits from the Program. The Program Area is the Service Area for the Program.
41. "Transfer" means the use, sale, or conveyance of Credits by Program Sponsor.
42. "Waters of the State" means any surface water or groundwater, including saline waters, saline waters within the boundaries of the State of California.

43. "Waters of the U.S." mean waterbodies, including wetlands, over which there is federal jurisdiction under section 404 of the Clean Water Act.

### **SECTION III: STIPULATIONS**

#### *A. Disclaimer*

This Instrument does not in any manner affect the statutory authorities and responsibilities of the Parties.

#### *B. Exhibits*

The following Exhibits are attached to and incorporated by this reference into this Instrument:

- A. Program and Service Area
- B. Compensation Planning Framework
- C. Program Account and Credit Fee Analysis
  - 1. Program Account Terms and Conditions
  - 2. East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study, Final Report (2017)
  - 3. East Contra Costa County HCP/NCCP Endowment Agreement and First Amendment
- D. Instrument Modification Procedure
- E. Program Credits
  - 1. Program Credits Overview
  - 2. Advance Credit Analysis
  - 3. Credit Transfer Agreement
  - 4. Template Credit Ledger and Template Transaction Ledger
- F. Mitigation Plan Template
- G. Site Protection Instrument Templates
  - 1. Conservation Easement Template
  - 2. Restrictive Covenant Template
- H. Property Assessment Form
- I. Approved Mitigation Plans
  - 1. Souza II
  - 2. Upper Hess Creek Watershed
  - 3. Hess Creek Restoration Project
- J. Coordinated Implementation of Program and HCP/NCCP

## SECTION IV: PROGRAM STRUCTURE

### A. Framework

This Instrument is intentionally broad and sets the framework under which Program sponsored ILF Projects will be identified, funded, operated, maintained, and managed. The Instrument authorizes the Program to Transfer Credits to be used as Compensatory Mitigation for Department of the Army permits and associated Clean Water Act section 401 water quality certifications or as a result of completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act. As ILF Projects are identified, Program Sponsor will submit site-specific Mitigation Plans to the USACE for review and approval as amendments to the Instrument through the process outlined in **Exhibit D**, and will update the list of approved Mitigation Plans identified in **Exhibit I**.

### B. Service Area

The Program Area is the Service Area for the Program, as shown on **Exhibit A**. The Service Area is coextensive with the area covered by the HCP/NCCP.

### C. Program Account

1. Upon the Instrument being fully executed by all of the Parties, Program Sponsor must establish a Program Account. Revenues from the Transfer of Credits will be deposited in the Program Account and will be used only for the comprehensive costs associated with site selection, design, implementation, and interim management of ILF Projects, and administrative costs for Program Sponsor, as set forth in **Exhibit C**. All interest and earnings from the Program Account will also remain in the account and will be used only for such costs. The Program Account is further detailed in **Exhibit C**.
2. Complete budgets for individual ILF Projects will be approved as part of Mitigation Plans. Any deviation in excess of ten percent (10%) from the approved budget will require USACE approval before additional funds are disbursed, as described in **Exhibit F**.
3. Program Sponsor will include Program Account reports in the Program's Annual Report, in accordance with Section VII.A.4. Program Sponsor shall make available for review all books, accounts, reports, files, and other records relating to the Program Account, as set forth in **Exhibit C**.

### D. Program Establishment Date

The Program Establishment Date will occur, and Transfer of Advance Credits may begin, on the date the Instrument has been executed by all of the Parties and the Program Account has been established (the "**Program Establishment Date**"). Within 30 days of the Program Establishment Date, Program Sponsor will upload the final, signed Instrument including all of its Exhibits, to RIBITS and provide an electronic copy each member of the IRT.

### E. ILF Projects

Program Sponsor will identify potential ILF Projects consistent with the Instrument and submit a Mitigation Plan to the USACE along with a written request for an Instrument amendment, as provided in Section V.A.2. Program Sponsor will implement the ILF Projects upon approval and will report on implementation in the Annual Report, as provided in Section VII.A.

