

**IMPLEMENTATION AGREEMENT FOR THE
NATOMAS BASIN HABITAT CONSERVATION PLAN**

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LIST OF EXHIBITS

- Exhibit A - Definitions
- Exhibit B - CITY's Baseline Map
- Exhibit C - SUTTER's Baseline Map
- Exhibit D - List of Covered Species in Permit Area

IMPLEMENTATION AGREEMENT FOR THE NATOMAS BASIN HABITAT CONSERVATION PLAN

THIS IMPLEMENTATION AGREEMENT FOR THE NATOMAS BASIN HABITAT CONSERVATION PLAN is entered into as of the _____ day of _____, 2003 by and among the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America ("USFWS"), the CALIFORNIA DEPARTMENT OF FISH AND GAME, a subdivision of the Resources Agency of the State of California ("CDFG"), the CITY OF SACRAMENTO, a chartered city ("CITY"), the COUNTY OF SUTTER ("SUTTER"), a political subdivision of the State of California, and The Natomas Basin Conservancy, Inc. ("TNBC", or "Conservancy"), a California nonprofit public benefit corporation, (hereafter collectively referred to as "Parties"). The CITY, SUTTER and TNBC are hereafter also referred to collectively as "Permittees" and each is individually referred to as "Permittee."

1. RECITALS AND PURPOSES

The Parties have entered into this Agreement in consideration of the following facts and assumptions, intentions and expectations:

1.1 Purpose. This Implementation Agreement ("Agreement") describes the mechanisms for implementation of the Natomas Basin Habitat Conservation Plan ("NBHCP" or "Plan") a cooperative federal, state and local program for the conservation of those plant and animal species listed on Exhibit D (collectively the "Covered Species") and their habitats in the Natomas Basin. The purposes of this Agreement are: a) to ensure the implementation of each of the terms of the NBHCP; b) to describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and c) to provide assurances to the Permittees that as long as the terms of the NBHCP are properly implemented, no additional mitigation will be required of them except as provided for in this Agreement or required by law. This Agreement also establishes terms and conditions that support issuance of Permits by the USFWS under Section 10(a)(1)(B) of the Endangered Species Act ("ESA") and CDFG under Section 2081 of the California Fish and Game Code to allow the taking of the Covered Species within the Permit Area a) by the CITY and SUTTER, and third persons under the CITY's and SUTTER's direct control, incidental to Authorized Development and b) by TNBC, and third persons under TNBC's direct control, incidental to management activities for a period of fifty (50) years.

1.2 Parties' Intent. The intent of the Parties, in addition to the purposes set forth above, is that a comprehensive conservation program be established, and be implemented under the auspices of TNBC for the conservation of the Covered Species and their habitats, to provide an opportunity for individual Authorized Development project proponents to obtain incidental take authorization, through CITY's and SUTTER's Take Permits, for a broad array of Covered Species under the ESA and CESA including both currently listed species and species that may be listed in the future; to minimize the review of individual projects by the USFWS and CDFG; and to standardize take mitigation and onsite take avoidance and minimization measures for projects covered by the NBHCP.

1.3 Coordination. The NBHCP will be implemented by the Parties through execution of this Agreement, subject to and in accordance with the Permits.

1.4 Habitat. The Covered Species may use or inhabit portions of the Natomas Basin area which is situated northeasterly of the confluence of the American River and Sacramento River. Consequently, Planned Development of 17,500 acres, including CITY and SUTTER Authorized Development and Metro Air Park's 1,983 acres of authorized development, related infrastructure, and government public works planned in this area over the next fifty (50) years may result in a loss

of habitat and takings of the Covered Species, incidental to the normal course of this Planned Development.

1.5 Mitigation. Implementation of the NBHCP through this Agreement is intended to avoid, minimize and mitigate to the maximum extent practicable, and minimize and fully mitigate, the individual and cumulative impacts of take of Covered Species resulting from Authorized Development within the CITY's and SUTTER's respective Permit Areas in the Natomas Basin. All required mitigation is specified in the NBHCP.

1.6 Integrity and Viability of NBHCP. While the NBHCP was developed as a comprehensive multi-species habitat conservation plan to avoid, minimize and mitigate for the expected loss of habitat values and incidental take of the Covered Species that could result from urban development, operation and maintenance of irrigation and drainage systems, and certain activities associated with TNBC management of its system of reserves within the Natomas Basin when it is fully implemented, the biological viability of the NBHCP is not compromised by the failure of other Potential Permittees to participate in the NBHCP and execute this Agreement. The mitigation strategies provided in the NBHCP are designed to allow for separate and independent implementation of NBHCP mitigation measures by CITY, SUTTER or other Potential Permittees, and may be adjusted under the terms of the Plan if fewer than all land use jurisdictions or other Potential Permittees participate, so that the NBHCP is viable and will minimize and mitigate the impacts associated with take of Covered Species resulting from Covered Activities carried out within the Natomas Basin by each Permittee, even if the Plan is not implemented by other Potential Permittees.

1.7 Reliance. In reliance upon this Agreement, CITY and SUTTER are making long range plans and financial investments in public infrastructure improvements necessary for the preservation of the public health, safety and welfare. Without the assurances identified in this Agreement, they would not enter into, support or approve any such plans or financial commitments.

1.8 Local Land Use Authority. The parties to this Agreement intend that nothing in the NBHCP or in this Agreement shall be interpreted to mean or operate in a manner that expressly or impliedly diminishes or restricts the local land use decision making authority of CITY or SUTTER, provided that the Parties acknowledge that should either CITY or SUTTER exercises its respective land use authority in a manner that conflicts with the terms of the NBHCP, this Agreement or the Permits, the Service and/or CDFG may suspend or revoke CITY's or SUTTER's Permits pursuant to Section 7.4 of this Agreement and applicable laws and regulations.

1.9 CITY, SUTTER and TNBC as Permittees. This Agreement also establishes the conditions under which the incidental take granted to CITY and SUTTER under their respective Permits will apply to landowners and developers within their respective Permit Areas in the Natomas Basin as of the Effective Date (as depicted on Exhibits B and C attached hereto and incorporated herein) in order to allow the taking of the Covered Species incidental to Authorized Development. TNBC's Permit will authorize incidental take of the Covered Species by TNBC anywhere within its Permit Area with respect to the management and other activities and responsibilities that TNBC or third parties under its control assumes on behalf of CITY and SUTTER under the NBHCP.

1.10 USFWS Authorities. USFWS is authorized to enter into this Agreement pursuant to the ESA (16 U.S.C. 1531 et seq.), the United States Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f) et seq.).

1.11 CDFG Authorities. CDFG is authorized to enter into this Agreement pursuant to CESA sections 2080 and 2081.

AGREEMENT

FOR AND IN CONSIDERATION of the recitals set forth above, which are incorporated by reference herein, the covenants set forth herein, and other considerations, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

2 DEFINITIONS

Terms used in this Agreement with reference to the ESA shall have the same meaning as those same terms have under the ESA, or in regulations adopted by the USFWS, and terms used in this Agreement with reference to CESA, shall have the same meaning as those same terms have under CESA, or regulations adopted by CDFG. Capitalized terms used in this Agreement shall have the defined meanings specified in the NBHCP as attached hereto as Exhibit A and incorporated herein into this Agreement. Where additional terms are used in this Agreement, definitions are included within the applicable text. Any amendments to the definitions contained in this Agreement shall be deemed automatically to be amendments to the definitions contained in the NBHCP.

3 OBLIGATIONS OF THE PARTIES

3.1 CITY and SUTTER.

3.1.1 Limitation on Total Development in Natomas Basin and Individual Permit Areas. The NBHCP anticipates and analyzes a total of 17,500 acres of Planned Development in the Natomas Basin, 15,517 acres of which constitutes Authorized Development within CITY and SUTTER. (An additional 1,983 acres of development is allocated to the Metro Air Park project in Sacramento County under the Metro Air Park Habitat Conservation Plan and is analyzed within the NBHCP.) CITY agrees not to approve more than 8,050 acres of Authorized Development and to ensure that all Authorized Development is confined to CITY's Permit Area as depicted on Exhibit B to this Agreement). SUTTER agrees not to approve more than 7,467 acres of Authorized Development and to ensure that all Authorized Development is confined to SUTTER's Permit Area as depicted on Exhibit C to this Agreement). The Parties further agree:

(a) Because the effectiveness of the NBHCP's Operating Conservation Program is based upon CITY limiting total development to 8,050 acres within the CITY's Permit Area, and SUTTER limiting total development to 7,467 acres within SUTTER's Permit Area, approval by either CITY or SUTTER of future urban development within the Plan Area or outside of their respective Permit Areas would constitute a significant departure from the Plan's Operating Conservation Program. Thus, CITY and SUTTER further agree that in the event this future urban development should occur, prior to approval of any related rezoning or pre-zoning, such future urban development shall trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development, and/or possible suspension or revocation of CITY's or SUTTER's Permits in the event the CITY or SUTTER violate such limitations.

(b) For purposes of the NBHCP and this Agreement, CITY agrees that although the West Lakeside Annexation area is proposed by the landowners to be annexed to the CITY, this area currently is located within Sacramento County and is outside of the County's Urban Services Boundary and the City's Sphere of Influence, and it is not included in the 8,050 acres of Authorized Development or within the CITY's Permit Area. Thus, CITY agrees that in the event this annexation occurs, it shall, prior to approval of any rezoning or pre-zoning associated with such annexation, trigger a reevaluation of the Plan, a new effects analysis, potential amendments and/or revisions to the Plan and Permits, a separate conservation strategy and issuance of Incidental Take Permits to the City for that additional urban development, and/or possible

suspension or revocation of CITY's Permit in the event the CITY violates such limitations without completing such reevaluation, amendment, or revision or new conservation strategy for that additional urban development.

3.1.2 EXCLUSION OF DEVELOPMENT FROM SWAINSON'S HAWK ZONE. With the exception of 252 acres included as Authorized Development by CITY in the NBHCP, the Parties agree that the CITY's and SUTTER's Permit Areas shall exclude a one mile wide strip of land adjacent to the Sacramento River within their respective jurisdictions known as the Swainson's Hawk Zone (SHZ). The Parties further agree as follows:

(a) CITY and SUTTER shall not approve any future urban development within their respective portions of the Swainson's Hawk Zone beyond the 252 acres of Authorized Development identified by CITY in the NBHCP.

(b) Within One Hundred and Eighty (180) days of the Effective Date, SUTTER shall initiate a General Plan Amendment to remove all land within SUTTER's portion of the Swainson's Hawk Zone from the Industrial/Commercial Reserve designation in the Sutter County General Plan and to redesignate such land for agricultural uses.

(c) Because the effectiveness of the NBHCP to adequately minimize and mitigate the effects of take of the Covered Species depends, in part, on the exclusion of urban development from both the CITY and SUTTER's portions of the Swainson's Hawk Zone, approval by either CITY or SUTTER of future urban development in the Swainson's Hawk Zone, except as otherwise explicitly allowed under the NBHCP, would constitute a significant departure from the Plan and would trigger a reevaluation of the Plan and Permits, a new effects analysis, potential amendments to the Plan and/or Permits, a separate conservation strategy and issuance of Incidental Take Permits to the permittee for that additional development, and/or possible suspension or revocation of CITY or SUTTER's Permits in the event CITY or SUTTER violate such restrictions.

3.1.3 Timing of Mitigation. CITY and SUTTER agree to comply with the NBHCP Chapter VI requirements applicable to the timing of acquisition of Mitigation Lands, including, but not limited to, the requirement to maintain a 200-acre cushion of Mitigation Lands, and other timing restrictions on approval of Authorized Development as provided in Sections 4 and 5 of this Agreement and Chapter VI of the NBHCP.

3.1.4 Baseline Map. CITY and SUTTER have prepared, and USFWS and CDFG have approved, the Baseline Maps set forth in Exhibits B and C, attached hereto and incorporated herein by this reference, which depict: (1) those land areas within their respective Permit Areas which are designated as "Exempt Area-Existing Development" and therefore not subject to the NBHCP, the Permits, or this Agreement; (2) those land areas designated as "Development Subject to 1997 HCP," within their respective Permit Areas for which Authorized Development projects have been approved between 1997 and 2002 and have been developed in compliance with the Mitigation Requirements of the NBHCP in effect in 1997; and (3) those undeveloped land areas designated as "Development Subject to 2002 HCP," within the Permit Areas which will be subject to the Mitigation Requirement of the NBHCP.

3.1.5 Restriction on Urban Development/Mitigation Alternatives. CITY and SUTTER shall not issue any Urban Development Permit for any Authorized Development project on a parcel of land in their respective Permit Areas, outside of those areas depicted as "Exempt Area-Existing Development" on the Baseline Map, unless the Authorized Development project proponent has satisfied the Mitigation Requirement specified in Chapters IV through VI of the NBHCP.

3.1.6 Determination of Compliance. CITY and SUTTER shall ensure that an Authorized Development project proponent has complied with the Mitigation Requirements of Chapters IV through VI of the NBHCP prior to issuing an Urban Development Permit for the Authorized Development project.

3.1.7 Urban Development Permit Conditions. CITY and SUTTER shall include in any Urban Development Permit the on-site Take avoidance, minimization and mitigation measures specified in Chapter V of the NBHCP (the “Conservation Measures”) to reduce or eliminate to the extent feasible, the direct and indirect impacts of Authorized Development on the Covered Species and shall include in such Urban Development Permit notice of the need to comply with the requirements of other agencies applicable to the project.

3.1.8 Full Compliance with the NBHCP. The Parties agree that for purposes of CITY’s and SUTTER’s determination that an Urban Development Permittee is in full compliance with the NBHCP, the Urban Development Permittee must: (1) comply with the Mitigation Requirement, (2) implement the Conservation Measures including any such measures that are required to be conducted prior to commencement of grading and/or construction (e.g., pre-construction surveys, species avoidance measures, allowing USFWS or TNBC to conduct translocation and relocation of Covered Species, etc.), and (3) implement any measures specified in or provided for in Chapter V of the NBHCP which are required to be implemented after commencement of grading and/or construction, including but not limited to, pre-construction surveys, retention of Swainson’s Hawk nesting trees, and elderberry shrub preservation.

