

MITIGATION CREDIT AGREEMENT TEMPLATE

INSTRUCTIONS FOR MCA PREPARERS

(To be removed prior to final execution of the Mitigation Credit Agreement)

Guidance for the Mitigation Credit Agreement (MCA) portion of the Regional Conservation Investment Strategies (RCIS) Program is located in **Error! Reference source not found.** of the RCIS Program Guidelines. The Guidelines provide information, suggestions, and instructions regarding MCAs, and shall be used in conjunction with this template. Section **Error! Reference source not found.** of the Guidelines describes the required information to be included in a Mitigation Credit Agreement. The definitions of MCA terms can be found in **Error! Reference source not found.** of the RCIS Program Guidelines.

Language that is bracketed, bold, and italicized indicates information the MCA sponsor must provide. This text must be replaced with information relevant to the MCA. Text that is within brackets, but not bold or italicized, is template language that should only be edited when necessary.

Please do not change the exhibit numbers specified in this template. If an exhibit is optional, or not required, indicate the exhibit is not applicable in the sections where they are referenced. To best facilitate and expedite review and approval by CDFW, all edits, replaced text, deletions, or proposed changes to template language within this document must be made in track changes.

[MCA FULL NAME] MITIGATION CREDIT AGREEMENT

This Mitigation Credit Agreement (MCA) is made by and between the California Department of Fish and Wildlife (CDFW) and **[If any other agencies are signing the MCA as an acknowledging agency, insert the name of each agency]** and **[Insert name of person or entity]**, as the sponsor (MCA sponsor), and **[Insert name(s) of owner(s)]** as the MCA site(s) property owner(s) (owner) of the **[Insert Full MCA name]** Mitigation Credit Agreement using the **[Insert date of the RCIS Program Guidelines in effect at the time of MCA submission]** RCIS Program Guidelines. CDFW, the MCA sponsor, and the MCA site(s) property owner(s) are referred to in this MCA collectively as the "Parties" and individually as a "Party."

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RECITALS

- A. The MCA sponsor is **[Insert the name of the person or entity that is the sponsor]**, which is an **[Insert one of the following: individual or an entity (If the MCA sponsor is an entity, specify the type of entity, and if applicable, its member agencies, and cite its enabling statute)]**.
- B. CDFW is an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. CDFW serves as the state trustee for fish and wildlife resources.
- C. Fish and Game Code Sections 1850-1860 establish a program for voluntary species and habitat conservation at a regional scale, including mechanisms for advance mitigation through an MCA.
- D. Fish and Game Code Section 1856 authorizes CDFW, in its discretion, to enter into an MCA with an individual or entity to facilitate conservation actions and habitat enhancement actions within the area of an approved Regional Conservation Investment Strategy (RCIS) and to authorize the creation, sale, and use of mitigation credits deriving from those actions.
- E. The **[Insert the name of RCIS in which the MCA is located ([Insert the short name of RCIS])]** was approved by CDFW on **[Date of CDFW approval]**. **[Provide a one or two sentence description of the geographic location and extent of the RCIS]**.
- F. The MCA sponsor seeks to design and implement **[Insert one of the following: conservation actions, habitat enhancement actions, or conservation actions and habitat enhancement actions]** that measurably advance the conservation goals and objectives of the **[Insert the short name of RCIS]** and to create mitigation credits that can be used as compensatory mitigation for impacts to **[Insert all applicable: focal species, non-focal species, and other conservation elements]**.
- G. The MCA sponsor and CDFW thus seek to enter into this Agreement to facilitate the design, implementation, protection, and management of **[Insert one of the following: conservation actions, habitat enhancement actions, or conservation actions and habitat enhancement actions]**, the creation of Mitigation Credits based on those actions, and to establish the terms and conditions under which those Mitigation Credits may be sold or used.
- H. The **[Insert the short name of RCIS]** includes the following components required to create this MCA: An outline to guide the development of Long-term Management and Monitoring Plans; a process for MCA sponsors to provide information to RCIS proponents to allow the RCIS proponents to track the progress of, and evaluate the effectiveness of the actions listed in the RCIS; and

identifies **[Insert the public or private entity]** as the entity that will be responsible for evaluating the effectiveness of those actions.¹

- I. The **[Insert name of MCA]** site **[Insert one of the following: is/is not]** already permanently protected, and **[Insert one of the following: has/has not been used, or currently in use, to fulfill compensatory mitigation requirements for permanent impacts for one or more projects]**.²
- J. The **[Insert name of MCA]** will not be utilized to fund or offset the costs of the design, construction, or mitigation of new Delta water conveyance facilities.³

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the Parties hereby agree as follows:

1 Name of the MCA

This MCA shall be known as the **[Insert the full name and, if desired, an abbreviated name for the MCA, as indicated in the Guidelines, Section Error! Reference source not found.]**.⁴

2 Supporting Regional Conservation Investment Strategy

The Regional Conservation Investment Strategy on which this MCA is based is the **[Insert name of RCIS and provide a brief description of the RCIS in which the MCA is located including its geographic extent, the number of focal species, non-focal species, and other conservation elements it addresses, as indicated in the Guidelines, Section 5.3.2]**.⁵

3 Purpose of the MCA

The purpose of this MCA is to set forth the agreement of the Parties regarding the creation, use, operation, and maintenance of the MCA. The purpose of the MCA is to design and implement **[Insert one of the following: conservation actions, habitat enhancement actions, or conservation actions and habitat enhancement actions]** that measurably advance the conservation goals and objectives of the **[Insert the short name of RCIS]**,⁶ which will contribute to connectivity and ecosystem function within the region by **[include a description of how connectivity and ecosystem function will improve]**,⁷ and to create Mitigation Credits that can be used to offset compensatory mitigation requirements to **[insert the specific focal species, non-focal species, and/or other conservation elements]**.

To create these credits the MCA will implement the following actions: **[Insert the name(s), title(s), or number(s) of the specific action(s) identified in the RCIS that this MCA will implement. For each action indicate if either:**

- a conservation action (preservation or establishment credit type) and/or
- a habitat enhancement action (establishment credit type) and
- how each action will measurably advance the conservation goals and objectives of the RCIS.

If there are multiple actions that will be implemented in this MCA, provide the information as a list.]

The MCA sponsor and property owner shall manage and maintain the **[Insert one or more of the following as applicable]** focal species, non-focal species, and/or other conservation elements in accordance with this **[insert MCA name]** MCA, **[Insert all that are applicable]** the Development Plan, Interim Management and Monitoring plan, and Long-term Management and Monitoring Plan.

