

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 10/2018)

AGREEMENT NUMBER

4600012954

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Water Resources

CONTRACTOR NAME

Westlands Water District

2. The term of this Agreement is:

START DATE

June 15, 2019

THROUGH END DATE

June 14, 2024

3. The maximum amount of this Agreement is:

\$44,000,000.00 Forty-Four Million Dollars and No Cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	8
Attachment 1	Credit Development and Purchase Agreement	24
Attachment 2	Sample Work Authorization	1
Exhibit B	Budget Detail and Payment Provisions (Public Entities) (Rev. 02/13)	1
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Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at www.dgs.ca.gov/ols/resources/standardcontractlanguage.aspx

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

Westland Water District

CONTRACTOR BUSINESS ADDRESS

3130 N. Fresno Street

CITY

Fresno

STATE

CA

ZIP

93703

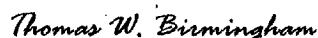
PRINTED NAME OF PERSON SIGNING

Thomas W. Birmingham

TITLE

General Manager

CONTRACTOR AUTHORIZED SIGNATURE



DATE SIGNED

6/3/2019

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PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Water Resources

CONTRACTING AGENCY ADDRESS

3500 Industrial Blvd.

PRINTED NAME OF PERSON SIGNING

Dean Messer

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Dean Messer

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

VB

[Handwritten signature]



Approved as to legal form and sufficiency:
[Signature]
for Ass. Chief Counsel, DWR

CITY

West Sacramento

STATE

CA

ZIP

95691

TITLE

Chief, Division of Environmental Services

DATE SIGNED

6/4/2019

EXEMPTION (If Applicable)

EXHIBIT A SCOPE OF WORK

Through this Contract, between the Department of Water Resources ("DWR") and Westlands Water District ("WWD" or "Contractor"), DWR will fund the restoration of habitat on an approximate 2,201-acre property, known as Lower Yolo Ranch, which is located within the intertidal and sub-tidal zone of the Cache Slough Complex in the Yolo Bypass, Yolo County, as part of the Lower Yolo Ranch Tidal Restoration Project ("Project").

The Project is being implemented to help meet DWR's obligations under the 2008 U.S. Fish and Wildlife Service ("USFWS") Biological Opinion for Delta Smelt (specifically, 8,000 acres of intertidal and associated subtidal habitat restoration); the 2009 National Marine Fisheries Service ("NMFS") Biological Opinion for the Coordinated Operations of the State Water Project ("SWP") and the Federal Central Valley Project ("CVP"); and the California Fish and Wildlife ("CDFW") 2009 Longfin Smelt Incidental Take Permit.

DWR and WWD entered into a "Conditional Delta Smelt Habitat Acreage Credit Development and Purchase Agreement ("Purchase Agreement") on October 18, 2018 (attached hereto as Exhibit A, Attachment 1 of this Contract). The Purchase Agreement was developed to outline the terms under which WWD and DWR will partner to develop, construct, and implement the Project. In addition, the Purchase Agreement defines the terms of how DWR will purchase habitat mitigation credits produced by the Project at the end of the five-year term of this Contract and acquire fee title to the restored property.

Per the terms of the Purchase Agreement WWD will undertake the lead to develop, manage, construct the Project and ascertain habitat mitigation credits. DWR will participate with WWD in project oversight. DWR will provide funds based upon a fixed price per habitat mitigation credit generated by the Project. The price paid per habitat mitigation credit will be \$23,815 per the terms of the Purchase Agreement.

1. PROJECT BACKGROUND:

The Project will provide habitat for Delta Smelt by restoring tidal, freshwater marsh and shallow water habitat in the intertidal and sub-tidal zone of the Cache Slough Complex in the Yolo Bypass. The Project is anticipated to restore, enhance, and preserve approximately 2,201 acres and create approximately 1679.5 Habitat Acreage Credits of the tidal restoration requirement in the 2008 USFWS Biological Opinion for Delta Smelt, provided that the Project is constructed and implemented as described in the "Final Crediting Prospectus" dated June 2013. The Project is also identified as a Priority Restoration project under the California EcoRestore (EcoRestore) Program.

2. REQUIREMENTS FOR DISBURSEMENT:

WWD shall meet all conditions precedent defined in subsections (a)-(b) below before DWR will purchase Habitat Acreage Credits. It is anticipated that failure by WWD to comply may, at the option of DWR, result in termination of this Contract and/or the Purchase Agreement. DWR shall have no obligation to disburse money under this Contract and/or the Purchase Agreement unless and until WWD completes the following:

- a. Provide a copy of a resolution adopted by its governing body authorizing its designated representative to execute this Contract and the Purchase Agreement.

- b. Complete all necessary tasks identified in the Purchase Agreement to transfer fee title of the Project property and appurtenant access easements and generate the issuance of a Final Habitat Acreage Credit Certification from USFWS.

3. TASKS AND DELIVERABLES:

An ongoing component of this Project will be project oversight/management. It is the responsibility of WWD to manage the Project and incorporate project oversight/management into the Project tasks which may include, at a minimum, sub-consultant coordination, project meetings and conference calls, budget monitoring, schedule tracking, project invoicing, prevailing wage documentation, and construction activities. In addition, the following tasks and deliverables will be met:

TASK 1 - Mutually Agreeable Escrow Instructions, Geodetic Standard Requirements, Water Rights

This task will complete mutually agreed upon Escrow Instructions, DWR Geodetic Standard Requirements (including Boundary Surveys, Land Survey Map, Legal Descriptions, Monumentation, Record of Survey, and Land Boundary Files), and transfer Water Rights.