3.1.9 Transfer of Mitigation Fees. CITY and SUTTER shall promptly transfer all Mitigation Fees collected on account of Authorized Development to TNBC in accordance with the provisions of Chapter VI of the NBHCP.

3.1.10 Enforcement. CITY and SUTTER shall comply with the NBHCP, this Agreement and the Permits and, following their applicable land use permit enforcement procedures and practices, shall take all necessary and appropriate actions to enforce the terms of the Section 10(a)(1)(B) Permit, the Section 2081 Permit, the NBHCP, and this Agreement as to themselves and all third persons subject to their jurisdiction or control, including Urban Development Permittees, that are subject to the requirements established by the NBHCP, the Permits and this Agreement, specifically including the urban permitting and approval requirements set forth in this Section 3. Provided CITY and SUTTER take actions within their respective authorities to enforce compliance with the terms of the NBHCP, this Agreement and the Permits, a violation of the Permits by such third persons shall not be a basis to suspend or revoke the CITY or SUTTER Permits, unless USFWS or CDFG determine that continuation of the Permits would appreciably reduce the likelihood of the survival and recovery of a Covered Species in the wild or USFWS or CDFG determine that the violation renders CITY or SUTTER unable to implement successfully the NBHCP.

3.1.11 Relationship of TNBC to CITY and SUTTER. To comply with the requirements of the NBHCP, CITY and SUTTER have chosen to implement their Mitigation Requirement and other obligations under the NBHCP, including their reporting and monitoring obligations, in part, through the selection of TNBC as the Plan Operator. The Parties further agree:

(a) In the event that the Service determines pursuant to Section 7.6.1 of this Agreement, or CDFG determines pursuant to Section 7.6.2 that TNBC has violated the terms of the NBHCP, the Permits or this Agreement, such violation shall be considered a failure by CITY and SUTTER to implement their obligations of the Operating Conservation Program under the NBHCP. Provided, however, that if the violation by TNBC related to MAP mitigation acquisition or management requirements, or to other violations resulting from and solely pertaining to a violation of the MAP HCP, the provisions of this subsection shall not apply and neither City nor Sutter shall be considered to have failed to implement their obligations of the Operating Conservation Program under the NBHCP.

(b) Notwithstanding the foregoing in the event USFWS or CDFG make the determination set forth in Section 3.1.11(a), CITY’s and SUTTER’s Permits shall not be revoked or suspended, if CITY and/or SUTTER implement corrective measures, within the period

specified by the USFWS and/or CDFG, to remedy TNBC's violation which may include, but shall not be limited to (1) replacing TNBC with another conservation entity qualified to serve as a Plan Operator, (2) transferring the Mitigation Lands to CDFG in accordance with Section 3.2.12 of this Agreement, (3) implementation by TNBC of measures specified by the USFWS and/or CDFG as necessary to remediate the violation unless USFWS or CDFG determine that continuation of the Permits would appreciably reduce the likelihood of the survival and recovery of a Covered Species in the wild or USFWS or CDFG determine that the violation renders CITY or SUTTER unable to implement successfully the NBHCP; or (4) implementation by CITY and/or SUTTER of measures necessary to remediate the violation.

(c) Should the USFWS or CDFG determine that CITY or SUTTER has violated their separate obligations under the NBHCP, the Permits or this Agreement, such violation shall not be attributed to TNBC nor shall TNBC's Permits be affected, so long as TNBC continues to properly implement its obligations under the NBHCP with respect to the Mitigation Lands, including its obligations as the Plan Operator.

3.1.12 Certification of Urban Development Permittee. Urban Development Permits (i.e., the grading permit or notice to proceed) issued by CITY and SUTTER shall constitute a certification to the Urban Development Permittee that the Urban Development Permittee has complied with the Mitigation Requirements of the NBHCP and will be allowed to construct, maintain and operate a public or private project which may result in the Incidental Take of the Covered Species consistent with the conditions in the Permits and the Urban Development Permit, on the parcels for which the Urban Development Permit was issued. The issuance of such certifications shall be considered ministerial actions for the purposes of the laws of the State of California.

3.1.13 Public Works Projects. CITY and SUTTER shall apply the Mitigation Requirement and Conservation Measures set forth in this Section and in Chapters IV through VI of the NBHCP to all public works projects in their respective Permit Areas.

3.1.14 Assistance. CITY and SUTTER shall provide staff members to serve on the NBHCP Technical Advisory Committee.

3.1.15 Annual Report of Authorized Development. CITY and SUTTER shall each implement the Annual Report requirements described at Chapter VI of the NBHCP. In addition, at any other time during the Permit terms, CITY and SUTTER, at the request of USFWS or CDFG, shall provide within thirty (30) days, to the Wildlife Agencies additional information relevant to implementation of the NBHCP reasonably available to CITY and SUTTER.

3.1.16 Adaptive Management. CITY and SUTTER agree to abide by and implement all Adaptive Management provisions specified in, and subject to the limitations of, Chapter VI of the NBHCP, including, but not limited to, implementing revisions to management of Mitigation Lands, such as those which may be included in recovery plans for the Covered Species, in response to monitoring results in the Plan Area or to peer-reviewed new scientific information, in response to substantial land use changes in the Basin outside the Permit Areas and system of reserves, and Plan responses to Changed Circumstances.

3.1.17 Overall Program Review/Independent Midpoint Reviews. CITY and SUTTER agree to implement the Overall Program Review and Independent Mid-Point Reviews described in Chapter VI of the NBHCP to evaluate the performance and effectiveness of the NBHCP in achieving its biological goals and objectives.

3.1.18 CITY and SUTTER Liaison. CITY and SUTTER shall each designate a liaison to CDFG and USFWS for communications concerning this Agreement and the NBHCP. The CITY's and SUTTER's liaisons shall be responsible for reporting on their respective agency's implementation of and compliance with this Agreement, the NBHCP, and the Permits. CITY and SUTTER shall notify CDFG and USFWS of the name, address and telephone number of the liaison within 30 days of the Effective Date and shall subsequently notify CDFG and USFWS within 30 days in writing if the name, address or telephone number of the liaison is changed.

3.1.19 Implementation of other NBHCP Components. CITY and SUTTER agree to implement each of the other components of the NBHCP identified in the Plan or this Agreement, specifically including enactment of and periodic revisions to the Mitigation Fee ordinances and Catch Up Fee ordinances or through other funding mechanisms except for the CITY or SUTTER general funds, as described in Chapter VI of the Plan as necessary to ensure the NBHCP is fully funded. The commitments set forth herein shall be subject to the limitation that implementation of such measures is within the CITY's or SUTTER's land use or other legal authority.

3.2 The Natomas Basin Conservancy.

3.2.1 Establish Mitigation. TNBC agrees that it will serve as the Plan Operator under the NBHCP, and will Acquire, locate, operate, manage, and maintain Mitigation Lands in accordance with Chapters IV through VI of the NBHCP and Section 5 of this Agreement. To the extent provided in the NBHCP, such activities shall be carried out in consultation with the TAC and with the approval of the Wildlife Agencies.

3.2.2 Acceptance of Mitigation Fees. TNBC agrees that it will accept Mitigation Fees from CITY and SUTTER and use them exclusively to implement its Acquisition, management, monitoring, reporting and other responsibilities identified in Chapters IV through VI of the NBHCP.

3.2.3 TNBC Land Management; Site Specific Management Plan/NBHCP Biological Monitoring Plans/Surveys. TNBC agrees that it shall be responsible for implementing the following management obligations within its Permit Area:

(a) TNBC, in consultation with the TAC and subject to the approval of the Wildlife Agencies as provided in the NBHCP, shall prepare a Site Specific Management Plan for each Mitigation Land site acquired by TNBC under the Plan. Each Site Specific Management Plan shall be completed in accordance with the timing requirements specified in Chapter IV and VI, of the NBHCP and shall contain each of the elements described in Chapters IV and VI, E. of the NBHCP. TNBC agrees to implement the Site Specific Management Plans in accordance with the NBHCP and upon approval.

(b) TNBC, in consultation with the TAC and subject to the approval of the Wildlife Agencies as provided in the NBHCP, shall prepare an overall Biological Monitoring Plan consistent with the provisions of Chapter VI of the NBHCP. Upon approval, TNBC agrees to implement the overall NBHCP Biological Monitoring Plan in accordance with the NBHCP.

(c) TNBC shall conduct annual surveys of the Covered Species on Mitigation Lands and periodic surveys of the Covered Species throughout the Plan Area as provided in the NBHCP, the Site Specific Management Plans and Plan-wide Biological Monitoring Plan.

3.2.4 Implementation Annual Report. TNBC shall provide the Parties with an Implementation Annual Report by May 1 of each calendar year the NBHCP is in effect. The Implementation Annual Report shall include all of the information identified in Chapter VI of the NBHCP, including the results of the Compliance Monitoring implemented by CITY, SUTTER and TNBC and the Effectiveness Monitoring implemented by TNBC during the prior calendar year, and provide an accounting of all Mitigation Fees collected, all Urban Development Permits Issued, and all Mitigation Lands Acquired.

3.2.5 Implementation Annual Meeting. On or before July 1 of each calendar year each Permittee, USFWS and CDFG shall meet to discuss the Implementation Annual Report submitted by the TNBC, and any concerns, comments or recommendations any of the Parties may have regarding implementation of the NBHCP.

3.2.6 Funding. At least annually, TNBC shall evaluate the adequacy of Mitigation Fees to fund implementation of the NBHCP and shall recommend to CITY and SUTTER adjustments to the Mitigation Fee as necessary to ensure the Plan is fully implemented.

3.2.7 Budgeting and Planning. Prior to the end of each calendar year, the TNBC

shall prepare a budget and a plan for its proposed activities for the forthcoming year and provide copies to each Permittee, CDFG and USFWS.

3.2.8 Successor. With the prior written approval of CITY, SUTTER, USFWS and CDFG, the assets and obligations of TNBC may be transferred to any other non-profit corporation provided that the successor corporation assumes each of the obligations of TNBC as set forth under the NBHCP the TNBC Permit, and this Agreement.

3.2.9 Transfer to CDFG. In the event TNBC is unable to meet its financial obligations and is dissolved, becomes insolvent or goes bankrupt, and no other suitable successor is found, then the ownership of the Mitigation Lands (including conservation easements), accumulated Mitigation Fees and other sums designated for enhancement and maintenance of those lands, shall be transferred to the CDFG or a non-profit association or corporation organized for conservation purposes that is approved by USFWS, CDFG, CITY and SUTTER, which shall hold the Mitigation Lands (including conservation easements) in perpetuity and use the Mitigation Fees for the acquisition and permanent management, operation, maintenance, monitoring, and conservation of the Mitigation Lands in accordance with the NBHCP. In the event the ownership of Mitigation Lands (including conservation easements), accumulated Mitigation Fees and other sums designated for enhancement and maintenance of those lands are transferred to CDFG, CDFG shall have the authority to seek adjustments to the Mitigation Fee consistent with the provisions of the NBHCP.

3.2.10 Operation in Perpetuity. Subject to the requirements of Chapters IV and VI of the NBHCP, Mitigation Lands acquired to meet the NBHCP's Mitigation Requirement shall function in perpetuity to provide Habitat Values for the Covered Species. TNBC shall establish a sufficient endowment from the endowment components of the Mitigation Fees adopted by CITY and SUTTER to permanently sustain management of the Mitigation Lands in accordance with the NBHCP following expiration or termination of the Permits.

3.2.11 Conflicts of Interest. TNBC shall establish and maintain by-laws which include, at a minimum, restrictions on interests in contracts by Board members and employees which are at least as stringent as those applied to government officers and employees by California Government Code §1090 and following, as well as restrictions on participation in decisions and requirements of financial disclosure which are at least as stringent as those applied to government officers and employees by the Political Reform Act of 1974 and any regulations promulgated pursuant thereto.

3.2.12 TNBC Proceedings Open to Public. TNBC agrees that its actions and proceedings shall be conducted in public, in a manner consistent with the Ralph M. Brown Act, California Government Code Sections 54950, et seq. TNBC may conduct closed sessions for real estate negotiations as permitted in its Bylaws, referenced in the NBHCP, as may be amended from time to time ("TNBC Bylaws"). Pursuant to the TNBC Bylaws, the provisions of the Ralph M. Brown Act regarding the disclosure of information with respect to real property transactions (including, but not limited to Government Code Sections 54954.5(b), 54956.8 and 54957.1(a)(1)), whether such transactions are pending or completed, shall not apply. As used herein, "real property transactions" shall include options to purchase or lease, purchases, and leases of real property, as well as farming contracts affecting real property that TNBC has acquired or is in negotiations to acquire.

3.2.13 Implementation of Other NBHCP Components. TNBC shall implement each of the other components of the NBHCP identified in the Plan or this Agreement, including but not limited to the conservation strategies and Take avoidance, minimization and mitigation measures, to the extent such measures fall under its authority and control.

3.3 USFWS.

3.3.1 Oversight. After issuance of each Section 10(a)(1)(B) Permit, the USFWS shall monitor the implementation of such Permit, this Agreement, and each Permittee's activities thereunder, to ensure compliance with the NBHCP, this Agreement and the Permits.