[See the Guidelines, Section 5.3.3]

4 MCA Site and Service Area Information

4.1 Property Ownership Description

[Describe the property ownership of each proposed MCA site and indicate if any owner is considered a public agency or not.]⁸

[If the MCA occurs on public lands, the MCA sponsor shall submit, with the draft MCA package, a letter or document signed by the public agency landowner indicating its approval to include those lands in the MCA. Include the following statement: The MCA occurs on publicly owned land; see the attached letter that indicates **[Enter the name of the public agency landowner]** has approved the inclusion of their land in this MCA and which allows CDFW and the conservation easement grantee or long-term durability agreement entity (as applicable) to enforce all terms and conditions of the MCA on its lands.] **[See Guidelines, Section 5.2.4]**

[If the MCA sponsor and the property owner are the same, include the following statement: For this MCA, the MCA sponsor and property owner are the same entity. Throughout the document, the roles and responsibilities of the MCA sponsor and the property owner are referenced separately to highlight their different capacities.]

4.2 Contact Information

The name and contact information for each of the following: MCA sponsor, property owner, land manager, conservation easement grantee or long-term durability agreement entity, endowment holder (if applicable/optional), and any contractors or consultants (if applicable/optional), as indicated in the Guidelines, Section **Error!**

Reference source not found., are included in Exhibit A which is attached to this MCA and incorporated herein by this reference.⁹

4.3 Qualifications

[Describe the qualifications of the following, separately as applicable, as indicated in the Guidelines, Section 5.3.4.3.¹⁰ For each entity proposed as the land manager or conservation easement grantee, indicate their status under CDFW's due diligence process (i.e., approved, initiated, or has not yet initiated due diligence review). The sponsor and property owner are not subject to CDFW's due diligence review unless they are also designated as the land manager or conservation easement grantee as allowed. Please see [CDFW's Endowments and Mitigation Land Management web page](#) for more information. Due diligence must be completed prior to MCA establishment.

When describing the endowment holder (if applicable), indicate if they meet the criteria in Government Code Section 65965-65968 and if they have provided a self-certification letter to CDFW that indicates they specifically meet the requirements of Government Code Section 65968, subdivision (e)(1-5)).

- A. Land manager**
- B. Conservation easement grantee (if applicable)**
- C. Endowment holder (if applicable, include status of self-certification letter)**
- D. Any contractors or consultants (if applicable)]**

4.4 Location Information

[Describe the MCA location. Provide separately a KMZ file of the location.] Maps of the general vicinity and of the site are included in Exhibit B which is attached to this MCA and incorporated herein by this reference. Photographs are included in Exhibit C, which is attached to this MCA and incorporated herein by this reference. **[See Guidelines, Section Error! Reference source not found..]¹¹**

4.5 Service Area

[Describe and map the proposed service area for each MCA site, including credit type and an ecologically based justification for how the service area was determined; see Guidelines, Section 5.3.4.5.]¹²

A map of each service area is included in Exhibit D, which is attached to this MCA and incorporated herein by this reference.

[Provide separately a KMZ file of each service area. If an MCA and established bank(s) have service areas that overlap, describe the following: the MCA must identify the established bank(s) approved by CDFW that have comparable credit types. The MCA shall explain how available mitigation credits at those established banks are comparable or different. If those available mitigation credits from the

established bank(s) will not be purchased or used, the MCA shall outline why they will not be purchased or used.]

5 MCA Site Declarations and Review

5.1 Land Use Consistency Declaration

The MCA site **[Insert one of the following: is/is not]** currently being used to fulfill existing compensatory mitigation requirements, **[Insert one of the following: is/is not]** designated or dedicated for park or open space use, and **[Insert one of the following: is/is not]** designated for purposes that may be inconsistent with habitat preservation.¹³ **[See Guidelines, Section Error! Reference source not found.]**

[If an MCA site is located within the boundary of an existing Natural Community Conservation Plan, include the following statement: The creation of MCA credits has been approved in writing by the implementing entity of the existing Natural Community Conservation Plan within which the MCA is located. This written approval is attached as Exhibit E and incorporated herein by this reference.]

5.2 Public Funding

No public funding or grants were received for planning, acquisition, restoration, or other purposes related to the MCA that conflict with the creation of this MCA.

[Describe any public funding or grants received for planning, acquisition, restoration, or other purposes related to the MCA to ensure that they do not preclude, diminish, or interfere with the funding or purpose of the grant, as indicated in the Guidelines, Section 5.3.5.2.]¹⁴

5.3 MCA Site Inspection by CDFW

[See Guidelines, Section Error! Reference source not found.] [Include the following statement: With proper notice, the MCA Sponsor and Land Manager shall allow representatives of CDFW to inspect the MCA site to evaluate the actions being implemented for credits as described in Section 3: Purpose of the MCA, throughout the life of the MCA, and during long-term management to ensure the habitat is maintained in perpetuity.] The MCA will be inspected by CDFW prior to MCA approval.

5.4 Tribal Resources

[See Guidelines, Section Error! Reference source not found.] [A Tribal Resources Summary that describes the results of the cultural resources records search conducted for each MCA site is attached as Exhibit F,¹⁵ and incorporated herein by this reference.] [If the MCA sponsor chooses to conduct field surveys or collects additional information regarding cultural resources on site, any information that is

available for the public, should be included in the Tribal Resources Summary exhibit.]

5.5 Approvals

[See Guidelines, Section 5.3.5.5] [List all known permits, authorizations, and other approvals necessary or appropriate to survey, develop, construct, operate, or maintain the MCA, including the name and contact of each agency requiring the permit, permit numbers or other preliminary identifiers, agency contact and their status at the time the draft MCA package is submitted] Once obtained, copies of all permits, authorizations, and other approvals shall be provided to CDFW.

5.6 Compliance with the California Environmental Quality Act

[See Guidelines, Section 5.3.5.6] CDFW's approval of this MCA is considered a discretionary action subject to CEQA (See generally Pub. Resources Code, sections 21067 and 21069).

[If a CEQA document is used or proposed include the following:

The lead agency for this project is **[Insert the name of the Lead Agency]**. The lead agency's prior environmental review of the Project is set forth in the **[Insert the name of Negative Declaration, Mitigated Negative Declaration and Initial Study/Name of EIR, (SCH No.: 0000000000)]** dated **[Insert date of Negative Declaration/Mitigated Negative Declaration/EIR]** that the **[Insert name of Lead Agency]** **[Insert one of the following: adopted (for an ND/MND)/certified (for an EIR)]** for **[Insert the name of the Project] (Project) on [Insert date adopted/certified]**. At the time the lead agency **[Insert one of the following: adopted/certified]** the **[Insert one of the following: Negative Declaration/Mitigated Negative Declaration/EIR]** and approved the Project it also adopted various mitigation measures for the **[Insert one of the following: habitat enhancement action and/or conservation action]** as conditions of Project approval].

