

MITIGATION FUNDING AGREEMENT
between
EAST BAY REGIONAL PARK DISTRICT
and
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

This Mitigation Funding Agreement (the “**Agreement**”) is entered into this 28th day of April, 2020 (the “**Effective Date**”) by and between the East Bay Regional Park District (the “**District**”) and the California Department of Fish and Wildlife (“**CDFW**”).

RECITALS

- A. The District is a non-enterprise, independent special district with its own taxing authority, whose sole purpose is to acquire and manage land for open space, public recreation and natural resource protection. The District has extensive natural resource expertise and an established record of successful conservation land management achieved through the District’s own budget and staffing. The District’s ability to manage land for the benefit of protected species and habitat has been recognized by CDFW, which has authorized the District to hold and manage mitigation lands for third parties, including the State.
- B. Pursuant to the California Endangered Species Act (“**CESA**”), to obtain incidental take coverage the District is required to seek incidental take permits from CDFW for the District’s own projects that could result in incidental harm to or “take” of endangered species.
- C. One such District project is the Wildfire Hazard Reduction and Resource Management Plan, the goal of which is to reduce fuel loads to decrease fire hazards that could result in loss or damage to property and life (the “**Current Project**”). Because such project activities are expected to result in the incidental take of certain species, the District sought and obtained the Incidental Take Permit No. 2081-2011-046-03 (the “**Current ITP**”).
- D. Incidental take permits (“**ITPs**”) commonly require a permanent set-aside of habitat conservation lands as compensation for impacts to species and their habitat and require permitholders to provide adequate funding to ensure long-term management of such lands for the benefit of species. To meet such funding requirements, CDFW typically requires permitholders to fund an endowment, within the meaning of Government Code section 65965(a), that generates enough interest to cover annual management costs.
- E. The District estimates that if the District, as a permitholder, is required to fund a traditional endowment for all of its projects, including the Current Project, over the next few years, the District would need to set aside several million dollars to generate the interest necessary to cover the management costs. Permanently setting aside such a large amount of local tax dollars will significantly reduce the funds available to invest in stewardship staff and appropriate management of habitat-sensitive public lands.
- F. To address this issue, the District and CDFW formed a working group to explore options for an alternative funding approach that reflects the District’s conservation mission and to avoid

unnecessarily tying up public dollars while ensuring full protection of habitat conservation lands. Following negotiations, CDFW and the District have agreed that for the District's own projects, including the Current Project, long-term funding requirements can be met through use of a long-term mitigation fund governed by an agreement between CDFW and the District, in lieu of traditional endowments.

- G. In furtherance of the foregoing, for the Current Project and future District projects requiring long-term mitigation management by the District pursuant to those CESA permits that the District and CDFW agree should be covered under this Agreement (each, a "**Project**", and collectively, the "**Projects**"), CDFW and the District desire to provide long-term funding for the mitigation management on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Management Obligations.** The District shall be responsible for carrying out the management tasks required by the CESA permits for the Projects using funds from the District's project operating budget(s), and not from the Reserve Fund (as defined below). For the mitigation lands of each Project, the District shall prepare a long-term management plan (LTMP) and property analysis report (PAR) for CDFW's review and approval. The PAR for a Project shall be the basis for determining the annual long-term management costs for such Project. On or before January 31st of each calendar year following the date of this Agreement, the District shall provide to CDFW, a written report of annual project budgets showing the actual long-term management costs for the immediately prior calendar year and the projected long-term management costs for the current year under each CESA permit for the Projects.
2. **Long-Term Mitigation Reserve Fund.** The District shall establish and maintain in accordance with this Agreement a long-term mitigation reserve fund (the "**Reserve Fund**") to ensure adequate funding for perpetual management of mitigation lands as required by CESA permits for the Projects. The Reserve Fund shall constitute a public trust and shall be permanently restricted to paying the costs of long-term management and stewardship of the mitigation properties for the Projects in accordance with the terms of this Agreement. The Reserve Fund will not be used to cover any costs of managing the mitigation lands of the Projects, except as and when required by CDFW in accordance with this Agreement following a Non-Performance Event (as defined below). Maintenance of the Reserve Fund in compliance with this Agreement shall be a condition of all CESA permits for the Projects that are covered under this Agreement.
3. **Application to Current Project.** The parties acknowledge and agree that the parties' full execution of this Agreement satisfies Condition of Approval 8.5.1. of the Current ITP .
4. **Fund Amount.** The parties agree that the amount required to be maintained in the Reserve Fund will be as follows:

- a. An amount no less than the cost of five (5) years of annual long-term management required under all CESA permits to be covered under this Agreement ("**5-Year Management Cost**") shall be maintained in the Reserve Fund, to a maximum of \$500,000 (the "**Maximum Amount**") in contributions. The parties agree that the initial 5-Year Management Cost (the "**Initial Reserve Amount**") is the greater of (i) \$100,000 or (ii) the costs of five years of long-term management for the Current Project based on the PAR therefor, which amount will be promptly finalized by the parties following the parties' full execution of this Agreement. The District shall fund the Initial Reserve Amount into the Reserve Fund within ninety (90) days following the parties' full execution of this Agreement and the Reserve Fund Agreement (as defined below). The then-current 5-Year Management Cost, as adjusted pursuant to this Section, maintained in the Reserve Fund shall be referred to herein as the "**Current Reserve Amount.**"
- b. Within sixty (60) days of execution of each new ITP to be covered by this Agreement or before the District engages in any project-related activities under that ITP, whichever occurs first, the District shall deposit into the Reserve Fund an amount equal to five (5) years of annual long-term management costs under that ITP, until the Reserve Fund reaches the Maximum Amount.
- c. The Current Reserve Amount, and any need to adjust the Current Reserve Amount annually to account for inflation, shall be subject to review every five (5) years, or more often as new long-term CESA permit obligations are issued to District for the Projects, or if requested by CDFW or the District, and may be modified upon agreement of CDFW and the District, including addressing annual adjustments for inflation.
- d. Notwithstanding any provision herein to the contrary, if at any point in time, based on any adjustment to the Current Reserve Amount made in accordance with this Agreement, the amount required to be maintained in the Reserve Fund exceeds the Maximum Amount, then prior to requiring the District to deliver the funds to satisfy such adjustment, the parties shall meet and discuss whether such increase is appropriate or necessary for the District to secure its long-term mitigation management of the then current Projects. The District shall have no obligation to deliver any additional funds in excess of the Maximum Amount until after such meeting.
- e. Within sixty (60) days following release of applicable funds from the Reserve Fund to CDFW pursuant to a Release Notice (as defined below) delivered in accordance with Section 6 below, the District shall replenish the Reserve Fund in the amount released to CDFW.
- f. All interest earned on the Reserve Fund or revenue generated by Holder's investment thereof pursuant to the Reserve Fund Agreement shall remain in the Reserve Fund. For purposes of calculating the Maximum Amount, such interest and revenue shall not be included or otherwise taken into account.

5. **Fund Management.** The parties agree that the Reserve Fund will be established with and held in trust by the National Fish and Wildlife Foundation (“NFWF”), or a successor entity mutually approved by the District and CDFW (each, “Holder”). Promptly after the parties’ full execution of this Agreement, the District and CDFW shall enter into an East Bay Regional Park District Reserve Fund Agreement with NFWF in the form attached hereto as Exhibit A (the “Reserve Fund Agreement”).

6. **Release and Use of Reserve Funds.**
 - a. In the event that the District fails to comply with any term or condition of its CESA permits relating to perpetual management of mitigation lands (including but not limited to those included in the conservation easements and management plans prepared pursuant to those CESA permits) in any material respect (a “Non-Compliance”), CDFW shall notify the District thereof (including the details of the non-compliance) in writing. Upon receipt of CDFW’s written notice of Non-Compliance, the parties shall meet within thirty (30) days of the date of such notice to discuss the subject Non-Compliance and suitable resolution(s) reasonably acceptable to both parties (“Meet and Confer”). If the parties do not agree upon a resolution for the subject Non-Compliance during such Meet and Confer, then the District may dispute any aspect of the Non-Compliance in writing whereupon the parties shall participate in a dispute resolution process in accordance with Section 9 below. The District’s failure to commence curing of an undisputed Non-Compliance within thirty (30) days following the date of the applicable Meet and Confer shall constitute a “Non-Performance Event”; provided, however, that if the nature of the undisputed Non-Compliance is such that more than thirty (30) days are reasonably needed to commence cure, then the undisputed Non-Compliance shall not become a Non-Performance Event unless and until the District fails to commence such cure within sixty (60) days after the date of the applicable Meet and Confer or fails to continuously and diligently prosecute such cure to completion after such sixty (60) day period.

 - b. Upon the occurrence of a Non-Performance Event (and provided the District has not commenced its curing efforts therefor), CDFW may, in its sole discretion, send a written notice of a Non-Performance Event specifying the amount to be released from the Reserve Fund (a “Release Notice”) to both Holder and the District for the purpose of obtaining funds from the Reserve Fund in the amount reasonably necessary for CDFW to cure the applicable Non-Compliance. CDFW shall have no right to send a Release Notice for any Non-Compliance disputed by the District and no such Release Notice shall be valid unless and until (i) completion of the dispute resolution process and a determination by such process that a Non-Compliance has occurred or a determination by the CDFW Director that the dispute resolution process has been completed pursuant to Section 9(c), and (ii) the District’s failure to commence cure of such Non-Compliance within thirty (30) days (or sixty (60) days, as the case may be, as described in Section 6.a. above) the determination by the dispute resolution process that a Non-Compliance has occurred.

- c. Any and all amounts released from the Reserve Fund to CDFW shall be used solely for the purpose of curing the applicable Non-Compliance and performing the underlying mitigation requirement.
- d. The parties agree that (i) upon Holder's receipt of a Release Notice in accordance with this Section, Holder will release from the Reserve Fund to CDFW the amount set forth such Release Notice in accordance with the Reserve Fund Agreement, and (ii) upon release of the applicable amount to CDFW and the District's replenishment of the Reserve Fund in the same amount, the Non-Compliance and Non-Performance Event relating to such release shall be deemed cured for purposes of this Agreement and the District shall have no further obligation or liability with respect to the specific underlying performance obligation that was the subject of the Non-Compliance or Non-Performance Event.

7. District's Failure to Fund.

- a. If the District fails to fund the Initial Reserve Amount within ninety (90) days following the parties' execution of this Agreement and the execution of the Reserve Fund Agreement, this Agreement shall terminate without further action on the part of any party, and the District shall fund perpetual endowment(s) in accordance with Section 7.b. below.
- b. If the District fails to replenish or deliver additional funds to the Reserve Fund or to maintain the Reserve Fund, as required by this Agreement, then CDFW shall notify the District in writing of such failure. If the District fails to correct such failure within thirty (30) days following the District's receipt of CDFW's notice thereof, then CDFW, in its sole discretion, may elect to terminate this Agreement and thereafter require the District to fund perpetual endowments for each of the ITPs subject to this Agreement in an amount sufficient to fund all of the long-term management activities required under the applicable ITP, as set forth in the applicable LTMP and PAR, in perpetuity, within ninety (90) days following CDFW's written notice of such election.
- c. Upon CDFW's election to terminate this Agreement in accordance with this Section, all amounts then remaining in the Reserve Fund shall be immediately released to the District to fund any endowments required by Section 7.b. above, and the parties shall have no further obligation or liability under this Agreement.

8. **Alternative Funding Mechanisms.** The parties may, at any time, mutually agree to terminate this Agreement and use an alternative funding mechanism to secure the District's long-term mitigation management obligations for the Projects. Upon a termination of this Agreement in accordance with this Section, all amounts then remaining in the Reserve Fund shall be immediately released to the District to fund such alternative funding mechanism and the parties shall have no further obligation or liability under this Agreement.

9. Dispute Resolution Process.

- a. The District and CDFW recognize that disagreements concerning Non-Compliance or a Non-Performance Event or implementation or interpretation of this Agreement may arise from time to time. The District or CDFW may at any time request resolution of any matter governed by this Agreement in dispute under this Section. The party requesting resolution shall do so by giving notice to the other party, specifying in such notice the nature of the dispute. Within thirty (30) days after a party's delivery of written notice hereunder, the parties' representatives (first level) shall meet at a mutually acceptable time and place. The parties agree to work together in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation at the lowest possible level of each organization. The first level will involve the District's Chief of Stewardship and the CDFW Environmental Program Manager. If resolution cannot be reached at that level, the next level will involve CDFW Chief Deputy Director or Regional Manager, and the District's General Manager or Assistant General Manager. Both agencies agree to make the appropriate individual or their representatives available within a reasonable timeframe to discuss the disagreement. All offers, promises, conduct and statements, whether written or oral, made in the course of negotiation by either party or a party's agents, employees, experts and/or attorneys are confidential, privileged and inadmissible for any purpose, including in any other proceeding involving the parties; provided, however, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.
 - b. If the particular dispute is not resolved under Section 9.a. above, then the parties may agree to submit such dispute for mediation.
 - c. In the event the parties do not resolve a Non-Compliance or Non-Performance Event dispute pursuant to the process set forth in subsection (a) above and either do not elect to submit the matter for mediation or fail to resolve the dispute through mediation, the Director of CDFW may, in his or her discretion, elect to declare the dispute resolution process complete and provide the District with one last opportunity to cure the Non-Compliance or Non-Performance Event. If the District does not commence efforts to cure within thirty (30) days, and diligently pursue those efforts until the cure is complete, CDFW may, in its discretion, issue a Release Notice pursuant to Section 6(d) above, and Holder shall release funds in accordance with that notice.
 - d. In the event that any action or proceeding regarding a dispute under this Agreement is brought by a party, such action shall be brought in the US District Court for the Northern District of California or the Superior Court for Alameda County.
10. **Integration; Modification; Waiver.** This Agreement, together with the exhibits hereto, embodies and constitutes the entire understanding between the parties with respect to the matters discussed herein. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No waiver by either party hereto of any failure or refusal by the other party to comply with its obligations

hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply. All exhibits hereto and are incorporated by reference into this Agreement.