3.3.2 Technical Assistance. Subject to Section 8.12 of this Agreement, the USFWS shall provide staff to serve on the NBHCP Technical Advisory Committee (TAC), shall provide responses to TNBC as required under the NBHCP in a timely manner, and recommend, as appropriate, revisions to the NBHCP under the Plan's Adaptive Management, Overall Program and Independent Mid-Point Reviews, and other applicable provisions, to ensure the viability of the Plan. USFWS shall also make available USFWS staff for informal consultations and meetings with the staffs, boards or councils of the Permittees to assist with implementation of the NBHCP. Consistent with its legal authorities, the USFWS shall cooperate with TNBC in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and bond issues to augment the conservation strategies of the NBHCP. Such funds are in addition to, and not in substitution of, the funding required to implement the NBHCP as described in this Agreement.

3.3.3 Newly Listed Uncovered Species. Coverage and authorization for Take of newly listed species which are not covered under the Permits shall require amendment of the NBHCP and the Permits. Until and unless the Section 10(a)(1)(B) Permits are amended to cover the newly listed species, the Permittees shall adhere to the Changed Circumstances provisions applicable to the listing of a new species as described in Chapter VI of the NBHCP. Modification of the NBHCP as necessary to amend the Permits to authorize take of new species not previously covered by the NBHCP shall be at the discretion of all parties to the NBHCP, this Agreement and the associated Permits.

3.3.4 Effective Date and Issuance of Section 10(a) Permits.

(a) For purposes of the Section 10(a)(1)(B) Permit, as to each Land Use Agency Permittee, the USFWS and TNBC, the Effective Date of this Agreement shall be the date, following execution of this Agreement by that Land Use Agency Permittee, the USFWS and TNBC, that the Section 10(a)(1)(B) Permits are issued to that Land Use Agency Permittee and TNBC.

(b) Following execution of this Agreement, the Service will issue a Section 10(a) Permit to each signatory Permittee authorizing the Take of each listed Covered animal Species incidental to the Covered Activities, subject to and in accordance with the NBHCP, this Agreement and the Permits.

(c) For Covered animal Species not listed as an endangered species or threatened species under ESA as of the Effective Date, the Section 10(a) Permits shall become effective as to each such species concurrent with the listing of the species as a threatened species or endangered species under the ESA. The NBHCP also covers seven (7) plant species. Take of listed plants is not prohibited under the ESA and therefore will not be authorized under the Section 10(a) Permits. Plants are included as Covered Species under the NBHCP and will be listed on the federal permits in recognition of the conservation measures provided for them under the NBHCP. Plant species covered under the NBHCP will also be provided assurances under the federal "No Surprises" rule.

3.3.5 Permit Findings. USFWS, based on the best scientific and commercial data available and the terms and provisions of this Agreement and the NBHCP, has found that with respect to the Covered Species:

(a) The Taking of Covered Species will be incidental to otherwise lawful activities.

(b) Implementation of the NBHCP by the Permittees will, to the maximum extent practicable, minimize and mitigate the impacts of the Incidental Take of Covered Species.

(c) CITY and SUTTER will ensure that adequate funding for the NBHCP will be provided and the NBHCP and this Agreement provide procedures for addressing Changed Circumstances and Unforeseen Circumstances.

(d) The Take of Covered Species in accordance with this

Agreement will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

(e) The measures agreed upon by the Permittees and the USFWS for purposes of the NBHCP will be met.

(f) Through this Agreement, the USFWS has received the required assurances that the NBHCP will be implemented.

3.4 CDFG.

3.4.1 Oversight. After issuance of the Section 2081 Permit to CITY and SUTTER, CDFG shall monitor the implementation of the Section 2081 Permit, this Agreement and TNBC's activities thereunder, including but not limited to, the modification, enhancement, operation and maintenance of the Mitigation Lands in order to ensure compliance with this Agreement and consistency with CDFG's trustee agency duties pursuant to CESA, and recommend any amendments to the NBHCP CDFG deems desirable, in the reasonable exercise of its discretion, under the Plan's Adaptive Management provisions as described in Chapter IV, Section E of the NBHCP or the Overall Program Review as described in Chapter IV, Section I of the NBHCP.

3.4.2 Assistance. CDFG shall provide staff to serve on the NBHCP TAC, and shall ensure the availability of its staff for informal consultations and meetings with TNBC and the staffs, boards or councils of the other Parties to this Agreement to ensure the appropriate monitoring of permitted activities which may lead to the Incidental Take of State Protected Species. CDFG will assist TNBC (to the extent authorized by the California Legislature) in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and bond issues to augment the conservation strategies of the NBHCP. Such funds are in addition to, and not in substitution of, the funding required to implement the NBHCP as described in this Agreement.

3.4.3 New Species. CDFG shall make available to Permittees information it has or acquires regarding new sightings or occurrences of any species in the Permit Areas which is state listed as threatened or endangered, is a candidate for listing as threatened or endangered, or is otherwise likely to be state listed, and which is determined to be dependent upon habitat in the Permit Area, if such species is not otherwise described in Exhibit D hereof. Once a year, upon the request of TNBC, CDFG shall provide TNBC with updated information from the California Natural Diversity Data Base ("CNDDDB") covering new sightings and occurrences of any species not otherwise described in Exhibit D within the Permit Areas. At the same time, CDFG may propose any amendments to the NBHCP CDFG deems reasonably necessary to preserve Habitat Values for the benefit of such species.

3.4.4 CDFG Land Management. CDFG shall manage in perpetuity, in a manner consistent with the NBHCP, for the conservation of the Covered Species any Mitigation Lands conveyed to it by TNBC pursuant to the terms and provisions of this Agreement.

3.4.5 Effective Date and Issuance of Section 2081(b) Permit.

(a) For purposes of the Section 2081(b) Permit, as to each Land Use Agency Permittee, CDFG and TNBC, the Effective Date of this Agreement shall be the date, following execution of this Agreement by that Land Use Agency Permittee, CDFG and TNBC, that the Section 2081(b) Permits are issued to that Land Use Agency Permittee and TNBC.

(b) Following execution of this Agreement, CDFG will issue a Section 2081(b) Permit or modification to an existing Permit to each Permittee authorizing the Take of each Covered Species incidental to Covered Activities, subject to and in accordance with the NBHCP and this Agreement.

(c) As to each Covered Species that is not currently listed under CESA, the Incidental Take Authorization under the Section 2081(b) Permits shall become effective consistent with Section 6.2.4 of this Agreement.

3.4.6 Section 2081(b) Permit Findings.

CDFG, based on the best scientific and other information that is reasonably available, and the terms and provisions of this Agreement and the NBHCP, has found that with respect to the Covered Species:

(a) Incidental Take. The authorized Take of Covered Species will be incidental to an otherwise lawful activity.

(b) Minimize and Fully Mitigate. The impacts of the authorized Take will be minimized and fully mitigated.

(c) Roughly Proportional. The measures required to minimize and fully mitigate the impacts of the authorized Take will be roughly proportional in extent to the impact of the authorized Take of Covered Species.

(d) Applicant's Objectives. The measures required to minimize and fully mitigate the impacts of the authorized Take will preserve Permittee objectives to the greatest extent possible, consistent with the obligation to minimize and fully mitigate the impacts of the authorized Take.

(e) Capable of Successful Implementation. All required measures will be capable of successful implementation.

(f) Adequate Funding. Permittees have ensured adequate funding to implement the required minimization and mitigation measures, and for monitoring compliance with, and effectiveness of, those measures.

(g) No Jeopardy. The issuance of the Section 2081(b) Permits will not jeopardize the continued existence of any Covered Species.

(h) Unlisted Species. Covered Species that are not currently listed as threatened or endangered under CESA have been treated in the NBHCP as if they were listed, and the NBHCP identifies measures to minimize and fully mitigate the impacts of the authorized Take of such unlisted species. The findings in this Section 3.4.5 apply to all Covered Species, including Covered Species that are not listed.

4 MITIGATION

4.1 Mitigation Lands. Mitigation Lands will be established and managed pursuant to the NBHCP.

4.2 Respective Permit Areas. Developers of all lands within the respective Permit Areas that are developed pursuant to an Urban Development Permit, shall provide mitigation pursuant to the NBHCP for the direct, indirect and cumulative impacts of development upon Covered Species and their habitat. CITY and SUTTER shall require an Urban Development Permittee to provide mitigation for the conversion of land to Authorized Development in the respective Permit Areas, in conformity with the NBHCP and the following sections.

4.3 Existing Development Exempt. Parcels of land within the respective Permit Areas that are shown as "Exempt Area-Existing Development" and "Development Subject to 1997 HCP" on the Baseline Maps depicted on Exhibits B and C of this Agreement are not covered by the NBHCP, this Agreement, or the Permits, provided, however, that nothing in this Agreement shall be construed to exempt such existing development from any applicable requirements of the ESA or CESA.

4.4 Mitigation Ratio. Mitigation for the conversion of land in the respective Permit Areas to Authorized Development will be required at the ratio of one half (½) acre of land protected or conserved for every one (1) acre of land converted to Authorized Development (the "Mitigation Ratio").

4.5 Calculation of Mitigation Requirement for Authorized Development Projects. The Mitigation Requirement for each public or private project is determined by applying the Mitigation Ratio to the land area converted to Authorized Development (the "Mitigation Requirement"). The

land area converted to Authorized Development is determined as follows:

(1) For both private and public development projects, except as provided in (2) and (3) below, the gross area of a particular project is considered "land area converted to Authorized Development" whether the entire project is graded or not. The fees payable shall be calculated by multiplying the Mitigation Fees (in dollars per acre) times the land area converted to Authorized Development, prorated for fractional acres.

(2) For private development projects, a separate parcel or portion of a parcel which will be transferred to a public agency for a public use consisting of a park, school or other public building, is exempt. The Mitigation Requirement for such uses must be satisfied when the parcel of public use property is developed by the respective public agency owning the parcel. With respect to other lands designated for public use, the following criteria will apply: (a) Roads: where a road is included within the respective Land Use Agency's finance plan for purposes of financing, the land transferred or to be transferred by fee or easement to the agency for the road project is excluded; where a road is not one which is financed pursuant to the agency's finance plan, but is to be paid for entirely by the private landowner or developer of the project, even though ultimately it will be dedicated to the agency, the land transferred or to be transferred to the agency for the road is included; (b) Utilities: where the landowner or developer is required to transfer to the respective Land Use Agency or another public entity (e.g., Sacramento Municipal Utility District), by easement or fee, land for a structure such as a pump station, outfall station, or similar structure, such land is excluded; where the landowner or developer is required to transfer to the agency non-exclusive easements for utility lines (water lines, sewer lines, and similar lines), the land covered by such easements is included; if the easement is exclusive, the land covered by the easement is excluded, but the transferee agency will be required to provide mitigation upon development of the transferred parcel. With respect to each parcel or portion of a parcel exempted or excluded pursuant to this section, the Mitigation Requirement shall be satisfied by CITY or SUTTER at the time such parcel or portion of land is converted to Authorized Development.

(3) For both private and public projects, excluded is any parcel or portion of the parcel approved as Mitigation Land by TNBC and the Wildlife Agencies in accordance with the NBHCP and which will be transferred in fee to TNBC or will be encumbered by a Conservation Easement in favor of TNBC for purposes of satisfaction of the Mitigation Requirement for the particular development project.

4.6 Satisfaction of Mitigation Requirement. The Land Use Agency Permitter each retains authority to require an Urban Development Permittee/landowner to satisfy the Mitigation Requirement by: (1) payment of the Mitigation Fees; or (2) subject to the approvals required by the NBHCP, transfer of Mitigation Land to TNBC, together with payment of all components of the Mitigation Fee except the Land Acquisition Fee as specified in the NBHCP. Credit against the Land Acquisition Fee component of the Mitigation Fees is based on the number of acres of land being transferred and is not based on cost or perceived value of the land transferred. Where a Land Use Agency Permittee elects to require an Urban Development Permittee to transfer land to TNBC, (1) TNBC and the Wildlife Agencies must approve the transfer of each parcel of Mitigation Land considering its location, proximity to urban uses and roads, current land condition, and all other factors specified in the NBHCP, and (2) such land must be dedicated prior to authorization by the applicable Land Use Agency Permittee for disturbance of the land resulting from the associated Urban Development Project. If the amount of land transferred to TNBC is less than the Mitigation Land required for the public or private project, the landowner is obligated to pay the outstanding balance of the Land Acquisition Fee component of the Mitigation Fees. If the amount of land transferred to TNBC is greater than the amount of Mitigation Land required for the development project, the landowner may choose one of the following credit options: (i) receive credit from the excess amount of land toward required Mitigation Land under the NBHCP for future Authorized Development of property owned by the landowner; or (ii) transfer credit from the excess amount of

land toward required Mitigation Land under the NBHCP for Authorized Development of property owned by another specified landowner. If either credit option is chosen, then prior to the transfer of Mitigation Land being finalized, the landowner shall inform CITY or SUTTER, as appropriate and TNBC in writing of the choice to receive or transfer credit and to whom the credit is to be transferred. Any transfer of fee title to lands or a Conservation Easement therein in order to satisfy the Mitigation Requirement shall be accomplished by a deed or grant of a conservation easement to TNBC in a form acceptable to USFWS and CDFG, in recordable form on or before issuance of an Urban Development Permit (i.e., a building permit, grading permit, or other permit which allows a disturbance of the surface of the earth for the public or private project). All land proposed to be transferred to TNBC in satisfaction of the Mitigation Requirement must meet the acquisition criteria specified in the NBHCP.

4.7 Jurisdictional Wetlands. Nothing in this Agreement shall relieve any Urban Development Permittee desiring to discharge any fill or other material into any jurisdictional wetlands, of any requirement to obtain a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers and comply with all the terms and conditions thereof. Take of Covered Species related to jurisdictional wetlands by the Urban Development Permittee shall be authorized through the incidental take permits issued to CITY and SUTTER and shall be subject to the requirements of the NBHCP.