[If a CEQA exemption is proposed include the following:

CDFW determined that the Project and issuance of this MCA constitutes an exemption: **[Insert one of the following: Categorical exemption or Statutory exemption [State type and section number/Statutory exemption state code number]. [Include a written justification for why the project is exempt based on the appropriate categorical or statutory exemption].**

[This MCA, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's [Insert one of the following: Negative Declaration/Mitigated Negative Declaration/EIR] for the Project and the environmental effects related to approval of this MCA (California Public Resources Code, sections 21000, et seq).] Based on the CEQA findings, CDFW determines that approval of this MCA will not result in any

previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. **[Include only if ND, MND or EIR:** Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the approval of this MCA, will avoid, or reduce, to below a level of significance, any such potential effects.] CDFW consequently finds that approval of this MCA will not result in any significant, adverse impacts on the environment.

6 MCA Site Development, Management, and Operations

6.1 Natural Resources Evaluation

[See Guidelines, Section Error! Reference source not found.] A current natural resources evaluation is attached as Exhibit G,¹⁶ and incorporated herein by this reference for each MCA site. The natural resources evaluation outlines the requirements included in the Guidelines.

6.2 Development Plan

[See Guidelines, Section 5.3.6.2] [If a development plan is needed, include: A Development Plan is attached as Exhibit H, and incorporated herein by this reference.] **[If a Development Plan is not needed, include:** This MCA does not propose restoration or other development of the MCA site; therefore, a development plan is not included.] **[If a combined Development and Interim Management and Monitoring Plan is submitted, include:** The attached Exhibit H is a combined Development and Interim Management and Monitoring Plan.]¹⁷

6.3 Interim Management and Monitoring

[See Guidelines, Section Error! Reference source not found.] An Interim Management and Monitoring Plan is attached as Exhibit I and incorporated herein by this reference. The MCA sponsor shall be responsible for conducting management, monitoring, and maintenance activities according to the Interim Management and Monitoring Plan until the end of the interim management period.¹⁸ **[If a combined Development and Interim Management and Monitoring Plan is submitted, change reference above to Exhibit H.]**

6.4 Long-term Management and Monitoring

[See Guidelines, Section Error! Reference source not found.] A Long-term Management and Monitoring Plan, consistent with any outline included in the RCIS,¹⁹ and applicable real estate instrument are attached as Exhibit J and incorporated herein by this reference.

The property owner shall be obligated to manage, monitor, and maintain the MCA site(s) in perpetuity, or until the end of the durability agreement term (depending on which real estate instrument is prepared for the MCA), to preserve its habitat and conservation values in accordance with this MCA, the applicable real estate instrument, and the Long-term Management and Monitoring Plan. Such activities will be funded by an endowment or another comparable mechanism approved by CDFW (See Guidelines, Section 5.3.9.2). During the long-term management period, the property owner shall be responsible for submitting annual reports to CDFW, in accordance with Section 11.²⁰

6.5 Remedial Action Plan

[See Guidelines, Section 5.3.6.5]

- A. Prior to MCA closure, if any Party discovers any failure to achieve the performance standards or any injury or adverse impact to the MCA site on either preserved or established habitat, the Party making the discovery shall notify the other Parties within five (5) business days of such discovery. After the Parties are notified CDFW shall follow the enforcement provisions described under Section 13.1. Unless CDFW determines that such damage is the result of extraordinary circumstances as described under Section 13.2 and no Remedial Action Plan is needed, CDFW shall require the MCA sponsor to develop and implement a remedial action plan to correct such condition, as described below. The annual report required under Section 11.2 shall identify and describe any remedial action proposed, approved, or performed and, if the remedial action has been completed, evaluate its effectiveness.
- B. After MCA closure, if any Party discovers any injury or adverse impact to the MCA site as preserved or established, the Party making the discovery shall notify the other Parties within five (5) business days of such discovery. After the Parties are notified CDFW shall follow the enforcement provisions described under Section 13.1. Unless CDFW determines that such damage is the result of extraordinary circumstances as described under Section 13.2, CDFW shall require the Property Owner to develop and implement a remedial action plan to correct such condition, as described below. The annual report required under Section 11.2 shall identify and describe any remedial action proposed, approved, or performed and, if the remedial action has been completed, evaluate its effectiveness.
- C. Within 30 calendar days of the date of written notice from CDFW, or earlier if CDFW declares that emergency action is necessary, the MCA sponsor or owner (as applicable) shall develop a remedial action plan and submit it to CDFW for written approval. The remedial action plan must identify and describe proposed actions to achieve the performance standards or remedy injury or adverse impact to the MCA site and set forth a schedule within which the MCA sponsor

or owner will implement those actions. The MCA sponsor or owner shall, at their cost, implement the necessary and appropriate remedial action in accordance with the remedial action plan approved by CDFW.

CDFW shall find the MCA sponsor or owner in default pursuant to Section 13.1 and take action accordingly, if:

- i. the MCA sponsor or owner (as applicable) fails to develop a remedial action plan and submit it to CDFW or to implement remedial action identified by CDFW, in accordance with this section, or
 - ii. 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.
- D. If CDFW determines there is damage to the MCA site as a result of extraordinary circumstances, the provisions of Section 13.2 shall apply.

6.6 MCA Site Closure

[See Guidelines, Section 5.3.6.6] Procedures for closing an MCA site are as follows:²¹

- A. Upon MCA closure, no further credit sales or returns shall occur, but use of conservation action credits may occur.
- B. MCA closure shall be deemed effective when CDFW provides written confirmation that all of the following have occurred:
 - i. All performance-based milestones and performance standards have been met and any remedial action required under Section 6.5 have been completed for released credits as evidenced by:
 - a. Submission of all required annual reports in accordance with Section 11.
 - b. The completion of all remedial actions, if any, in accordance with the applicable remedial action plan(s).
 - c. An on-site inspection by CDFW.
 - ii. Either: (1) the last authorized credit has been sold; or (2) the MCA sponsor requests MCA closure by written notice to CDFW and CDFW provides written approval of the closure.
 - iii. All financial responsibilities of the MCA sponsor have been met, including full funding of the endowment amount for no less than three years, if applicable, and full payment of the CDFW implementation fee.

7 MCA Site Evaluation

7.1 Phase I Environmental Site Assessment

[See Guidelines, Section Error! Reference source not found.] A Phase I Environmental Site Assessment dated no more than six months prior to submittal is attached as Exhibit K and incorporated herein by this reference.²²

7.2 Legal Description and Plat Map

[See Guidelines, Section Error! Reference source not found.] Legal description, and plat maps are attached as Exhibit L, and incorporated herein by this reference.