10. **Notices.** Any notice, request, demand, consent, approval or other communications under this Agreement shall be in writing, and shall be deemed duly given or made at the time and on the date when personally delivered as shown on a receipt therefor (which shall include delivery by a nationally recognized overnight delivery service) or three (3) business days after being mailed by a prepaid registered or certified mail, return receipt requested, to the address for each party set forth below. Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth below.

If to the District: East Bay Regional Park District
Assistant General Manager
Acquisition, Stewardship and Development Division
2950 Peralta Oaks Court
Oakland, California 94605
Attention: Kristina Kelchner
Telephone: 510-544-2600
E-mail: kkelchner@ebparks

with a copy to: District Counsel
2950 Peralta Oaks Court
Oakland, California 94605
Attention: Carol Victor
Telephone: 510-544-2005
E-mail: cvictor@ebparks.org

and to: Chief of Stewardship
Attention: Matt Graul
Telephone: 510-544-2346
E-mail: mgraul@ebparks.org

If to CDFW: Environmental Program Manager
Habitat Conservation Planning Branch
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 95814
Attention: Cathie Vouchilas
Telephone: (916) 651-1190
E-mail: cathie.vouchilas@wildlife.ca.gov

With a copy to: Office of General Counsel
California Department of Fish and Wildlife
P.O. Box 944209

Sacramento, CA 95814
Attention: Steven Ingram
Telephone: (916) 651-7401
E-mail: steven.ingram@wildlife.ca.gov


11. **Facsimile and Electronic Mail Signatures.** Signatures to this Agreement transmitted by telecopy or by emailed .pdf file shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or emailed .pdf file signature and shall accept the telecopied signature or emailed .pdf file signature of the other party to this Agreement.
12. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the State of California.
13. **Severability.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.
15. **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendment or modification hereof.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR
ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date set forth above.

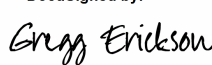
DISTRICT:

EAST BAY REGIONAL PARK DISTRICT

By: 
Name: Robert Doyle
Title: General Manager

CDFW:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By: 
Name: Gregg Erickson
Title: Regional Manager, Bay Delta Region

*Thanks All!
RAD*


APPROVED AS TO FORM:
District Counsel
East Bay Regional Park District

EXHIBIT A
Reserve Fund Agreement
(See attached)

EAST BAY REGIONAL PARK DISTRICT RESERVE FUND AGREEMENT

By and Among

California Department of Fish and Wildlife

East Bay Regional Park District

National Fish and Wildlife Foundation

THIS EAST BAY REGIONAL PARK DISTRICT RESERVE FUND AGREEMENT ("Reserve Fund Agreement") is made as of the last date of signature below (the "Effective Date") by and among the East Bay Regional Park District, a California special district ("District"); the California Department of Fish and Wildlife ("CDFW"); and the National Fish and Wildlife Foundation ("Foundation") (collectively, the "Parties").

WHEREAS, District is responsible to provide for long-term management of certain mitigation lands as required by permits issued by CDFW pursuant to the California Endangered Species Act.

WHEREAS, pursuant to that certain Mitigation Funding Agreement, dated April 28, 2020, by and between CDFW and the District ("MFA"), District is required to maintain a long-term mitigation reserve fund to be established with and held in trust by the Foundation for the benefit of CDFW and the fish and wildlife resources for which CDFW serves as trustee and to ensure adequate funding for perpetual management of certain mitigation lands as required by CDFW permits, on the terms and conditions set forth therein. The MFA is attached to this Reserve Fund Agreement as **Exhibit A** for informational purposes.

WHEREAS, CDFW and District intend that Foundation 1) establish the "East Bay Regional Park District Reserve Fund" pursuant to Section VII.F. of the Amended and Restated Master Mitigation Account Memorandum of Agreement between the California Department of Fish and Wildlife and the National Fish and Wildlife Foundation, dated June 10, 2019, as may be amended from time to time (the "Master MOA"), as a separate Sub-Account (as that term is defined in the Master MOA) to receive, manage, and administer District's deposit of the "Initial Reserve Amount" (as that term is defined in the MFA) and any additional deposits of amounts as required by the MFA; and 2) administer such Sub-Account in accordance with the terms and conditions set forth in this Reserve Fund Agreement. The Master MOA is attached to this Reserve Fund Agreement as **Exhibit B** for informational purposes.

AGREEMENT

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Reserve Fund Establishment

a. Promptly after execution of this Reserve Fund Agreement by the Parties and Foundation's receipt of a one-time Per Sub-Account Deposit Fee (as that term is defined in the Master MOA) of Three Thousand Four Hundred Dollars (\$3,400), Foundation shall establish a Sub-Account under the Master MOA titled "**East Bay Regional Parks District Reserve Fund**" ("Reserve Fund" or "Account").

2. Reserve Fund Deposits

a. District shall make such payments to the Foundation for deposit into the Reserve Fund as are required by the MFA. In accordance with Section VI.A.2. of the Master MOA, for each payment of funds to Foundation for deposit into the Reserve Fund, CDFW shall either transmit to the Foundation, or require or authorize District to transmit to the Foundation, a "Deposit Document" (as such term is defined in the Master MOA) applicable to such payment. For each such payment, CDFW and District shall utilize the form of Deposit Document attached to this Reserve Fund Agreement as **Exhibit C**.

3. Reserve Fund Investment

a. The Foundation agrees to accept and deposit into the Reserve Fund the payments made in accordance with Section 2 above. The Foundation shall invest all funds in the Account in accordance with Section V, Subsections B, C, and D, of the Master MOA, and the Foundation's Investment Policy Governing Cash Management ("IPS"), Bond Portfolio. A copy of the current IPS is attached to the Master MOA as Exhibit C. All investment earnings on the Reserve Fund shall be credited thereto and treated as an indivisible part thereof.

4. Reserve Fund Administration

a. The Foundation shall administer the Account in accordance with Section VII of the Master MOA and the following terms:

- 1) **Foundation Annual Fee**: The Foundation shall be entitled to assess and collect an Annual Fee (as that term is defined in the Master MOA) from the balance of the Account. The Annual Fee applicable to the Account shall be an amount equal to Three Thousand Dollars (\$3,000) expressed in calendar year 2020 dollars. The Foundation shall be entitled to adjust the Annual Fee (either annually or at such other longer time interval as the Foundation may elect) to account for inflation over the period of time elapsed after calendar year 2020. The measure of inflation to be used by the Foundation for such purposes shall be the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index – West Region, or the successor of such index.
- 2) **Foundation Disbursement Fee**: In addition to the Annual Fee, the Foundation shall be entitled to assess and collect a disbursement fee

("Disbursement Fee") from the balance of the Account for each disbursement made by the Foundation from the Account pursuant to Section 5 below. Each Disbursement Fee shall be an amount equal to Two Thousand Dollars (\$2,000) expressed in calendar year 2020 dollars. The Foundation shall be entitled to adjust the Disbursement Fee (either annually or at such other longer time interval as the Foundation may elect) to account for inflation over the period of time elapsed after calendar year 2020. The measure of inflation to be used by the Foundation for such purposes shall be the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index – West Region, or the successor of such index.

3) Account Activity Reports: The Foundation shall provide Account activity reports to District in the same form and at the same time it provides such activity reports to CDFW under Section VII.D(2) of the Master MOA.

4) Final Account Activity Report: The Foundation shall provide a final Account activity report to CDFW and District within ninety (90) days of Account Closure (as that term is defined in Section 7.c. below). The final Account activity report shall report on deposits, disbursements, fees, and investment activity during the period beginning on the date of the most recently delivered Account activity report and the date of Account Closure.

5) Account Disbursements: The Foundation shall disburse funds from the Account in accordance with Section 5 of this Reserve Fund Agreement.

5. Reserve Fund Disbursements

a. Attached to this Reserve Fund Agreement as **Exhibit D** is a form of "Release Notice" (as that term is defined in the MFA). Consistent with the terms of the MFA, CDFW shall have sole power to complete, execute, and submit to the Foundation one or more Release Notices under this Reserve Fund Agreement, which shall be substantially in the form attached as Exhibit D. Each Release Notice submitted by CDFW to the Foundation shall satisfy the following two (2) requirements:

1) Each Release Notice shall include a certification by CDFW to the Foundation that CDFW has satisfied all conditions applicable to CDFW's issuance of such Release Notice pursuant to the MFA.

2) Each Release Notice shall be signed by the CDFW Manager for the Bay Delta Region or his/her designee and simultaneously submitted to District.

b. The Foundation shall be entitled and obligated to rely conclusively on the validity of each and every Release Notice submitted to the Foundation by CDFW that satisfies the conditions set forth in Sections 5.a.1) and 5.a.2) immediately above. The Foundation shall be entitled and obligated to rely conclusively on the validity of all such Release Notices without further investigation or inquiry by the

Foundation. If the Foundation determines that any Release Notice delivered by CDFW to the Foundation does not satisfy the conditions set forth in Sections 5.a.1) and 5.a.2) immediately above, the Foundation shall give CDFW and District prompt written notice thereof, including but not limited to a statement of the reasons for such determination. Upon receiving such written notice, CDFW may correct any such non-conformity in the applicable Release Notice and thereafter re-submit the applicable Release Notice.

c. Section 7.c. of the MFA provides for the disbursement of funds from the Reserve Fund upon (i) District's failure to replenish or deliver additional funds to the Reserve Fund as required thereunder and (ii) CDFW's corresponding election to terminate the MFA. If at any time the Foundation receives written notice signed jointly by District and CDFW that, by operation of Section 7.c. of the MFA, disbursement of funds from the Reserve Fund is required, then the Foundation shall make the disbursement so specified in accordance with Section 5.e. below. The Foundation shall be entitled and obligated to rely conclusively on the validity of any such written notice without further investigation or inquiry by the Foundation.

d. Section 8 of the MFA provides for the disbursement of funds from the Reserve Fund upon agreement by District and CDFW (i) to allow the use of an alternative funding mechanism to secure the District's long-term mitigation management obligations for the Projects (as defined in the MFA) and (ii) to correspondingly terminate the MFA. If at any time the Foundation receives written notice signed jointly by District and CDFW that, by operation of Section 8 of the MFA, disbursement of funds from the Reserve Fund is required, then the Foundation shall make the disbursement so specified in accordance with Section 5.e. below. The Foundation shall be entitled and obligated to rely conclusively on the validity of any such written notice without further investigation or inquiry by the Foundation.

e. The Foundation shall disburse 1) the dollar amount of funds specified in each Release Notice; or 2) the unobligated balance of funds in the Reserve Fund less any Annual Fee and Disbursement Fee due and owing to Foundation (the "Disbursal Amount") for the other notices as described above in this Section 5, to CDFW or other entity identified therein. The Foundation shall make such disbursement as soon as is practicable after all of the following have occurred: 1) the Foundation has received a) the Release Notice or other notice, as applicable, as described above in this Section 5; b) payee information required by the Foundation to make the disbursement; and c) the Recipient Agreement (as that term is defined in the Master MOA) or other agreement such as a Master Reimbursable Agreement (as that term is defined in the Master MOA) applicable to the disbursement and, if applicable, 2) the Foundation has determined the Disbursal Amount.

6. Authority and Fiduciary Obligations of Foundation and Limitations on Liability

a. In acting hereunder, the Foundation shall have only such duties as are expressly stated herein and shall have no other duties implied, inferred, or

otherwise imposed under this Reserve Fund Agreement. The Foundation shall not be liable for any error of judgment or any act done, or omitted to be done, hereunder by it in the absence of the Foundation's gross negligence or willful misconduct.

b. The Foundation may act in reliance upon any writing, instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and shall not be required to investigate the truth or accuracy of any statement contained in any such writing or instrument. Also, the Foundation may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized so to do.

c. The Foundation shall make no disbursement or obligation of funds in the Account, except in strict accordance with the provisions of this Reserve Fund Agreement.

d. The Foundation shall have a duty of loyalty to CDFW and District with respect to the Account, and shall not use or borrow against funds in the Account for its own benefit, except for assessment and collection of the fees due to the Foundation or its financial institutions as provided by this Reserve Fund Agreement.

e. The Foundation shall not be liable to CDFW or District or any other persons or entities for financial losses accruing to the Account as a result of investments pursuant to this Reserve Fund Agreement that are consistent with the IPS. The Foundation shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the Foundation's obligations under this Reserve Fund Agreement by such employees when they are acting within the course and scope of their employment.

7. Termination; Account Closure

a. This Reserve Fund Agreement shall continue in full force and effect unless and until terminated by any Party, which termination shall be effective on the date specified by the notifying Party in a written notice delivered to the other Parties not less than one hundred eighty (180) days prior to the intended date of termination. Notwithstanding the immediately preceding sentence, regardless of the date that notice of termination is provided and the passage of the intervening minimum one hundred eighty (180) day notice period, termination is not effective unless and until the Foundation has transferred in an orderly fashion the custody, control or other power necessary for the investment, management, and administration of all the funds in the Account (other than funds in an amount equal to any fees due and owing to the Foundation or its financial institutions) to a successor entity identified or approved in writing by both CDFW and District.

b. Prior to the effective date of termination of this Reserve Fund Agreement, the Foundation shall transfer all funds remaining in the Account, other than fees due and owing to the Foundation or its financial institutions, to a successor entity designated or approved by both CDFW and District.

c. Account Closure shall occur after the final transfer of funds in the Account.