#### *F. Generation and Use of Credits*

Program Sponsor will generate Credits by implementing ILF Projects, as provided in Section V. B. Credits will be Released upon satisfaction of the Credit Release schedule described in Mitigation Plans and will be available for Transfer in accordance with all applicable requirements in permits issued under section 404 of the Clean Water Act and associated Clean Water Act section 401 water quality certifications. The USACE will determine the type and number of Credits available for each ILF Project based upon each approved Mitigation Plan, in accordance with the terms and conditions contained herein.

#### *G. Land Acquisitions*

Lands acquired to establish the HCP/NCCP Preserve System and to fulfill land acquisition commitments in the HCP/NCCP, on which a site protection instrument may already be recorded, may be used to provide sites for ILF Projects. Such land acquisitions do not pre-determine USACE approval of the lands as suitable locations for ILF Project sites. All ILF Project sites must meet the site selection criteria identified in the Compensation Planning Framework in **Exhibit B**.

### **SECTION V: ILF PROJECT APPROVAL AND OPERATION**

This Section identifies the general framework in which individual ILF Projects will be approved and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the applicable USACE standard operating procedures at the time of its approval. Program Sponsor shall provide for access to the ILF Project site by members of the USACE or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site and will provide written notice to Program Sponsor within a reasonable time prior to the inspection.

#### *A. ILF Project Approval*

##### 1. Project Site Selection

All individual ILF Projects will be located within the Program Area. Program Sponsor will evaluate potential ILF Projects based on the prioritization criteria in the Compensation Planning Framework in **Exhibit B**.

##### 2. Instrument Amendment

As ILF Projects are identified, Program Sponsor will prepare a Mitigation Plan, including a project budget, Interim Management Plan, and either a Long-term Management Plan or a copy of the HCP/NCCP Preserve Management Plan that will serve as the Long-term Management Plan for the ILF Project site, and submit a written request to the USACE to amend the Instrument. This process is described in **Exhibit D**.

##### 3. Permits

Program Sponsor will obtain all applicable permits and authorizations needed to construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such permit or authorization.

#### 4. Financial Assurances

Notwithstanding any other provision of this Instrument, Program Sponsor's financial obligation for the Program will be limited to funds in the Program Account and Endowment Account. Program Sponsor will take the following actions to ensure sufficient Program Account funds are available to meet Compensatory Mitigation obligations for Credits Transferred:

- a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed as work is accomplished to operate and monitor the individual ILF Projects.
- b. Funds outlined in approved ILF Project budgets will be earmarked and held in the Program Account to manage the individual ILF Project sites during the Interim Management Period, including contingency and Remedial Actions.
- c. Include in Mitigation Plans financial assurance for each ILF Project as needed in accordance with 33 C.F.R. 332.3(n). Each approved Mitigation Plan will have an identified schedule for the release of any needed financial assurances as the ILF Project meets its approved Performance Standards.

#### 5. ILF Projects Established on the Program Establishment Date

Concurrent with the review and approval of this Instrument, the USACE has reviewed and approved Mitigation Plans for the following ILF Projects listed in **Exhibit I**: Souza II, Upper Hess Creek Watershed, Hess Creek Restoration Project. The balance of Program Credits available for Transfer, including both Advance Credits and Released Credits generated by approved ILF Projects, is set forth in the Program's Credit Ledger, in accordance with Section VII.A.

### *B. Operation*

#### 1. Mitigation Plans

Program Sponsor shall be responsible for preparing Mitigation Plans in accordance with **Exhibit F**. Each Mitigation Plan shall outline measurable objectives, Performance Standards, and monitoring requirements. Each Mitigation Plan must include an Interim Management Plan, a Long-term Management Plan or the HCP/NCCP Preserve Management Plan that will serve as the Long-term Management Plan and must identify the entity that will be responsible for management of the ILF Project site. For most, if not all, ILF Project sites, the entity responsible for long-term management will be the East Bay Regional Park District, the California Department of Parks and Recreation, or Save Mount Diablo.