Subtask 1.01:

WWD and DWR will develop Escrow Instructions. WWD will be required to execute the Escrow Instructions, Grant Deed, and Access Easement Deed. DWR will deposit the Escrow Instructions unaccepted Grant Deed, and unaccepted Access Easement Deed into escrow.

Deliverables will include one hard copy original of an executed Grant Deed to transfer title of the Project Property, one hard copy original of an executed Access Easement Deed to provide access to the Project Property, and one hard copy of executed Escrow Instructions mutually acceptable to WWD and DWR.

Subtask 1.02: WWD will complete DWR Geodetic Requirements as outlined in the Credit Development and Purchase Agreement, Attachment 3 including Boundary Surveys, Land Survey Map, and Legal Descriptions as per terms of the Purchase Agreement. WWD will meet with DWR Geodetic Branch Chief, Dan Mardock, upon contract award.

- a) **Boundary Surveys:** All Project Property site boundaries will be surveyed. The resulting land surveys will comply with the State of California Professional Land Surveyors Act and Public Resources Code as required as well as any additional requirements in the standards quoted below. WWD will submit the results of a boundary survey to DWR for review and approval prior to submitting proposed legal descriptions and deeds.
- b) **Land Survey Map:** A land survey map showing the boundary, existing encumbrances, and the proposed acquisition will be prepared and submitted for review and approval. In cases where real property rights over multiple parcels are to be transferred, a land net survey of the boundary, existing encumbrances, and the proposed acquisition may be developed covering multiple parcels in one document.

c) **Legal Descriptions:** All legal descriptions for property to be transferred in fee title to DWR will include the following:

- i. Properly prepared Preamble with general location references such as Section, Township and Range, County, and State.
- ii. DWR Parcel Number (to be assigned by DWR Geodetic Branch staff) will be added between the preamble and the body of the final legal description.
- iii. The Point of Beginning will be referenced to a basis of bearing based on two found property monuments of record including recording or filing information. Courses that intersect or adjoin an existing senior deed or ownership line of record will call to or along that line citing deed and/or map of record information.
- iv. Area in acres or square feet (if under 0.02 acre).
- v. The Basis of Bearing will be the California Coordinate System, CCS83, and will comply with the California Public Resources Code (Section 8801-8819). Note: to translate existing CCS27 coordinates to CCS83 coordinates a field surveyed tie to a minimum of two applicable found monuments that have both CCS27 values and CCS83 values is required.
- vi. Distances will be California Coordinate System grid distances in U.S. survey feet.
- vii. Each legal description will have an accompanying exhibit map.
- viii. Existing survey monuments tied or referenced in an existing DWR deed that may be affected or is adjacent to or abutting the new deed will be surveyed.

Deliverables will include one electronic copy and one hard copy of boundary maps, land survey maps, and the legal description of the property.

Subtask 1.03: WWD will complete DWR Geodetic requirements of Monumentation, Record of Survey, and Land Boundary Files as per DWR Geodetic Standards outlined in the Credit Development and Purchase Agreement, Attachment 3 and will meet with DWR Geodetic Branch Chief, Dan Mardock, upon contract award:

- a) **Monumentation:** Monumentation will be set along the proposed habitat restoration project site property boundaries. Contact the Department of Water Resources, Division of Engineering, Geodetic Branch, for existing DWR survey monumentation and mapping information that may be applicable to the project and monumentation requirements.
- b) **Record of Survey:** A Record of Survey will be filed in accordance with all local and state regulatory requirements. A draft copy of the Record of Survey map will be submitted to DWR for review prior to submittal to the regulatory agency. Each developer requesting review of a record of survey map will provide copies of the following:
 - i) Title reports of Grantor ownerships (including DWR property)
 - ii) All documents referred to in title reports or referenced in the documents referred to in the title reports, with a list of encumbrances which affect and/or not affect the new parcel.
 - iii) Maps of Record used for boundary resolution and property ties.
 - iv) Area and alignment calculations with CCS83 coordinates.
 - v) Survey notes showing primary control points utilized, found monuments of record and any ties to other non-published survey control.

c) **Land Boundary Files:** WWD will submit MicroStation (.dgn) CAD file or importable AutoCAD (.dwg) file and all associated cogo and/or coordinate data files, with legal description and affected property boundaries delineated, including but not limited to the following:

- i) Basis of Bearing with survey control points used to determine Basis
- ii) Mapping orientation – North to the top of file
- iii) Vicinity Map
- iv) State Plane Coordinate grid tic
- v) Existing easements and/or encumbrances, as listed in title reports, will be delineated with reference to the specific title report and exception number
- vi) Corner ties will be shown.
- vii) Significant topographic features, i.e. Public roads, major water courses, existing utilities, population centers, buildings and fences will be shown.
- viii) Map Legend showing:
 - a. Primary Survey Control Monuments
 - b. Found Monuments
 - c. Set Monuments

Deliverables will include one hard copy and one electronic copy of Record of Survey, and Land Boundary Files described above.

Subtask 1.04: This task addresses water rights associated with the property.