4.8 Rivers, Streams or Lakes. Nothing in this Agreement shall relieve any Urban Development Permittee desiring to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the CDFG, or use any material from the streambeds, of any requirement to comply with Fish and Game Code, Division 2, Chapter 6, commencing with Section 1600 (concerning Streambed Alteration Agreements). This Agreement and implementation of the NBHCP are intended to satisfy only site-specific mitigation requirements for impacts of taking Covered Species as a result of an Authorized Development project which may be imposed under Chapter 6 of the California Fish and Game Code, with the exception of mitigation specifically directed at those vernal pool species included on the list of Covered Species.

4.9 Funding for Operating Conservation Program. CITY and SUTTER shall fund the Operating Conservation Program in accordance with Chapter VI of the NBHCP.

4.9.1 Mitigation Fees. Where an Urban Development Permittee selects payment of Mitigation Fees as its method of satisfying the Mitigation Requirement for the public or private project, the provisions of Section 4 shall govern the calculation and collection of such fees, and such Urban Development Permittee shall pay the Mitigation Fees as so calculated. The amount payable for the Mitigation Fee shall be the amount specified by ordinance or resolution adopted by the governing body of the CITY or SUTTER, including but not limited to the "catch-up fee" ordinances or other ordinances or resolutions adopted prior to or after the Effective Date.

4.9.2 Adjustments to the Mitigation Fee for Purposes of Funding the Operating Conservation Program Other than Changes to the Managed Marsh Component. Notwithstanding any other provision of this Agreement, upon request of TNBC or upon the written request of USFWS or CDFG as supported by documented evidence in the form of a written report and technical analysis, and as otherwise necessary, CITY and SUTTER shall review, and at the discretion of each, adjust the Mitigation Fees to take into account costs of land acquisition and TNBC operations, to maintain or meet the Mitigation Ratio specified in Section 4.4 of this Agreement, and to meet TNBC management, monitoring, adaptive management, or related costs required to fund the Operating Conservation Program as set forth in Chapters IV, V and VI of the NBHCP. The decision to adjust the Mitigation Fees may include but is not limited to consideration of the following factors: (1) the market price of land being acquired as Mitigation Land; (2) the necessity to maintain the 0.5 to 1 Mitigation Ratio; (3) the need to fund ongoing and permanent management and monitoring costs in accordance with the NBHCP; (4) the necessity to ensure the

effectiveness of the NBHCP's Operating Conservation Program; and (5) the availability of other sources of revenues, including the sale of hunting rights on Mitigation Lands, proceeds from the cultivation of rice on Mitigation Lands and other funds and grants.

(a) Notwithstanding the foregoing and in accordance with, and subject to the limitations of, Chapter VI of the NBHCP, CITY or SUTTER shall be obligated to increase the Mitigation Fees to fund recommended changes to the Operating Conservation Program resulting from future recovery plans, monitoring results from the Plan Area or peer-reviewed new scientific information relevant to the Plan only when such recommendations:

(1) Relate to the physical management of Mitigation Lands;

(2) Would improve the effectiveness of the NBHCP's Operating Conservation Program by identifying relevant new information, approaches, techniques, or species protection needs;

(3) Can be implemented within the NBHCP Plan Area; and

(4) Fit within the overall intent and framework, are consistent with the NBHCP's biological goals and objectives and would not exceed the established Mitigation Ratio of the NBHCP; and

(5) Would not substantially sacrifice habitat values for Covered Species that are not addressed by the recovery plan, the monitoring results or other peer-reviewed new scientific information.

(b) Adjustment of the Mitigation Fees pursuant to this subsection is independent of adjustments made on account of inflation/deflation pursuant to Section 4.9.4 of this Agreement. Nothing in this Agreement shall be construed to diminish or otherwise affect the discretionary authority of the Land Use Agencies with respect to fee adjustments under this Section 4.9.1.

4.9.3 Adjustments to the Mitigation Fee for purposes of Funding the Changes to the Managed Marsh Component. Upon written notification supported by documented evidence in the form of a written report and technical analysis by USFWS or CDFG to CITY and SUTTER of the adoption of a future Giant Garter Snake Recovery Plan, the availability of monitoring results from the Plan Area, or peer-reviewed new scientific information indicating an adjustment in the enhancement and management activities for managed marsh as specified in Chapter VI of the NBHCP, the CITY and SUTTER shall review, and at the discretion of each, adjust the Mitigation Fees to take into account increased costs of TNBC's enhancement and management of a higher proportion of managed marsh on Mitigation Lands acquired after adoption of the final Giant Garter Snake Recovery Plan by the USFWS, the availability of peer-reviewed new scientific information or monitoring results from the Plan Area indicate an adjustment in the enhancement and/or management activities for managed marsh is warranted as specified and subject to the limitations contained in Chapter VI of the NBHCP. The obligation to adjust the Mitigation Fees shall be subject to the following limitations set forth in Chapter VI of the NBHCP:

(b) the obligation to increase the Mitigation Fees shall be applied prospectively to future Mitigation Lands acquired after adoption of the Recovery Plan, in response to monitoring results from the Plan Area or in response to peer-reviewed new scientific information.

(c) if the Recovery Plan, monitoring results collected from the Plan Area, or peer-reviewed new scientific information indicate a higher proportion of managed marsh (1) will improve the effectiveness of the NBHCP's Operating Conservation Program to meet its biological goals and objectives, (2) is beneficial to the snake, and (3) will not adversely affect any other listed Covered Species.

(d) the maximum levels of managed marsh which may apply to future Mitigation Land acquisitions which occur after the results of monitoring from the Plan Area or

peer-reviewed new scientific information, or Giant Garter Snake Recovery Plan adoption shall not exceed seventy-five percent (75%) of such Mitigation Lands.

Adjustment of the Mitigation Fees pursuant to this subsection is independent of adjustments made on account of inflation/deflation pursuant to Section 4.9.4 of this Agreement. (Nothing in this Agreement shall be construed to diminish or otherwise affect the discretionary authority of the Land Use Agencies with respect to fee adjustments under this Section 4.9.2.)

4.9.4 Fee Adjustments for General Inflation. On or before January 1 of each year, CITY and SUTTER shall review and, at the discretion of each, adjust the dollar amount of the Mitigation Fees (as adjusted from time to time pursuant to Section 4.4.1), to take into account the effects of inflation/deflation generally. Adjustments will be calculated as follows: the current Mitigation Fee shall be multiplied by the index for October of the year prior to January 1, divided by the index for October of the preceding year [e.g., 2003 Fee = 2002 Fee x (October, 2002 CPI Index/October, 2001 CPI Index)]. For purposes of making this adjustment, the index utilized shall be the Consumer Price Index for All Urban Consumers, All Items, San Francisco–Oakland–San Jose (1982-1984=100), as published by the U.S. Department of Labor, or its successor. Technical adjustments made pursuant to this Section 4.9.4 shall be independent of, in addition to and not a part of adjustments to, the Mitigation Fee adjustments made pursuant to Section 4.9.2 and 4.9.3.

4.9.5 Failure to Adjust Mitigation Fees. CITY and SUTTER acknowledge that the failure of either CITY or SUTTER to adjust the Mitigation Fees as necessary to maintain the Mitigation Ratio and ensure implementation of each of the other requirements of the NBHCP identified in Chapters IV through VI of the NBHCP and/or in this Section 4 may result in suspension or revocation of their respective Permits as set forth in Section 7.6 of this Agreement.

5 Mitigation Lands

5.1 Location of Mitigation Lands. TNBC shall locate Mitigation Lands in accordance with Chapters IV through VI of the NBHCP and this Section.

5.2 Setbacks and Buffers. All Mitigation Lands Acquired by TNBC shall conform to the buffer and setback requirements set forth in Chapters IV and VI of the NBHCP.

5.3 In-Basin Acquisition. All Mitigation Lands shall be acquired within the Natomas Basin as provided in the NBHCP.

5.4 Coordinating Mitigation Land Acquisition With Agency Acquisitions. Prior to the Acquisition of any parcel of Mitigation Land, TNBC shall provide written notice to the USFWS, CDFG, and both CITY and SUTTER of its intent to Acquire such lands. USFWS and CDFG agree that they will not knowingly interfere or compete with TNBC for the Acquisition or control of such lands and that they will consult with TNBC in formulating any Acquisition plans. As to those lands identified by USFWS or CDFG for acquisition, TNBC, likewise, shall not knowingly interfere with or compete with the affected agency for acquisition or control until TNBC is notified by that agency that it is no longer pursuing acquisition or control of the lands.

5.5 Timing of Mitigation Land Acquisition. TNBC shall comply with the requirements of the NBHCP relating to the Acquisition of Mitigation Lands in advance of approval of Authorized Development set forth in Chapter VI of the NBHCP. The Parties further agree that in order to ensure that Mitigation Lands are Acquired in an amount sufficient to meet the Mitigation Requirement that attaches to all Authorized Development under the NBHCP, TNBC shall establish a 200 acre cushion of Mitigation Lands prior to the approval of any Authorized Development by CITY or SUTTER under the Plan and shall maintain the 200 Acre Mitigation Land cushion until the approval of the last 400 acres of Authorized Development under the Plan. CITY, SUTTER and TNBC shall implement this requirement in accordance with the NBHCP, as follows.

(a) No Urban Development Permits for Authorized Development shall be issued by CITY or SUTTER after September 30 of each calendar year until TNBC notifies CITY and SUTTER that it has Acquired Mitigation Lands which equal the number of acres necessary to meet the Mitigation Requirement attached to all prior Urban Development Permits issued by CITY and SUTTER plus an additional 200 acres of Mitigation Land.

(b) Because TNBC is responsible for Acquiring Mitigation Lands for Planned Development, TNBC will credit mitigation fees collected under the Metro Air Park HCP (MAP HCP) along with all Mitigation Fees collected by CITY and SUTTER for Authorized Development. The collection of Mitigation Fees for Planned Development will be credited against the Mitigation Lands Acquired by TNBC, in chronological order, with priority given to the oldest project among those approved under the MAP HCP and the CITY's or SUTTER's Permits to have paid Mitigation Fees.

5.6 Acquisition of 400 and 2,500-Acre Blocks. TNBC shall comply with those provisions of the NBHCP relating to Acquisition of Mitigation Lands to ensure that the Mitigation Lands are consolidated in minimum 400-acre habitat blocks and at least one 2,500 acre habitat block prior to the expiration of the Permits. The 400 acre minimum block requirement and the 2,500 acre minimum block requirement shall be applied in the aggregate to all Permittees and to all other approved HCPs in the Natomas Basin that are based on the NBHCP, so that the plans as a whole must achieve the identified habitat block consolidation requirements set forth in the NBHCP upon Plan completion. Notwithstanding the above, CITY and SUTTER each retain the independent obligation to provide 400 acre minimum blocks and one 2,500 acre minimum block prior to the date their respective Permits expire in the event the other Permittees cease participation in the NBHCP, or in the event the Potential Permittees choose not to participate in the NBHCP. None of the provisions contained herein shall be construed to prohibit the USFWS or CDFG from authorizing Mitigation Land acquisitions that do not comply with the minimum 400-acre minimum block size in the event that TNBC identifies potential Mitigation Lands which otherwise provide opportunities for the preservation of important biological resources.

5.7 Accounting for Mitigation Lands

5.7.1 Managed Marsh. Mitigation Lands acquired and converted to and managed as seasonal or perennial marsh, and existing marsh lands acquired by TNBC and managed as seasonal or perennial marsh, will count fully toward the 0.5:1 Mitigation Ratio described in Section 4.4 of this Agreement.

5.7.2 Rice Land. Mitigation Lands in current rice production as Rice Lands will count fully toward the 0.5:1 Mitigation Ratio described in Section 4.4 of this Agreement.

5.7.3 Uplands. Mitigation lands providing upland habitats will count fully towards the 0.5:1 Mitigation Ratio described in Section 4.4 of this Agreement.

5.7.4 Proportion of Mitigation Lands as Marsh. Within three years of the approval of a Site Specific Management Plan a minimum of 25 percent of the Mitigation Lands must be in managed marsh as specified in the NBHCP. Thereafter, a minimum of 25 percent of the Mitigation Lands shall be in managed marsh until and unless that amount is increased up to a maximum of 75 percent of the Mitigation Lands in accordance with Section 4.9.3 of this Agreement and Chapter VI

of the NBHCP. Pursuant to Section 4.9.3 of this Agreement and Chapter VI of the NBHCP, any increase in the amount of Mitigation Lands required to be in managed marsh shall apply only to Mitigation Lands Acquired to satisfy the Mitigation Requirement for Authorized Development which are acquired after the USFWS or CDFG provide written notice and its accompanying documentation of Recovery Plan adoption, the availability of monitoring results from the Plan Area, or the availability of credible scientific information collected in the Plan Area. Provided the Wildlife Agency's requested increase in managed marsh complies with Chapter VI of the NBHCP, the failure of TNBC to adopt the increase in managed marsh as requested by either Wildlife Agency shall trigger a reevaluation of the Plan and possible suspension or revocation of the CITY and SUTTER's Permits as set forth under Section 7.6 of this Agreement.

5.8 Conservation Measures. CITY and SUTTER shall include in each Urban Development Permit the Conservation Measures provided in Chapter V of the NBHCP.

6 ASSURANCES

6.1 USFWS

6.1.1 No Surprises Assurances.

(a) Unforeseen Circumstances. As provided in 50 C.F.R. 17.3, the term "Unforeseen Circumstances" shall mean changes in circumstances affecting a species or geographic area covered by the NBHCP that could not reasonably have been anticipated by the plan developers and USFWS at the time of the Plan's negotiation and development, and that results in a substantial and adverse change in the status of a Covered Species.