Program Sponsor shall complete pre- and post-ILF Project implementation Aquatic Resource delineations (as required by USACE) and functional or condition assessments will be completed using USACE-approved techniques. Mitigation Plans must include a survey or other document acceptable to the USACE, completed by a professional land surveyor or other qualified person or entity, defining the ILF Project site. If the proposed ILF Project site is not already protected by a Site Protection Instrument (i.e., it is not already included and protected as part of the HCP/NCCP Preserve System), the Mitigation Plan must also include a Property Assessment using the form in **Exhibit H**. Upon approval

of the Mitigation Plan by the USACE, Program Sponsor shall be responsible for implementing the plan.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit F**. Upon approval of a Mitigation Plan by the USACE, Program Sponsor or other management entity identified in the Mitigation Plan, as applicable, shall be responsible for conducting management and monitoring activities according to the Mitigation Plan until completion of the Interim Management Period.

3. Long-term Management and Monitoring

ILF Projects shall be designed, to the maximum extent practicable, to be self-sustaining once Performance Standards have been achieved. Program Sponsor shall be responsible for preparing Long-Term Management Plans, or identifying the HCP/NCCP Preserve Management Plan that will serve as the Long-term Management Plan for ILF Project sites, in accordance with **Exhibit F**. Once the Interim Management Period is completed, Program Sponsor or the identified management entity, as applicable, shall implement long-term management and monitoring of the ILF Project site(s) according to the Long-term Management Plan or HCP/NCCP Preserve Management Plan.

Program Sponsor or the identified management entity, as applicable, shall be obligated to manage and monitor each ILF Project site in perpetuity to preserve its Aquatic Resources in accordance with this Instrument, the Conservation Easement or Restrictive Covenant, and the Long-term Management Plan or HCP/NCCP Preserve Management Plan. Such activities will not be funded through the Program Account and will instead be funded through other HCP/NCCP funds and the Endowment Account. The Endowment Account also serves to provide in-perpetuity funding for management of the HCP/NCCP's Preserve System. The Program Sponsor will ensure sufficient funds are deposited into the Endowment Account to fund the Long-term Management Plan or HCP/NCCP Preserve Management Plan for all ILF Project sites.

Program Sponsor and the USACE shall meet and confer upon the request of any one of them to consider revisions to any Long-term Management Plan or HCP/NCCP Preserve Management Plan as necessary or appropriate to better preserve the habitat and conservation values on the ILF Project site(s). During the Long-term Management Period, Program Sponsor will be responsible for including information regarding long-term management in the Program's Annual Report, in accordance with Section VII.A.

1. Remedial Action Plan

- a. Prior to Program Closure, if any Party discovers any injury or adverse impacts to an ILF Project site, as Preserved, Established, Restored, or Enhanced, the Party making the discovery shall notify the other Parties within thirty (30) calendar days. The USACE may require Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The Annual Report required under Section VII.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if any Remedial Action has been completed, evaluate its effectiveness.
- b. Within sixty (60) calendar days of the date of written notice from the USACE, Program Sponsor shall develop a Remedial Action plan and submit it to each member of the USACE for written approval. The Remedial Action plan must identify and describe

proposed actions to remedy the injury or adverse impact to the ILF Project site and set forth a schedule within which Program Sponsor shall implement those actions. Program Sponsor must implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the USACE.

- c. If (A) Program Sponsor fails to develop a Remedial Action plan or to implement a Remedial Action plan approved by the USACE, in accordance with this Section, or (B) a Remedial Action plan is agreed upon and implemented, but the conditions do not satisfy the plan's objective and measurable Performance Standards by the dates specified in the plan, then the USACE may find Program Sponsor in default pursuant to Section VIII.A and take action accordingly.
- d. If it is impracticable or infeasible to complete Remedial Actions on the ILF Project site, the Program Sponsor must propose an appropriate reduction in Credits to be generated by the ILF Project or propose an alternative site or mechanism to replace any acreage or Aquatic Resource that were impacted or did not achieve the Performance Standards.
- e. If the USACE determines that the ILF Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for Release, as adjusted in accordance with this Instrument), then the USACE shall notify Program Sponsor in writing of its default pursuant to Section VIII.A and take action accordingly. Upon receipt of notification, Program Sponsor shall cease Credit Transfers immediately and is not authorized to resume Credit Transfers until notified in writing by the USACE.
- f. During the Interim Management Period, Program Sponsor's obligation to implement any Remedial Action will be limited to expending ILF Project contingency funds and any financial assurances established for that ILF Project.