WWD and DWR shall cooperate with Sweetwater: (1) to obtain an amendment to Sweetwater's licenses to add fish and wildlife enhancement and associated mitigation as a purpose of use and to add points of diversion or re-diversion; (2) to transfer to DWR with conveyance of fee title shares of Sweetwater appurtenant to that portion of the Property to be conveyed to DWR (the Restored Habitat and the Buffer Zone); (3) to obtain a partial assignment of Sweetwater's licenses to DWR, with the same priority date of Sweetwater's licenses and terms and conditions acceptable to DWR, corresponding to the shares of Sweetwater obtained by DWR; and, (4) to extinguish DWR's shares in Sweetwater after partial assignment of Sweetwater licenses. Should the actions described in this paragraph not be completed prior to completion of the Project, the Parties will negotiate in writing another term which meets the project goals or otherwise terminate this Agreement.

TASK 2 - Completion of Design Drawings

This task includes revisions or completion of the design drawings with guidance and input regarding construction of the project.

WWD will consult with DWR in good faith throughout the design process to enable DWR to evaluate and provide guidance and input regarding the development of the Project. DWR may require reasonable, cost-effective modifications to the Project design or restoration, provided, that the total costs of the modifications, including design, modeling, analysis, management, permitting, and construction costs, that in the aggregate add more than two-hundred and fifty thousand dollars (\$250,000) to the Project's total cost shall be borne by DWR pursuant to the term of the Purchase Agreement. Any costs incurred by the WWD in excess of the amount

listed above will be submitted in a detailed work authorization request, Exhibit A, Attachment 2 to DWR for review and approval.

Deliverables will include one hard copy and one electronic copy of design drawings.

TASK 3 – Final Project Prospectus Binder

This Task entails finalizing and submitting the Project Prospectus and associated supporting documents to DWR and FAST including the Property Assessment and Warranty (PAW). The PAW should identify how each of the title and use restrictions or other encumbrances have been addressed and cleared in order for FAST to approve the project for crediting.

WWD will complete all documents as required and amend the Project Prospectus as required by FAST to reflect major site design changes. WWD will develop and complete the Restoration Plan and accompanying documents and submit them to DWR for approval. Documents accompanying the Restoration Plan will include at minimum: the Conservation Easement, an Interim Management Plan (defined as the period between execution of scope of work and construction of the Project), a Long-Term Management Plan, and an Adaptive Management and Monitoring Plan. The Adaptive Management and Monitoring Plan and Conservation Easement will be developed in coordination with DWR and CDFW.

WWD and DWR will coordinate with FAST to obtain a Conditional Habitat Acreage Credit Determination letter. Upon receipt of this letter, DWR will fund escrow with the expected purchase price of credits per the mutually agreed upon escrow instructions completed in Task 1.

Deliverables will include one hard copy and one electronic copy of FAST Prospectus, all management plans, PAW, and conservation easement in order to receive a Conditional Habitat Acreage Credit Determination from FAST.

TASK 4 – Environmental Permits, Consultations, and Clearances

WWD will obtain all necessary environmental permits, consultations and clearances, as well as supporting biological and technical studies, required to implement the Project. These permits may include, but are not limited to, a Yolo County grading permit, Yolo County flood hazard development permit, California Lake or Streambed Alteration Agreement, Central Valley Flood Protection Board Encroachment Permit and Environmental Questionnaire, Clean Water Action Sections 401, 402, 404/10 Permits, a US Army Corps of Engineers Section 408 Permission, and issuance of the Delta Plan Certification.

Deliverables will include one hard copy and one electronic copy of each permit application as well as final permits and supporting documentation.

TASK 5 - Restoration Construction

WWD will construct the Project. WWD will complete Project construction in accordance with all permits and deliver all agency-approved as-built project documentation for any changes made during construction, subject to the provisions of this Contract and Purchase Agreement. The activities associated with the construction of the Project will include habitat

restoration work, construction contract management and administration, environmental compliance and construction monitoring, interim land management, and as-built drawings.

Construction scope of work generally consists of removal of water control infrastructure, removal of the existing tide-gates and bulkheads and replacement of the point of diversion. In addition, the project design will incorporate tidal connection between the interior channels and adjoining open waters.

Activities associated with the construction of the Project will include: equipment mobilization, habitat restoration work, construction contract management and administration, environmental compliance, construction monitoring, and interim land management. WWD is responsible for contract oversight during construction, measurement and payment review, environmental compliance oversight, plan implementation verification (including grade checking), as-built drawing preparation, demobilization, and construction site disturbance remediation.

WWD will oversee the establishment of the target vegetative communities as well as preventing unauthorized entry or uses of the project site. The land management and maintenance activities are expected to include invasive species control, vegetation establishment and maintenance (e.g. herbicide applications, spot irrigation), trash removal, trespass control (e.g. signs, gates and patrol), and site access maintenance.

Within 90-days after the DWR approval of as-built drawings (100% complete), WWD will have formally satisfied all their responsibilities and activities included in Task 4. All subtasks listed within this task including maintenance, trespass control, trash removal, and interim property management will need to continue during the final 90 days after approval of the final as-built drawings.

Deliverables will include restoration work, regular construction progress updates to DWR at established intervals and any required compliance documents (e.g. any post-construction notifications, mitigation requirements, performance standards and compliance reports), all agency approved documents to project changes during construction, and interim property management plan.

WWD will provide one hard and electronic copy of the as-built drawings, and pre- and post-project photographs, permit closeout reports, including any related substantial documentation such as aerial photos, topographic data, GIS-based spatial files of the Project site, parcels, and delineation of habitat types and post project aerial and associated GIS data. Work authorization itemizing work to be completed for amounts over those listed above \$250,000.