8. Contact Information/Communications

a. All approvals, notices, reports, and other communications required or permitted under this Reserve Fund Agreement shall be in writing and delivered by first-class mail, overnight mail, email, or electronic .pdf format (with a copy of the electronic .pdf communication also delivered by another means provided in this Section 8.).

b. All deposits to the Account made by check shall be mailed to the Foundation's headquarters office at 1133 15th Street, NW, Suite 1000, Washington D.C. 20005, to the attention of the Chief Financial Officer. All deposits to the Account made by electronic funds transfer shall be directed to the Foundation (Taxpayer I.D. Number 52-138-4139) in accordance with wiring instructions provided by the Foundation to District at the time of deposit.

c. Each Party agrees to notify the other Parties promptly after any change in named representative, address, telephone, or other contact information. The individuals named below shall be the Representatives of the District, CDFW, and the Foundation follows:

District:

Kristina Kelchner
Assistant General Manager
Acquisition, Stewardship and Development
Division
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
Phone: 510-544-2600
E-mail: kkelchner@ebparks.org

District Alternate:

Debra Auker
CFO / AGM of Management Services
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
Phone: 510-544-2101
E-mail: dauker@ebparks.org

CDFW:

Gregg Erickson
Regional Manager, Bay Delta Region
California Department of Fish and Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Phone: (707) 428-2019
E-mail: gregg.erickson@wildlife.ca.gov

Foundation Primary:

Anne Butterfield
Senior Manager, IDEA
National Fish and Wildlife Foundation
90 New Montgomery Street, Suite 1010
San Francisco, CA 94105
Phone: (415) 243-3106
Email: anne.butterfield@nfwf.org

Foundation Alternate:

Heather Hoyles
Manager, IDEA
National Fish and Wildlife Foundation
90 New Montgomery Street, Suite 1010
San Francisco, CA 94105
Phone: (415) 243-3105
Email: heather.hoyles@nfwf.org

d. The Parties agree and acknowledge that any change to their respective Representatives as set forth in Section 8.c. above shall not constitute an amendment to this Reserve Fund Agreement and may be effected through written notice to the other Parties.

9. **Transfer and Assignment.** No Party may transfer or assign this Reserve Fund Agreement, in whole or in part, to any other individual or legal entity without the prior written consent of the other Parties, which consent may be withheld.

10. **Amendments.** This Reserve Fund Agreement may be amended only by a written amendment, signed by the Parties. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Reserve Fund Agreement may not be amended via electronic mail.

11. **Choice of Law.** This Reserve Fund Agreement shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Reserve Fund Agreement, the Parties agree to submit to the jurisdiction of the courts of the State of California.

12. Requests for Information. The Foundation shall not be responsible for responding to requests for information about this Reserve Fund Agreement or the Account. The Foundation may refer any such requests to CDFW and/or District.

13. Access to Foundation Records. CDFW and District, or any of their duly authorized representatives, shall, upon thirty (30) business days' prior written notice, have access to any books, documents, papers and records of the Foundation that are directly pertinent to this Reserve Fund Agreement for purposes of making audits, examinations, excerpts or transcription. The Foundation shall keep all books, documents, papers, or records for at least five years after their preparation.

14. Independent Capacity. Each of the Parties is acting in its independent capacity in entering into and carrying out this Reserve Fund Agreement and not as an agent, employee, or representative either of the other Parties.

15. No Third-Party Rights. This Reserve Fund Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a party to this Reserve Fund Agreement.

16. Responsibility for Conduct. Each Party shall be responsible for the consequences of its own actions or inaction, willful misconduct, gross negligence, and/or breach of obligations in connection with this Reserve Fund Agreement, and in connection with any work undertaken in accordance with this Reserve Fund Agreement.

17. Severability. Each provision of this Reserve Fund Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

18. Dispute Resolution. The Parties will cooperate in good faith to achieve the objectives of this Reserve Fund Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

19. MFA Conflicts. In the event a conflict arises between the terms of this Reserve Fund Agreement and the MFA, the Parties will meet and confer to resolve the issue to the mutual satisfaction of the Parties in accordance with Section 18 above.

20. Counterparts. This Reserve Fund Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Reserve Fund Agreement, intending to be bound legally.

East Bay Regional Park District

Robert E. Doyle

4/24/2020

Robert Doyle

Date

General Manager

Tax Identification Number:

National Fish and Wildlife Foundation

Timothy J. DiCintio

4/28/2020

Timothy J. DiCintio

Date

Senior Vice President, Impact-Directed Environmental
Accounts

California Department of Fish and Wildlife

DocuSigned by:

Gregg Erickson

4/28/2020

Gregg Erickson

Date

Regional Manager, Bay Delta Region

EXHIBIT B

Amended and Restated Master Mitigation Account Memorandum of Agreement

**Amended and Restated Master Mitigation Account
Memorandum of Agreement between the
California Department of Fish and Wildlife and the
National Fish and Wildlife Foundation**

This Amended and Restated Master Mitigation Account Memorandum of Agreement ("Agreement") is entered into by and between the California Department of Fish and Wildlife, an agency of the State of California ("CDFW"), and the National Fish and Wildlife Foundation, a District of Columbia non-profit corporation ("Foundation"), as of the date of the signature of the second Party to sign ("Effective Date"). CDFW and the Foundation are referred to herein individually as a "Party" and collectively as the "Parties." This Agreement supersedes the Parties' original Memorandum of Agreement, dated November 23, 2010, as amended on March 9, 2012 ("Original MOA").

I. PURPOSES

A. The Original MOA established the CDFW Master Mitigation Account ("CDFW Account") to receive long-term endowment and other monies to be used to conserve, protect, restore, and enhance fish, wildlife, native plants and habitats under the jurisdiction of CDFW ("Account Purpose"), and to provide for the Foundation's deposit, investment, management, and administration of the CDFW Account for the Account Purpose. The purpose of this Agreement is to amend and restate certain terms of the Original MOA consistent with the Account Purpose.

B. The primary source of funds to be deposited, invested, managed and administered under this Agreement are monies to be paid by individuals or private or governmental entities ("Participant" or "Participants") as a requirement of approvals, permits or other authorizations issued by CDFW ("CDFW Approvals") (or other such transactions in which CDFW is not a permitting agency, but has a land management or other interest) to minimize and mitigate certain unavoidable impacts of Participant projects on fish, wildlife, native plants, and habitats.

C. CDFW Approvals include, but are not limited to, those issued pursuant to the California Endangered Species Act (Fish & G. Code, § 2050, et seq.), the California Lake and Streambed Alteration Program (Fish & G. Code, § 1600, et seq.), the California Natural Community Conservation Planning Act (Fish & G. Code, § 2800, et seq.), and the California Environmental Quality Act (Pub. Res. Code, § 21000, et seq.).

D. The Foundation will be responsible to ensure that monies deposited in the CDFW Account will be deposited, invested and managed in accordance with this Agreement and CDFW's direction and investment policy guidance to achieve the objectives set forth in this Agreement and the applicable Deposit Documents.

E. The use of the CDFW Account will be limited by the amount of money available in the CDFW Account at any given time, and by the stated purposes as described in the applicable Deposit Documents. The Foundation shall disburse funds in the CDFW Account in accordance with direction provided by CDFW and as set forth in the Deposit Documents and "Recipient Agreements," as hereinafter defined. In the event the Foundation becomes aware of a conflict between the direction provided by CDFW in its Deposit Documents and any Recipient Agreements, the Foundation shall notify and request direction from CDFW prior to any disbursement.

II. AUTHORITY

A. CDFW is an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species. (Fish & G. Code, § 1802.)

B. The Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 et seq., as amended ("Establishment Act"), and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The Establishment Act directs the Foundation to undertake activities that further the conservation and management of fish, wildlife, and plant resources for present and future generations and authorizes the Foundation to accept funds from any legal source to further its mission. The Establishment Act also requires the Foundation to report annually to the United States Congress on its proceedings and activities, including by providing Congress with a "full and complete statement of its receipts, expenditures, and investments" each year. (16 U.S.C. Section 3706(b)).

C. This Agreement is authorized under California Fish and Game Code Sections 1225-27, 1600 et seq., 1802, 2050 et seq., and 2800 et seq.; California Code of Regulations, Title 14, California Fish and Game Commission Policies; California Government Code Section 65965-65968; and other applicable laws and regulations.

III. DEFINITIONS

A. "Deposit Document" shall mean documents such as permits, consents, authorizations, approvals and other writings issued by CDFW which describe the sources, purposes, and amounts of the various funds to be deposited into the CDFW Account. A "Set of Deposit Documents" is associated with a single project but may include more than one permit, consent, authorization, approval, or other writing issued by CDFW. A standard form of Deposit Document for certain Sub-Accounts (as defined below) is attached hereto as Exhibit A. The standard form of Deposit Document may be modified at any time by mutual written consent of the Parties without the need for an amendment to the Agreement.

B. "Project" shall mean an activity consistent with the Sub-Account Purpose that has been selected by CDFW for funding with amounts in the applicable Sub-Account in the CDFW Account in accordance with the procedures set forth in this Agreement.

C. "Recipient" shall mean any person or entity that receives monies from the CDFW Account for the performance of a Project as set forth in a Recipient Agreement.

D. "Recipient Agreement" shall mean a contract, grant agreement, invoice, work order, or other written agreement or arrangement between the Foundation and a Recipient for the performance of a Project, including but not limited to long-term maintenance and management activities, to be funded through a Sub-Account.

E. "Sub-Account" shall mean each individual sub-account within the CDFW Account established for (1) long-term maintenance or management; (2) initial and capital management; (3) near-term acquisition or (4) near-term restoration, enhancement, rehabilitation, and other activities associated with each Set of Deposit Documents. The Foundation shall track and account for each Sub-Account in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFW Account. Within each Sub-Account, the Foundation shall track and account for all monies deposited by Participants or other depositors in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFW Account.

IV. CDFW RESPONSIBILITIES

A. CDFW Representative. CDFW shall appoint the CDFW Representative and an alternate ("CDFW Alternate"), who shall represent CDFW in carrying out its obligations under this Agreement. The CDFW Representative and CDFW Alternate are designated in Section XI.C. CDFW may also elect to designate a representative other than the CDFW Representative or CDFW Alternate for a particular Sub-Account ("Sub-Account Representative"). Unless stated otherwise in a Deposit Document or other written direction from CDFW, the signature of the applicable CDFW Regional Manager (or his/her designee) on the Deposit Document shall be deemed to be a CDFW election under this Section IV.A. to designate the applicable CDFW Regional Manager (or his/her designee) as the Sub-Account Representative for the Sub-Account(s) identified on the Deposit Document. The Foundation may rely on all written communications made hereunder by the CDFW Representative, Foundation Alternate, or Sub-Account Representative, as the communications of CDFW itself. CDFW shall notify the Foundation within ten (10) days of any change in the CDFW Representative, CDFW Alternate or Sub-Account Representative by giving notice pursuant to Section XI.A.

B. Approve Deposits into the CDFW Account. The CDFW Representative, the

CDFW Alternate, and/or the applicable Sub-Account Representative shall be the only persons authorized to approve deposits into the CDFW Account. As described in additional detail in Section VI. below, CDFW, by and through the CDFW Representative, CDFW Alternative, or the applicable Sub-Account Representative, shall retain sole responsibility for specifying the amount and designated purpose of funds to be deposited into the CDFW Account.

C. Direct Disbursements from the CDFW Account to Recipients other than CDFW.

From time to time, the CDFW Representative, CDFW Alternate, and/or applicable Sub-Account Representative, or their designees, shall direct the Foundation in writing to disburse funds from applicable Sub-Accounts in the CDFW Account to Recipients other than CDFW (i.e., a third-party Recipient) to pay for performance of specified Projects consistent with the applicable Deposit Documents. Such disbursement shall occur pursuant to a Recipient Agreement in accordance with the applicable terms set forth in Section VI.F.1. through 3. below. CDFW shall have the right at any time to review and approve (1) all Recipient Agreements, including any amendments, prior to their execution and (2) all requests from Recipients for disbursements of funds from the applicable Sub-Account in the CDFW Account, prior to the Foundation's making such disbursements. If CDFW directs the Foundation to make disbursements from the CDFW Account to one or more Recipients in specified amounts and/or at specified intervals, the Foundation is entitled to rely upon such direction and shall make such disbursements in the amounts and/or at the intervals so specified until and unless otherwise directed by CDFW in writing.

D. Direct Disbursements from the CDFW Account to CDFW. CDFW may elect to use money from the CDFW Account for Projects to be carried out by CDFW rather than by a third-party Recipient. In such instances, the CDFW Representative, CDFW Alternate, or their designees, shall direct the Foundation in writing to disburse funds from applicable Sub-Accounts in the CDFW Account to CDFW to pay for performance of Projects consistent with the applicable Deposit Documents. Such disbursement shall occur pursuant to an applicable Master Reimbursable Agreement in accordance with the terms set forth in Section VI.G. below.

V. FOUNDATION RESPONSIBILITIES

A. Foundation Representative. The Foundation shall appoint the Foundation Representative and an alternate ("Foundation Alternate"), who shall represent the Foundation in carrying out its obligations under this Agreement. CDFW may rely on all written communications made hereunder by the Foundation Representative or Foundation Alternate as the communications of the Foundation itself. The Foundation shall notify CDFW in writing of any change in the Foundation Representative or Foundation Alternate within ten (10) days of such change by giving notice to CDFW pursuant to Section XI.

