

AGREEMENT FOR HABITAT PROVISION

This agreement (this "Agreement") is made as of the date last signed below (the "Effective Date"), by and between _____ ("Cooperator"), having an address of _____, and The Nature Conservancy, a District of Columbia nonprofit corporation (the "Conservancy"), having an address of 830 S Street, Sacramento, CA 95811.

BACKGROUND

Cooperator farms that certain real property in _____ County, shown on the map attached hereto as **Exhibit A** (the "Property"). The Conservancy is working with the Migratory Bird Conservation Partnership (Audubon California, the Conservancy, and Point Blue Conservation Science) on the implementation of a habitat incentive program in the Central Valley for bird habitat in the Sacramento, Suisun, Yolo-Delta, San Joaquin, and Tulare basins as identified by the Central Valley Joint Venture (the "Habitat Program"). Cooperator has received information about the Habitat Program via the Conservancy's informational website (<http://www.birdreturns.org>), conversations, or other means. Cooperator desires to enroll certain acreage of its Property in the Habitat Program (the "Enrolled Acreage"). The Enrolled Acreage is identified on **Exhibit A**.

TERMS AND CONDITIONS

Cooperator and the Conservancy agree to the following terms and conditions:

1. Term of Agreement

This Agreement will commence on the Effective Date and will expire on October 30, 2026 (the "Expiration Date"). Upon such expiration, the parties will have no further rights or obligations under this Agreement, except as specifically provided in this Agreement.

2. Habitat Requirements and Verification

Cooperator will manage the Enrolled Acreage as follows:

- a) Ground Preparation. Prior to starting to flood the Enrolled Acreage, Cooperator will ensure that on the Enrolled Acreage there is incorporation of crop residue and standing vegetation to expose the soil and remove organic matter. To reduce the likelihood of mosquito propagation, the post-harvest crop stubble treatment must result in no more than 10% standing crop stubble or other emergent vegetation on each field (the "Ground Preparation"). Ground Preparation must be verified by the Conservancy as set forth in Section 2(b) prior to any water being applied to the Enrolled Acreage.
- b) Verification of Ground Preparation. Verification of the Ground Preparation will involve a site visit by the Conservancy or its representative to visually inspect the condition of the Enrolled Acreage and to determine the Enrolled Acreage's suitability for the Habitat Program. Cooperator will notify the Conservancy when the Enrolled Acreage is available and ready for verification. This notification and site visit is required to be completed before any water is applied to the Enrolled Acreage and after the Cooperator performs the Ground Preparation. In determining verification of proper Ground Preparation, the Conservancy will use its professional judgment to determine compliance with the requirements and objectives of the Habitat Program. Cooperator remains responsible for complying with Ground Preparation requirements and failure to meet Ground Preparation requirements to the satisfaction of the Conservancy will constitute noncompliance. If any Enrolled Acreage is determined to be non-compliant, Cooperator will have the option of performing additional Ground Preparation to improve the condition of such Enrolled Acreage, or Cooperator may elect to end its participation in the Habitat Program without penalty or payment.

for any work performed by Cooperator. If Cooperator applies any water to the Enrolled Acreage prior to the Conservancy's verification of the Ground Preparation, then the Conservancy reserves the right to terminate the Agreement with no payment to Cooperator if the Ground Preparation does not meet the requirements of this Agreement.

Upon successful verification of the Ground Preparation, the Conservancy or its representative will place depth stakes in the Enrolled Acreage to document representative water depths. For each field within the Enrolled Acreage, the Conservancy will place depth stakes at or near the field edge.

- c) Water Application and Management. After Ground Preparation verification by the Conservancy, Cooperator shall start applying water to the Enrolled Acreage such that it is 75-100% flooded as close to [Insert start date] (the "Flooding Start Date") as possible and maintain a shallow depth of water of less than an inch (1") (ponded mud flats) up to a maximum of four inches (4") for three (3) weeks after the required water level is reached (the "Flooding Period"). If Cooperator is unable to start applying water within 5 days of the Flooding Start Date, Cooperator will contact the Conservancy to obtain approval to change the Flooding Start Date. If the Flooding Start Date cannot be changed or Cooperator does not obtain prior approval from the Conservancy to change the Flooding Start Date, the Participation Fee may be affected as described in Section 5 below. The parties agree that the Conservancy can provide approval of a change to the Flooding Start Date by email. After the Flooding Period, Cooperator will allow evaporative drawdown of the water levels on each field in the Enrolled Acreage for two weeks (the "Drawdown Period").
- d) Verification of Water Application and Management. The Conservancy will monitor compliance by visiting the Enrolled Acreage and measuring water depth and visually estimating the percentage of the Enrolled Acreage that is flooded in compliance with Section 2(c). The Conservancy may also monitor compliance by reviewing satellite imagery.