TASK 6 - Final Habitat Acreage Credit Certification, Transfer of Property in Fee Title, Policy of Title Insurance

After construction has been completed WWD and DWR will coordinate with FAST to obtain a Final Habitat Acreage Credit Certification letter.

Within 60 days of receiving the Final Habitat Acreage Credit Certification letter, and pursuant to the mutually agreeable escrow instructions developed in Task 1, DWR will (i) request an

updated Title Report from the escrow company, (ii) remove the Grant Deed and Access Easement Deed from escrow, accept both deeds and then return them to escrow, (iii) and provide written approval to the escrow company to close escrow and record the Grant deed at the Yolo County Recorder's Office effectively transferring fee title of the Project property and access to DWR, and (iv) instruct the escrow company to issue Policy of Title Insurance for the Project property in the name of DWR.

This Task requires WWD to provide interim property management activities on the site in order to comply with all permit and FAST credit conditions until DWR and WWD satisfy the conditions in Section 9 of the Purchase Agreement

Deliverables include one hard and one electronic copy of updated title report, fee title, access easements, annual reports, preliminary title report, property assessment and warranty, correspondence from permit agencies, transfer of water rights, and request of Final Crediting Letter to USFWS and DWR.

4. SUBMISSION OF ADDITIONAL INFORMATION BY WWD:

WWD will submit Quarterly Progress Reports to DWR during the term of the Project Agreement. Progress reports must meet generally accepted professional standards for technical reporting and must be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to DWR. All progress reports will be submitted along with any work authorizations to the DWR Project Manager (Task 4), and must be submitted in both electronic and hard copy forms. If requested, WWD will promptly provide any additional information deemed necessary by DWR for approval of work authorizations.

a. Quarterly Progress Reports. Beginning the quarter after the Agreement is executed (signed) by DWR, and for the duration of the Agreement, WWD will submit to DWR a Quarterly progress report, which explains the status of each task described in the Scope of Work. Quarterly Progress Reports must be submitted by the last day of the quarter.

At the sole discretion of the State, the State will modify the requirements for preparation and submittal of work plans and reports called for in this Exhibit in order to improve administration of this contract.

5. DISBURSEMENT:

Following receipt of the Conditional Habitat Acreage Credit Determination letter DWR will fund escrow with the expected purchase price of credits. The purchase price will be dispersed from escrow within 60 days of receipt of the Final Habitat Acreage Credit Certification letter. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.

6. CONTRACT MANAGERS:

The Contract Managers during the term of this agreement will be:

Contract # 4600012954

Exhibit A

Page 8 of 8

Department of Water Resources

Name: Ling-ru Chu

Phone: (916) 376-9826

Email: ling-ru.chu@water.ca.gov

Westlands Water District

Name: Jose Gutierrez

Phone: (559) 241-6204

Email: jgutierrez@westlandswater.org

Contract Managers may be changed upon written notice to the other party.

**EXHIBIT A, ATTACHMENT 1
CREDIT DEVELOPMENT AND PURCHASE AGREEMENT**

THIS CONDITIONAL Delta Smelt HABITAT CREDIT DEVELOPMENT AND PURCHASE AGREEMENT ("Agreement"), dated as of _____, is entered into by and between the State of California acting by and through the California Department of Water Resources ("DWR") and the Westlands Water District ("Westlands"). DWR and Westlands will collectively be referred to as the "Parties."

RECITALS

WHEREAS, the United States Fish and Wildlife Service ("USFWS") 2008 Delta smelt biological opinion ("Smelt BiOp"), Reasonable and Prudent Alternative ("RPA") 4, requires DWR to create or restore a minimum of 8,000 acres of intertidal and associated subtidal wetland habitat within the Sacramento-San Joaquin River Delta ("Delta") and Suisun Marsh; and

WHEREAS, the California Department of Fish and Wildlife ("CDFW") 2009 longfin smelt incidental take permit ("CDFW ITP") requires DWR to restore 800 acres of intertidal wetland habitat; and

WHEREAS, the National Marine Fisheries Service ("NMFS") 2009 Salmonid Biological Opinion ("Salmon BiOp") RPA Action I.6.1 requires DWR, in conjunction with the United States Bureau of Reclamation ("USBR"), to restore between 17,000 to 20,000 acres of floodplain rearing habitat in the lower Sacramento River Basin; and

WHEREAS, the California EcoRestore Program ("EcoRestore") is focused on implementing a comprehensive suite of habitat restoration actions to support the long-term health of the Delta and its native fish and wildlife species, which identifies the Lower Yolo Ranch Restoration Project ("Project") to further purposes of EcoRestore; and

WHEREAS, NMFS, USFWS, CDFW, USBR, DWR, and the State and Federal Contractors Water Agency ("SFCWA") entered into a 2011 Memorandum of Agreement Regarding the Early Implementation of Habitat Projects for the Central Valley Project and State Water Project Coordinated Operations Criteria and Plan and Bay Delta Conservation Plan ("Crediting MOU") in order to set up a process through which the Fish Agencies, collectively known as Fish Agency Strategy Team ("FAST"), can provide initial consultation, credit estimates, and issue Habitat Acreage Credits which will provide assurances and otherwise facilitate the development of Restoration Projects; and

WHEREAS, DWR has several options to satisfy the restoration requirements articulated in the Smelt and Salmon BiOps, CDFW ITP, or any future regulation. These options include completing all Restoration Projects independently, undertaking joint and cooperative efforts to facilitate Restoration Projects, and/or purchasing Habitat Acreage Credits from third-party Restoration Projects; and