B. Duty to Maintain Accounts. The Foundation shall maintain the CDFW Account

in an interest bearing or investment account at one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation or Securities Investor Protection Corporation (each an "Account Holder" and together the "Account Holders"). In consultation with third parties and/or the Foundation, CDFW will determine the appropriate investment strategy or strategies to apply to the CDFW Account, including each Sub-Account within the CDFW Account. For accounting purposes, the Foundation shall ensure the CDFW Account shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure all Sub-Accounts within the CDFW Account are distinguishable from each other.

C. Investment Decisions. The Foundation shall invest amounts in the CDFW Account consistent with this Agreement, including but not limited to this Section V and Sections I.D. and VI.E. of this Agreement and applicable State and Federal laws, and in accordance with investment guidance determined by CDFW and communicated to the Foundation in writing for implementation by each of the Account Holders. In addition, if requested by CDFW, the Foundation shall invest amounts in any Sub-Account in an investment pool to achieve a specified purpose and tenure of the relevant funds consistent with the applicable Deposit Document. Day-to-day investment decisions will be made by the professional investment advisor or financial institution with which the Foundation has established or will establish an investment advisory relationship. The Foundation may rely on the advice of any such adviser, and may delegate day-to-day investment decision-making authority, consistent with applicable State and Federal law, to such adviser with respect to management of the CDFW Account or any Sub-Account. Investment income accruing to each Sub-Account will be credited thereto (with investment income accruing on pooled funds apportioned *pro rata* to each Sub-Account within such pool) and shall be used to carry out the purposes of the various Sub-Accounts as set forth in the applicable Deposit Documents.

D. Commingling of Assets. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the CDFW Account with other funds held or managed by the Foundation that are subject to identical investment purposes and restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the CDFW Account commingled in this manner shall at all times remain subject to the investment guidance specified by CDFW for such funds. In addition, notwithstanding this authorization, and in accordance with Section V.B. above, the Foundation shall ensure that funds in the CDFW Account shall at all times be distinguishable within the Foundation's internal account system from the balances of all other accounts maintained or managed by the Foundation.

E. Administration of Account. The Foundation shall administer the CDFW Account consistent with Section VII. below.

F. Requests for Proposals. If requested by CDFW, under separate agreements with CDFW, the Foundation shall prepare one or more specialized requests for proposals

(each an "RFP") for Projects to be selected by CDFW and funded by the CDFW Account.

G. Disbursements to Recipients. The Foundation shall pay Recipients' requests for payments in accordance with the procedures set forth in the respective Recipient Agreements as described in Section VI.F. below.

H. Disbursements to CDFW. The Foundation will disburse funds from the CDFW Account to CDFW as payment for performance of Projects by CDFW in accordance with payment procedures provided by CDFW in an applicable Master Reimbursable Agreement referenced in Section VI.G. below.

I. Termination of Projects and Disbursements. The Foundation will take appropriate steps to terminate or cancel a Project if directed to do so by CDFW, and terminate disbursements in accordance with the terms of the applicable Recipient Agreement.

J. Requests for Information. The Foundation shall not be responsible for responding to requests for information about this Agreement, the CDFW Account, or any Sub-Accounts established thereunder. The Foundation may refer such requests to the CDFW Representative, Alternate or Sub-Account Representative.

VI. STANDARD OPERATING PROCEDURES

CDFW and the Foundation expect that, in the ordinary course, the procedures set forth in this Section VI. will govern the deposit, management, and disbursement of funds in Sub-Accounts within the CDFW Account. To the extent that an applicable Deposit Document or Set of Deposit Documents, provisions of applicable law or regulation, or written instructions delivered by CDFW to the Foundation specify additional or different provisions or procedures for such deposit, management, or disbursement, such alternate provisions or procedures shall be deemed to apply.

A. Payments to the Foundation.

1. Permits, consents, authorizations, and/or related approvals issued by CDFW (or other such transactions in which CDFW is not the permitting agency, but has a land management or other interest) may directly require or authorize Participants to pay funds to the Foundation for management pursuant to this Agreement, or CDFW may direct or authorize Participants to pay such funds to the Foundation through other communications transmitted to Participants in conjunction with or after issuance of the applicable Deposit Document(s).

2. For each payment of funds to the Foundation associated with a Set of Deposit Documents, CDFW shall either transmit, require or authorize the paying Participant to transmit with its payment, to the Foundation the applicable Deposit

Document(s) approved by CDFW or other written communication from CDFW requiring or authorizing such payment.

3. For each payment of funds to the Foundation pursuant to Section VI.A.1., CDFW shall utilize the then-prevailing standard form of Deposit Document (the current version is attached hereto as Exhibit A).

B. Classification of Mitigation or Other Activity. CDFW shall classify (either in the Set of Deposit Documents or a separate written instrument delivered to the Foundation) each specific mitigation or other activity identified in a Deposit Document or other instrument delivered to the Foundation as relating to either (1) long-term maintenance or management ("Endowment"), (2) short-term (e.g., three-year or more) initial and capital management ("Initial and Capital"), (3) near-term land acquisition ("Acquisition"), or (4) near-term restoration, enhancement, rehabilitation or other measure not described in (1), (2) or (3) ("Enhancement").

C. Limits on the Foundation's Liability. The Parties expressly agree and acknowledge that as between the Parties the specification of mitigation measures and mitigation funds in a Set of Deposit Documents is the sole and exclusive responsibility of CDFW. Without limiting the foregoing, the amount of mitigation funds specified for long-term maintenance and management, whether calculated pursuant to a Property Analysis Record or otherwise, shall be the sole and exclusive responsibility of CDFW and applicable Participant(s), and shall in no respect be the responsibility of the Foundation. CDFW agrees and acknowledges that the Foundation is expressly entitled to rely on the validity of all such mitigation measures and the accuracy of the calculation of mitigation funds without independent verification. The Foundation shall not be liable in any respect to CDFW, or to any other party, for any errors, omissions, inaccuracies, or other elements in the specification of such mitigation measures or mitigation funds.

D. Establishment of Sub-Accounts. With respect to the funds received by the Foundation in connection with each Set of Deposit Documents, the Foundation shall establish an individual Sub-Account corresponding to each mitigation or other activity identified in Section VI.B.(1)-(4) above provided for in the Set of Deposit Documents. The Foundation shall deposit funds it receives in connection with a particular Set of Deposit Documents and designated, respectively, for deposit into the applicable Endowment, Initial and Capital, Acquisition, or Enhancement Sub-Account established with respect to that Set of Deposit Documents.

E. Investment of Sub-Account Funds. Pending disbursement in accordance with this Agreement, the Foundation shall (1) invest funds in Endowment Sub-Accounts in accordance with the then-prevailing Investment Policy Statement Governing Mitigation Endowment Accounts Held by the National Fish and Wildlife Foundation approved in writing by CDFW. A copy of the current version is attached to this Agreement as Exhibit B and incorporated herein by this reference; and (2) invest funds in Initial and Capital, Acquisition, and Enhancement Sub-Accounts in accordance with the Foundation's then-prevailing investment policy statement governing cash management.

A copy of the Foundation's current investment policy statement governing cash management is attached to this Agreement as Exhibit C and incorporated herein by this reference. The Foundation shall notify CDFW of any change to such policy statement no later than ten (10) days after such change becomes effective.

F. Recipient Agreements for Disbursements to Recipients Other than CDFW.

1. With the approval of CDFW, the Foundation shall enter into Recipient Agreements for the performance of appropriate Projects or other activities by Recipients other than CDFW to be funded with amounts in Endowment, Initial and Capital, Enhancement, and Acquisition Sub-Accounts. Recipient Agreements shall be subject to approval by CDFW. The Foundation shall enter into such Recipient Agreements and shall pay Recipients for performance of such Projects and activities in accordance with the terms of such Recipient Agreements.

a. CDFW may also direct the Foundation to make direct disbursements (with a Recipient Agreement in the form of a direct invoice) of amounts in Enhancement and Acquisition Sub-Accounts to Recipients for performance of appropriate Projects or activities as determined by CDFW.

b. If an Initial and Capital Sub-Account is not accompanied by an Endowment Sub-Account, the Recipient Agreement for the Initial and Capital Sub-Account shall be in the form of a direct invoice.

c. If an Initial and Capital Sub-Account is accompanied by an Endowment Sub-Account, the Recipient Agreement for the Initial and Capital Sub-Account may be in the form of either: (i) a direct invoice; or (ii) a Recipient Agreement approved by CDFW.

2. At CDFW's election, transmitted in writing to the Foundation, Recipient Agreements governing payments from Endowment or Initial and Capital Sub-Accounts may expressly provide for payment by the Foundation to Recipients of specific dollar amounts at specific time intervals, including advance payments, without CDFW's ongoing approval of individual payments. In such instances, CDFW reserves the right to issue a "stop payment" notice to the Foundation (upon receipt of which the Foundation shall immediately cease any further disbursements from the applicable Sub-Account) if CDFW determines the applicable Recipient is not properly implementing the Endowment or Initial and Capital Sub-Account activities for which it is receiving disbursement of Sub-Account funds or that there is a need to reduce the amount of funds being disbursed. At CDFW's request, the Foundation and its investment advisors will consult with CDFW as to the projected financial impact of any potential disbursement from an Endowment or Initial and Capital Sub-Account on the continuing expected financial viability of such Sub-Account.

3. Provisions for Disbursements to Recipients from Initial and Capital and Endowment Sub-Accounts. The Foundation shall not be required to make more than one

single annual disbursement in the ordinary course to a Recipient of funds from an Endowment or Initial and Capital Sub-Account. Disbursements shall be in annual amounts specified or approved by CDFW and shall be made by the Foundation to the specified Recipient pursuant to a Recipient Agreement approved by CDFW for the performance of appropriate long-term maintenance and management as determined by CDFW.

G. Master Reimbursable Agreement and Provisions for Disbursements to CDFW from all Sub-Accounts. CDFW and the Foundation will execute a "Master Reimbursable Agreement" to govern disbursements from applicable Sub-Accounts within the CDFW Account by the Foundation to CDFW in its capacity as Recipient. The Foundation will make disbursements to CDFW in accordance with the terms of the Master Reimbursable Agreement as payment for performance of appropriate activities to be performed by CDFW. The Master Reimbursable Agreement shall provide for a single, advance annual payment from the CDFW Account (covering all applicable Sub-Accounts), to be made by the Foundation to CDFW in accordance with a schedule agreed to by CDFW and the Foundation.

VII. GENERAL ACCOUNT ADMINISTRATION

A. Establishment of Sub-Accounts within the CDFW Account. Each Sub-Account shall be created and funded within the CDFW Account as and when the Foundation receives Sub-Account funds and the applicable Set of Deposit Documents. In connection with the creation and funding within the CDFW Account, the Foundation shall assign unique identifying information to each Sub-Account.

B. One-Time Deposit Fee. Unless the Parties agree otherwise in writing, each Sub-Account shall be subject to a one-time "Per Sub-Account Deposit Fee" of three thousand four hundred dollars (\$3,400). The Per Sub-Account Deposit Fee is to cover the cost of establishing the Sub-Account in the Foundation's financial and accounting systems and is to be paid by the Participant (or other source of funding) separate from the deposit amount for the mitigation measures. The Foundation shall have the right to increase the Per Sub-Account Fee once every five years (each an "Adjustment Date") after the Effective Date if necessary to ensure that the Per Sub-Account Fee reflects inflation after the year 2019 and retains its purchasing power in 2019 dollars. The amount of any such increase shall be based upon the increase, if any, in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, 1982-84 = 100 ("Index"). The "Beginning Index" shall be the Index published most recently before the Effective Date. The "Comparison Index" shall be the Index published most recently before the Adjustment Date. If the Comparison Index is greater than the Beginning Index, then the Per Sub-Account Fee shall be increased by an amount equal to the ratio that the Comparison Index bears to the Beginning Index, as rounded to the nearest dollar. As an example, if the Beginning Index is 215 and the Comparison Index is 220, then the increase shall be \$79 (\$3,400 x 220/215). If not paid through other means, the Foundation shall assess and collect the Per Sub-Account Fee on the applicable deposit

amount (such Per Sub-Account Fee to be deducted by the Foundation from the deposit amount itself).

C. Annual Fee. Each Sub-Account shall also be subject to an Annual Fee, to cover the cost of annual administration, operation and accounting of such Sub-Account. The Foundation shall assess and collect the Annual Fee either quarterly or annually, in either case at the Foundation's election, during each year in which the applicable Sub-Account is in existence. The Foundation shall collect the appropriate Annual Fee by deducting it from the balance of each respective Sub-Account.

1. The Annual Fee on Endowment Sub-Accounts shall be one percent (1%) of the balance of each such Sub-Account.

2. Then Annual Fee on Initial and Capital Sub-Accounts shall be the greater of one percent (1%) of the balance of each such Sub-Account or one thousand dollars (\$1,000).

3. The Annual Fee on Acquisition and Enhancement Sub-Accounts shall be the greater of three percent (3%) of the balance of each such Sub-Account or one thousand dollars (\$1,000).

D. CDFW Account Activity Reports. Unless directed otherwise by CDFW, for each year the CDFW Account is in existence the Foundation shall submit CDFW Account activity reports for each Sub -Account to the CDFW Representative and CDFW Alternate: (1) annually by March 15 for Endowment Sub-Accounts; and (2) semi-annually by June 15 and December 15 for all other Sub-Accounts. In each activity report, the Foundation shall report on deposits, disbursements, fees, and earnings and other investment income during the period to which the report pertains, with a reconciliation of the remaining unobligated balance, and, if applicable, other information as required by Government Code section 65966 (e)(1). The activity reports will also summarize the current status of all active Recipient Agreements and will include a description of the work or other activities performed under such Recipient Agreements for which disbursements from the CDFW Account were made during the applicable reporting period. Upon request, the Foundation shall also provide to the CDFW Representative and CDFW Alternate copies of its audited financial statements for any completed fiscal year.