## 2. Long-term Ownership and ILF Site Protection

Program Sponsor will be responsible for ensuring long-term protection of each ILF Project site through the use of either a Conservation Easement or a Restrictive Covenant, as determined by Program Sponsor. Program Sponsor will ensure that the Conservation Easement or Restrictive Covenant is in place prior to the first Credit Release, as provided in Section VI.C. The draft Conservation Easement or Restrictive Covenant, substantially in the form of **Exhibit G-1 or Exhibit G-2**, must be included in the Mitigation Plan for each proposed ILF Project and submitted to the USACE for review and approval. The site protection instrument shall include, but is not limited to, an assignment of long-term management responsibility for the ILF Project site and will, to the extent practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project. A copy of each recorded site protection instrument shall be furnished to the USACE and become part of the official Program record. If any action is taken to void or modify an ILF Project site protection instrument, Program Sponsor must notify the USACE in writing.

## **SECTION VI: CREDIT ACCOUNTING**

### *A. Advance Credits*

Upon the Program Establishment Date, Program Sponsor is permitted to Transfer the following Advance Credits:

- Permanent Wetland – 0.500 credit
- Seasonal Wetland – 1.500 credit
- Alkali Wetland – 0.500 credits
- Riparian Woodland/Scrub (WOTUS) – 1.000 credit
- Perennial Stream – 250 feet
- Intermittent Stream – 1,000 feet
- Ephemeral Stream – 500 feet
- Riparian Woodland/Scrub (non – WOTUS) – 1.000 credit
- Slough/Channel – 0.500 credit
- Pond – 0.500 credit

The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and is based on (1) the projected demand for Credits within the Program Area as outlined in the Advance Credit analysis in **Exhibit E-2**, (2) Program Sponsor's past performance for implementing Enhancement, Restoration, and/or Establishment activities within the Program Area, and (3) the projected financing necessary to begin planning and implementation of ILF Projects.

Program Sponsor will be obligated to Fulfill all Advance Credits that are Transferred. To Fulfill Advance Credits, Program Sponsor must do one of the following: (1) generate Released Credits of the same type and number as the Transferred Advance Credits; or (2) assign the obligation to Fulfill the Transferred Advance Credits to an USACE-approved third party under terms and conditions approved by the USACE (e.g., purchase of credits from a mitigation bank or in-lieu fee program).

Once Program Sponsor has Transferred all of its Advance Credits, the USACE may not approve any additional Advance Credits until the Transferred Advance Credits have been Fulfilled. Once Advance Credits are Fulfilled, an equivalent number of Advance Credits may be made available for Transfer, at the discretion of the USACE.

Program Sponsor must complete land acquisition and initial physical and biological improvements for an ILF Project that will Fulfill Advance Credits by the third full growing season after the first such Advance Credit was Transferred. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination that more time is needed to plan and implement an ILF Project or, if doing so would not be in the public interest, direct Program Sponsor to disburse funds from the Program Account to provide alternative Compensatory Mitigation to Fulfill the Compensatory Mitigation obligations associated with the Advance Credit Transfers.

#### *B. Generation of Credits*

Each approved Mitigation Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to Aquatic Resources at the site as determined by the difference between pre- and post-site conditions.

#### *C. Credit Release*

Each approved Mitigation Plan will include a Credit Release schedule referenced to Performance Standards. As milestones in an individual ILF Project's Credit Release schedule are reached (i.e.,

Restoration and/or Establishment is implemented), Advance Credits are Fulfilled, and converted to Released Credits. At a minimum, Credits will not be Released until Program Sponsor has obtained USACE approval of the Mitigation Plan, the ILF Project has achieved the applicable milestones in the Credit Release schedule, and Program Sponsor has submitted a request for Credit Release to the USACE along with documentation substantiating achievement of the criteria for Release, and Credit Releases have been approved by the USACE. If the ILF Project does not achieve the performance-based milestones, the USACE may modify the Credit Release schedule, including reducing the number of Credits.