WHEREAS, Westlands purchased certain real property commonly known as the Lower Yolo Ranch ("Property") in 2007 for the purpose of generating, restoring, and enhancing habitat for smelt, salmon, and other Federal or State listed species; and

WHEREAS, SFCWA developed the Project to restore habitat for Delta smelt and salmon by restoring estuarine marsh and shallow water habitat on the Property, and acting as the lead agency for the Project prepared an environmental impact report ("EIR") pursuant to the requirements of the California Environmental Quality Act ("CEQA"), filing a notice of determination on July 18, 2013; and

WHEREAS, Westlands has now taken responsibility for development of the Project from SFCWA and intends to implement it; and

WHEREAS, DWR and Westlands acknowledge the benefits of completing a Restoration Project on the Property in a timely manner; and

WHEREAS, DWR, as the State agency that is responsible for the operation and maintenance of the State Water Project ("SWP"), is obligated to obtain Habitat Acreage Credits from the Fish Agencies to comply with the requirements of the BiOps, DFW ITP, and other regulations; and

WHEREAS, Westlands, as a water agency that holds a water contract affected by the Coordinated Operations of the Central Valley Project ("CVP") and SWP, has an interest in ensuring all requirements of operating the CVP and SWP are met, including the restoration requirements in the BiOps, CDFW ITP, and other regulations.

TERMS OF AGREEMENT

NOW, THEREFORE, DWR and Westlands enter into this Agreement to set forth the terms and conditions upon which DWR and Westlands will collaborate to develop, manage, and construct the Project, to establish the purchase price per Habitat Acreage Credits which DWR shall pay to Westlands, and to transfer the Restored Habitat and the Buffer Zone to DWR after completion of the Project as follows:

- 1. DEFINITIONS.** The terms listed below, when used in this Agreement, have the meaning set forth below:

"Buffer Zone" means the approximate 419 acres that are upslope and to the north and east of the Project footprint described in the Prospectus, which is intended to minimize impacts from adjacent land uses on the Restored Habitat and from the Restored Habitat on adjacent land uses.

"Conditional Habitat Acreage Credit Determination" means the conditional habitat credit determination for the Project to be provided by USFWS.

"FAST" means the Fishery Agency Strategy Team consisting of USFWS, NMFS, CDFW and USBR as described in the Crediting MOU.

"Final Habitat Acreage Credit Certification" means the final determination and receipt of Habitat Credits to be provided for the Project by the USFWS in accordance with the Crediting MOU.

"Fish Agencies" means the USFWS, the NMFS, and the CDFW.

"Habitat Acreage Credits" for purposes of this agreement, means habitat credits eligible to offset habitat mitigation requirements or commitments for Delta Smelt, which acreage amounts for each habitat credit to be calculated and provided for the Project by USFWS.

"Project" means the Lower Yolo Ranch Restoration Project, identified as Alternative 4 in the Lower Yolo Restoration Project Draft Environmental Impact Report, and as modified by mutual agreement of the Parties, to be constructed on the Property.

"Property" means the Lower Yolo Ranch owned by Westlands identified as Yolo County APNs 033-270-001, and -003, 033-280-002, 033-370-001, and -002, 033-380-002, -003, and -007, 033-390-001, and -005, as shown on Attachment 1.

"Prospectus" means SFCWA's June 2013 Final Prospectus for the Project.

"Purchase Price" means \$23,815 per Habitat Acreage Credit identified in the Final Habitat Acreage Credit Certification.

"Restored Habitat" means the portion of the Property that was or will be restored, enhanced, and/or preserved by Westlands for aquatic and terrestrial species habitat by the Project.

"Restoration Project" means any physical restoration project that generates, restores or enhances habitat for smelt, salmon, and/or other Federal or State listed species for the purpose of obtaining Habitat Acreage Credits required under the Salmon BiOp, Smelt BiOp, CDFW ITP, and/or any other regulation resulting from the Coordinate Operations of the CVP and SWP.

"State" means the State of California, acting by and through the DWR.

2. **PROJECT SELECTION.** The Project is a tidal habitat restoration project to be constructed on the Property, identified as a Restoration Project. The Project is consistent with the principles set forth in the Fish Restoration Program Agreement and Implementation Strategy, and the Crediting MOU, in that the Project will maximize ecological values and restoration through natural processes, while minimizing physical modification, third party impacts, and acquisition and maintenance costs.

3. DESCRIPTION OF THE PROJECT. The Project is located at the hydrological intersection of the Putah Creek fan, the historic Yolo Basin floodway, and the North Delta tidal marsh. The Tidal Marsh Complex design shown on Exhibit B will reconnect areas of existing topography, which are at an intertidal elevation, to adjacent tidal water bodies to allow seasonal and tidal waters to drain slowly through the marsh plains. Through the alteration of approximately 2,134 acres, the Project will maximize the amount of restored tidal marsh and enhanced seasonal wetlands/riparian areas while minimizing both the disturbances to existing resources and the amount of earth-moving needed to construct the wetland complex. The Project will also remove agricultural irrigation and restrict cattle grazing on restored wetlands located on the Project site, as needed to implement the project or in accordance with any easements or USFWS requirements.

A detailed Project description is attached as Attachment 2.

4. LOWER YOLO RANCH PERMITS AND AUTHORIZATIONS. Westlands will obtain all necessary Federal, State, county and local permits for construction of the Project.