E. Additional Endowment Sub-Account Reporting. With respect to Endowment Sub-Accounts, the Parties agree to use best efforts to jointly develop (after the Effective Date) one or more additional reporting thresholds that would trigger reporting to CDFW in addition to the reports described in Section VII.D. above. The intent of this provision is to design a process by which the Foundation would, or would cause its investment advisors to, provide notice to CDFW in the event that actual investment returns or prevailing economic conditions pose a material risk of depletion with respect to Endowment Sub-Accounts. The thresholds that would trigger such additional reporting will be developed by CDFW and the Foundation in consultation with the Foundation's

investment advisors. The Parties further agree to jointly develop one or more options that may be employed by CDFW to mitigate such risk as and when it might arise. These options may include, but are not necessarily limited to, a determination and directive by CDFW to suspend or reduce disbursements from the Endowment Sub-Accounts for a period of time until the risk of depletion has receded to acceptable levels.

F. Additional Agreements. The Parties agree and acknowledge that, at their mutual election, they may enter into further agreements regarding the establishment, maintenance, and/or operation of additional Sub-Accounts created within the CDFW Account. If and to the extent that any such further agreements contain terms or conditions different from those set forth in this Agreement, the terms of such further agreements shall be deemed to supersede the provisions of this Agreement with respect to such additional Sub-Accounts.

G. Limits on the Use of Funds.

1. No funds disbursed from the CDFW Account may be used by any Recipient to pay for lobbying activities, illegal activities, unauthorized (not identified in Deposit Documents) operating expenses or any litigation expenses, except that with the prior written approval of CDFW such funds may be disbursed by the Foundation for the actual and reasonable costs of enforcement or defense of conservation easements or fee titles for mitigation properties.

2. The Foundation shall ensure, by including appropriate terms in Recipient Agreements, that no funds disbursed from the CDFW Account are permitted to be used for any purpose prohibited by Section VII.G.1., above, or to unlawfully augment any Recipient's federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. Section 1301(a) ("Purpose Statute"), Title 31, U.S.C. Section 1341 ("Anti-Deficiency Act"), Title 31, U.S.C. Section 3302(b) ("Miscellaneous Receipts Act"), or other applicable law.

VIII. LIMITATIONS ON FOUNDATION'S LIABILITY

The Foundation shall not be liable to CDFW or other persons for financial losses arising from investments pursuant to this Agreement that are consistent with the applicable investment policy statement, including but not limited to the CDFW-approved investment policy statement governing Endowment Sub-Accounts. The Foundation shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the Foundation's obligations under this Agreement by such employees when they are acting within the course and scope of their employment.

IX. FIDUCIARY OBLIGATIONS OF FOUNDATION

A. **Disbursements.** The Foundation shall make no disbursement or obligation of funds in the CDFW Account, including but not limited to the Endowment Sub-Accounts, except in strict accordance with the provisions of this Agreement.

B. **Duty of Loyalty.** The Foundation shall have a duty of loyalty to CDFW with respect to the CDFW Account, and shall not use or borrow against funds in the CDFW Account for its own benefit, except for assessment and collection of the fees due to the Foundation as provided by this Agreement.

C. **Governing Law for Endowment Sub-Accounts.** Except to the extent provided in this Agreement, any other applicable written agreement between CDFW and the Foundation, or the then-prevailing Investment Policy Statement Governing Mitigation Endowment Accounts Held by the National Fish and Wildlife Foundation approved by CDFW (the current version of which is attached as Exhibit B), the Foundation's fiduciary obligations with respect to investment of funds held in the Endowment Sub-Accounts shall be governed by the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), codified under California law at California Probate Code section 18501 et seq. or any applicable successor to such law, and Government Code sections 65965-65968 or any applicable successor to such law.

D. **Governing Law for Initial and Capital, Acquisition and Enhancement Sub-Accounts.** Except to the extent provided in this Agreement, any other applicable written agreement between CDFW and the Foundation, or the Foundation's then-prevailing investment policy statement governing cash management (the current version of which is attached as Exhibit C), the Foundation's fiduciary obligations with respect to investment of funds held in the Initial and Capital, Acquisition and Enhancement Sub-Accounts shall be governed by California Corporations Code section 5240-5241, which sets forth requirements applicable to assets held by nonprofit corporations for investment.

X. TERM, TERMINATION, AND TRANSFER OF AGREEMENT

A. **Term.** This Agreement shall terminate: (1) on the tenth (10th) anniversary of the Effective Date if not extended by the Parties in writing prior thereto; or (2) without cause on the date specified by either Party in a written notice delivered to the other Party not less than one hundred eighty (180) days prior to the intended date of termination.

B. **Termination.** Upon termination of this Agreement, the Foundation shall immediately transfer all monies remaining in the CDFW Account, other than monies properly due and owing to the Foundation or its financial institutions hereunder, to the control of CDFW or an entity designated by CDFW to serve as a successor.

C. **Transfer.** Within ninety (90) days following final disbursement of the funds in the CDFW Account to any successor, the Foundation shall provide to CDFW a final accounting showing the deposits (including investment income accrued thereon) and disbursements of all sums received pursuant to this Agreement, from the date of the last accounting through the date of final disbursement, together with copies of all Recipient Agreements and other documents CDFW may reasonably request.

XI. CONTACT INFORMATION/COMMUNICATIONS

A. **Notices.** All approvals, notices, reports and other communications required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, email, or electronic .pdf format (with a copy of the electronic .pdf communication also delivered by another means provided in this Section XI.A.). Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

B. **Deposits.** All deposits to the CDFW Account by Participants or CDFW made by check shall be mailed to the Foundation's headquarters office at 1133 15th Street, NW, Suite 1000, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits to the CDFW Account by Participants or CDFW made by electronic funds transfer shall be directed to the Foundation (Taxpayer I.D. Number 52-138-4139), in accordance with wiring instructions provided by the Foundation to the payor at the time of deposit.

C. **CDFW and Foundation Representatives.** The individuals named below shall be the Representatives of CDFW and the Foundation for purposes of this Agreement. Contact information for the CDFW Representative and Foundation Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the CDFW Account shall be as set forth in Section XI.B. above):

If to CDFW:

CDFW Representative:

Cathie Vouchilas
Environmental Program Manager
Habitat Conservation Planning Branch
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 95814
Phone: (916) 651-1190
Email: cathie.vouchilas@wildlife.ca.gov

CDFW Alternate:

Fernando Galli
Staff Services Manager
Habitat Conservation Planning Branch

If to the Foundation:

Foundation Representative:

Anne Butterfield
Senior Manager, IDEA
National Fish and Wildlife Foundation
90 New Montgomery Street
Suite 1010
San Francisco, California
Phone: (415) 243-3106
Email: anne.butterfield@nfwf.org

Foundation Alternate:

Jana Doi
Manager, IDEA
National Fish and Wildlife Foundation

California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 95814
Phone: (916) 651-8711
Email: fernando.galli@wildlife.ca.gov

90 New Montgomery Street
Suite 1010
San Francisco, California 94105
Phone: (415) 243-3102
Email: jana.doi@nfwf.org

D. The Parties agree and acknowledge that any change to their respective Representatives as set forth in Section XI.C. above shall not constitute an amendment to this Agreement and may be effected through written notice to the other Party.

XII. MISCELLANEOUS PROVISIONS

A. **Assignment.** The Foundation may not assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of CDFW, which CDFW may withhold. CDFW may assign its rights to a successor agency without the consent of the Foundation provided that the successor agency is legally obligated to assume or otherwise assumes CDFW's obligations hereunder.

B. **Severability.** If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

C. **Independent Capacity.** Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee or representative of the other Party.

D. **Good Faith.** The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

E. **No Delegation.** Nothing contained in this Agreement is intended to unlawfully delegate CDFW's duties or to limit the authority of CDFW to fulfill its statutory or regulatory responsibilities.

F. **No Third-Party Beneficiaries.** This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between CDFW and any third parties, including Recipients whose Projects are funded from the CDFW Account.

G. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, disregarding principles of conflicts of

law. Venue for any action arising out of this Agreement shall be in the Superior Court of the County of Sacramento, California.

H. Waiver. Any waiver by either Party of any term or provision of this Agreement must be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any other event or circumstance.

I. Headings. The headings used in this Agreement are for convenience only and shall not determine or limit the interpretation, construction or meaning of this Agreement.

J. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and may not be amended, except in writing signed by each Party hereto. Each Party to this Agreement warrants to the other that its respective signatory has full right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:  Date: June 6, 2019

Charlton H. Bonham, Director

NATIONAL FISH AND WILDLIFE FOUNDATION

By:  Date: June 10, 19

Jeff Trandahl, Executive Director

EXHIBIT A

Standard Form of Deposit Document

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NATIONAL FISH AND WILDLIFE FOUNDATION**

**MASTER MITIGATION ACCOUNT
DEPOSIT DOCUMENT**

CDFW Permit or Other Approval (No. and Name): _____
(or Other Transaction reference No. and Name)

Project Proponent (Participant): _____

Payor (if different from Participant): _____

Project Name: _____

Project Phase (if applicable): _____

Project Location: _____

**Land Owner of the Mitigation Property (if
applicable and known):** _____

**Land Manager of the Mitigation Property (if
applicable and known):** _____

**CDFW Contact (name, phone number, email
address):** _____

Monies Required for Applicable Mitigation and Minimization Activities:

<input type="checkbox"/>	Endowment Sub-Account	\$	_____
<input type="checkbox"/>	NFWF Account Set-Up Fee (\$3,400, additional)	\$	_____
<input type="checkbox"/>	Initial and Capital Sub-Account	\$	_____
<input type="checkbox"/>	NFWF Account Fee Set-Up Fee (\$3,400, additional)	\$	_____
<input type="checkbox"/>	Land Acquisition Sub-Account	\$	_____
<input type="checkbox"/>	NFWF Account Set-Up Fee (\$3,400, additional)	\$	_____

<input type="checkbox"/>	Enhancement Sub-Account	\$ _____
<input type="checkbox"/>	NFWF Account Set-Up Fee (\$3,400, additional)	\$ _____

TOTAL for Project (or Project Phase, if applicable) \$ _____

☐ **Prior Deposit Document(s) submitted for previous deposit(s) (check and complete, if applicable):**

Project Phase: _____ Deposit: \$ _____

Project Phase: _____ Deposit: \$ _____

Project Phase: _____ Deposit: \$ _____

Project Phase: _____ Deposit: \$ _____

Project Phase: _____ Deposit: \$ _____

Project Phase: _____ Deposit: \$ _____

Governing Minimization and Mitigation Activities and Payment Schedule Information:

Endowment Activities: (Long-term Maintenance or Management Activities)

1. a. Description of Activities: The activities to be funded with monies in the Endowment Sub-Account are as described in the CDFW Permit/Approval (or Other Transaction Document) and CDFW-approved Property Analysis Record or equivalent document attached to, or included in the written materials accompanying, this Deposit Document. Any additional notes, descriptions, or explanations regarding the Endowment activities are as follows:

b. Citation(s) (e.g., page, section, condition number) to CDFW Permit/Approval or Other Transaction Document:

c. Endowment Payment Schedule: The payment schedule is set forth in the attached Endowment Payment Schedule.

Initial and Capital Maintenance or Management Activities:

1. a. Description of Activities: The activities to be funded with monies in the Initial and Capital Sub-Account are as described in the CDFW Permit/Approval (or Other Transaction Document) and CDFW-approved Property Analysis Record or equivalent document attached to, or included in the written materials accompanying, this Deposit Document. Unless specified otherwise by CDFW in writing in this section, or in a CDFW-approved payment schedule or other written direction, the Initial and Capital Measures will be defined as the first three (3) years of initial stewardship of the mitigation or conservation property.

b. Citation(s) (e.g., page, section, condition number) to CDFW Approval (or Other Transaction Document):

c. Initial and Capital Payment Schedule: The payment schedule is set forth in the attached Initial and Capital Payment Schedule.

Acquisition Activities: (Near-term Land Acquisition Activities)

a. Description of Activities: The activities to be funded with monies in the Acquisition Sub-Account are described in the CDFW Permit/Approval (or Other Transaction Document), or included in the written materials accompanying, this Deposit Document.

b. Citation(s) (e.g., page, section, condition number) to CDFW Approval (or Other Transaction Document):

c. Implementation Schedule:

Enhancement Activities: (Near-term Restoration, Enhancement, Rehabilitation, or Other Activities)

a. Description of Activities: The near-term restoration, enhancement, rehabilitation, or other activities to be funded with monies in the Enhancement Sub-Account are described in the CDFW Permit/Approval (or Other Transaction Document), or included in the written materials accompanying, this Deposit Document.

b. Citation(s) (e.g., page, section, condition number) to CDFW Approval (or Other Transaction Document):

c. Implementation Schedule:

Approved by CDFW:

(Signature)

(Printed Name)

(Title)

(Date)

INFORMATION & INSTRUCTIONS

The Deposit Document is used for internal purposes by the CDFW and NFWF under the Master Mitigation Account MOA. The Deposit Document is not itself a Decision Document. The following is information and direction with respect to the Deposit Document.

The Deposit Document is to be filled out by the appropriate CDFW staff, as determined by the CDFW. The CDFW staff who takes the lead in preparing the Deposit Document shall coordinate with other applicable CDFW staff, and National Fish and Wildlife Foundation (NFWF) staff prior to finalizing the Deposit Document.