7.3 Property Assessment and Warranty

[See Guidelines, Section Error! Reference source not found.] A property assessment and warranty, including a Preliminary Title Report dated no more than one year prior to submittal, an explanation of all recorded and unrecorded encumbrances affecting the Property on title, and a Boundary Improvements and Encumbrances (BIE) Map, is attached as Exhibit M, and incorporated herein by this reference.²³

7.4 Real Estate Instrument

[See Guidelines, Section Error! Reference source not found.] [Insert one of the following: A Conservation Easement²⁴ (for a conservation action) or [Insert the name of long-term durability agreement or other real estate instrument approved by CDFW](for a habitat enhancement action)] is attached as Exhibit N,²⁵ and incorporated herein by this reference.

[If the MCA site includes habitat enhancement actions that will be protected by a real estate instrument other than a conservation easement, explain how that instrument will function and how it will adequately protect the habitat enhancement actions and ensures the long-term durability of those actions.]

7.5 Title Insurance

[See Guidelines, Section 5.3.7.5] [If the MCA is implementing a conservation action, include the following: Proof of title insurance shall be provided upon recordation of the Conservation Easement and prior to MCA establishment, attached as Exhibit O, and incorporated herein by this reference.**]** **[If it is determined that title insurance is NOT required, include the following:** Title insurance is not required, because **state reason that title insurance is not needed.**]

8 MCA Establishment

[See Guidelines, Section Error! Reference source not found.] The MCA will be established, and the sale or use of credits may begin after CDFW confirms that all of the following actions have occurred:

A. The MCA has been approved by all of the Parties;

- B. One of the following real estate instruments are in place, as applicable:
 - i. A Conservation Easement that has been (1) executed by the Grantor; (2) accepted by a Grantee that has been approved by CDFW; and (3) recorded in the Official Records of the county in which the MCA is located;
 - ii. A long-term durability agreement approved by CDFW that has been properly processed;
- C. The MCA sponsor has complied with its obligation to furnish all necessary financial securities in accordance with Section 9;
- D. Any subordination agreement(s), required by CDFW to prioritize the Conservation Easement or long-term durability agreement (as applicable) over other encumbrances, has been executed and recorded;
- E. A copy of the title insurance policy has been provided to CDFW upon recordation of the required real estate instrument according to Section 7.4, if required;
- F. Sufficient long-term management funding is in place to cover any credits released upon establishment. For endowments, the funding shall be in accordance with Section 9.2.1 below;
- G. All reporting requirements necessary since MCA approval have been met according to Section 11 below.
- H. All applicable entities designated as the land manager or conservation easement grantee have been approved under CDFW's due diligence review; and
- I. All endowment holders (as applicable) have submitted their self-certification letters indicating they meet the requirements of Government Code Section 65968, subdivision (e)(1-5).

9 Financial Securities and Funding

9.1 Securities

[See Guidelines, Section 5.3.9.1²⁶] [List all types of securities that will be needed (e.g., construction, performance, interim management, and compliance), describe which securities are not needed and why, what time period each security will cover (e.g., construction phase, interim management phase), and associated tasks to accomplish performance-based milestones, and/or performance standards. State whether they will be in the form of an irrevocable standby letter of credit with CDFW as the beneficiary (to be held by CDFW), or cash, and their estimated values.] A

Securities Analysis is attached as Exhibit P and is incorporated herein by this reference.

The MCA sponsor is responsible for providing security for the performance and completion of MCA site construction, management, monitoring, and remedial action in accordance with this MCA, as set forth in this Section.

The amount of each security shall be reviewed and approved by CDFW, and it shall be an irrevocable standby letter of credit or cash. The MCA sponsor shall ensure the security shall remain available in the full amount until released by CDFW.

9.1.1 Construction Securities

[If credits are to be released prior to the completion of all construction related activities, include the following:

The MCA is releasing credits prior to completing all construction related activities described in the Development Plan.]

The MCA sponsor shall furnish a Construction Security based on the total cost of construction yet to be completed as specified in Exhibit P.

[If credits will not be released prior to the completion of all construction related activities include the following:

The MCA sponsor is not seeking credits to be released prior to completion of all construction related activities, and therefore, does not require a Construction Security.

For CDFW to release the Construction Security or to determine that construction is completed, as-built drawings of the MCA site, with accurate maps of the constructed habitats, must be submitted to CDFW no later than 90 calendar days following the completion of all construction activities. The as-built drawings shall consist of full-size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.

9.1.2 Performance Security

[If credits are to be released prior to meeting all performance standards described in the Development Plan and/or Interim Management and Monitoring Plan include the following:

The MCA is releasing credits prior to meeting all performance-based milestones, including performance standards described in the Development Plan and/or Interim Management and Monitoring Plan.

Prior to MCA establishment, the MCA sponsor shall furnish the Performance Security based on the amount specified in Exhibit P. The cost is based on expected costs associated with project management, monitoring, and reporting from the time

construction is completed, until all performance-based milestones and performance standards are achieved.

This cost shall be no less than 10% of the construction cost and shall take into account the cost of any foreseeable remedial action,. This security guarantees the MCA sponsor's obligations to meet all performance-based milestones and performance standards. After CDFW determines the MCA sponsor has satisfied all performance-based milestones and performance standards, CDFW shall release the Performance Security.

If credits will not be released prior to meeting all performance-based milestones and performance standards described in the Development Plan and Interim Management and Monitoring Plan include the following:

The MCA is not requesting a credit release prior to meeting all performance-based milestones and performance standards described in the Development Plan and Interim Management and Monitoring Plan, and therefore, does not require a Performance Security.】

9.1.3 Interim Management Security

[If credits are to be released prior to completing the interim management period, and prior to fully funding the endowment for three years include the following:

The MCA is releasing credits prior the end of the interim management period.

Prior to MCA Establishment, the MCA sponsor shall furnish the Interim Management Security based on the amount specified in Exhibit P. The amount of the Interim Management Security shall be equal to the estimated cost to implement three years of interim management (as described in the Interim Management and Monitoring Plan), as set forth in Exhibit I. This security guarantees the MCA sponsor's obligations under this MCA while the endowment is maturing until approximately three years after the endowment amount is fully funded. Once the interim management period is completed and accepted by CDFW, the Interim Management Security will be released back to the MCA sponsor.