5. WATER RIGHTS. Appropriate water rights appurtenant to the Property are currently secured by licenses issued to the Sweetwater Mutual Water Company ("Sweetwater"), of which Westlands is the majority shareholder. Each acre of land of the Property is allocated a corresponding share of Sweetwater. Westlands and DWR shall cooperate with Sweetwater: (1) to obtain an amendment to Sweetwater's licenses to add fish and wildlife enhancement and associated mitigation as a purpose of use and to add points of diversion or rediversion; (2) to transfer to DWR with conveyance of fee title shares of Sweetwater appurtenant to that portion of the Property to be conveyed to DWR (the Restored Habitat and the Buffer Zone); (3) to obtain a partial assignment of Sweetwater's licenses to DWR, with the same priority date of Sweetwater's licenses, corresponding to the shares of Sweetwater obtained by DWR; and, (4) to extinguish DWR's shares in Sweetwater after partial assignment of Sweetwater licenses. Should the actions described in this paragraph not be completed prior to completion of the Project, the Parties will negotiate in writing another term which meets the Project goals or otherwise terminate this Agreement.

6. BOUNDARY SURVEYS, MAPS AND LEGAL DESCRIPTIONS. Westlands will complete Boundary Surveys, Land Survey Map, and Legal Descriptions as per DWR Geodetic Standards set forth in Attachment 3. All Project property site boundaries and materials must comply with the State of California Professional Land Surveyors Act and Public Resources Code. Westlands will submit the results of a boundary survey and land survey map to DWR for review and approval prior to submitting proposed legal description and deeds.

7. FAST HABITAT ACREAGE CREDIT LETTER. The Crediting MOU was executed in order to provide assurances and facilitate the development of each Restoration Project by setting up a process through which the Fish Agencies provide an initial consultation and

Conditional Habitat Acreage Credit Determination and issue the Final Habitat Acreage Credit Certification. The sequence of tasks for issuance of the Final Habitat Acreage Credit Certification will be provided in the scope of work for the Project.

a. The Prospectus for the Project has been prepared and submitted to FAST. Westlands shall prepare updates/revisions as necessary, as well as any other documents required pursuant to the Crediting MOU for submission to FAST.

b. DWR, in coordination with Westlands, shall serve as the Project proponent pursuant to the Crediting MOU and FAST process. DWR, in coordination with Westlands or its designee, shall communicate with and submit all required documents, updates, letters, and/or requests to USFWS in a timely manner.

c. Based upon completion and delivery of the Prospectus, as amended if needed, DWR shall request a Conditional Habitat Acreage Credit Determination from the USFWS. Satisfaction of the conditions deemed appropriate by the USFWS for the development of the Project and completion of USFWS obligations shall be the responsibility of Westlands.

d. Westlands, in coordination with DWR, shall work in good faith, without undue delay, to ensure DWR receives a Conditional Habitat Acreage Credit Determination from the USFWS to complete the Project in a timely manner, and obtains the Final Habitat Acreage Credit Certification from the USFWS.

e. According to the Prospectus, as may be amended, the Project will restore, enhance, preserve, or protect approximately 2,134 acres of the Property, creating approximately 1679.5 Habitat Acreage Credits. The conditional number of Habitat Acreage Credits shall be determined by the USFWS and included in the Conditional Habitat Acreage Credit Determination.

f. The final number of Habitat Acreage Credits produced by the Project and subsequently conveyed to DWR will be determined by the Final Habitat Acreage Credit Certification to be provided by USFWS, which is expected to be issued approximately 60 days after completion of the Project.

g. If either Party disputes the Conditional Habitat Acreage Credit determination by the USFWS, or the Final Habitat Acreage Credit Certification, the Party may dispute the amount, and the other Party shall cooperate in good faith with the disputing Party to resolve the dispute.

8. RESTORATION CONSTRUCTION PROCESS & DWR OVERSIGHT

a. Westlands or its authorized representatives will be solely responsible for the construction of the Project.

b. Westlands will be responsible for obtaining any property rights necessary for completion of the Project, including but not limited to property rights on properties owned by third parties which may be necessary in order to properly construct the Project.

c. Westlands will consult with DWR in good faith throughout the process to enable DWR to evaluate and provide guidance and input regarding the construction of the Project, including potential opportunities to maximize Habitat Acreage Credits and ecological values by incorporating adjacent restoration efforts, including Yolo Flyway Farms hydrologic connections. DWR may require reasonable, cost-effective changes to the Project, provided, that the costs of changes, which in the aggregate, add more than two-hundred, fifty thousand dollars (\$250,000) to the Project's total cost shall be borne by DWR.

d. Upon DWR's request, Westlands will maintain as necessary temporary fencing along the property line separating the Restored Habitat and Buffer Zone from the property retained by Westlands to prevent livestock on the property retained by Westlands from entering portions of the Restored Habitat and Buffer Zone.

e. The Parties understand and acknowledge that the Project will require that the Restored Habitat area of the Property be subject to a permanent conservation easement, in a form reasonably approved by USFWS, and DWR. The holder(s) of the permanent conservation easement shall be determined by agreement of the Parties. The Parties shall develop conservation easement deed language, which shall include perpetual land use restrictions, and shall coordinate on the recording of all applicable deeds. Said perpetual deed restrictions shall include provisions for DWR and/or its agent/designee to have full right of access and authority to perform any and all activities reasonably necessary to provide long-term monitoring, operation, maintenance and overall management of the Restored Habitat.