(1) "No Surprises" Assurances. Pursuant to the No Surprises Rule at 50 C.F.R. Sections 17.3, 17.22(b)(5) and 17.32(b)(5), and provided that CITY, SUTTER and TNBC are properly implementing the NBHCP, USFWS shall not require CITY, SUTTER or TNBC to provide additional land, water or other natural resources, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the NBHCP, this Agreement and the Permits with respect to Covered Activities under the Permits without the consent of CITY or SUTTER. However, nothing in this Section or in the Assurances Rule shall be interpreted: (1) to restrict the authority of USFWS to take appropriate action under the ESA or applicable regulations to ensure that the NBHCP is properly implemented in accordance with this Agreement; (2) to apply to future Adaptive Management modifications for Mitigation Lands that are deemed necessary or appropriate by the USFWS or CDFG as determined in accordance with Chapter VI of the NBHCP and in consultation with CITY, SUTTER and TNBC, to respond to the results of monitoring in the Plan Area, or to new scientific information relevant to the NBHCP, (3) to apply to future modifications to the NBHCP as a result of future recovery plans as determined in accordance with Chapter VI of the NBHCP, (4) to apply to the NBHCP responses to Changed Circumstances identified in Chapter VI of the NBHCP, or (5) to apply to changes anticipated to occur as a result of the Urban Development activities anticipated by the Section 10(a)(1)(B) Permit, Section 2081(b) Permit, or as otherwise approved by the USFWS, provided that such actions, modifications and changes comply with the limitations and restrictions set forth in Chapter VI of the NBHCP. If USFWS makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, CITY, SUTTER and TNBC will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species and ensure that third persons under their control that are carrying out Covered Activities avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

(2) Unforeseen Circumstances Finding. In the event that USFWS believes that Unforeseen Circumstances may exist in accordance with the "No Surprises" rule, it shall notify CDFG, CITY, SUTTER and TNBC in writing of the applicable specific facts described in Section 6.1.1 above. In the notification, USFWS shall clearly document the basis for

the proposed finding regarding the existence of Unforeseen Circumstances in accordance with the requirements of 50 C.F.R. § 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C). Within fifteen (15) days of receiving such notice, CITY, SUTTER and TNBC, USFWS and CDFG shall meet to consider the facts cited in the notice and potential changes to the NBHCP's Operating Conservation Program or management and operation of the Mitigation Lands. Pursuant to 50 C.F.R. § 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C), USFWS shall make an Unforeseen Circumstances finding based on the best scientific evidence available, after considering any responses submitted by any other Parties pursuant to this section, and USFWS shall have the burden of demonstrating that Unforeseen Circumstances exist.

(3) Effect of Unforeseen Circumstances Finding. Pursuant to 50 C.F.R. 17.22(b)(5) and 17.32(b)(5), in the event that USFWS makes a finding of Unforeseen Circumstances and additional conservation and mitigation measures are deemed necessary to respond to such Unforeseen Circumstances, USFWS may require additional measures from CITY, SUTTER or TNBC where the NBHCP is being properly implemented, but only if such measures are limited to modifications within the Mitigation Lands and the NBHCP's Operating Conservation Program for the affected species and maintain the original terms of the NBHCP to the maximum extent possible. Additional conservation and mitigation measures shall not involve the commitment of additional land, water or other natural resources without the consent of CITY and SUTTER.

(b) Changed Circumstances.

(1) Changed Circumstances Defined. As provided in 50 C.F.R. 17.3, the term "Changed Circumstances" means changes in circumstances affecting a species or geographic area covered by the NBHCP that can reasonably be anticipated by CITY, SUTTER or TNBC and that can be planned for in the NBHCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events.) Changed circumstances and planned responses to those circumstances are described in Chapter VI of the NBHCP.

(2) Permittee-Initiated Response to Changed Circumstances. CITY, SUTTER or TNBC, as appropriate, will immediately notify USFWS and all other Permittees upon learning that any of the Changed Circumstances listed in Chapter VI of the NBHCP has occurred, and shall provide written notice within seven (7) days. Permittees shall modify their activities and shall require third persons under the Permittees' control to modify their activities, as appropriate, in accordance with Chapter VI of the NBHCP, to the extent necessary and feasible to minimize and mitigate the effects of the Changed Circumstances. CITY, SUTTER and TNBC and will report to USFWS on their actions. Such modifications will be initiated without awaiting notice from USFWS. Such changes are provided for in the NBHCP, and hence do not constitute unforeseen circumstances or require amendment of Permits or the NBHCP.

(3) USFWS-Initiated Response to Changed Circumstances. If USFWS determines that Changed Circumstances have occurred and that CITY, SUTTER or TNBC have not responded in accordance with Chapter VI of the NBHCP, the USFWS in coordination with CDFG will so notify CITY, SUTTER and TNBC and, as appropriate, direct them to make the required changes. Within thirty (30) days after receiving such notice, CITY, SUTTER or TNBC, as appropriate, will make the required changes and report to USFWS on their action. Such changes are provided for in the NBHCP, and hence do not constitute unforeseen circumstances or require amendment of Permits or of the NBHCP.

6.1.2 Migratory Bird Treaty Act (MBTA). If during the term of the Section 10(a)(1)(B) Permits, an avian Covered Species which is protected under the MBTA is listed under the ESA, the Section 10(a)(1)(B) Permits will also constitute Special Purpose Permits under 50 C.F.R. Section 21.27 for the "take" (for purposes of this Section, as that term is understood under the MBTA) of those Covered avian Species which are listed as threatened or endangered under the ESA and which are also protected by the MBTA. The take of such species in conjunction with any Authorized Development Project, in accordance with the terms of this Agreement, the NBHCP and

CITY's, SUTTER's or TNBC's Section 10(a)(1)(B) Permits, will not be in violation of the MBTA. Such Special Purpose permits shall be valid for a period of three years from the date the species is listed under the ESA provided that City's, Sutter's, or TNBC's Section 10(a)(1)(B) Permit, as applicable, remains in effect for that period. Such Special Purpose Permit will authorize take of any avian Covered Species listed under the ESA during the three year Special Purpose Permit term. Such Special Purpose Permit shall be renewed as to each Permittee, provided that each Permittee continues to fulfill its obligations under this Agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 C.F.R. Section 21.27 or its successor at the time of renewal.

6.1.3 Beneficial Effects With Respect to Future Listings. To the extent permitted by the ESA and consistent with the provisions of the NBHCP, the USFWS shall consider the NBHCP and this Agreement in any future determination by the USFWS with regard to the listing of one or more of the currently unlisted Covered Species as an endangered species or threatened species pursuant to the ESA.

6.1.4 Critical Habitat. The USFWS further agrees that it will consider the NBHCP in its preparation of any proposed designation of critical habitat concerning any Covered Species and agrees that, consistent with 50 C.F.R. 424.12, the NBHCP incorporates those special management considerations necessary to manage the Covered Species and their habitats in a manner that will provide "for the conservation of the species involved" within the CITY, SUTTER's and TNBC's respective Permit Areas in the Natomas Basin. Consistent with the No Surprises Rule set forth in Section 6.1.2(a), in the event that a critical habitat designation is made for any Covered Species and upon a determination that CITY, SUTTER and TNBC are properly implementing the NBHCP, no additional mitigation in the form of land, land restrictions or financial compensation, beyond that required by the NBHCP, shall be required of any Permittee in connection with Urban Development in its Permit Area as a result of such critical habitat designation without the consent of that Permittee.

6.1.5 ESA Listing of Currently Unlisted Covered Species. In the event that one or more of the Covered animal Species that are not currently listed as an endangered species or threatened species are so listed pursuant to the ESA, the Section 10(a)(1)(B) Permit shall become effective to permit the Incidental Take of such species in connection with Urban Development within each Permittee's Permit Area as of the date the species is listed provided the CITY, SUTTER and TNBC are properly implementing the NBHCP. The Parties expressly acknowledge that it is the intent of this Agreement that the Mitigation Lands will be administered so as to conserve and enhance the habitat values for all listed and unlisted Covered Species reasonably expected to be found in Natomas Basin, to the extent provided for in the NBHCP.

6.2 CDFG

6.2.1 CESA Compliance. CDFG shall consider adherence to the terms of this Agreement to be compliance with the CESA and the California Native Plant Protection Act for the impacts of Authorized Development on State Protected Species in the Permit Area. Take of Fully Protected Species is not authorized by this Agreement.

6.2.2 Adequate Mitigation Under CESA. CDFG shall consider adherence to the terms of the Section 2081 Permit, the NBHCP and this Agreement to minimize and fully mitigate the impacts associated with the Incidental Take of State Protected Species in the Permit Areas as authorized by the Section 2081 Permit and this Agreement pursuant to CESA.

6.2.3 Assurances. Except as otherwise required by law, no further mitigation from Urban Development Permittees and/or CITY and SUTTER consisting of land, additional land restrictions, or financial compensation beyond that described herein and provided for in the NBHCP, will be required by CDFG to address the impacts of Authorized Development within the respective Permit Areas on the State Protected Species, Covered Species which become listed in the future as State-protected species, or their habitats pursuant to the CESA.

6.2.4 CESA Listing of Currently Unlisted Covered Species. In the event that one or more of the Covered Species that are not State Protected Species are listed as an endangered species or threatened species or candidate species pursuant to the CESA (“Additional State Protected Species”), the Section 2081 Permit shall become effective to permit the Incidental Take of such species in connection with Authorized Development within each Permittee’s Permit Area as of the date the species is accepted and designated as a candidate species pursuant to California Fish and Game Code section 2074.2, upon confirmation by CDFG that substantial evidence demonstrates that the Section 2081 Permit will continue to meet the standards in California Fish and Game Code Section 2081(b) and Title 14 of the California Code of Regulations, Section 783.4 for the Additional State Protected Species. In the event CDFG determines that such standards will not be met, and the Section 2081 Permit does not become effective upon the designation of an Additional State Protected Species as a candidate, threatened, or endangered species under CESA, CDFG shall accept and give due consideration to the minimization and mitigation measures in the NBHCP and this Agreement in support of an application for a permit amendment or for a separate Section 2081 Permit authorizing Incidental Take of any such Additional State Protected Species. CDFG shall make reasonable efforts to review and process the application for an amendment to the Section 2081 Permit or a new Section 2081 Permit to authorize Incidental Take of an Additional State Protected Species to ensure, to the extent consistent with CESA, that the Incidental Take authorization is effective at the time the Covered Species is accepted and designated as a candidate species under CESA.

(a) The Parties expressly acknowledge that it is the intent of this Agreement that the Mitigation Lands will be administered so as to enhance their Habitat Values for all the Covered Species reasonably expected to be found in the Permit Areas.

(b) To the extent permitted by the CESA, the CDFG shall consider the NBHCP and this Agreement in any future determination by the CDFG with regard to the listing of one or more of the currently unlisted Covered Species as an endangered species or threatened species pursuant to the CESA.

6.2.5 Changed Conditions. For the purposes of this Agreement, the term “Changed Conditions” shall have the same meaning as expressed in CESA and its related implementing regulations in Title 14 of the California Code of Regulations, commencing with section 783.0. Prior to making a finding of Changed Conditions, CDFG shall provide notice to CITY, SUTTER, TNBC and other Parties hereto of any proposed amendments to this Agreement which CDFG proposes to remedy the Changed Condition. CDFG shall, to the extent feasible, meet with CITY, SUTTER, TNBC, and other Parties hereto at least ninety (90) days prior to making a finding of Changed Conditions to provide such parties with an opportunity to submit their comments and suggested revisions to the proposed amendment.

6.3 Limits on Future Revisions to NBHCP. The Parties acknowledge that the NBHCP expressly provides for revisions to the Plan’s Operating Conservation Program and Mitigation Lands as a result of monitoring results collected from the Plan Area, peer-reviewed new scientific information, or future recovery plans for the Covered Species, as part of the Adaptive Management program, in response to Changed Circumstances and for any other cause identified in Chapter VI of the NBHCP, provided that such revisions comply with Chapter VI of the NBHCP. Such revisions are provided for under the Plan and are therefore not subject to the restrictions on additional Mitigation contained in USFWS’s No Surprises Rule or agreed to by CDFG, nor do such revisions require amendment of the Plan or the Permits. Notwithstanding the above, such revisions shall be subject to the following limitations unless such limitations are waived in writing by CITY, SUTTER and TNBC.

(a) The modifications shall not require more than 75 percent of the Mitigation Lands to be converted to or maintained as managed marsh; and

(b) The modifications shall not require the Mitigation Ratio to be greater than 0.5 acre mitigation to 1.0 acre development.

(c) The modifications shall comply with the requirements, limitations and restrictions specified in Chapter VI of the NBHCP.

6.4 Reservation of Rights Re: Subsequent Listing of Species. This Agreement shall not be construed as a waiver of any rights or objections that any of the Parties hereto or Urban Development Permittees may have with respect to the proposed listing of any Candidate Species under the ESA or CESA or of any of the other Covered Species described in this Agreement. The Permittee and the Urban Development Permittees reserve their right to oppose any formal listing of any Candidate Species or other Covered Species pursuant to the ESA or CESA. Likewise, nothing in this Agreement is intended, nor shall be construed to limit the authority of USFWS or CDFG to enforce or otherwise carry out their respective responsibilities under the federal or state Endangered Species Acts and other applicable federal and state laws.

6.5 Land Use Authority. Nothing in the NBHCP or in this Agreement shall be interpreted or operate in a manner that expressly or impliedly diminishes or restricts the local land use authority of CITY and SUTTER. Notwithstanding the foregoing sentence, CITY and SUTTER acknowledge that they have chosen to implement several of the commitments made by them under the NBHCP through the exercise of their respective land use authorities. Therefore, a failure of CITY or SUTTER to exercise their land use authorities in a manner consistent with their obligations under the NBHCP could compromise the effectiveness of the Plan, would trigger a reevaluation of the Plan and their respective Permits and could result in suspension or revocation of such Permits as set forth in Section 7.6 of this Agreement.

6.6 No Liability. All Parties hereto agree that under no circumstances shall CITY, SUTTER and TNBC have any liability whatsoever for any debts, liabilities or financial obligations incurred by another Permittee under the NBHCP. Notwithstanding the foregoing sentence CITY and SUTTER acknowledge that they are obligated under their Permits to fully implement the NBHCP, including funding each of the obligations assigned to TNBC as the Plan Operator under the NBHCP. Therefore, a failure of CITY or SUTTER to fully fund TNBC's obligation under the Plan could compromise the effectiveness of the Plan, would trigger a reevaluation of the Plan and CITY, SUTTER and TNBC's respective Permits and could result in suspension or revocation of such permits pursuant to Section 7.6 of this Agreement.