If credits will not be released prior to the end of the interim management period include the following:

The MCA is not requesting a credit release prior to the end of the interim management period, and therefore, does not require an Interim Management Security.】

9.1.4 Compliance Security

Prior to MCA establishment, the MCA sponsor shall furnish the Compliance Security
The cost shall be no less than 10% of the construction costs and shall take into account the costs of any foreseeable remedial action as specified in Exhibit P. This

security guarantees the MCA sponsor's obligations under this MCA through MCA closure. This security covers any remedial actions needed until MCA closure. Upon MCA closure, the Compliance Security will be released back to the MCA sponsor.

9.2 Long-term Management Funding

[See Guidelines, Sections 5.3.9.2 and 5.2.4 (d)] ²⁷ [Explain how the long-term protection and management of the conservation action(s) or habitat enhancement action(s) at each site will be funded through an endowment or another comparable funding mechanism. If the MCA sponsor is a state agency, they may utilize other comparable funding mechanism(s) approved by CDFW in accordance with an adopted statewide policy regarding funding for long-term management and operations of mitigation sites. Describe the funding mechanism selected and its estimated value]. An Endowment Fund Analysis is attached as Exhibit Q and incorporated herein by this reference.

9.2.1 Endowment Fund

- A. The endowment fund shall be an amount sufficient to fully provide for the financial requirements of the long-term management of the MCA in accordance with the Long-term Management and Monitoring Plan (Exhibit J), the endowment fund analysis (Exhibit Q), the Endowment Fund Schedule (Exhibit R), and are incorporated herein by this reference. The endowment fund shall be held in trust for the benefit of the resources to be protected and shall be held, managed, invested, and disbursed solely for, permanently restricted to, the stewardship and management of the MCA site in accordance with the MCA. The MCA sponsor shall fully fund the endowment amount through endowment deposits according to the Endowment Fund Schedule attached as Exhibit R, and incorporated herein by this reference **[See Guidelines, Section 5.3.9.2]**. If the MCA sponsor intends to release a portion of the MCA credits prior to fully funding the endowment, the same or greater portion of the endowment's principal must be funded. The endowment fund shall be held by the endowment holder.
- B. Until the Endowment is fully funded, the endowment principal will be adjusted annually for inflation. The MCA sponsor shall calculate inflation based on changes in the Consumer Price Index (CPI) for California, for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research, and shall adjust the endowment principal proportionally with the April 1st inflation rate. The MCA sponsor shall measure inflation by calculating the percent change between the annual average CPI value published for the year the MCA was established and the CPI value published for the adjustment year. The MCA sponsor shall multiply this percentage increase in CPI by the endowment amount in Exhibit Q. The product will be the increase in the endowment principal for the adjustment year. If deflation occurs (CPI of the adjustment year is less than the previous year), then

the MCA sponsor shall not adjust the endowment principal for the adjustment year. This information shall be included in the annual reporting.

- C. The MCA sponsor shall provide to CDFW confirmation of each endowment deposit within 30 calendar days of such deposit.
- D. The endowment deposits that the endowment holder receives are to be held in the endowment fund.

9.2.2 Endowment Fund Management:

- A. The endowment fund should be governed by an investment policy statement that is designed to generate investment returns, over long periods of time, sufficient to keep pace with inflation and pay the costs of long-term management and monitoring, net of any financial investment and administrative fees.
- B. Disbursements shall not be made from the endowment fund until three years after the date on which the endowment amount is fully funded.
- C. The Parties anticipate that disbursements from the endowment fund will be made available by the endowment holder to the property owner to fund annual long-term management of the MCA as anticipated in the Long-term Management and Monitoring Plan and endowment analysis.
- D. Notwithstanding Probate Code Sections 18501-18510, the property owner and the endowment holder shall consult with CDFW in the event that either (a) the value of the endowment fund has decreased to levels that may threaten its continued existence as a source of perpetual funding for long-term management and monitoring, whether due to unexpected investment performance or otherwise; or (b) long-term management expenses exceed those estimated in the endowment fund analysis and schedule. Property owner shall submit a proposed temporary revised Long-term Management and Monitoring Plan and endowment fund analysis in writing to CDFW and grantee within 60 calendar days after completion of property owner's consultation with CDFW and grantee. Upon written approval of the temporary revised Long-term Management and Monitoring Plan by CDFW and any required notification to the endowment holder, the property owner shall implement the approved revised management measures and tasks. The original Long-term Management and Monitoring Plan shall be restored in full force and effect upon expiration of the temporary revised Long-term Management and Monitoring Plan or sooner if the circumstances in Subsections (a) or (b) above cease to exist.

9.3 Financial Records and Auditing

- A. MCA sponsor and property owner are required to maintain complete and accurate financial records relating to the operation of the MCA, using generally

accepted accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board. At the request of CDFW, no more frequently than annually, the MCA sponsor and property owner shall each have its financial records relating to the operation of the MCA audited by an independent licensed Certified Public Accountant and shall submit the auditor's report to CDFW upon completion.

- B. CDFW shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this MCA. MCA sponsor and property owner agree to maintain such records for possible audit for a minimum of three years after MCA closure, or three years after the date of performance, whichever is later. MCA sponsor and property owner agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, MCA sponsor and property owner agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this MCA.

10 Credit Type, Release, Sale and Use, and Reporting

10.1 Credit Type and Quantity

[See Guidelines, Section 5.3.10.1]²⁸ [Fully describe the proposed type(s) of mitigation credits, the quantity of credits created, and the supporting rationale, including how the credits correlate to the focal species, non-focal species, an/or other conservation element protected by the conservation actions or habitat enhancement actions proposed.]

10.2 Credit Evaluation and Table

[See Guidelines, Section 5.3.10.2.] The Credit Evaluation and Credit Table are attached as Exhibit S and Exhibit T, respectively and are incorporated herein by these references. The MCA must explain the methods and calculations undertaken, including the units of measurements used, to formulate the quantity and value of each type of credit for each focal species, non-focal species, and other conservation element.