9. PURCHASE OF HABITAT CREDITS, TRANSFER OF PROPERTY, AND ESCROW

- a. DWR has opened an escrow account to facilitate the transfer of property and purchase of Habitat Acreage Credits and transfer of the Restored Habitat and Buffer Zone of the Property in fee. Within 45 days of the receipt of the Conditional Habitat Acreage Credit Determination, DWR shall deposit an amount equal to \$23,815 multiplied by the habitat acreage credit identified in the Conditional Habitat Acreage Credit Determination into the escrow account. DWR and Westlands will develop mutually acceptable escrow instructions to be provided to the escrow company.
- b. Upon completion of construction of the Project as determined by Westlands, Westlands shall give written notice to DWR of the Completion of the Project ("Completion Notice"). With the Completion Notice, Westlands shall submit to DWR a comprehensive long term plan for management of the Project ("Management Plan") that includes: (1) detailed

descriptions of how the Project should be managed in the future to preserve the Habitat Acreage Credits, (2) one hard and electronic copy of: (a) an updated and then current policy of title insurance, (b) all recorded deed documents, and associated documents including any related documentation and agreements, (c) GIS-based special files of the Project site, parcels and delineation of habitat types, property assessment and warranty, (d) topographic survey and aerial photograph of the Restored Habitat and Buffer Zone, and (e) as-built drawings.

c. Within 60 days of issuance of the Final Habitat Acreage Credit Certification and pursuant to the mutually agreed upon escrow instructions to be developed between Westlands and DWR:

i. DWR shall pay the Purchase Price to Westlands in full. DWR shall have no obligation to pay any sums to Westlands for any work related to the Project unless and until the USFWS issues its Final Habitat Acreage Credit Certification.

ii. Westlands shall transfer to DWR for DWR's sole use fee title of the Restored Habitat and the Buffer Zone in an "as is" condition by grant deed along with any and all of its rights, entitlements and interests in or to the Habitat Acreage Credits, and Westlands will retain no further interest in the Habitat Acreage Credits, the Restored Habitat or the Buffer Zone whatsoever. DWR agrees to: (1) indemnify, defend and hold harmless Westlands from any and all claims arising out of or relating in any way to the Restored Habitat and the Buffer Zone, and (2) accept fee title to the Restored Habitat and Buffer Zone subject to those title encumbrances listed in the mutually agreed upon escrow instructions, except for any monetary liens, if any. Westlands agrees to remove any monetary liens prior to transfer of title. If requested by DWR, Westlands shall pay all survey costs, escrow costs, transfer taxes, and a CLTA title policy. All taxes, assessments and utility costs shall be prorated at close of escrow.

iii. Upon payment of the Purchase Price, Westlands shall convey fee title of the Restored Habitat and Buffer Zone to DWR in accordance with this Section and Section 9 below.

iv. Westlands shall provide DWR sufficient assignable access easements from public roads to the Restored Habitat and Buffer Zone.

The intent of DWR's payment of the Purchase Price and Westlands transfer of fee title is that they will occur simultaneously through escrow.

d. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time which is in violation of, or in conflict with, Federal or State laws, rules or

regulations, or which may require any rebates to the Federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.

10. POST-CONSTRUCTION MANAGEMENT. Until the Parties satisfy the conditions in Section 9, Westlands shall manage the Restored Habitat in a manner that will not diminish the amount of Habitat Acreage Credits. Upon Parties satisfying the conditions in Section 9, DWR shall be responsible for management of the Restored Habitat and Buffer Zone.

11. TERM OF AGREEMENT. This Agreement shall become effective upon approval by DGS. This Agreement shall terminate upon fulfillment of the Parties respective obligations.

12. CALIFORNIA ENVIRONMENTAL QUALITY ACT. Westlands will comply with all applicable provisions of CEQA, including Public Resources Code 21166.

13. DEFAULT REMEDIES.

a. Default—General. Subject to the provisions of this Section and extensions of time set forth herein, failure or delay by either Party to timely perform any term or provision of this Agreement constitutes a default under this Agreement.

b. Cure Period. In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR and the General Manager of Westlands, or authorized representatives, shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. Neither Party shall be in default during the 30-day period.

c. Arbitration of Disputes. If the dispute is unresolved, the Parties will seek to use the services of a mutually acceptable, neutral arbitrator in an effort to resolve the dispute. If the Parties agree on an arbitrator, the Parties shall share the fees and expenses of the arbitrator equally. The arbitration shall: (1) be non-binding and (2) be conducted in accordance with the rules of the American Arbitration Association (“AAA”) and in accordance with Part III, Title 9 of the California Code of Civil Procedure. If an arbitrator cannot be agreed upon, or if the arbitrator's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation, and either Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

14. NOTIFICATION. In addition to the notices required under other Sections of this Agreement, each Party shall promptly notify the other Party, in writing, of the following items:

- a. A request for changes to the Agreement, the Habitat Acreage Credits resulting from the Project, or to the Parties of the Agreement.
- b. Any public or media event publicizing the accomplishments and/or results of the Project or this Agreement.

15. COUNTERPARTS. This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, and all counterparts shall be deemed the same instrument with the same effect as if all Parties hereto had signed the same signature page.