#### *D. Balance of Credits*

The Program will have available for Transfer the number of available Advance Credits for the Program, plus any Released Credits generated by ILF Projects beyond those required to Fulfill Advance Credit Transfers.

#### *E. Fee Schedule*

The cost per unit of Credit must include the expected costs associated with development of ILF Projects in the Service Area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the Program. A description of the basis for the ILF Program Fee Schedule is included in **Exhibit C**. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by Program Sponsor on a case-by-case basis. The cost per unit of Credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of Credit does not take into account the resources necessary for long-term management, protection of the ILF Project site, and enforcement of the Conservation Easement or Restrictive Covenant, as these costs will be funded from the account used to fund the HCP/NCCP, as detailed in Exhibit C. In addition, the cost per unit of Credit must include financial assurances as necessary to ensure successful completion of ILF Projects. These fees shall be reviewed at least annually and updated as appropriate. The HCP/NCCP requires periodic fee audits where HCP/NCCP fee amounts are reviewed and updated based on actual costs of implementation, and the fee amount per unit of Credit will also be updated as appropriate.

Program Sponsor may include other costs or charges in Program fee amounts as it determines necessary or appropriate.

#### *F. Transfer of Credits*

1. All Covered Activities are eligible to use the Program as Compensatory Mitigation.
2. Credits may only be used in conjunction with an USACE permit authorization or resolution of an unauthorized activity.
3. Payments for such Credits shall be deposited in the Program Account.
4. The USACE will make decisions about the most appropriate Compensatory Mitigation on a case-by-case basis, during evaluation of the applicable permit application. This Instrument does not guarantee that the USACE will accept the use of Program Credits for a specific project, and authority for approving use of the Program for Compensatory Mitigation lies with the USACE.
5. The responsibility to provide Compensatory Mitigation remains with the permittee unless and until Credits are Transferred from the Program to meet the permittee's Compensatory

Mitigation requirements. Upon USACE approval of use of Credits from the Program, the permittee may contact Program Sponsor to secure the necessary amount and resource type of Credits, as outlined in the applicable permit conditions. Upon Transfer of Credits, the Program Sponsor shall enter the Transfer into RIBITS.

6. Program Sponsor assumes all legal responsibility for meeting Compensatory Mitigation requirements for USACE-authorized activities for which fees have been accepted and Credits have been Transferred. The transfer of liability is established by: 1) the approval of this Instrument; 2) receipt by the USACE of a Credit Transfer Agreement that is signed by Program Sponsor and the permittee and dated (see **Exhibit E-3**); and 3) the payment of fees from the permittee to Program Sponsor. A copy of each Credit Transfer Agreement will be retained in the administrative and accounting records for the Program. Other than what is described in this paragraph, no other legal responsibility for any permit will transfer to Program Sponsor, unless a separate agreement is entered into between Program Sponsor and the permittee.
7. Program Sponsor shall notify all Signatory Agencies upon any Credit Transfer in accordance with Section VII.B of this Instrument. Upon Transfer of Credits, Program Sponsor shall enter the Credit Transfer into RIBITS.
8. If an ILF Project site is damaged after the Program Establishment Date, and such damage materially impairs Aquatic Resources or habitat values on such damaged ILF Project site, Program Sponsor shall implement the provisions of Section V.B.4 or VIII.A. Failure to comply with Section V.B.4 shall constitute default, and the USACE will take action accordingly.
9. Transferred Credits are not transferable or assignable. Once a Credit is Transferred, Program Sponsor may cancel a Credit Transfer and allow a Permittee to relinquish or return such Credit, subject to an administrative fee, if the Permittee's project is not approved or implemented, or if the project is modified so as to avoid the Impacts for which such Credit was Transferred. Any such relinquishment or return will be subject to USACE approval and will be entered into RIBITS by the Program Sponsor.