7 AMENDMENTS AND REMEDIES

7.1 Revisions and Amendments to the NBHCP. Revisions to the NBHCP shall be implemented in accordance with Chapter VI of the Plan. Revisions shall not require Amendment of the Plan or Permits. Amendments to the NBHCP shall require amendment of the Permits and shall be processed in accordance with the amendment provisions of Chapter VI of the Plan and all applicable laws and regulations.

7.2 Amendments to Agreement. This Agreement may be amended only by written document signed by all of the Parties.

7.3 Land Use Changes. The Parties to this Agreement agree that the adoption and amendment of General Plans, Specific Plans, Community Plans, zoning ordinances and similar ordinances, and the granting of implementing land use entitlement by CITY or SUTTER pertaining to land in their respective Permit Areas, shall be matters within the sole discretion of CITY and SUTTER, and shall not require amendments to this Agreement or the approval of the other Parties to this Agreement. No such action by CITY or SUTTER shall in any way alter or diminish its obligations under this Agreement and the NBHCP. Notwithstanding the foregoing sentences, CITY and SUTTER acknowledge that they have chosen to implement several of the commitments made

by them under the NBHCP through the exercise of their respective land use authorities. Therefore, a failure of CITY or SUTTER to exercise their land use authorities in a manner consistent with their obligations under the NBHCP could compromise the effectiveness of the Plan, would trigger a reevaluation of the Plan and their respective Permits and could result in suspension or revocation of such Permits as set forth in Section 7.6 of this Agreement.

7.4 Remedies in General. The Parties acknowledge that each of the Covered Species is unique and that the loss of any of the Covered Species would be irreparable and that therefore injunctive and/or temporary relief may be appropriate in certain circumstances involving a breach of this Agreement. Notwithstanding any other provision of this Agreement, the Parties shall not be liable in monetary damages to any Party or any person for any breach of this Agreement, in the performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Subject to the foregoing, the Parties shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a)(1)(B) Permit and Section 2081 Permit and to seek remedies for any breach thereof, consistent with and subject to the terms of this Agreement. It is expressly understood by the Parties that monetary damages will not provide an adequate remedy for material breach of this Agreement.

7.5 Third Party Enforcement. This Agreement shall not create in the public, any member of the public, or any other person or entity, including any Urban Development Permittee, any rights under this Agreement, nor shall it authorize anyone not a signatory to this Agreement to maintain a suit (1) in equity or law to enforce the terms of this Agreement and/or the NBHCP, Section 10(a)(1)(B) Permit or Section 2081 Permit, or (2) for compensation or damages under the provisions of the Agreement, NBHCP, or Permits.

7.6 Suspension or Revocation.

7.6.1 Suspension or Revocation by USFWS. The Parties acknowledge that the USFWS has the authority to suspend or revoke any of the Section 10(a)(1)(B) Permits, in whole or in part, in the event of a material violation of the Section 10(a)(1)(B) Permit and pursuant to any applicable federal laws or regulations that govern the permitted activity. The regulations found at 50 C.F.R. §§13.27 - 13.29 and 17.22(b)(8), or any successor regulations, shall govern the suspension or revocation of the Section 10(a)(1)(B) Permit issued by the USFWS.

7.6.2 Suspension or Revocation by CDFG. The Parties acknowledge that CDFG shall have the authority to suspend or revoke the Section 2081 Permit in the event of a material breach or violation of the Section 2081 Permit or any applicable California laws or regulations governing the permitted activity.

7.6.3 Status of Urban Development Permittees after Suspension or Revocation. Notwithstanding the suspension or revocation of a Permittee's Permit, CITY and SUTTER shall remain liable under this Agreement to carry out all of their responsibilities under the Permits and this Agreement arising from any Authorized Development approved, authorized, or carried out by CITY or SUTTER, within their respective Permit Areas between the Effective Date of the Agreement and the date a Permittee's Permit is suspended or revoked. As to any Authorized Development project approved or authorized by CITY or SUTTER prior to the Permit suspension or revocation and that is in compliance with the Permit, but as to which construction activity has not commenced as of the suspension or revocation, so long as CITY or SUTTER and the Urban Development Permittee, if any, continue to fulfill their obligations under the Permit, the Permit shall continue in effect for that Authorized Development project until that project is completed.

7.6.4 No Further Approvals by Permittees. Subject to the provisions of section 7.6.3 above, if a Permit is suspended or revoked, CITY and SUTTER shall not have the authority to rely upon the Permit to approve or carry out any actions that would violate the ESA or CESA in the absence of such Permit. Notwithstanding the suspension or revocation, CITY and SUTTER shall remain fully liable under the Permits and this Agreement to carry out all of their responsibilities,

including the Mitigation Requirement, under the NBHCP, the Permits and this Agreement arising from Authorized Development approved, authorized or carried out by an Urban Development Permittee within the respective Permit Areas between the Effective Date and the date the Permit is suspended or revoked.

7.6.5 Severability. The violation by CITY or SUTTER of their respective Permits shall not adversely affect or be attributed to, nor shall it result in the loss or diminution of any right, privilege or benefit under a Permit held by a non-responsible Permittee. Nor shall CITY and SUTTER be deemed to have violated the Permits solely as a consequence of the actions of an Urban Development Permittee or other third person subject to CITY's or SUTTER's jurisdiction and control, so long as CITY or SUTTER takes all necessary and appropriate steps, if any are available, to halt and correct the violation in accordance with this Agreement and consistent with their police powers and local land use authority. However, the violation by TNBC of its Permits shall be considered a failure by CITY and SUTTER to implement their obligations of the Operating Conservation Program under the NBHCP. In such event, CITY and SUTTER's Permits shall not be revoked or suspended, if CITY and/or SUTTER implement corrective measures in accordance with Section 3.1.11 of this Agreement. Notwithstanding the above, to the extent that action or inaction by a Permittee, an Urban Development Permittee or other third party subject to CITY's or SUTTER's jurisdiction and control, or TNBC prevents proper implementation of the NBHCP or compliance by one or more of the remaining Permittees with their Permits or results in a determination by the USFWS or CDFG that continuation of the Permits would appreciably reduce the likelihood of the survival and recovery of a Covered Species in the wild, such Permits may be suspended or revoked in accordance with applicable USFWS and CDFG regulations.

7.6.6 Validity of Permits. In the event a court of competent jurisdiction invalidates either City, County's or TNBC's Section 10(a)(1)(B) or Section 2081 Permits with regard to one or more Covered Species, other than the Giant garter snake or Swainson's hawk, such action shall not be construed to invalidate the permits with regard to the remaining Covered Species. The requirements of the State and Federal Incidental Take Permits and the NBHCP shall continue to be implemented by each Permittee with regard to the remaining Covered Species.

8 MISCELLANEOUS

8.1 Term of Agreement. This Agreement shall remain in effect for a period of fifty (50) years from the Effective Date.

8.2 Termination

8.2.1 Termination by Mutual Consent. CITY or SUTTER may, by mutual agreement with the Wildlife Agencies, terminate this Agreement as to itself. In the event that such mutually agreed-upon termination occurs, a written termination agreement shall be executed to ensure that the mitigation required under the NBHCP and this Agreement for all Authorized Development approved, authorized or carried out prior to termination is carried out. Upon execution of such agreement and surrender of the Permits to the Wildlife Agencies, no further take shall be authorized under the terms of the surrendered Permits.

8.2.2 Termination by USFWS or CDFG. The USFWS or CDFG may terminate this Agreement upon revocation of the Section 10(a)(1)(B) Permit or the Section 2081 Permit in accordance with Section 7.6.

8.2.3 Termination by the TNBC. The TNBC may terminate voluntarily its participation under this Agreement only if it has an agreement to do so with the CITY, SUTTER, USFWS and CDFG. Any agreement allowing TNBC to terminate its participation and its status as Plan Operator, shall contain provisions for assuring that the provisions of the NBHCP will be implemented.

8.2.4 Effect of Termination. In the event this Agreement is terminated by the USFWS or CDFG with respect to a Permittee, that Permittee's Section 10(a)(1)(B) Permit or

Section 2081 Permit, as applicable, shall, subject to Section 8.2.1 above, be void. CITY and SUTTER acknowledge that, although the NBHCP Operating Conservation Program would mitigate for effects resulting from the Land Use Agencies' Covered Activities, because the percentage of uplands to wetlands differs between their respective Permit Areas, the NBHCP allows for the Operating Conservation Program provided for under the NBHCP to be reevaluated and revised in the event either CITY's or SUTTER's Permits are terminated or revoked to ensure that the configuration of Mitigation Lands provided for under the NBHCP continues to adequately mitigate for the impacts of Authorized Development in the remaining jurisdiction.

8.2.5 Status of Mitigation Lands Upon Termination. The Mitigation Lands are to be established in perpetuity. Management of the Mitigation Lands by TNBC in accordance with the NBHCP shall continue in perpetuity, notwithstanding termination, suspension or revocation of CITY's or SUTTER's Section 10(a)(1)(B) Permit or Section 2081 Permit for any reason, unless the suspension or revocation of CITY's or SUTTER's Permits is due to a violation by TNBC of its Permits. TNBC's management activities shall be funded from the Mitigation Fees collected on account of past Authorized Development under the Permits which includes endowment components to fund permanent management. None of the assets of the TNBC, including lands or interests in land may be transferred, conveyed, or assigned to any person or entity, except as specified in Sections 3.2.11 and Section 3.2.12 of this Agreement. However, take previously authorized through Urban Development Permits or for public or private projects for which the Mitigation Requirement was been completed or is otherwise assured shall continue to be authorized. In the case of the federal Permit, upon notification from the Service that implementation of all minimization and mitigation measures identified in the termination agreement have been implemented, the permit shall be deemed canceled.

8.3 Binding Effect. The terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

8.4 Notices. Any notice required or permitted to be given hereunder shall be in writing, shall be deemed made upon receipt, and shall be given by personal delivery or by certified mail/return receipt requested, addressed to the Parties as follows:

City of Sacramento
915 I Street, Room 109
Sacramento, CA 95814
Attn: City Manager

County Administrative Officer
County of Sutter
1160 Civic Center Blvd., Ste. A
Yuba City, CA 95993

United States Fish and Wildlife Service
Office of the Regional Director
Portland, OR 97232

with a copy to:

Field Supervisor
U.S. Fish and Wildlife Service
3310 El Camino Avenue, Suite 130
Sacramento, CA 95821-6340

California Department of Fish and Game Office of the Director
1416 9th Street, 12th floor
Sacramento, CA 95814

with copies to:

General Counsel
California Department of Fish and Game
1416 9th Street, 12th floor
Sacramento, CA 95814

and to:

Regional Manager
California Department of Fish and Game
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670

The Natomas Basin Conservancy
1750 Creekside Oaks Dr., Suite 290
Sacramento, CA 95833
Attn: Executive Manager

Any Party may give notice to the others specifying a different address for notice purposes.

8.5 Captions. The headings of the various sections hereof are for convenience only, and shall not affect the meaning of any provisions of this Agreement.

8.6 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute but one and the same instrument.

8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the ESA, the CESA, and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of USFWS to fulfill its responsibilities under the ESA or CDFG under CESA or other applicable law, including but not limited to seeking penalties against CITY, SUTTER or TNBC. Moreover nothing in this agreement is intended to limit the legal responsibilities of USFWS as an agency of the federal government or CDFG as an agency of the State of California.

8.8 Complete Agreement. This Agreement, together with the NBHCP, constitutes the full and complete agreement between the Parties concerning the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings, whether oral or written, all of which shall be deemed to have been merged herein, it being the intention of the Parties that this be a completely integrated agreement. Specifically, this Agreement shall supercede the Implementation Agreement executed in December, 1997.

8.9 Federal Section 7 Consultations. Nothing in this Agreement is intended to eliminate or modify the obligation of a federal agency to consult with the USFWS pursuant to section 7(a) of the ESA (16 U.S.C. Section 1536(a)). To the maximum extent appropriate, in any consultation

under said provision involving CITY or SUTTER or a prospective or other Urban Development Permittee with regard to Covered Species, the USFWS shall ensure that the biological opinion issued in connection with the proposed public or private Project which is the subject of the consultation is consistent with the biological opinion issued in connection with the NBHCP, provided that the proposed public or private Project is consistent with the NBHCP. Any biological measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the Mitigation Requirement imposed by CITY or SUTTER under the NBHCP as implemented by this Agreement, provided that, unless otherwise required by law, the USFWS shall not impose additional mitigation measures on the project proponent in excess of those that have been or will be required by the CITY or SUTTER pursuant to the NBHCP, this Agreement and the Permits.

8.10 Conflict with NBHCP. The NBHCP and each of its terms are intended to be, and by this reference are, incorporated herein. In the event of any contradiction, conflict or inconsistency between the terms of this Agreement and the NBHCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and of the NBHCP shall be interpreted to be supplementary to each other. Where interpretation is required, this Agreement shall be interpreted as a vehicle for implementation of the NBHCP.

8.11 Other Permittees. The failure of other Potential Permittees identified in the NBHCP to obtain Permits shall not preclude this Agreement from going into effect within the geographical boundaries of each Permittee, or on lands Acquired by the NBC, nor preclude the issuance of the Permits to such other Potential Permittees or to subsequent signatories of this Agreement.

8.12 Federal Appropriations. USFWS's commitment to provide technical assistance under the NBHCP and to implement this Agreement, including the assurances provided herein, are subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

8.13 State Appropriations. Implementation of this Agreement and the NBHCP and the assurances provided herein, is subject to the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

8.14 References to Regulations. Any reference in this Agreement, the NBHCP, or the Permits to any regulation or rule of USFWS or CDFG shall be deemed to be a reference to such regulation or rule in existence at the time the action is taken.