3. Participant Questionnaire

Cooperator shall complete a Participant Questionnaire provided to Cooperator by the Conservancy following completion of the Drawdown Period.

4. Access to Property, Duty of Care

Cooperator hereby irrevocably grants the Conservancy and its employees, funders, guests, invitees, subcontractors, agents and assigns permission to enter the Property to verify field conditions and monitor birds on the Property until the Expiration Date. The Conservancy or its representative will provide Cooperator with at least 24 hours' notice prior to entering the Property unless Cooperator agrees to a shorter notice period. Notice or agreement under this section may be provided verbally or in writing, including by text, email or fax. The Conservancy and its employees, funders, guests, invitees, subcontractors, agents, and assigns will coordinate their activities with Cooperator in order not to unreasonably disturb ongoing maintenance operations and other farm or hunting activities on the Property or on Cooperator's adjacent property, if applicable. Notwithstanding the foregoing, Cooperator acknowledges that the Conservancy needs to access the Property at least twice per week for monitoring purposes and Cooperator agrees to ensure that such access is allowed even during hunting season.

During the term of this Agreement, Cooperator will, at Cooperator's sole cost and expense,: (a) comply with all federal, state, and local laws and regulations and any contractual obligations relating to the use of the Property, including, but not limited to, any diversion or water reporting requirements of the State of California; and (b) take,

use, provide and make proper, necessary and sufficient precautions, safeguards and protections against the occurrence of any accidents, injuries or damages to any person or the Property.

5. Payment Terms; Termination

- a. Participation Fee. If the terms of this Agreement have been met and there has been no material breach of this Agreement by Cooperator, then the Conservancy will pay Cooperator a payment equal to \$[Insert sum] (XXX acres at \$XX.00 per acre) (the "Participation Fee") within thirty days following the end of the Drawdown Period and verification that the habitat requirements of this Agreement have been satisfied. The payment is based in part on the acreage of the Enrolled Acreage as provided by Cooperator, which is subject to verification by the Conservancy using standard mapping methods. If the Enrolled Acreage is not flooded as required in this Agreement as the result of an unintentional act of Cooperator, or if such failure to perform is excused under Section 6 below, then the Conservancy shall consult with the Cooperator and determine whether any payment should be made. If the Enrolled Acreage is not prepared and flooded as required in this Agreement or if Cooperator otherwise breaches in any material respect any of the terms of this Agreement, then the Conservancy may terminate this Agreement and, upon such termination, neither party will have any further obligation or liability to one another under this Agreement, except as provided in Sections 9, 10, 12, and 16.
- b. Reimbursable Expenses: The Conservancy will reimburse the Cooperator for fees charged by the local Mosquito Vector Control District (MVCD) for mosquito abatement treatments required on the Enrolled Acreage during the Flooding Period and Drawdown Period up to a maximum amount of \$[Insert maximum amount]. To receive reimbursement, Cooperator will submit to the Conservancy an invoice from the MVCD showing the amount due for the treatments applied on the Enrolled Acreage during the Flooding Period and Drawdown Period.

6. Force Majeure

The failure of either party to perform any obligation otherwise due solely as a result of (a) governmental action, laws, orders, regulations, directions or requests, or (b) as a result of events, such as war, acts of public enemies, strikes or other labor disturbances, fires, floods, acts of God or any causes of like kind beyond the reasonable control of such party (collectively referred to as "Force Majeure"), is excused for so long as such Force Majeure exists or until the parties agree to terminate this Agreement.

7. Resolution of Disputes

Cooperator and the Conservancy agree to use their best efforts to resolve any disagreement over the interpretation or application of any of the terms of this Agreement.