10.3 Credit Release Schedule

[See Guidelines, Section 5.3.10.3.] A Credit Release Schedule is attached as Exhibit U and incorporated herein by this reference. It includes a credit release schedule for each credit type included in Section 10.1 (see Exhibit T). ***[Describe the number of releases, the performance-based milestones, performance standards, or triggers that must be met prior to each release, including when and how many credits are intended to be released]***²⁹

10.4 Credit Sale and Use

[See Guidelines, Section 5.3.10.4.] The terms of sale and use that apply to this MCA are attached as Exhibit V and incorporated herein by this reference.³⁰

[Include all terms of sale and use as indicated in the Guidelines, Section 5.3.10.4]

- A. The Credit sale and use may begin only after CDFW has approved the release of credits. MCA sponsor shall have the exclusive right to determine the price for any and all MCA credits it offers for sale.
- B. In no case shall the number of credits of any particular type sold or used exceed the total number of credits of that type which have been released for sale or use, as evidenced by written approval by CDFW.
- C. Approval of credit use as a mechanism for satisfying a mitigation requirement is determined on a case-by-case basis by the regulatory agency that imposed the mitigation requirement to ensure the use is appropriate to compensate for the impacts of the specific project to which the credits are proposed to be applied. The purchaser or user of the credits should seek written approval from the applicable regulatory agency prior to purchase.
- D. Once a credit is sold by the MCA sponsor, that credit may not be sold or transferred to another entity. Sold credits that have not been used may only be returned back to the MCA sponsor at the MCA sponsor's discretion.³¹ In order to return credits back to the ledger, a Credit Receipt must be completed, the MCA sponsor must update the Credit Ledger to document the transaction, and the following conditions must be met:
 - i. The MCA is open;
 - ii. The original purchaser of the unused credits obtains written documentation of MCA sponsor's conditional approval to return credits and provides a copy to CDFW for CDFW review and written approval;
 - iii. MCA sponsor enters the returned credits in the ledger.
 - iv. Upon the return of the credits specified above, the MCA sponsor shall submit to CDFW and any acknowledging agency(ies) associated with those credits copies of the following:
 - a. Credit Receipt.
 - b. An updated ledger.

10.5 Credit Reporting

[See Guidelines, Section 5.3.10.5.]

10.5.1 Credit Receipt

A template Credit Receipt is attached as Exhibit W and incorporated herein by this reference.

10.5.2 Credit Ledger

[Explain how the proposed mitigation credits will be accounted for, including the specific methods proposed for reporting and maintaining a record of all credits created, released, sold, used, or returned.] A template Credit Ledger is attached as Exhibit X and incorporated herein by this reference.³²

11 Reporting

11.1 Annual Inflation Adjustments to Endowment Inflation Report

[See Guidelines, Section Error! Reference source not found..] By August 1st of each year following the first endowment deposit, until the endowment amount is fully funded, the MCA sponsor shall provide an Endowment Inflation Report to CDFW and the endowment holder, in both Word and PDF electronic format that includes the following:

- A. The adjusted endowment amount determined in accordance with Exhibit Q;
- B. The resulting adjusted endowment deposit amounts.

If the MCA sponsor fails to submit complete reports on time, the MCA sponsor is in default per Section 13.1.

11.2 Annual Report

[See Guidelines, Section Error! Reference source not found..] The MCA sponsor or property owner, as specified below, shall submit an annual report to CDFW, the RCIS implementing entity, and acknowledging agencies, in an editable electronic format, on or before January 31st of each year following the approval of the MCA. If MCA sponsor or property owner, as applicable, fails to submit complete reports on time, the MCA sponsor or property owner, as applicable, is in default pursuant to Section 13.1. Each annual report shall cover the period from January 1 through December 31 (the "Reporting Period"). Prior to the end of the interim management period, the MCA sponsor shall be responsible for annual reporting of the MCA development and interim management tasks as described in the Interim Management and Monitoring Plan (Exhibit I). After the interim management period, the property owner shall be responsible for annual reporting of the MCA long-term management tasks described in the Long-term Management and Monitoring Plan (Exhibit J).

- A. Each annual report shall include:

- i. An updated Credit Ledger (Exhibit X) showing all credits sold, used, or returned since the first credit release and an accounting of all remaining credits.
 - ii. An itemized account of all applicable activities pertaining to the Construction Security, Performance Security, Interim Management Security, and the Endowment Fund (as applicable).
 - iii. A statement of the amount/balance of the Endowment Fund at the beginning and end of the Annual Reporting Period.
- B. All reports shall include data, documentation, and discussion of the MCA's progress toward meeting performance standards described in this MCA and its exhibits. The annual report shall describe any deficiencies in attaining and maintaining performance standards and any remedial action proposed, approved, or performed. If remedial action has been completed, the annual report shall also evaluate the effectiveness of that action.
- C. During Interim management and long-term management – The Interim and Long-term Management and Monitoring Plans contain reporting requirements that are separate from, and in addition to, the standard requirements listed above for the annual report.

During the interim management period, the annual report shall also contain an itemized account of the management tasks in accordance with the Interim Management and Monitoring Plan and any remedial actions conducted during the Reporting Period. During the long-term management period, the annual report shall contain an itemized account of the management tasks in accordance with the Long-term Management and Monitoring Plan and any remedial actions conducted during the Reporting Period. Each annual report shall also include the following:

- i. The time period covered, i.e., the dates "from" and "to."
- ii. A description of each management task conducted, the dollar amount expended, and time required.
- iii. The total dollar amount expended for management tasks conducted during the Reporting Period.
- iv. A description of the management and maintenance activities proposed for the next reporting year.
- v. A description of the overall condition of the MCA site(s), including photos documenting the status of the MCA site(s) during the Reporting Period and a map documenting the location of the photo points.

11.3 Credit Sale and Use Reporting

[See Guidelines, Section Error! Reference source not found..] Upon every transaction of credits, the MCA sponsor shall submit to CDFW, the following:

- A. A copy of the executed credit receipt.
- B. An updated credit sale and use ledger in the form provided in Exhibit U.

12 Responsibilities

[See Guidelines, Section 5.3.12]

12.1 Responsibilities of the MCA Sponsor and Property Owner

- A. Without limiting any of its other obligations, including without limitation, those described in the real estate instrument, the MCA sponsor and property owner each hereby agrees and covenants the following responsibilities during the time the MCA is in operation:
 - i. If the MCA is utilizing a Conservation Easement, the MCA sponsor and property owner shall, prior to the execution of the Conservation Easement included as Exhibit N, provide CDFW with satisfactory evidence that the proposed conservation easement grantee is authorized to hold conservation easements pursuant to California Civil Code § 815.3 and Government Code §§ 65966-65967, has a primary purpose of long-term land stewardship for conservation purposes consistent with the purpose of the MCA, and has agreed to be the conservation easement grantee.
 - ii. The MCA sponsor shall be responsible for all activities and costs associated with the establishment and operation of the MCA, including but not limited to construction, planting, remedial action, documentation, maintenance, management, monitoring, and reporting, until completion of the interim management period. Some responsibilities and costs, including but not limited to remedial action and actions specified in subparagraphs iii and vii, below, will extend past the interim management period until MCA closure.
 - iii. The MCA sponsor shall perform the actions described in this MCA and its exhibits to support all credits that are sold or used. The MCA sponsor shall provide CDFW with the Credit Receipt (Exhibit W) for all credits sold, used, or returned, including noting any transferred credits by Caltrans.
 - iv. The MCA sponsor or property owner shall not discharge or release on, to or from the MCA site, or permit others to discharge or release on, to or from the MCA site, any material, waste, or substance designated as hazardous or toxic or as a pollutant or contaminant under any Federal, state, or local environmental law or regulation (each a hazardous substance).