8.15 Applicable Laws. All activities undertaken pursuant to this Agreement, the NBHCP or the Permit must be in compliance with all applicable state and federal laws and regulations.

8.16 No Partnership. Neither this Agreement nor the NBHCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

8.17 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first set forth above.

U.S. FISH AND WILDLIFE SERVICE,
An Agency of the Department of the Interior
of the United States of America

By: _____

Name: _____

Title: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME,
A Subdivision of the Resources Agency
of the State of California

By: _____

Name: _____

Title: _____

CITY OF SACRAMENTO,
A Municipal Corporation

By: _____

Robert P. Thomas
City Manager

Approved as to Form:

City Attorney

COUNTY OF SUTTER,
A Political Subdivision of the State of California

By: _____

County Administrative Officer

Approved as to Form: _____
County Counsel

NATOMAS BASIN CONSERVANCY,
A Non-Profit Corporation

By: _____

Name: _____

Title: _____

EXHIBIT A: DEFINITIONS

NBHCP Definitions

Terms used in the NBHCP and Implementation Agreement shall have the same meaning as those same terms have under the ESA and CESA, except as set forth below. Capitalized terms used but not defined herein, but which are defined in the Plan, shall have the meanings specified in the Plan.

1. Adaptive Management. The term “Adaptive Management” means a method for examining alternative strategies for meeting measurable goals and objectives, and then, if necessary adjusting future conservation management actions according to what is learned to achieve those goals and objectives.
2. Amendment. The term “Amendment” shall refer to significant changes to the NBHCP, Implementation Agreement and/or Incidental Take Permit for circumstances as described in Chapter VI, Section 3(b) of the NBHCP. Amendments include activities which are more significant than and different from revisions (see also “Revisions”).
3. Area B (Out of Basin Mitigation Area). Area B shall refer to lands identified on Figure 20 of the HCP in which TNBC may pursue acquisition of Mitigation Lands under the specific terms described in Chapter IV, Section 2.b of the HCP, with approval of USFWS and CDFG. TNBC shall account for all acreage acquired in Area B to ensure that the total amount of such lands does not exceed 20 percent of the total Mitigation Lands. The additional requirements for acquisition of mitigation lands in Area B (out of basin) apply only to Area B and do not apply to any acquisitions of mitigation lands located within the Natomas Basin or the outer “ring” of the Natomas Basin defined as the land bounding the Natomas Basin and extending to the edge of the water immediately outside the Natomas Basin levees.

(Note: During the final NBHCP approval process by the City Council of the City of Sacramento and the Board of Supervisors of Sutter County, authorization to purchase Mitigation Lands to offset the impacts of development was limited to the Natomas Basin and the “outer” ring around the levees of the Natomas Basin. No authorization to purchase lands to mitigate impacts of Authorized Development in Area B (out of basin) was granted by the City Council and the Board of Supervisors.)

4. Authorized Development. The term “Authorized Development” means that development for which incidental take is authorized for the City of Sacramento and Sutter County under this NBHCP. Authorized Development is limited to a total of 15,517 acres of Planned Development (as further defined below in Section III.A) under the NBHCP. Included within the City’s 8,050 acre portion of the Authorized Development are 28 acres of infrastructure development associated with the Metro Air Park (MAP) project in Sacramento County. Included within Sutter County’s 7,467 acres of Authorized Development is 16.5 acres of proposed drainage channel improvements located within Sacramento County. Incidental take resulting from the 1,983 acre MAP project, including the 28 acres located in the City of Sacramento, is covered by separate incidental take permits issued by the Wildlife Agencies. The 15,517 acres of Authorized Development related incidental take within the City and Sutter County combined with the 1,983 acres of development related take within Sacramento County for the MAP project represent a total of 17,500 acres of potential urban

development in the Natomas Basin which has been analyzed in the NBHCP as Planned Development, as further defined below. Any development within the City of Sacramento beyond the 8,050 acres to be covered under its incidental take permits, within Sutter County, beyond the 7,467 acres to be covered under its incidental take permits, or within Sacramento County beyond the MAP project, will not be covered under the respective incidental take permits and will trigger a reevaluation of impacts to and mitigation for biological and other resources in the Natomas Basin and amendment of the NBHCP and the incidental take permits or development of a new HCP and issuance of new incidental take permits to address such impacts and mitigation as appropriate.

5. Biological Monitoring. The term “Biological Monitoring” means the mandatory element of all HCPs that is designed and implemented to provide the information necessary to assess compliance and project impacts, and verify progress toward the biological goals and objectives for the Plan’s Covered Species and habitats.
6. Biological Monitoring Plan. Refers to specific monitoring requirements to be conducted in the Natomas Basin as specified in Chapter VI, Section E, Subsection 2, and includes both the overall NBHCP Biological Effectiveness Monitoring Program and the Site Specific Biological Monitoring Programs.
7. Changed Circumstances. This term “Changed circumstances” is defined in Title 50 of the Code of Federal Regulations, Section 17.3 as changes in circumstances affecting a species or geographic area covered by the NBHCP that can reasonably be anticipated by Plan Participants and the USFWS, and that can be planned for (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events.)” Changed circumstances addressed in NBHCP are outlined in Chapter VI, Section K of the HCP.
8. Compliance Monitoring. The term “Compliance Monitoring” means an itemized, task specific method of verifying that the Permittee is carrying out the terms of the NBHCP, Permit and IA.
9. Conservation Measures. The term “Conservation Measures” means that accepting and conveying developer mitigation fees, and possibly land dedications, as required under the NBHCP, the Land Use Agencies shall implement a variety of measures that will avoid, minimize or mitigate the take of Covered Species.
10. Covered Activities. The term “Covered Activities” means the Land Use Agencies Covered Activities and the TNBC Covered Activities.
11. Covered Activities, Land Use Agencies. The term “Land Use Agencies Covered Activities” refers to those specific activities identified at Chapter I, Section N.(1) of the NBHCP for which each Land Use Permittee shall be provided coverage under the federal Section 10(a)(1)(B) permits, and the State Section 2081 Permits. Covered Activities generally means the conversion from vacant land or agricultural uses to residential, commercial, and industrial uses, including related public and private infrastructure development and improvements by the City or Sutter County.
12. Covered Activities, TNBC. The term “TNBC Covered Activities” means those activities conducted by TNBC on behalf of the City, Sutter County and other Permittees who may

obtain take authorization pursuant to the NBHCP or an HCP based on the NBHCP, within TNBC's Permit Area. These activities include acquisition, habitat creation, restoration, preservation, enhancement, management and monitoring activities within Conserved Habitat Areas. TNBC's Covered Activities are described at Chapter I, Section N (3) of the NBHCP.

13. Covered Activities, Water Agencies. The term "Water Agencies Covered Activity" refers to those specific activities identified in Chapter I, Section N (2) of the NBHCP for which each Water Agency Permittee shall be provided coverage under the federal Section 10(a)(1)(B) permits, and the State Section 2081 Permits. Such Covered Activities generally include physical maintenance and operation of the Water Agencies' existing facilities located within the Plan Area, including channel maintenance, vegetation control (where no herbicides are utilized), and construction or improvement of facilities where there is no increase to the footprint of the existing facility.
14. Covered Species. The term "Covered Species" means the Federally Protected Species, State Protected Species and the Other Species identified within Table I-1 hereto.
15. ESA and CESA. The term "ESA" means the Federal Endangered Species Act of 1973, as amended. The term "CESA" means the California Endangered Species Act, as amended.
16. Exempt Area. The term refers to areas within the Natomas Basin, within the City of Sacramento which are already approved for development or already developed and as shown on Exhibit B of the Implementation Agreement.
17. Federally Protected Species. The term "Federally Protected Species" means those plants and animals listed by the United States ("U.S.") under the provisions of ESA and shown as Covered Species on Table I-1 hereto that are found, or may be found, in the Permit Areas, as well as those other Covered Species listed on Table I-1 that the USFWS may list in the future.
18. Five Point Policy. The term "Five Point Policy" refers to an addendum to the HCP Handbook published by the Fish and Wildlife Service and the National Marine Service on June 1, 2000. The five point policy addendum provides clarifying guidance for conducting the incidental take permit program and for those applying for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act (ESA).
19. Habitat Values. The term "Habitat Values" means the capability of a land or water area or associated areas, where indigenous plant(s) or animal(s), individually or collectively, may occur and upon which the Covered Species are dependent, in whole or in part, to provide for some or all of their maintenance, growth and reproduction.
20. Implementation Annual Meeting. The term refers to the annual public meeting held jointly with TNBC, other Permittees, USFWS and CDFG to report on the progress of the HCP Conservation Strategy as described in Chapter VI. G of the NBHCP.
21. Implementation Annual Report. The term refers to the annual report prepared by the TNBC describing the compliance and effectiveness monitoring processes and findings and the

status of the progress in implementing the NBHCP in accordance with the requirements of Chapter VI, Section G of the NBHCP.

22. Incidental Take. The term "Incidental Take" means any taking of Covered Species that is incidental to, and not the purpose of, the carrying out of otherwise lawful activity.
23. Incidental Take Permits. The terms "Incidental Take Permits," "ITPs" and "Permits" mean the individual permits issued to each Permittee subject to Section 10(a)(1)(B) of the Endangered Species Act and Section 2081 of the California Endangered Species Act.
24. Independent Mid-Point Review. This term refers to the required review and evaluation of the effectiveness of the HCP by each of the land use agencies at a defined mid-point in the approval of Authorized Development and as more specifically defined in Chapter VI, Section J of the NBHCP.
25. Land Use Agencies. The term "Land Use Agencies" means the City of Sacramento and Sutter County. If and when Sacramento County submits and receives approval of its own ITP, Sacramento County would be considered a Land Use Agency as defined herein.
26. MAP (Metro Air Park) Habitat Conservation Plan (MAP HCP). This term refers to the approved Habitat Conservation Plan for the Metro Air Park Project located in the unincorporated portion of the Natomas Basin within Sacramento County, specifically, "Habitat Conservation Plan for the Metro Air Park Project in the Natomas Basin, Sacramento County, California, Prepared by Metro Air Park Property Owner's Association, Dated 2001."
27. Mitigation Fees. As defined in Chapter VI, the term "Mitigation Fees" means the one time, up-front fees levied upon an Authorized Development site (in gross acres) that is used to pay for the Mitigation Land acquisition, enhancement, management, monitoring, and other activities required under the NBHCP. The Mitigation Fees must be paid prior to the issuance of an Urban Development Permit by the Land Use Permittee. The components of the Mitigation Fee include: Land Acquisition, Restoration/Enhancement/Monitoring, Administration O&M, O&M Endowment Fund, Supplemental Endowment Fund, and Fee Collection Administration as defined in Chapter VI.
28. Mitigation Lands. The term "Mitigation Lands" means the reserve lands acquired through collection and use of Mitigation Fees from Authorized Development, and in some cases land which has been accepted for dedication from Authorized Development, which will be set aside and managed at a ratio of one-half ($\frac{1}{2}$) acre of land protected or preserved for every one (1) acre of land converted to Authorized Development. The NBHCP Operating Conservation Program will result in 8,750 acres of Mitigation Lands to be established and managed by TNBC.
29. Mitigation Ratio. The term "Mitigation Ratio" means mitigation for the conversion of land in the respective Permit Areas to Authorized Development at a ratio of one-half ($\frac{1}{2}$) acre of land protected or preserved for every one (1) acre of land converted to Authorized Development.

30. Mitigation Requirement. The term “Mitigation Requirement” means the mitigation requirement for each public and private project is determined by applying the Mitigation Ratio to the land area converted to Authorized Development as calculated in accordance with the requirements set forth in Chapter VI, Section 1.
31. Natomas Basin. "Natomas Basin" or "Basin" means that geographical area depicted in Figure 2, Natomas Basin and Affected Jurisdictions.
32. Natomas Basin Habitat Conservation Plan. The terms “Natomas Basin Habitat Conservation Plan,” “NBHCP” and “the Plan” mean the year 2002 version of the Natomas Basin Habitat Conservation Plan prepared for the City of Sacramento, Sutter County, The Natomas Basin Conservancy (TNBC), RD 1000 and Natomas Mutual.
33. Natomas Basin Habitat Conservation Plan, 1997. The terms “1997 NBHCP” and “1997 Plan” mean the previously approved City of Sacramento Natomas Basin HCP that was the original basis for this 2002 NBHCP.
34. No Surprises Rule. The term “No Surprises Rule” refers the terms and conditions specified in the February 28, 1998, the U.S. Fish and Wildlife final rule codifying its “No Surprises” policy into federal regulation (63 FR 8859). The “No Surprises” rule states, in part, that: “In negotiating unforeseen circumstances, the [Service] will not require the commitment of additional land, water or financial compensation or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the Permittee. If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the [Service] may require additional measures of the Permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the Conservation Plan’s Operating Conservation Program for the affected species, and maintain the original terms of the Conservation Plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan, without the consent of the Permittee.” (50 C.F.R. Sections 17.22(b)(5)(iii) and 17.32(b)(5)(iii).) The No Surprises Rules is discussed in Chapter VI, Section K of the NBHCP.
35. Operating Conservation Program. The term “Operating Conservation Program” means the totality of the conservation and management measures provided for under the NBHCP to avoid, minimize, mitigate and monitor the impacts of take of the Covered Species as described in Chapters IV through VI of the Plan. The Operating Conservation Program includes totals the Permittees reporting obligations under the Permits and responses to Changed Circumstances described in Chapter VI.
36. Overall Program Review. This term refers to a required program review of the effectiveness of the Operating Conservation Program to be initiated at the point Urban Development Permits covering a total of 9,000 acres of development in the Natomas Basin have been issued by the Land Use Permittees and by Sacramento County for the Metro Air Park. The areas to be covered by the Overall Program Review are specified and described in Chapter VI, Section I of the NBHCP.