8. Property Management and Notification of Changes in Operation, Lease or Ownership

During the term of this Agreement, Cooperator and Cooperator's representatives and assigns (including all subcontractors and lessees) will manage the Property in accordance with this Agreement and so as not to disturb the nature of this project.

Cooperator shall maintain title or a valid leasehold interest in the Property for the duration of the Agreement and will promptly notify the Conservancy of any planned or pending changes in operation, lease or ownership of the Property.

No exercise of the rights granted herein will give rise to any claim of title to the Property on the part of the Conservancy or parties claiming through or under them. This Agreement and the rights granted herein may not be assigned, in whole or in part, by Cooperator without the written consent of the Conservancy.

9. Cooperator's Representations and Warranties

Cooperator represents and warrants that: (a) it has the power and authority to enter into this Agreement and to perform the actions contemplated hereunder, (b) it has obtained all consents necessary for its participation in the Habitat Program and its performance of the terms of this Agreement (including without limitation the consents of any landowners and any persons with other rights with respect to the Property) (such consents, the "Consents"), (c) it has provided the Conservancy with a written description of all Consents, and (d) no other agreements or obligations concerning the Property interfere with Cooperator's right or ability to perform its obligations hereunder or will be violated by Cooperator's performance of such obligations. Cooperator further represents and warrants that Cooperator has conducted its own review of its participation in the Habitat Program and its taking of or omission of actions required by or related to this Agreement, that, except as expressly provided in this Agreement, neither the Conservancy nor any person affiliated with or otherwise on behalf of the Conservancy is making or has made any representation or warranty, written or oral, with respect to the Habitat Program or otherwise, and that Cooperator has not relied and will not rely on any such representation or warranty or any omissions by any such persons whether made on, before or after the date hereof, except as expressly set forth in this Agreement. Cooperator certifies that none of the acres included in the Enrolled Acreage are currently, nor during any portion of the Flooding Period or Drawdown Period will they be, enrolled in the California Ricelands Waterbird Foundation's Bid4Birds or California Winter Rice Habitat Incentive Program (CWRHIP), Natural Resources Conservation Service Regional Conservation Partnership Program (RCPP), Waterbirds Habitat Enhancement Program (WHEP) or similar program.

Without limiting the foregoing, if the Property is owned by any person (the "Landowner") other than Cooperator, then Cooperator represents and warrants that Cooperator has the right to execute and perform this Agreement with respect to the Property, without the consent of the Landowner (except for any consent as Cooperator may already have obtained and which is irrevocable with respect to Cooperator's participation in the Habitat Program), and that the Landowner will not have any rights against the Conservancy in respect of Cooperator's performance under or in any way related to this Agreement and Cooperator's participation in the Habitat Program. At the request of the Conservancy, Cooperator will arrange for a meeting of the Conservancy with the Landowner.

This Section 9 will survive the termination or expiration of this Agreement or any part thereof.

10. Indemnification

Cooperator assumes the risk of any damage caused by its participation in the Habitat Program. Cooperator will indemnify, defend and hold harmless the Conservancy and its affiliates and funders and their officers, directors, members, employees and agents from and against any and all claims, demands, causes of action, damages, judgments, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising or resulting, directly or indirectly, from any negligent action or failure to act on the part of Cooperator or breach by Cooperator of any of its obligations, representations and warranties under this Agreement. The Conservancy will indemnify, defend and hold harmless Cooperator from any and all claims, demands, causes of action, damages, judgments, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising or resulting, directly or indirectly, from any negligent action arising from the entry of the Conservancy's representatives on the Property or breach by the Conservancy of any of its obligations under this Agreement (provided that the foregoing shall not apply to any such claims or actions to the extent arising from the absence of any Consent). Notwithstanding the foregoing, in no event will any party be liable for consequential, incidental or special damages.

This Section 10 will survive the termination or expiration of this Agreement or any part thereof.

11. Insurance

Cooperator shall name the Conservancy, its officers, agents and employees as additional insureds under Cooperator's liability insurance policy.

12. Notice

Except as provided for in this Agreement, or for such day-to-day communications or instructions as may be called for or reasonably anticipated in the description of the work to be done under this Agreement (none of which may, however, alter the terms of this Agreement), any notice, demand, request, consent, or approval of any kind that any party to this Agreement desires or is required to give to or make on another party under or in connection with this Agreement (a "Notice") will be in writing and will be served upon the party being addressed, at the most recent address which the addressed party has provided for such purposes under this Agreement.