- v. The property owner shall not create or suffer any lien or encumbrance upon the property included in the MCA other than as set forth in the property assessment and warranty approved by CDFW. The property owner shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest on any property included in the MCA without the prior written consent of CDFW and the grantee,.
 - vi. The MCA sponsor or property owner shall not construct or install any structure or improvement on, or engage in any activity or use of, the MCA site, including mineral exploration or development, excavation, draining, dredging, or other alteration of the MCA site that is prohibited by, or not consistent and in accordance with this MCA and its exhibits.
 - vii. The MCA sponsor shall ensure that the MCA is managed and maintained in accordance with the Development and Interim Management and Monitoring Plan, the approved MCA and its exhibits prior to MCA closure.
 - viii. The property owner shall ensure that the MCA is managed and maintained in accordance with the Long-term Management and Monitoring Plan, this MCA, and its exhibits.
 - ix. The property owner shall allow, or otherwise provide for, access to the MCA site to the MCA sponsor, CDFW, any CE grantee or long-term durability agreement entity, or third-party beneficiary (as applicable), as described in the real estate instrument.
 - x. The property owner shall grant to MCA sponsor all rights and authority necessary, and shall not limit the MCA sponsor, in performing its responsibilities and obligations pertaining to the MCA site in accordance with this MCA and its exhibits.
- B. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this MCA or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this MCA or extensions for the performance of the requirements of this MCA.
- C. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates.

12.2 Responsibilities of CDFW

- A. CDFW will make a good faith effort to review the annual reports and any remedial action plans within sixty calendar days from the date of receipt of complete submittal. If CDFW is unable to complete its review within the time specified in this section, this fact will be reflected in any schedule established for

performance of remedial action and any evaluation of timely performance of remedial action by MCA sponsor.

- B. CDFW shall conduct compliance inspections for any purpose(s) it determines as necessary to assess compliance with this MCA.

13 Other Provisions

[See Guidelines, Section 5.3.13]

13.1 Enforcement Provisions³³

- A. If CDFW determines that the MCA sponsor or owner (as applicable) has defaulted in the performance of an obligation under the terms of this MCA, CDFW shall send a written notice (Notice of Default) to the MCA sponsor or owner describing the violation and requesting to meet and confer to determine the appropriate action(s) to take to cure the default. CDFW and the MCA sponsor or owner (as applicable) shall meet and confer within thirty days of receipt of such Notice of Default.
- B. If CDFW and the MCA sponsor or owner fail to resolve the issue through the meet-and-confer process, CDFW shall send a written notice (Notice of Violation) to the MCA sponsor describing the violation and instructing the MCA sponsor or owner to cure the violation within thirty days. If the cure reasonably requires more than thirty days, the MCA sponsor or owner shall inform CDFW in writing and shall indicate how many days it will take to cure the violation. CDFW may, in its reasonable discretion, determine in writing whether to extend the cure period beyond the initial thirty days.
- C. If the MCA sponsor or owner fails to cure the violation within thirty days after receipt of the Notice of Violation, or if CDFW grants a longer cure period and the MCA sponsor or owner fails to begin the cure within thirty days of receipt of the Notice of Violation and to continue diligently to pursue and complete the cure in good faith, CDFW may, in its sole discretion, suspend credit sale and/or use, reduce the amount of available credits, utilize financial securities, or suspend or terminate the MCA. Any suspension or revocation of this MCA pursuant to this section shall be made in writing and shall be signed by the Director, Chief Deputy Director, or Deputy Director for Ecosystem Conservation of CDFW.
- D. In the event of suspension or termination of this MCA pursuant to this section the MCA sponsor shall remain liable for the implementation, maintenance, and management of any conserved lands or habitat enhancements for which mitigation credits have been sold.
- E. If CDFW determines that the MCA is operating at a credit deficit (i.e., that credit sales made exceed the credits authorized for release, as adjusted in accordance with this MCA), CDFW shall send a Notice of Default. Upon receipt

of notification, MCA sponsor shall cease credit sales and credit use immediately. All credit sales or use can only resume with CDFW review and notice that the default has been resolved.

- F. If the MCA sponsor fails to submit or complete required annual reports in a timely manner as required by the Development Plan and/or the Interim Management and Monitoring Plan (as applicable), the MCA sponsor is in default resulting in an automatic suspension of credit sale and use effective 30 days after the report is due. The suspension will be lifted within 10 calendar days after CDFW receives a complete annual report. If the Property Owner fails to submit complete required annual reports in a timely manner as required by the long-term management plan, the Property Owner is in default. CDFW will notify the Property Owner of the date by which the annual report must be made complete.

13.2 Extraordinary Circumstances

In the rare event (an extraordinary circumstance) in which the MCA can no longer serve its intended purpose as compensatory mitigation, in whole or in part, for the specific resources for which it was established, CDFW may determine that the MCA sponsor is relieved of some or all of its obligations under this MCA if the failure or delay in the performance of its obligations is caused by, directly or indirectly, forces beyond its control, including, accidents, acts of war or terrorism, civil or military disturbances, natural catastrophes or acts of God; it is understood that the MCA sponsor shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances. CDFW will determine whether extraordinary circumstances exist that will excuse performance. This may result in CDFW limiting or suspending the creation of undeveloped credits and/or the sale or use of credits. .

13.3 Controlling Law

This MCA shall be governed by the provisions of California Fish and Game Code Sections 1850-1858, as amended, and CDFW's Regional Conservation Investment Strategies Program Guidelines (Guidelines), as amended. In the event of any conflict, Sections 1850-1861 govern the interpretation of the Guidelines and the MCA, and the terms of the Guidelines also govern the interpretation of the MCA.

13.4 No Limitation of Authority

This MCA is not intended, nor shall it be construed, to limit CDFW's authority to fulfill its statutory or regulatory responsibilities or to otherwise limit the powers afforded to either Party by applicable law.

13.5 Modification and Amendment

This MCA, including its exhibits, may be amended or modified only with the written approval of CDFW and the MCA sponsor or as required by law.