## **SECTION VII: PROGRAM REPORTING**

### *A. Annual Report*

Program Sponsor shall upload an Annual Report to RIBITS and furnish a copy in editable electronic format, on or before June 30th of each year following the Program Establishment Date. Each Annual Report shall cover the preceding calendar year (the "**Reporting Period**"). The Annual Report shall address the following:

1. ILF Project Development

The Annual Report shall document the degree to which each approved ILF Project is meeting its Performance Standards. The Annual Report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If a Remedial Action plan has been fully implemented, the Annual Report shall also evaluate the effectiveness of the plan.

2. Interim Management and Long-term Management

The Annual Report shall contain an itemized accounting of the management tasks

conducted during the reporting period in accordance with the Interim Management Plan or Long-term Management Plan for each ILF Project site, including the following:

- a. The time period covered, i.e., the dates “from” and “to”;
  - b. A description of each management task conducted, the dollar amount expended, and time required;
  - c. The total dollar amount expended for management tasks conducted during the Reporting Period;
  - d. A description of the overall condition of each ILF Project site during its Interim Management Period, including color photographs documenting the status of the ILF Project site and a map documenting the location and direction of the photo points; and
  - e. Additionally, all new or renewed licenses or leases on each ILF Project site will be included.
3. Credit Ledger Report

The Annual Report will include a Credit Ledger Report (**Exhibit E-4**) for the Reporting Period, with information for each ILF Project site, showing the beginning and end balance of Released Credits, Credit Transfers, permitted impacts by resource type for each Credit Transfer, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., Credit Transfers suspended). The Credit Ledger Report form may be updated, as appropriate.

4. Program Account

The Annual Report shall include detailed summaries of Program and Endowment Accounts deposits and disbursements for each ILF Project made over the previous calendar year, as detailed in **Exhibit C-1**.

As provided in Section IV.C., revenues from the Transfer of Credits will be deposited in the Program Account and will be used only for the comprehensive costs associated with site selection, design, implementation, and interim management of ILF Projects, and administrative costs for Program Sponsor, as set forth in **Exhibit C**. Funds for long-term management and maintenance of Mitigation Projects will be held in the Program Account for management during the permit term. Management funds required after the permit term will be held in the Sponsor’s endowment account. The Sponsor will establish an accounting code for funds within the Program Account for each Mitigation Project for the long-term management and maintenance of the Mitigation Project site. Funding for each Mitigation Project will be tracked and reported separately in each ILF Annual Report. The Sponsor will disburse funds from the Program Account to the land manager for its performance of land management activities on the Mitigation Project site in accordance with the Long-Term Management Plan for the site.

5. Permit Reporting

A list of all permits for which in-lieu fee program funds were accepted. This list shall include: USACE permit number (or the state permit number if there is no corresponding USACE permit number, in cases of state programmatic general permits or other regional general permits), the Service Area in which the authorized impacts are located, the

amount of authorized impacts, the amount of required compensatory mitigation, the amount paid to the in-lieu fee program, and the date the funds were received from the permittee, as summarized in **Exhibit C-1**.

#### *B. Credit Transfer Reporting*

Upon the Transfer of Credits, Program Sponsor shall enter the Credit Transfer into RIBITS and submit to the USACE:

1. A copy of a Credit Transfer Certificate using the form in **Exhibit E-3** that identifies the permit number, a statement indicating the number and resource type of Credits that have been secured from Program Sponsor, and that legal responsibility has transferred from the permittee to Program Sponsor; and
2. An updated Credit Ledger, in editable electronic format in the form in **Exhibit E-4**.

### **SECTION VIII: OTHER PROVISIONS**

#### *A. Default*

Program Sponsor shall be in default if it fails to observe or perform any obligations or responsibilities required of it by this Instrument. In the event of default, the USACE shall issue a notice of default to Program Sponsor which includes direction and specified time period to cure the default. If Program Sponsor fails to remedy the default within the allotted time, the USACE will take appropriate action, which may include, but is not limited to, reducing available Credits, utilizing financial assurances, suspending Credit Transfers, and terminating the Instrument. This Section shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this Instrument or any remedy available under applicable State and/or Federal law. Remedies for default shall account for any temporal loss of ecosystem services within the Service Area.