37. Permit Area, City of Sacramento. The term “Permit Area” as applied to the City of Sacramento means that area designated on Figure 2 of the NBHCP Implementation Agreement that totals 8,050 acres located within the City of Sacramento city limits and in certain locations (i.e., the Panhandle Annexation Area) within the unincorporated areas of Sacramento County. Incidental take authority for the City of Sacramento is limited to this Permit Area.
38. Permit Area, County of Sutter. The term “Permit Area” as applied to Sutter County means that area designated on Figure 2 of the NBHCP Implementation Agreement that totals 7,467 acres located within the unincorporated areas of Sutter County, and approximately 16.5 acres located within unincorporated Sacramento County. Incidental take authority for Sutter County is limited to this Permit Area.
39. Permit Area, Natomas Mutual. The term “Permit Area” as applied to Natomas Mutual means canals, ditches, waterways, ponds and open water areas, as well as roads, right-of-ways, facilities, maintenance yards, pumps, pipelines, and water detention facilities, under the direct jurisdiction of Natomas Mutual and inside the inner toe of levees surrounding the Natomas Basin, but not including the Sacramento River levees. Incidental take authority for Natomas Mutual is limited to this Permit Area.
40. Permit Area, RD 1000. The term “Permit Area” as applied to RD 1000 means canals, ditches, waterways, ponds and open water areas, as well as roads, right-of-ways, facilities, maintenance yards, pumps, pipelines, and water detention facilities, under the direct jurisdiction of RD 1000 and inside the inner toe of levees surrounding the Natomas Basin, but not including the Sacramento River levees. Incidental take authority for RD 1000 is limited to this Permit Area.
41. Permit Area, TNBC. The term “Permit Area” as applied to The Natomas Basin Conservancy (TNBC) consists of all lands within the Natomas Basin (the Plan Area), as well as the land bounding the Natomas Basin and extending to the edge of water immediately outside the Natomas Basin levees and Area B as depicted on Figure 20, Out of Basin Mitigation Areas.
42. Permittees. The term "Permittees" means the City of Sacramento, Sutter County, RD 1000, Natomas Mutual and The Natomas Basin Conservancy.
43. Plan Area. The term “Plan Area” means the entire 53,537 acres of land within the inside toe of levee of the Natomas Basin levees. The Plan Area refers to the portion of the Natomas Basin that is bounded on the west by the Sacramento River, on the north by the Natomas Cross Canal, on the east by Steelhead Creek (formerly known as Natomas East Main Drain Canal), and on the south by the Garden Highway.
44. Planned Development. The term “Planned Development” means the Authorized Development plus the development of the 1,983 acre Metro Air Park, which is subject to the Metro Air Park Habitat Conservation Plan (“MAP Authorized Development”)
45. Plan Operator. The term “Plan Operator” means The Natomas Basin Conservancy, the entity responsible for implementing the NBHCP.

46. Plan Participants. The term “Plan Participants” means parties actively involved in implementing the NBHCP, including the Wildlife Agencies (USFWS and CDFG), the Permittees (City of Sacramento, Sutter County, Natomas Mutual and RD 1000), and the Plan Operator (TNBC).
47. Potential Permittees. The term “Potential Permittees” refers to additional entities within the Natomas Basin that may decide to commit to the terms of the NBHCP and the Implementation Agreement and, through the issuance of Permits by the Wildlife Agencies, join as full Permittees at a future date.
48. Protected Species. The term "Protected Species" means those plants and animals listed under the State CESA and the Federal ESA.
49. Qualified Biologist. The term “qualified biologist” shall refer to a biologist which meets the training and experience requirements necessary to conduct assessments or surveys for specific species, and who has been approved by the Wildlife Agencies to conduct those assessments or surveys.
50. Reintroduction. The term “reintroduction” as used in the NBHCP refers to relocating individuals (or seeds or cysts, etc) of a Covered Species: (1). Either from one TNBC Reserve Site to another TNBC Reserve Site or from one location on a TNBC Reserve Site to a new location within the same TNBC Reserve Site; or (2) the relocation of an individual of a Covered Species from a site which will be impacted by Authorized Development to a TNBC Reserve Site to avoid, minimize or mitigate the impacts to Covered Species. The term “reintroduction” as used in the Natomas Basin HCP refers to the movement of animals or plants within the Basin and does not refer to the intentional introduction or recolonization of Covered Species from outside the Basin to inside the Basin.
51. Revisions. Refers to minor changes to the NBHCP as specified in Chapter VI, Section 3.a of the NBHCP. Revisions to the NBHCP are changes to the Plan provided for under the Operating Conservation Program, including Adaptive Management changes and Mitigation Fee adjustments. These revisions would not result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP as approved, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved.
52. Section 10(a)(1)(B) Permits. The terms "Section 10(a)(1)(B) Permits" or "Permits" as used in this Plan means the permits issued by the USFWS under Section 10 (a)(1)(B) of the ESA which authorize the incidental take of a Covered Species which may occur as a result of urban development activities, including public facilities projects, within the City of Sacramento and Sutter County, or as a result of the operation and/or maintenance, including the construction and improvements with no significant increase to the existing footprint, of flood control or water supply activities, water ditches, canals, pumphouses, maintenance facilities, or other ancillary facilities within the Natomas Basin, or as a result of habitat management, enhancement, or restoration activities on reserve lands. "Permit" may also be used in this Plan to collectively refer to the Section 10(a)(1)(B) Permits, and the Section 2081 Permits.

53. Section 2081 Permits. The terms "Section 2081 Permits" or "Permits" means the permits for the incidental take of threatened and endangered species, listed under the CESA, issued by the CDFG under Section 2081(b) and/or 2081.1 of the California Fish and Game Code, or any successor section to authorize the incidental take of a Covered Species which may occur as a result of urban development activities, including public facilities projects, within the City of Sacramento and Sutter County, or as a result of the operation and/or maintenance, including the construction and improvements with no significant increase to the existing footprint, of flood control or water supply activities, water ditches, canals, pumphouses, maintenance facilities, or other ancillary facilities within the Natomas Basin, or as a result of habitat management, enhancement, or restoration activities on reserve lands. "Permits" may also be used in this Agreement to refer collectively to the Section 10(a)(1)(B) Permits and/or the Section 2081(b) or 2081.1 Permits.
54. Site Specific Management Plan. The terms "Site Specific Management Plan" and "SSMP" mean those plans that TNBC is required to complete for each reserve unit that it acquires. SSMP's shall include operations plans that address on-site habitat restoration, enhancement, maintenance and management activities that will be presented to the NBHCP TAC for approval on a three year basis.
55. State Protected Species. The term "State Protected Species" means those plants and animals listed by the State of California ("State") under the provisions of CESA and shown as Covered Species on Table I-1 hereto that are found, or may found, in the permit areas.
56. Swainson's Hawk Zone. This zone is defined as the lands which are not currently developed (excluding the 250 acres of land designated "Urban" on the City of Sacramento General Plan and the North Natomas Community Plan located within the City of Sacramento) and which are located within the Natomas Basin and within one mile east of the toe of the inside levee of the Sacramento River and extending from the Natomas Cross Canal on the north and Interstate 80 on the south. See also Figure 13 of the NBHCP.
57. System of Reserves. The term "system of reserves" means Mitigation Lands generally and includes all habitat conserved and managed for the Covered Species, including rice fields by TNBC.
58. Take or Taking. With regard to any activities subject to ESA, the terms "Take" or "Taking" shall have the same meaning as provided in the ESA. With regard to any activities subject to CESA, the terms "Take" or "Taking" shall have the same meaning as provided in CESA.
59. Technical Advisory Committee. The terms "Technical Advisory Committee" and "TAC" mean the advisory group of technical experts selected by the Permittees and the Wildlife Agencies to assist TNBC Board with directing the implementation of the NBHCP.
60. The Natomas Basin Conservancy. The terms "The Natomas Basin Conservancy," "the Conservancy" or "TNBC" shall mean the independent entity established for the purpose of implementing the Natomas Basin Habitat Conservation Plan on behalf of the City, Sutter County and other Potential Permittees. The TNBC is also a Permittee for purposes of implementation of the reserve system.

61. TNBC Mitigation Land or Reserve Area. The term “TNBC Reserve Area” or “TNBC Mitigation Land” shall mean those areas where TNBC is authorized to acquire and manage wildlife reserves subject to the provisions of the NBHCP. Such areas shall include all lands within the Natomas Basin, as well as the land bounding the Natomas Basin and extending to the edge of water immediately outside the Natomas Basin levees and Area B as depicted on Figure 20, Out of Basin Mitigation Areas. The TNBC Reserve Area and the TNBC Permit Area are coterminous.
62. Unforeseen Circumstances. The term “Unforeseen circumstances” is defined at 50 C.F.R. 17.3 as changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the USFWS at the time of the NBHCP’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species. Unforeseen circumstances are discussed in Chapter VI, Section K of the NBHCP.
63. Urban Development Permit and Urban Development Permittee. The term “Urban Development Permit” shall mean the final authorization granted by the Land Use Agencies prior to disturbance of undeveloped land in conjunction with a public or private development project. An Urban Development Permit may also be used to refer to a grading permit or notice to proceed. An “Urban Development Permittee” refers to the individual, agency or company applying for approval, or receiving approval of an Urban Development Permit from the Land Use Agencies.
64. Water Agencies. The term “Water Agencies” means RD 1000 and Natomas Mutual. Natomas Mutual is a private company and not a governmental agency.
65. Wildlife Agencies. The term “Wildlife Agencies” means the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Exhibit B - CITY's Baseline Map

SEE PDF FILE - HCP EXHIBIT B

Exhibit C - SUTTER's Baseline Map

Exhibit D -List of Covered Species in Permit Area

**TABLE I - 1
LISTED, CANDIDATE, AND OTHER SPECIES ADDRESSED IN THE NBHCP
AND/OR COVERED BY ITS ASSOCIATED PERMITS**

#	Species	Federal Status	State Status	Habitat Notes
1	Aleutian Canada goose <i>Branta canadensis leucopareia</i>	SC		Grazes in marshes and stubble fields, roosts on the water
2	bank swallow <i>Riparia riparia</i>		T	Nests in river banks, forages for insects over open water, croplands, and grasslands
3	burrowing owl <i>Athene cunicularia</i>		SSC	Prefers open, dry grassland and desert habitats
4	loggerhead shrike <i>Lanius ludovicianus</i>	SC	SSC	Prefers open habitats with scattered shrubs, trees, fences, and posts. Will use cropland.
5	Swainson's hawk <i>Buteo swainsoni</i>		T	Breeds in riparian forest; known nesting sites in trees along Sacramento River in Natomas Basin. Forages for small mammals in grasslands and croplands.
6	tricolored blackbird <i>Agelaius tricolor</i>	SC	SSC	Nests in marshes with bulrush, blackberry or cattails; three known occurrences in Natomas Basin. Forages on the ground in grasslands and croplands.
7	white-faced ibis <i>Plegadis chihi</i>	SC	SSC	Forages in flooded rice fields
8	giant garter snake <i>Thamnophis gigas</i>	T	T	Forages in marshes, low gradient open waterways and flooded rice fields, hibernates in canal berms and other uplands; several known occurrences in Natomas Basin
9	northwestern pond turtle <i>Clemmys marmorata marmorata</i>	SC	SSC	Lives in permanent bodies of water; requires floating vegetation, logs, rocks or banks for basking. Hibernates and lays eggs in uplands.
10	California tiger salamander <i>Ambystoma californiense</i>	C	SSC	Winters in ground squirrel burrows or other holes; breeds in vernal pools, stockponds, and other seasonal wetlands.
11	western spadefoot toad <i>Scaphiopus hammondi</i>	SC	SSC	Primary habitat is grasslands; breeds in shallow temporary pools
12	valley elderberry longhorn beetle <i>Desmocerus californicus dimorphus</i>	T		Lives and reproduces on elderberry shrubs found along rivers and canals.
13	midvalley fairy shrimp <i>Branchinecta mesovallensis n. sp.</i>			Vernal pool obligate often found in small pools; likely to occur in Plan Area
14	vernal pool fairy shrimp <i>Branchinecta lynchi</i>	T		Vernal pool obligate; widely distributed in Sacramento County
15	vernal pool tadpole shrimp <i>Lepidurus packardii</i>	E		Vernal pool obligate; widely distributed in Sacramento County
16	Boggs Lake hedge-hyssop <i>Gratiola heterosepala</i>		E	Low-terrace species found in shallow water margins of vernal pools
17	Colusa Grass <i>Neostaphia colusana</i>	T		Occurs in large deep pools with substrates of adobe mud but also in smaller pools; known in Yolo County

#	Species	Federal Status	State Status	Habitat Notes
18	delta tulle pea <i>Lathyrus jepsonii</i> ssp. <i>jepsonii</i>	SC		Perennial twining vine occurs in both riparian and marsh habitats
19	legenere <i>Legenere limosa</i>	SC		Found in wet places or vernal pools below 400 feet in elevation
20	Sacramento Orcutt grass <i>Orcuttia viscida</i>	E	E	Found in relatively large, deep vernal pools in eastern Sacramento County
21	Sanford's arrowhead <i>Sagittaria sanfordii</i>	SC		Tuberose perennial likely to occur in drainage or irrigation ditches
22	slender Orcutt grass <i>Orcuttia tenuis</i>	T	E	Found in relatively large, deep vernal pools in eastern Sacramento County

Key to Abbreviations

Federal

E = Listed as endangered C = Candidate for federal listing, data sufficient
T = Listed as threatened SC = Species of Concern--informal category, formerly called candidate 2 species (data for listing insufficient)

State

E = Listed as Endangered R = Listed as Rare
T = Listed as Threatened SSC = Species of Special Concern