CDFW Permit or Other Approval (or Other Transaction Document): Identify the CDFW permit/approval and identification/tracking number. If CDFW is not a permitting agency, identify the agreement, permit or other transaction document that sets forth CDFW's land management or other interest in the minimization, mitigation or conservation actions to be funded with the funds for deposit.

Project Proponent (Participant): Identify the name of the project proponent or permittee, which also may be known as the responsible party. If the project proponent or permittee is a company that is owned by another company, identify the name of the parent company.

Payor: Identify the name of the payor if it is different from the Project Proponent (Participant).

Project Name: Identify the name of the project.

Project Phase: If the project has been permitted in phases, specify the phase(s) to which this Deposit Document applies.

Project Location: Identify the county in which the project is located. Provide available information as to township, range, section, and base and meridian.

Land Ownership of the Mitigation Property: If applicable, indicate whether the land on which the project or project phase(s) is located is privately or publicly owned. If it is publicly owned, identify the applicable governmental entity.

Land Manager of the Mitigation Property: If applicable and known at the time of deposit, identify the name of the land manager if it is different from the owner of the land.

CDFW Contact: Identify the name, phone number, email address of the CDFW contact with the substantive knowledge about the project and the sub-account(s) to be established.

Monies Required for Deposit: There are four potential sub-accounts that can be established for a project under the CDFW NFWF Master Mitigation Account. For purposes of the Deposit Document, a subaccount also may be referred to as "Account." For each Account there is a one-time \$3,400 Deposit Fee and an Annual Fee.

Check the box next to each Account that is to be established and/or receive monies for required measures for the permitted project or project phase(s):

1. Endowment Sub-Account:

- a. This sub-account is to fund long-term management and maintenance of lands acquired for compensatory mitigation or conservation following the initial period of land management and maintenance.
 - 1) NFWF Deposit Fee (\$3,000 one-time)
 - 2) NFWF Annual Fee (1% annual)
- b. The spaces provided for the Endowment Sub-Account line-items on the Deposit Document are to specify:
 - 1) the amount of money identified in the PAR or other property analysis methodology for long-term land management and maintenance activities (which incorporates into its calculation the NFWF Annual Management Fee); and
 - 2) the one-time NFWF Deposit Fee for establishing the Sub-Account.

2. Initial and Capital Sub-Account:

- a. This sub-account is to fund initial and capital land management and maintenance, which is the first three years or other defined period of initial management and maintenance of compensatory mitigation or conservation lands, prior to the commencement of long-term land management and maintenance.
 - 1) NFWF Deposit Fee (\$3,400 one-time)
 - 2) NFWF Annual Fee (greater of 1% or \$1,000 annual)
- b. The spaces provided for the Initial and Capital Sub-Account line-items on the Deposit Document are to specify:
 - 1) the amount of money to be deposited for the first three years or other initial period of management and maintenance of compensatory mitigation lands; and
 - 2) The one-time NFWF Deposit Fee for establishing the Sub-Account.

3. Land Acquisition Sub-Account:

- a. This sub-account is to fund near-term land acquisition activities.
 - 1) NFWF Deposit Fee (\$3,400 one-time)
 - 2) NFWF Annual Fee (greater of 3% or \$1,000 annual)
- b. The spaces provided for the Land Acquisition Sub-Account line-items on the Deposit Document are to specify:
 - 1) the amount of money to be deposited for land acquisition (including NFWF Annual Management Fee and third-party and other transactional costs); and
 - 2) the one-time NFWF Deposit fee for establishing the Sub-Account.

4. Enhancement Sub-Account:

- a. This sub-account is to fund near-term restoration, enhancement, rehabilitation or other activities that are neither long-term land management and maintenance nor initial and capital land management and maintenance.
 - 1) NFWF Deposit Fee (\$3,400 one-time)
 - 2) NFWF Annual Fee (greater of 3% or \$1,000 annual)
- b. The spaces provided for the Enhancement Sub-Account line-items on the Deposit Document are to specify:

- 1) the amount of money (which incorporates into its calculation the NFWF Annual Management Fee) to be deposited for near-term restoration, enhancement, rehabilitation or other activities that are neither long-term land management and maintenance nor initial and capital land management and maintenance; and
- 2) the one-time NFWF Deposit Fee for establishing the Sub-Account.

TOTAL for Project (or Project Phase, if applicable): To calculate the total deposit for the Project or the Project Phase, add together all of the amounts indicated in the spaces provided to be deposited into each of the applicable Sub-Accounts.

Prior Deposit Documents: Check the box if a prior deposit document was submitted for the Project or a previously-approved Project Phase. If the box is checked, identify the phase of the project and the total dollar figure of the deposit for which the prior deposit document was submitted. There is space to identify up to six (6) prior deposit documents.

Governing Minimization and Mitigation Measures and Payment Schedule Information: For each of the applicable Sub-Accounts, add the minimization and mitigation measures information, as indicated. For any Endowment Sub-Account or Initial and Capital Sub-Account, please be sure to attach the applicable CDFW-approved Payment Schedule. If a Payment Schedule has not been approved by CDFW at the time of deposit, one should be approved in coordination with NFWF as soon as possible after the time of deposit and submitted to NFWF.

CDFW Approval of the Deposit Document: The Deposit Document should be approved and signed by either 1) the CDFW Representative (as that term is defined in the Master Mitigation Account MOA) or his/her designee; or 2) the Sub-Account Representative (as that term is defined in the Master Mitigation Account MOA), which shall be the applicable Regional Manager or his/her designee.

SUBMITTING THE DEPOSIT DOCUMENT AND FUNDS FOR DEPOSIT

The Deposit Document may be submitted to NFWF by CDFW separately from, but concurrent with, the Permittee's payment of funds for deposit, or the Deposit Document may be submitted to NFWF by the Permittee together with the payment of funds for deposit.

The funds for deposit may be paid by check or wire:

Deposits by check shall be sent to:

**National Fish and Wildlife Foundation,
1133 15th Street, NW, Suite 1000
Washington, D.C. 20005
Attn: Chief Financial Officer**

Please contact the National Fish and Wildlife Foundation for wire instructions.

All deposits must include a notation identifying the name of the project for which the deposit is being made.

EXHIBIT B

Investment Policy Statement Governing Mitigation Endowment Accounts Held by the National Fish and Wildlife Foundation (CDFW-Approved)

Foundation Investment Policy Statement Governing Endowment Management
(CDFW-Approved)

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**INVESTMENT POLICY STATEMENT
FOR MITIGATION ENDOWMENT ACCOUNTS
HELD BY THE NATIONAL FISH AND WILDLIFE FOUNDATION
As of July 2018**

Definitions

“CDFW”	The California Department of Fish and Wildlife, an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species.
“COMMITTEE”	The IDEA Endowment Committee of the Foundation.
“ENDOWMENT FUNDS”	These consist of assets held by the Foundation within its Impact-Directed Environmental Accounts program and designated by the CDFW for long-term management with a growth and income focus. These are hereafter referred to as Endowment Funds or, collectively, the “Endowment.”
“FOUNDATION”	The National Fish and Wildlife Foundation.
“IPS”	This investment policy statement for CDFW mitigation endowment accounts held by the Foundation.
“MANAGER”	The investment management organization(s) engaged as the Foundation’s investment manager. Since August 2010, the Manager has been and continues to be Commonfund.

Broad Philosophy

This IPS governs the investment management of Endowment Funds that are generated as a component of required environmental mitigation as set forth in permits, licenses, authorizations, and/or other “decision documents” issued by, through, or otherwise subject to the jurisdiction of the CDFW. The legal and regulatory programs pursuant to which such Endowment Funds are generated include, but are not necessarily limited to, the California Endangered Species Act (Cal. Fish and Game Code Section 2050 *et seq.*), the California Lake and Streambed Alteration Program (Cal. Fish and Game Code Section 1600 *et seq.*), the California Natural Community

Conservation Planning Act (Cal. Fish and Game Code Section 2800 *et seq.*), and the California Environmental Quality Act (Cal. Public Resources Code Section 21000 *et seq.*).

The CDFW has executed a Memorandum of Agreement ("MOA") with the Foundation regarding the Foundation's management of several categories of funds required by the CDFW to pay for environmental mitigation measures. One specific category of funds that may be required by the CDFW, and deposited into one or more accounts at the Foundation, is referred to as "long-term land management" or "endowment" funding. These funds are intended to provide a source of long-term, perhaps perpetual, yearly funding for the parcels of real property with which they are associated. It is the CDFW's expectation that such funds will be managed by the Foundation and invested by the Manager in a manner that enhances the likelihood that the initial principal amount of endowment funding for a particular parcel will provide sufficient investment growth and income to pay for required management and maintenance of that property over an indefinite period of time. Such funds will comprise the Endowment addressed by this IPS.

The Endowment Funds governed by this IPS will be maintained in financial accounts held at the Foundation, which will administer the Endowment in accordance with the terms hereof. Except to the extent provided otherwise in this IPS, in the MOA, or as otherwise specified by the CDFW in writing, the Foundation will manage the Endowment in accordance with the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), codified in California at Cal. Prob. Code §18501 *et seq.* The sections of this IPS entitled "Broad Philosophy," "Overall Objectives," and "Risk and Return Objectives" will remain in effect until modified at the direction of the CDFW, acting in consultation with the Committee. The sections of this IPS entitled "Asset Allocation Guidelines" and "Ongoing Monitoring" will remain in effect until modified at the recommendation of the Manager with the concurrence of the Committee, with thirty (30) days' advance written notice of any such modifications provided by the Foundation to the CDFW. If CDFW does not respond to the notice within thirty (30) days, the modifications will be deemed to have been approved by the CDFW. If CDFW requests additional information or objects to the modifications, the modifications will not be implemented until CDFW's request for information is satisfied and any objections have been resolved. The Committee will monitor the performance of the Endowment Funds and of the Manager and may make recommendations to the CDFW, from time to time as warranted, for potential changes in the objectives and policies set forth herein. The Manager is expected to propose to the Foundation any revisions to these provisions at any time that the Manager deems appropriate or advisable, and the Foundation will thereafter convey such proposed revisions to the CDFW for its consideration and/or approval, as appropriate. Final responsibility for the provisions of this IPS and any changes thereto will at all times remain with the CDFW.

The Foundation has delegated to the Manager the day-to-day management and investment of the Endowment Funds. Under the scope of this delegation, the Manager shall have discretion to manage the Endowment Funds in a manner that best achieves the investment objectives within the guidelines set forth in this IPS. In discharging its duties as investment manager, the Manager shall invest and manage the Endowment Funds in good faith and as a prudent investor would, exercising reasonable care, skill, and caution. The Foundation has delegated the investment management authority it might otherwise have to the Manager in the good faith belief that the Manager will achieve the objectives set forth in this IPS. The CDFW has approved this

delegation and has reserved the right to request and/or approve future delegation(s) to other investment managers of the day-to-day management and investment of the Endowment Funds.

Overall Objectives

This IPS is designed to:

- Establish appropriate **risk and return objectives** in light of the risk tolerance and the indefinite investment time horizon for the Endowment.
- Establish **asset allocation guidelines** and suitable investments for the Endowment, consistent with the risk and return objectives of this IPS.
- Provide a framework for **ongoing monitoring** of investment performance of the Endowment.

Risk and Return Objectives

Return Objectives. The overall objective with respect to the investment of Endowment Funds hereunder is to generate a level of financial support sufficient to pay the annual costs of long-term management for indefinite periods of time on parcels of real property secured or identified as “mitigation parcels” in connection with permits, authorizations, and other proceedings of the CDFW. It is the CDFW’s expectation that these costs will be funded exclusively from the corresponding Endowment Funds deposited for each parcel and, thus, that no other funding sources will contribute to defraying these costs.

The CDFW calculates the principal amount of each tranche of Endowment Funds (each corresponding to an individual parcel of real property) using an assumed annual drawdown rate of four and one-half percent (4.50%), comprised of three and one-half percent (3.50%) for property management expenses and one percent (1.00%) for administrative expenses. In addition, the CDFW expects the Endowment Funds to be invested so as to keep pace with inflation, that is, to maintain purchasing power over time. Accordingly, in investing Endowment Funds, the Manager will seek to attain an average real annual total return, net of any fees charged by the Manager or any underlying investment managers, of at least four and one-half percent (4.50%) over the long term. This target average real annual return is referred to hereinafter as the “Return Goal.” (The Return Goal may also be stated in nominal terms as an average annual total return of four and one-half percent (4.50%) plus annual inflation. Thus, for example, if inflation were measured at three percent (3.00%), the nominal Return Goal over the measurement period would be seven and one-half percent (7.50%).)

This IPS is based on the assumption that the spending on a mitigation parcel for land management activities plus administrative expenses over the long term will average no more than four and one-half percent (4.50%) annually of the average market value of the parcel’s corresponding Endowment Funds. This approach is intended to preserve the principal of the

Endowment Funds to the extent practicable while generating a return that will be available to fund land management activities on the mitigation parcel and related administration. To the extent the CDFW deems it necessary or desirable to allow a spending level greater than that projected for any particular parcel (which projection will be based on an assumed annual spend rate of four and one-half percent (4.50%)), the likelihood will increase that investment earnings alone (both appreciation and income) on the corresponding Endowment Funds will be insufficient to fund management activities on the relevant parcel in perpetuity. Thus, a decision by the CDFW to allow a spending level greater than that projected for any particular parcel will decrease the statistical likelihood that the Endowment Funds for that parcel will exist in perpetuity.