13.6 Termination of Agreement

The MCA sponsor may terminate this MCA upon 90 days written notice to CDFW; provided, however, that the obligation to ensure the perpetual protection and management of conservation actions and the long-term durability of habitat enhancement actions resulting in the creation of mitigation credits shall survive termination of this MCA. CDFW may terminate this MCA pursuant to Section 13.1. Once terminated, any unsold credits are void. The MCA sponsor must give the same 90 day written notice to anyone who has purchased unused credits. The purchaser shall either use the credits immediately or they may return the credits to the MCA sponsor at the MCA sponsor's discretion.

13.7 Entire Agreement

This MCA, including its exhibits, constitutes the complete, final, and exclusive terms and conditions governing the establishment of the MCA and the creation, sale and use of mitigation credits and supersedes all prior and contemporaneous discussions, negotiations, understandings, or agreements of the Parties.

13.8 Successors and Assigns

This MCA, and each of its covenants and conditions, will be binding on and will inure to the benefit of the Parties and their respective successors and assigns, subject to the limitations on transfer set forth in this MCA. The MCA sponsor may assign or otherwise transfer the MCA only with the prior amendment approval by CDFW. Any assignment or transfer made without the prior written approval of CDFW may, at the sole discretion of CDFW, result in the termination of this MCA and the invalidation of any credits created or sold after the date of the assignment or transfer.

13.9 Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this MCA 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, will not be affected unless an essential purpose of this MCA would be defeated by loss of the invalid or unenforceable provision.

13.10 Notices

Any notice, demand, approval, request, or other communication permitted or required by this MCA will be in writing first via electronic mail with read receipt and if necessary, via certified U.S. mail, postage prepaid. Addresses for purposes of giving notice are set forth below. 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 at least thirty (30) days prior.

To CDFW:

Landscape Conservation Planning Program Manager
Habitat Conservation Planning Branch
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
rcis@wildlife.ca.gov

To MCA sponsor:

[Insert name, mailing address, and email address for MCA sponsor]

To Property Owner:

[Insert name, mailing address, and email address for property owner]

13.11 Counterparts

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

13.12 No Third-party Beneficiaries

Except as expressly stated herein, this MCA is not intended to nor shall it be construed to create any third-party beneficiaries. The duties, obligations, and responsibilities of the Parties to this MCA with respect to third parties will remain as otherwise provided by law.

13.13 MCA Program Fees

Approval and implementation of this MCA by CDFW is subject to the payment of MCA fees in accordance with the Fee Schedule which is posted on [CDFW's RCIS Program website](#).

13.14 Liability

All terms and conditions of this MCA shall be binding upon both the MCA sponsor and the property owner. Notwithstanding California Civil Code Section 1431 or any other provision of law, the MCA sponsor or property owner (as applicable) shall be liable for the performance of the terms, conditions, and obligations specified under their roles as described in this MCA and shall be jointly and severally liable for any unauthorized take or other violations of this MCA, whether committed by the MCA sponsor or the property owner, or any person acting on behalf of one or more MCA sponsor or the property owner, including their officers, employees, representatives, agents or contractors and subcontractors. Any failure by one or more of the MCA sponsors or the property owner to comply with any term, condition, or obligation herein shall be deemed a failure to comply by both the MCA sponsor and the property owner.

References

¹ Fish & G. Code, § 1856, subdivision (b)(1-3)

² Fish & G. Code, § 1856, subdivision (f)

³ Fish & G. Code, § 1855, subdivision (d)

⁴ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(A)]

⁵ Fish & G. Code, § 1856, subdivision (b)

⁶ Fish & G. Code, § 1856, subdivision (g)(2)

⁷ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(K)]

⁸ Fish & G. Code, § 1856, subdivisions (g)(11) & (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(F)]

⁹ Fish & G. Code, § 1856, subdivisions (g)(1) & (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(B)]

¹⁰ Fish & G. Code, § 1856, subdivisions (g)(1) & (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(G)]

¹¹ Fish & G. Code, § 1856, subdivisions (g)(3), (g)(4), (g)(8), and (g)(17) [referencing Fish & G. Code, § 1798, subdivisions (b)(2)(C), (b)(2)(D), (b)(2)(E), and (b)(2)(J)]

¹² Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(I) and § 1798.5, subdivision (a)(2)(D)]

¹³ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(M)]

¹⁴ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(N)]

¹⁵ [CDFW's Tribal Communication and Consultation Policy](#)

¹⁶ Fish & G. Code, § 1856, subdivisions (g)(7) & (g)(17) [referencing Fish & G. Code, § 1798, subdivision (b)(2)(H)]

¹⁷ Fish & G. Code, § 1856, subdivisions (g)(5) & (g)(17) [referencing Fish & G. Code, § 1798.5, subdivision (a)(2)(B)]

¹⁸ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, § 1798.5, subdivision (a)(2)(B)]

¹⁹ Fish & G. Code, § 1856, subdivision (b)(1)

²⁰ Fish & G. Code, § 1856, subdivisions (g)(14) & (g)(17) [referencing Fish & G. Code, § 1798.5, subdivision (a)(2)(B)]

²¹ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(B)]

²² Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(H)]

²³ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, §1798, subdivision (b)(2)(L)] The [Property Assessment and Warranty Template](#) was developed for conservation and mitigation banks. To use with an MCA, replace "bank" with "MCA site(s)" and replace "BEI" with "MCA."

²⁴ Fish & G. Code, § 1856, subdivisions (g)(12) & (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(C)] The [Conservation Easement Template](#) was developed for conservation and mitigation banks. To use with an MCA, replace "bank" with "MCA site(s)" and replace "BEI" with "MCA."

²⁵ Fish & G. Code, § 1856, subdivisions (e) & (g)(12)

²⁶ Fish & G. Code, § 1856, subdivision (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(G)]

²⁷ Fish & G. Code, § 1856, subdivisions (g)(13) & (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(F)]

²⁸ Fish & G. Code, § 1856, subdivisions (g)(9)

²⁹ Fish & G. Code, § 1856, subdivisions (h)(2), (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(E)], & (g)(18)

³⁰ Fish & G. Code, § 1856, subdivision (g)(15)

³¹ Pursuant to Streets and Highway Code 800.6(b), the Department of Transportation is authorized to purchase credits, then allow other transportation agencies to use them. This must be reflected in the Credit Receipt of the sale and use of credits.

³² Fish & G. Code, § 1856, subdivisions (g)(17) [referencing Fish & G. Code, §1798.5, subdivision (a)(2)(E)] & (g)(18)

³³ Fish & G. Code, § 1856, subdivision (g)(16)

This Mitigation Credit Agreement becomes effective on the date of the last signature below (Approval Date).

**STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE**

[Name]

[Position]

[Date]

MCA SPONSOR

[Name]

[Position]

[Date]

MCA PROPERTY OWNER

[Name]

[Position]

[Date]