Each Notice will be given by at least one of the following means: (1) delivery in person, (2) certified U.S. mail, return receipt requested, postage prepaid, or (3) Federal Express or other reputable "overnight" delivery service, provided that next-business-day delivery is requested by the sender. Notices delivered in person will be deemed effective immediately upon delivery (or refusal of delivery or receipt). Notices sent by certified mail will be deemed given on the earlier to occur of: (1) the date of first attempted delivery; or (2) the third day after being deposited in the mail. Notices sent by Federal Express or other reputable "overnight" delivery service will be deemed given on the next-business-day after being deposited with the delivery service. Either party may, from time to time, by written notice to the other, designate a different address, which will be substituted for the most current address previously provided for such purposes under this Agreement.

This Section 12 will survive the termination or expiration of this Agreement or any part thereof.

13. Counterterrorism, Anti-Money Laundering and Economic Sanction Laws

Cooperator represents and warrants that, to the best of Cooperator's knowledge, Cooperator and Cooperator's subsidiaries, principals, and beneficial owners, if any (collectively, the "Cooperator Parties"):

- (a) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
- (b) (i) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism; and (ii) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;
- (c) are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
- (d) have not conducted, and will not conduct, their operations in violation of applicable money laundering laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any and all jurisdictions to which the Cooperator Parties, or any one of them, is subject, and no action or inquiry concerning money laundering by or before any authority involving any of the Cooperator Parties is pending.

Should Cooperator become aware that Cooperator or any other of the Cooperator Parties is subject to any of the above conditions of this Section during the term of this Agreement, Cooperator must immediately notify the Conservancy in writing. If the Conservancy determines that Cooperator or any of the Cooperator Parties is subject to any of the above conditions of this Section, the Conservancy may terminate this Agreement effective immediately upon written notice to Cooperator, with no further obligation by the Conservancy under this

Agreement, including payment, and the Conservancy may pursue all available remedies under applicable laws. The terms of this Section must be included in all permitted subcontracts.

14. Conflicts of Interest

Cooperator certifies that the information it has provided on the “Conflicts Inquiry Form” which is being provided to Cooperator by the Conservancy with respect to this Agreement (the “Inquiry Form”) is true and correct to the best of Cooperator’s knowledge. In the event that any material misrepresentation by Cooperator in such Inquiry Form is discovered during the term of this Agreement, the Conservancy may elect to declare this Agreement null and void and immediately terminate it.

15. Use of Data

The Conservancy will own all data collected and processed during the Habitat Program

16. Miscellaneous

This Agreement will become binding when signed by the Cooperator and the Conservancy. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written, concerning the subject matter of this Agreement and constitutes the entire agreement between the Conservancy and Cooperator with respect to such matters. No amendment to this Agreement will be effective unless it is in writing and is signed by all of the parties hereto. This Agreement will be interpreted and construed under, and will be and governed by, the internal laws of the State of California, without regard to any choice of law rules. Time is of the essence in this Agreement. The terms and conditions of this Agreement are binding upon Cooperator and its successors and assigns. Each party will bear and pay its own expenses, including, in the case of the Cooperator, any costs of preparing the Property for or otherwise participating in the Habitat Program.

Any and all exhibits, schedules, and addenda attached to and referred to in this Agreement are hereby incorporated into this Agreement as fully as if set out in their entirety herein, but in the event of any conflict between the terms of this main body of the Agreement and the terms of any exhibits, addenda, or other attachments to this Agreement, the terms of this main body of the Agreement will control. The provisions of this Agreement will survive the termination of this Agreement to the extent of any rights accrued or obligations incurred during such term, and Sections 9, 10, 12, and 16 shall survive any expiration or termination of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the other provisions will not be affected thereby. This Agreement may be executed in several counterparts, and all counterparts so executed will constitute one contract which will be binding on all of the parties, notwithstanding that all of the parties are not signatory to the same counterpart. Electronic signatures, digital signatures, fax signatures, and scanned signatures are acceptable for this Agreement in compliance with the Uniform Electronic Transactions Act (UETA).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date last written above.

COOPERATOR

THE NATURE CONSERVANCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachments:

Exhibit A – Map of Property showing Enrolled Acreage