In addition to using the Return Goal, the Committee will evaluate the Manager's performance on a relative basis by comparing it against market performance benchmarks and appropriate capital market measures, such as securities indices. The Manager's performance relative to these benchmarks and measures is referred to hereinafter as the "Relative Performance Goal." The Relative Performance Goal will be measured by comparing actual Endowment investment results over the current quarter – as well as over moving, annualized one, three, and five year time periods – against a weighted Endowment "Portfolio Benchmark," as defined more fully below.

The weighted Endowment Portfolio Benchmark will be created by including in the benchmark appropriate indexed returns (e.g., Bloomberg Barclays Aggregate, S&P 500, etc.), *pro rata*, according to the asset class weightings in the Endowment's target allocation. The overall Endowment Portfolio Benchmark for a period may be adjusted if there are disparities in asset allocations during any single time frame caused by very large Endowment inflows or outflows and/or tactical allocations that would cause the benchmark to be inappropriate for the time period being examined.

Risk Objectives. The acceptable risk profile for the Endowment should generally be for the Manager to assume the lowest possible risk consistent with achieving the Return Goal. While negative returns in any single year may be unavoidable, over longer terms, the Manager should select asset allocations that are expected to achieve overall positive portfolio returns. In order to allow ongoing assessment and monitoring of portfolio risk, the Manager will prepare and present to the Committee at least annually a report on the overall risk profile of the portfolio based on the then-existing asset allocation thereof. This report will also be made available to the CDFW.

Risk can be construed to include multiple different outcomes including loss of principal, failure to meet an expected return, volatility of investment returns around an expected mean (also known as "standard deviation") and/or portfolio drawdown relative to target spending. The CDFW's policy regarding investment risk, consistent with modern portfolio theory and UPMIFA's express preference for diversification in endowment portfolios, is that risk cannot be eliminated but should be managed.

The Committee is delegating to the Manager the responsibility of understanding the risks inherent in the investment strategy selected to attempt to achieve the Return Goal, ensuring that the Endowment portfolio is properly compensated for these risks, measuring and monitoring those risks, and periodically communicating this risk information to the Committee and, to the

extent requested, the CDFW. Most importantly, the level of overall Endowment portfolio risk taken should be consistent with the statistically-likely achievement of the overall Return Goal.

Asset Allocation Guidelines

The specific asset allocations within the Endowment portfolio, including necessary or appropriate rebalancing among the asset classes from time to time, will remain the responsibility of the Manager, exercising reasonable judgment in light of prevailing market conditions and the objectives of this IPS, including the permissible asset allocation ranges that follow.

Asset Allocation Ranges. The permissible asset allocation ranges for the asset classes in which the Manager will invest the Endowment, consistent with the overall risk and return objectives of this IPS, are as follows:

	Minimum	Target	Maximum	Benchmark Index
EQUITIES	45%	55%	65%	MSCI ALL COUNTRY WORLD INDEX (ACWI)
FIXED INCOME	5%	20%	25%	BARCLAYS U.S. AGGREGATE BOND INDEX
DIVERSIFYING STRATEGIES	0%	10%	20%	HFRI FOF CONSERVATIVE INDEX
REAL ASSETS	5%	15%	25%	WEIGHTED REAL ASSETS COMPOSITE

Performance Benchmarks

Policy Benchmark: 55% ACWI / 20% Barclays U.S. Aggregate / 10% HFRI FOF Conservative Index / 15% Weighted Average of Real Asset Components

The Policy Benchmark is a diversified benchmark that reflects the underlying exposures of the portfolio. This benchmark corresponds to the “relative performance goal” defined under the section “Risk and Return Objectives” in the IPS.

Inflation Benchmark: CPI + 4.5% annualized

The long-term goal is for the portfolio to maintain its real value net of spending and inflation. This benchmark corresponds to the “nominal return goal” defined under the section “Risk and Return Objectives” in the IPS. Over shorter periods of time, the Endowment’s return may deviate substantially from this benchmark.

Allowable Investments and Guidelines

Equities

The purpose of equity investments is primarily to provide long-term capital appreciation. Investing in equities and other equity-like strategies carry the expectation of greater market volatility and increased risk of loss.

Equity investments may include both public and private equity investments. Investment managers or sub-advisors may implement investments directly using a separate account or indirectly via a commingled fund. Public equity investments may either employ index or actively managed strategies.

Public equities include investments in U.S. and non-U.S. common stocks, American Depositary Receipts (ADRs), preferred stocks, and convertible stocks traded on the world's stock exchanges or over-the-counter markets. Public equity securities shall generally be restricted to readily marketable securities of corporations that are traded on established stock exchanges, including NASDAQ and similar networks.

Decisions as to individual security selection, number of industries and holdings, current income levels and turnover are left to broad manager discretion, subject to the standards of fiduciary prudence. Mutual funds or other commingled funds will not be considered as a single security, but rather, their portfolio stocks will be assessed for concentration issues. In no event and at no time will the securities of any one issuer exceed 5% at cost and 8% at market of the total Endowment portfolio.

Private capital investments are typically made through limited partnerships or limited liability corporations offered by professional investment managers. Private capital strategies may include venture capital, private equity, and distressed investments. These strategies typically offer no or limited ability to redeem or withdraw.

Fixed Income

The primary purpose of fixed income investments is to provide liquidity and protection against price deflation. Another benefit to fixed income investments is as a predictable source of current income. Fixed income instruments should reduce the overall volatility of the Endowment's assets.

Fixed income investments may include both U.S. and non-U.S. fixed income securities. Securities may include, but are not limited to, sovereign debt, government agency bonds, public and private corporate debt, emerging market, mortgages and asset-backed securities, non-investment grade debt and illiquid strategies such as direct lending. Fixed income investments also include cash and money market instruments, including, but not limited to, commercial paper, certificates of deposit, time deposits, bankers' acceptances, repurchase agreements, and U.S. Treasury and agency obligations. Fixed income investments may be implemented by

investment managers or sub-advisors either directly using a separate account or indirectly via a commingled fund.

The Manager should employ active management techniques, but changes in the average maturity of fixed income investments should be moderate and incremental. The Manager should discuss liquidity needs with the Committee as appropriate.

The use of high yield bonds and private credit is permitted, provided such bonds are held within a commingled fund or mutual fund and used to further diversify the Endowment portfolio. However, no more than 10% (at market) of the total Endowment portfolio may be allocated to high yield bonds. If a security already held in the portfolio is downgraded, the Manager will evaluate it carefully to determine whether the security should be kept in the portfolio or eliminated within a prudent time frame.

Fixed income investments should be diversified such that the securities of any one issuer, with the exception of the United States Government or its agencies, are limited at any time to 5% at cost and 8% at market of the total portfolio.

Within the above guidelines and restrictions, the Manager has discretion over the timing and selection of fixed income securities.

Diversifying Strategies

Investments into diversifying strategies should provide attractive risk-adjusted returns through low correlation to traditional equity and fixed income investments and through the value added by managers who have the flexibility to employ sophisticated investment strategies.

These diversifying strategies may include hedged equity, credit, event-driven, relative value, global macro, trend-following, quantitative, and other hedged strategies. Hedge fund managers may use leverage and derivatives to implement their strategies.

Real Assets

The purpose of investing in real assets is primarily to hedge the portfolio against inflation and to provide diversification to other investment strategies in the portfolio. Some real asset investments may also provide long-term opportunities for capital growth or income. Investments in real assets may include commodities (e.g. agricultural goods, metals, minerals, energy products, and foreign currencies), natural resources (e.g. oil, gas, clean energy, services, timber, and other natural resource investments), real estate (e.g. REITS, core, value-add, and other opportunistic real estate investment strategies) and other real asset strategies (e.g. infrastructure, intellectual property, or royalty payments).

As a general guideline, all transactions in the portfolio shall be entered into on the basis of the best execution which is interpreted to mean the best realized price.

Monitoring of Objectives and Results

All objectives and policies set forth in the sections entitled "Broad Philosophy," "Overall Objectives," and "Risk and Return Objectives" of this IPS remain in effect until modified by the CDFW in consultation with the Committee. The Committee will promptly communicate any such modifications to the Manager in writing. All objectives, policies, and guidelines set forth in the sections of this IPS entitled "Asset Allocation Guidelines" and "Ongoing Monitoring" will remain in effect until modified at the recommendation of the Manager with the concurrence of the Committee, with thirty (30) days' advance written notice of any such modifications provided by the Foundation to the CDFW. If CDFW does not respond to the notice within thirty (30) days, the modifications will be deemed to have been approved by the CDFW. If CDFW requests additional information or objects to the modifications, the modifications will not be implemented until CDFW's request for information is satisfied and any objections have been resolved.

If the Manager believes that any policies or guidelines in this IPS inhibit the investment performance or are otherwise inconsistent with the Return Goal or any objectives set forth in this IPS, it is the responsibility of the Manager to so notify the Committee.

This IPS shall be reviewed at least annually by the Committee with the Manager. The Endowment portfolio will be monitored on a continual basis for consistency in asset allocation and return objectives. Asset concentrations will also be monitored for exposure to sectors, industries, and individual securities, notwithstanding the fact the Manager is responsible for investment decisions. The CDFW and the Committee may evaluate the Manager to ensure that the factors underlying the performance expectations remain in place.

The Manager will report on the following to the Committee quarterly with respect to the Endowment.

- a. Current holdings at cost and market
- b. Purchases and sales during the period being reported
- c. Additions and withdrawals during the period being reported
- d. Total return net of commissions and fees
- e. Changes in staff or ownership of the Manager to the extent these changes potentially impact the ability of the Manager to fulfill its duties hereunder

EXHIBIT C

Foundation Investment Policy Statement Governing Cash Management

**NATIONAL FISH AND WILDLIFE FOUNDATION
IMPACT-DIRECTED ENVIRONMENTAL ACCOUNTS**

INVESTMENT POLICY GOVERNING CASH MANAGEMENT

As of February 2019

Definitions

“COMMITTEE”	The IDEA Investment Committee of the Foundation.
“FOUNDATION”	The National Fish and Wildlife Foundation.
“FUNDS”	These consist of the cash balances held by the Foundation within its Impact-Directed Environmental Accounts program and managed in accordance with this Investment Policy Statement. These are hereafter referred to as the Funds.
“IPS”	This Investment Policy Statement Governing Cash Management.
“MANAGER”	The investment management organization(s) engaged as the Foundation’s investment manager. As of December 2008, the Manager is Bank of America.

Broad Philosophy

The investments shall be made solely in the interest of the Foundation and its clients. The objectives and guidelines outlined in this document are expected to provide a general framework and guide for the management of these Funds, and the statements contained in this document are intended to provide sufficient flexibility to the Foundation’s Manager in its implementation of the investment process.

The Committee’s approach to management of the Funds reflects consideration of the time horizon, return objectives, and risk tolerance appropriate to the Funds and their purpose. The Committee recognizes that risks, volatility, and possibility of loss in purchasing power are present to some degree with all types of investment strategies. While high levels of risk are to be avoided, the assumption of the risk associated with the “Investment Universe” specified below is warranted and encouraged in order to allow the Manager the opportunity to achieve satisfactory results consistent with the objectives and the fiduciary character of the Funds.

The Committee has determined that the Funds should be managed in a way that reflects the following directives:

- The Funds shall be invested with the care, skill, prudence, and diligence under the circumstances prevailing from time to time that a prudent person acting in a similar capacity would use.
- Consistent year-to-year results are preferred to large fluctuations in rates of return.

- The level of risk-taking associated with the “Investment Universe” specified below is justified as a method of providing adequate returns.
- Funds shall be invested so as to minimize the risk of large losses and control excessive volatility.
- Short-term fluctuations in value shall be considered secondary to overall results.

Planning Time Horizon: While the Funds have no specific end date, the Funds are comprised of a number of individual project accounts many of which typically have a 2-4 year life. However, planning for this period is informed by the approximate projections regarding the expected outflow of funds from the investment portfolio as well as underlying funders’ risk tolerance. These projections are revisited at least annually.

Return Objective: The primary return objective of the Funds is to achieve capital preservation over the planning time horizon, ensure adequate liquidity to meet disbursement obligations consistent with the legal purpose of the Funds, while earning some total return (income and capital appreciation) commensurate with the Risk Tolerance set forth in this IPS.

Risk Tolerance: Conservative. Preservation of capital and adequate liquidity are of primary importance to the Funds and thus call for a conservative approach to investment risk. The investment horizon of the Funds enable them to tolerate some moderate short-term fluctuations in value, which provides some flexibility to the Funds’ Manager in terms of the duration and maturity of securities purchased within the portfolios. The Committee also believes that it is reasonable and prudent to attempt to achieve some total investment return while the Funds await disbursement in an attempt to preserve, to some degree, the purchasing power of the Funds over time. The Committee understands that the determination to invest the Funds entails some risk and therefore that risk cannot be entirely eliminated in the pursuit of the Return Objective. However, the Committee expects the Funds’ Manager to manage risk prudently and carefully within the constraints of this IPS in view of the primacy of capital preservation and liquidity management.

Responsibilities of the Committee

The Committee will not reserve any control over investment decisions, with the exception of specific limitations described below. The Manager will be held responsible and accountable to achieve the objectives stated herein. The Committee believes that the constraints will not hamper the Manager; however, the Manager if necessary should request modification that is deemed appropriate. The Committee recognizes its responsibility to ensure that the assets of the Funds are managed effectively and prudently by a Manager operating in full compliance with all applicable laws.