#### *B. Dispute Resolution*

1. The Parties agree to work together in good faith to resolve disputes concerning this Instrument. Unless a Party has initiated legal action in connection with the particular dispute, any Party may elect ("**Electing Party**") to employ an informal dispute resolution process whereby:
  - a. The Electing Party shall notify all other Parties to this Instrument of the dispute through a Dispute Notice. The Dispute Notice shall identify the Parties against which the Electing Party is commencing the informal dispute resolution process ("**Implicated Parties**"), the position of the Electing Party (including, if applicable, the basis for contending that a violation has occurred), and the resolution the Electing Party proposes.
  - b. Each Implicated Party shall have 45 calendar days after receipt of the Dispute Notice (or such other time as the Parties may mutually agree) to respond to the Electing Party. During this time, any Party to this Instrument that received the Dispute Notice may seek clarification of the Dispute Notice.
  - c. Within 45 calendar days after each Implicated Party's response was provided or due, whichever is later, the Electing Party and the Implicated Parties shall confer and

negotiate in good faith toward a mutually satisfactory resolution or shall establish a specific process and timetable to seek such resolution.

d. The dispute resolution process may be terminated by the Electing Party or any Implicated Party upon written notice to all other Parties to this Instrument.

2. Resolution of disputes among the IRT relating to amendments will be in accordance with 33 C.F.R. § 332.8.

### *C. Modification and Amendment*

This Instrument, including its Exhibits, may be amended or modified only with the written approval of the Parties. Instrument modifications, including the addition or expansion of ILF Projects, will follow the process outlined in **Exhibit D**. The USACE may approve a streamlined review process for changes reflecting Adaptive Management of an ILF Project site, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant.

### *D. Termination/Program Closure*

Any Party to this Instrument may terminate its participation in this Instrument by giving 90 days written notice to the other Parties. The written notice shall include the reason(s) the Party proposes to terminate its participation in this Instrument. The Parties shall meet and confer during the 90-day period prior to termination to attempt to resolve the reason(s) for termination. If the Parties resolve the reason(s) for termination, the Party proposing termination shall provide a written withdrawal to the other Parties and the Parties shall amend or modify this Instrument as necessary. If the Parties fail to resolve the reason(s) for termination during the 90-day meet and confer period, the termination shall become effective 90 days after the written notice. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations, including the successful completion of ongoing ILF Projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all ILF Project sites has been transferred to the party responsible for ownership and all long-term management of the project(s). Funds remaining in the Program Account after these obligations are satisfied must continue to be used for the Restoration, Establishment, and/or Enhancement of Aquatic Resources within the Service Area. The USACE shall direct Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of Aquatic Resources for which the fees were collected.

### *E. Controlling Language*

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language within the Instrument shall be controlling. The HCP/NCCP is not incorporated by reference in this Instrument, and the language of this Instrument does not control with respect to the HCP/NCCP.

### *F. Entire Agreement*

This Instrument, and all Exhibits, appendices, schedules and agreements referred to in this Instrument, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Program, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Instrument, shall be binding or valid. No alteration or variation of this Instrument shall be valid or binding unless contained in a written amendment in accordance with Section VIII.C. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

*G. Reasonableness and Good Faith*

Except as specifically limited elsewhere in this Instrument, whenever this Instrument requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If a Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

*H. Successors and Assigns*

This Instrument and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Instrument.

*I. Partial Invalidity*

If a court of competent jurisdiction holds any term or provision of this Instrument to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Instrument would be defeated by loss of the invalid or unenforceable provision.

*J. Notices*

1. Any notice, demand, approval, request, or other communication permitted or required by this Instrument shall be in writing and deemed given when delivered personally, sent by electronic mail, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been given to all Parties.
3. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section VIII.I.