The specific responsibilities of the Committee in the investment process include, and are limited to:

- Developing sound and consistent investment policy guidelines and reviewing them annually
- Establishing reasonable investment objectives

- **Selecting qualified investment managers**
- **Determining the appropriate allocation between the “Money Market” and “Bond” sub-portfolios for each funder**
- **Communicating the investment policy guidelines and objectives to the Manager, who, in turn, will be accountable for achieving investment results consistent with those guidelines and objectives**
- **Monitoring and evaluating performance results to assure that policy guidelines are being adhered to and that objectives are being met, and**
- **Taking appropriate action in the case of the Manager’s failure to perform to expectations**

The Committee believes that it can best exercise the responsibilities above by “managing the investment manager.” The Committee recognizes that for the best probable results, the determination of detailed investment strategy and day-to-day investment management must lie with professional managers and not with the Committee.

Responsibilities of the Manager

Full discretion, within the investment policy guidelines described herein, is delegated to the Manager regarding the selection of securities, asset class allocations (within the guidelines detailed herein) and the timing of transactions. However, the Manager may not transact through itself or its affiliates, though the Manager may participate in new issues where itself or an affiliate is a co-underwriter, provided that the Manager receives no economic benefit from the purchase.

The Manager also expressly assumes the following obligations:

- **The Manager is responsible for frequent communication with the Committee on all significant matters pertaining to investment policies. The Committee expects to be promptly informed of any material changes in investment strategy and other matters broadly affecting policy. The Committee recognizes that its investment guidelines and objectives should be based on sound principles that are likely to serve the Foundation and its clients well in all reasonably foreseeable market environments.**
- **The Manager will provide the Foundation with timely quarterly performance reports that include performance comparisons with the appropriate benchmarks.**
- **The Manager and its employees assigned to manage the Funds are responsible for strict compliance with the pertinent provisions of all applicable laws and regulations, including but not limited to those implemented by the U.S. Internal Revenue Service and the U.S. Securities and Exchange Commission, as they pertain to their duties, functions, and responsibilities as fiduciaries.**
- **Compliance with all Investment Management Agreement terms and IPS guidelines must**

be regularly monitored by the Manager based on the current market values of the securities within the investment portfolio. Securities that, at purchase, would move the portfolio out of compliance with these guidelines, based on the Manager's most recent valuation, may not be purchased.

Investment Policy Guidelines

The Committee's guidelines for investments for the Funds are as follows:

- The Manager will make reasonable efforts to preserve the principal of the Funds, but preservation of the principal shall not be imposed as an absolute requirement on individual investments.
- The Manager will continuously manage and review the investment portfolio.
- The Manager will exercise prudence when investing in fixed income investments so that adequate diversification is achieved within that asset class.
- The portfolio shall be managed in two "sub-portfolios," each with differing time horizons and risk tolerances:
 - **Money Market Portfolio:** Comprised of funds expected to be disbursed within 1 year and/or funds that cannot suffer market volatility; and
 - **Bond Portfolio:** Primarily comprised of funds expected to be disbursed within 2-4 years.
- From time to time, the Committee will communicate to the Manager in writing the dollar amount(s), percentage(s), and/or specific participating sub-accounts comprising the Funds that should be invested, respectively, in the Money Market Portfolio and the Bond Portfolio. The composition of these two sub-portfolios may be adjusted, primarily for considerations of the duration of disbursements and the efficiency of portfolio construction.
- The Investment Management Agreement for the Manager will incorporate the following investment policy guidelines for the management of the Funds:

	Money Market Portfolio	Bond Portfolio
Denomination	All holdings must be denominated in U.S. dollars.	
Diversification	<p>No more than 3% of the market value of the overall portfolio should be invested with a single corporate issuer. Obligations of the U.S. Government or its agencies are exempted from this requirement. For structured securities (ABS, CMBS and MBS), the Manager may not invest more than 3% at cost of the Funds in individual tranches.</p> <p>The maximum corporate bond individual industry percentage allocation as defined by Barclays Level 3, shall not exceed 20% of the market value of the portfolio.</p>	
Benchmark	<p>Benchmarks are selected using the following considerations:</p> <ul style="list-style-type: none"> - Duration of disbursements 	

	<ul style="list-style-type: none"> - Composition - Accessibility - Measurability - Transparency - Independence - Understandability. <p>It is anticipated that benchmarks be revisited periodically (typically every 2-3 years).</p> <p>The benchmarks currently in use for each segment of the portfolio are:</p>	
	90-Day U.S. Treasury Bills	Bloomberg Barclays U.S. Government/Credit 1-3 Year Bond Index
Portfolio Duration	Effective duration limited to no more than 1.1 years	Effective duration limited to no greater than 120% that of the benchmark.
Minimum Portfolio Average Credit Quality or Money Market Fund Rating (using ratings by S&P, Moody's, or Fitch)	Aaa-mf/AAAm	A2 or A
Allowable securities	Cash, Government or Treasury money market funds. These funds may use repurchase agreements.	All securities allowed in the near term portfolio as well as U.S. Treasuries, U.S. Agencies securities, repurchase agreements, certificates of deposit, corporate commercial paper, variable rate demand obligations and obligations of states, cities, or other types of municipal agencies, corporate bonds and notes, the debt of U.S. government sponsored enterprises, inflation-linked bonds, mortgage and other asset-backed securities, and privately placed securities issued under Rule 144(a) of the Securities Act of 1933.
Individual	N/A	Baa3 or BBB-

Security (non-ABS) Credit Quality Minimum at time of purchase (using ratings by S&P, Moody's, or Fitch)		<p>Exposure to bonds rated below "A" shall be no more than 20% of the portfolio's market value at the time of purchase.</p> <p>The Manager may not invest more than 2% at cost of the Fund in the bonds, commercial paper, or other debt instruments of any one company or entity (with corporate affiliates being treated as the same entity for these purposes) rated "BBB" or lower at the time of purchase.</p>
ABS Security Credit Quality Minimum at time of purchase (using ratings by S&P, Moody's, or Fitch)	N/A	<p>BBB+</p> <p>Exposure to ABS rated below "A" shall be no more than 20% of the total market value of ABS in the portfolio at the time of purchase.</p>
Exposure to ABS securities	N/A	No more than 50% of the Bond Portfolio may be invested in ABS securities.
Exposure to 144(a) securities	N/A	No more than 20% of the Bond Portfolio may be invested in 144(a) securities. Additionally, the minimum issue size for a 144(a) security to be considered for inclusion in the portfolio is \$250 million. The Bond Portfolio cannot own more than 5% of any individual 144(a) issue.
Reinvestment of income	Income is to be reinvested at the investment manager's discretion, considering the liquidity and projected cash flow needs of the portfolio.	
General Restrictions	The portfolios may not purchase unrated securities. All investments must carry and maintain an investment grade rating by at least one of S&P, Moody's, or Fitch. Ratings used for the	

	<p>purposes of compliance with IPS restrictions should be the highest of S&P, Moody's or Fitch.</p> <p>The portfolios may not purchase any derivatives.</p> <p>The portfolios may not own securities of the investment management firm or its affiliates.</p> <p>The portfolios may not hold or purchase privately placed securities, other than those issued under Rule 144(a) of the Securities Act of 1933.</p> <p>The Manager will consider the impact of realizing losses on the overall health of the Funds when making any transaction decisions.</p>
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- In order to help prevent a possible loss upon the forced sale of a security to meet a required disbursement of Funds, the Committee will, upon request and to the extent practicable, provide the Manager with the estimated required net cash flow on a timely basis.
- In the event a security is rated differently by two or more Nationally Recognized Statistical Rating Organizations (NRSRO), the security shall be considered to bear the highest agency rating. In the event of a credit downgrade below what is permissible, the investment manager will inform NFWF within three business days along with a recommended course of action.
- All assets selected for the Funds must have a readily ascertainable market value and must be readily marketable.
- The Manager may invest all or any portion of the Funds in mutual funds that are, themselves, invested exclusively in investments included in the above Investment Universe. Where funds are used, each fund is expected to operate within the parameters established by its Prospectus.
- If there is doubt as to whether a security is allowed to be purchased, the investment manager shall receive approval from the Committee prior to purchase.

Manager Termination

The Committee retains the discretion to terminate contractual relationships with the Manager for any reason, in accordance with the terms of the Manager's Investment Management Agreement. Some grounds that the Committee may consider for termination of the Manager may include, but are not limited to, the following criteria:

- I. Extraordinary Events (Organizational Issues). Extraordinary events which may be evaluated prior to a termination decision by the Committee include such things as:
 - a) Ownership changes
 - b) Key personnel departures
 - c) Significant changes in the investment philosophy or the investment process

- d) Litigation or other regulatory matters
- e) Failure to comply with stated investment guidelines
- f) Change in a portfolio's asset allocation

2. Short-Term and Long-Term Performance in Relation to Appropriate Market Index. Shorter-term performance standards incorporate a trailing time period of up to three years and measure the Manager's performance in relation to the appropriate benchmark. Longer-term performance standards measure the Manager's since-inception performance and trailing five-year returns in relation to the appropriate benchmark.

Manager Reporting Requirements

The Manager is required to provide the Committee with periodic investment information as required by the Investment Management Agreement and this IPS. Generally, these information requirements are listed below:

Monthly (due no later than the 10th business day following month end)

1. Final time-weighted rate of return calculated for the month.
2. Asset listings that contain descriptions of all securities held in the portfolio.
3. Notification and communication of investment activity (sell or hold) for any security downgraded below the allowable security rating at time of purchase.
4. Other portfolio statistics, including but not limited to duration, current yield, and yield to maturity, as mutually agreed to between the Foundation and the Manager.

Quarterly (due no later than the 21st calendar day following quarter end)

1. Time-weighted rates of return for the quarter, YTD, trailing one-year, and since inception.
2. Performance commentary that attributes the primary elements/drivers of quarterly performance to the sources of return and identifies any other material trends in the global and domestic economic environments and capital markets that could, in the Manager's reasonable judgment, affect the composition or expected performance of the portfolio implemented for purposes of this IPS.

Event Driven (due no later than the 5th business day following the event)

1. All significant changes pertaining to the portfolio implemented for purposes of this IPS or to the Manager itself, including but not limited to a) substantive changes in investment strategy and portfolio structure, b) significant changes in ownership, organizational structure, financial condition or professional staffing, c) litigation or violation of securities regulations, d) significant withdrawal of capital under management by the Manager or its business unit(s) managing either the Money Market or Bond Portfolios, e) significant losses of existing clientele by the business unit(s) managing either the Money Market or Bond Portfolios, or f) growth of significant new business.

In the event that the Funds move out of compliance with the terms of the Investment Management Agreement executed by the Foundation and the Manager and/or the investment policy guidelines set forth in this IPS (as identified in the Manager's regular review of the portfolio containing the Funds), through market conditions or other changes outside the control of the Manager, the Manager must bring the portfolio composition back into compliance within 30 days.

3. TERMS

The Manager must provide to the Committee a written report describing in detail any and all non-compliance extending beyond 30 days within 48 hours of reaching the 30-day violation period. Included in this report, the Manager also must provide information concerning the Manager's planned course of action to return to compliance with the Investment Management Agreement and this IPS, as well as the timing of such action. If the Manager deems it prudent, expedient and within the best interests of the Funds' investment objectives to remain out of compliance beyond 30 days, the Manager must provide a written request to the Committee for a compliance waiver.

In addition to the above information needs, the Manager is expected to provide monthly, annual and ad hoc reports required for the Foundation's financial reporting and external audit purposes.

EXHIBIT C

Deposit Document

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NATIONAL FISH AND WILDLIFE FOUNDATION**

**MASTER MITIGATION ACCOUNT
EAST BAY REGIONAL PARK DISTRICT RESERVE FUND
DEPOSIT DOCUMENT**

Project Proponent: East Bay Regional Park District

Payor (if different from Project Proponent): _____

**Project
Name:** _____

**Project Phase (if
applicable):** _____

**Project
Location:** _____

CDFW Contact (name, phone number, email address): _____

Monies Required for Deposit:

\$ _____

Approved by CDFW:

(Signature)

(Printed Name)

Manager, Bay Delta Region

(Date)

EXHIBIT D

Release Notice

[California Department of Fish and Wildlife letterhead]

[Date]

National Fish and Wildlife Foundation

Re: East Bay Regional Park District Reserve Fund

Dear *[Foundation Representative]*:

This Release Notice is delivered to you pursuant to Section 5 of the East Bay Regional Park District Reserve Fund Agreement, dated [month, date], 2020, by and among the East Bay Regional Park District, a California special district ("District"); the California Department of Fish and Wildlife ("CDFW"); and the National Fish and Wildlife Foundation ("Foundation") (collectively, the "Parties") (as the same may be amended from time to time, the "Agreement"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Agreement.

CDFW hereby submits this Release Notice to the Foundation after completion of the dispute resolution process as of [date] and a determination by such process that a "Non-Compliance" (as that term is defined in that certain Mitigation Funding Agreement, dated _____, 2020, by and between CDFW and the District ("MFA")) has occurred or a determination by the CDFW Director that the dispute resolution process has been completed pursuant to the MFA.; and the District's failure to commence cure of such Non-Compliance within [X days reflecting the applicable time period] as required by the MFA.

Therefore, CDFW hereby requests the Foundation disburse to CDFW, or an account or third-party entity designated by CDFW, in accordance with the payment instructions set forth below, *[insert Demand Amount]* (the "Demand Amount") East Bay Regional Park District Reserve Fund as soon as is practicable after the Foundation's receipt of all of the following: 1) this Release Notice; 2) payee information required by the Foundation to make the disbursement; and 3) Recipient Agreement (as that term is defined in the Master MOA) or other agreement such as a Master Reimbursable Agreement (as that term is defined in the Master MOA) for the disbursement, in accordance with the Agreement.

[Insert payment instructions describing payment as "Demand Amount."]

[Insert CDFW contact information.]

Sincerely,

[Name of CDFW Regional Manager]
Manager, Bay Delta Region