Program Sponsor:

East Contra Costa County Habitat Conservancy  
30 Muir Road  
Martinez, California 94553  
Attn: Abigail Fateman, Executive Director  
Telephone: (925) 655-2908  
Abigail.Fateman@dcd.cccounty.us

Chris Beale  
Resources Law Group, LLP  
400 Capitol Mall, Suite 2150  
Sacramento, CA 95814  
Telephone: (916) 442-4880  
CBeale@resourceslawgroup.com

Signatory Agencies:

U.S. Army Corps of Engineers  
Sacramento District  
1325 J Street, Room 1350  
Sacramento, California 95814  
Attn: Chief, Regulatory Division  
Telephone: (916) 557-5250  
SPKRegulatoryMailbox@usace.army.mil

U.S. Army Corps of Engineers  
San Francisco District  
450 Golden Gate Avenue, 4th Floor  
San Francisco, CA 94102  
Attn: Chief, Regulatory Division  
Telephone: (415) 503-6702

U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Director, Water Division  
Telephone: 415-947-8707

Non-Signatory IRT Members:

State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
Attn: Executive Officer  
Telephone: 916-341-5615

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670  
Attn: Executive Officer  
Telephone: 916-464-3291

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: Executive Officer

Telephone: 510-622-2300

*K. Counterparts*

This Instrument may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

*L. No Third-Party Beneficiaries*

This Instrument shall not create any third-party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this Instrument. The duties, obligations and responsibilities of the Parties to this Instrument with respect to third parties shall remain as otherwise provided by law in the event this Instrument had never been executed.

*M. Availability of Funds*

Implementation of this Instrument by the USACE and USEPA is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

*N. No Partnerships*

This Instrument shall not make or be deemed to make any Party to this Instrument an agent for or the partner or joint venturer of any other Party.

*O. Governing Law*

This Instrument shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and other applicable California and federal laws and regulations.

*P. Headings and Captions*

Any paragraph heading or captions contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Instrument.

*Q. Right to Refuse Transfer*

USACE approval of Transfer of Credits from the Program does not signify Program Sponsor's acceptance or confirmation of Program Sponsor's offer to Transfer. Program Sponsor reserves the right to refuse to Transfer Credits from the Program for any reason.

*R. No Contract*

USACE approval of this Instrument constitutes the regulatory approval required for the Program to be used to provide Compensatory Mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between Program Sponsor and USACE or any other agency of the state or federal government. Any dispute arising under this Instrument will not give rise to any claim for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

*S. Limitation of Liability*

Notwithstanding any other provision of this Instrument to the contrary, to the maximum extent permitted by law, Program Sponsor's maximum obligation and financial liability for the Program, including providing Compensatory Mitigation thereunder, is at all times limited to expenditure of the funds in the Program Account and the Endowment Account.

**[SIGNATURES ON NEXT PAGE]**



**Exhibit A: Program and Service Area**

**Exhibit B: Compensation Planning Framework**

**Exhibit C: Program Account and Credit Fee Analysis**

Exhibit C-1: Program Account Terms and Conditions

Exhibit C-2: East Contra Costa County HCP/NCCP Mitigation Fee Audit and Nexus Study, Final Report (2017)

Exhibit C-3: East Contra Costa County HCP/NCCP Endowment Agreement and First Amendment

**Exhibit D: Instrument Modification Procedure**

**Exhibit E: Program Credits**

Exhibit E-1: Program Credits Overview

Exhibit E-2: Advance Credit Analysis

Exhibit E-3: Credit Transfer Agreement

Exhibit E-4: Template Credit Ledger and Template Transaction Ledger

**Exhibit F: Mitigation Plan Template**

**Exhibit G: Site Protection Instrument Templates**

Exhibit G-1: Conservation Easement Template

Exhibit G-2: Restrictive Covenant Template

**Exhibit H: Property Assessment Form**

## **Exhibit I: Approved Mitigation Plans**

As individual ILF Projects are proposed and Mitigation Plans approved by formal Instrument amendments per Exhibit D, this Exhibit will be updated to identify each approved Mitigation Plan.

As part of the initial ILF Program approval, the East Contra Costa County Habitat Conservancy, the program Sponsor, is including the following three approved projects.

Exhibit I-1. Souza II

Exhibit I-2. Upper Hess Creek Watershed

Exhibit I-3. Hess Creek Restoration Project

**Exhibit J: Coordinated Implementation of Program and HCP/NCCP**