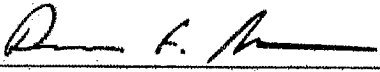
16. BINDING ON SUCCESSORS IN INTEREST. This Agreement shall be binding on the successors in interest of Westlands and DWR, including but not limited to the holder of a conservation easement on the Restored Habitat and/or Buffer Zone.

17. AUTHORITY TO EXECUTE THE AGREEMENT. Each person executing this Agreement on behalf of a Party confirms that he/she has full authority of the Party he or she represents to execute this Agreement and to bind the Party to all of the obligations and provisions set forth herein.

IN WITNESS THEREOF, DWR and Westlands have executed this Agreement on the date set forth below.

WATER DEPARTMENT OF WATER RESOURCES

WESTLANDS

By: 

By: _____

Title: Chief, Environmental Serv.

Title: _____

Date: 10/10/18

Date: _____

15. COUNTERPARTS. This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, and all counterparts shall be deemed the same instrument with the same effect as if all Parties hereto had signed the same signature page.

16. BINDING ON SUCCESSORS IN INTEREST. This Agreement shall be binding on the successors in interest of Westlands and DWR, including but not limited to the holder of a conservation easement on the Restored Habitat and/or Buffer Zone.

17. AUTHORITY TO EXECUTE THE AGREEMENT. Each person executing this Agreement on behalf of a Party confirms that he/she has full authority of the Party he or she represents to execute this Agreement and to bind the Party to all of the obligations and provisions set forth herein.

IN WITNESS THEREOF, DWR and Westlands have executed this Agreement on the date set forth below.

DEPARTMENT OF WATER RESOURCES

WESTLANDS

By: [Signature]

By: Thomas W Birmingham

Title: [Signature]

Title: General Manager

Date: 10/18/2018

Date: 10/18/2018

Attachment 2

Energy Consumption: Offsite Soil Disposal/Reduced-size Alternative

This alternative would vary in its consumption of energy used by the Project in construction, due to the various scenarios that could be employed during the excavation and transport of materials offsite. For those options based on conveyor systems, a larger expenditure of electricity would result than what would be needed by the Project. For those options relying on movement by trucks and scrapers to transport excavated soils at greater distances, more diesel fuel and gasoline would be consumed than that of the Project. However, even with a doubling or tripling of such energy requirements, the overall energy consumption for this short-term construction alternative would still have a negligible effect on the region's energy resources. Minor ongoing operation and maintenance energy use would be similar to that of the Project. As with the Project, this alternative's energy consumption would not be wasteful and would be less than significant.

Vessel Transportation: Offsite Soil Disposal/Reduced-size Alternative

Unlike the other alternatives, including the No Project alternative, only the Offsite Soil Disposal and Reduced-size alternative would have an impact to vessels calling at the Port of West Sacramento via the SRDWSC. In 2011, 58 vessels traveled to/from the Port, or roughly four to five vessels per month. As part of the Offsite Soil Disposal/Reduced-size alternative, should conveyor systems, bridges, and/or pipelines be installed to transport soil across the SRDWSC, such equipment would either be redirected, weighted down (i.e., pipelines), or disassembled to permit vessel passage. Applicable regulatory and local agencies, such as the U.S. Coast Guard, USACE, and the Port of West Sacramento, would be coordinated with to ensure no impacts to vessel traffic. Hence, for this alternative, vessel transportation would be less than significant. For the Project and the other alternatives (Alternative Nos. 1, 2, and 4), no impact to vessel transportation would occur.

5.4.4 Alternative No. 4: Tidal Marsh Complex Alternative

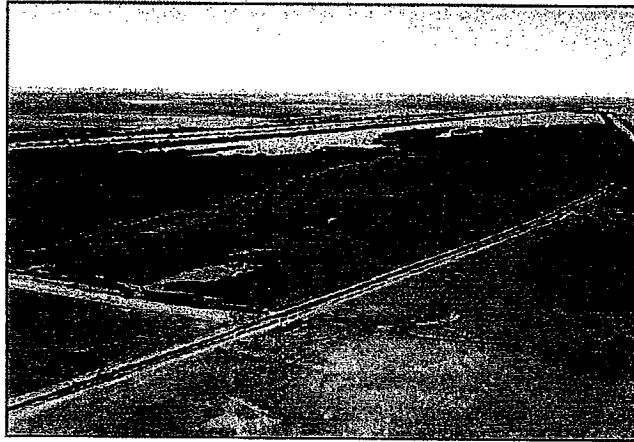
Overview of Alternative No. 4

Historically, the Project site holds a uniquely rich location at the hydrological intersection of the Putah Creek fan, historic Yolo Basin floodway and North Delta tidal marshes (Figure 5-12 shows aerial views of the Project site adjacent to various water bodies). The Tidal Marsh Complex (TMC) alternative would partially restore some of these ecological functions in the current, highly altered agricultural landscape by restoring as much of the historic, hydro-period diversity as feasible and practical. Considerations in wetland restoration and historical ecology revitalization would include reconnecting areas of existing topography that are at an intertidal elevation to adjacent tidal water bodies, by removing obstructions to tidal inundation and allowing seasonal and tidal waters to drain slowly through the marsh plains. Depending on the seasonal and regional hydrology, water would come from daily tidal exchange or from seasonal inundation during flood events in the Yolo Bypass.

Chapter 5 Alternatives



View from northwest (Shag Slough Stair Step Channel in foreground)



View from northwest (Liberty Island in background)



View from northeast (Sacramento River Deep Water Ship Channel in foreground)

Figure 5-12.
Aerial Views of
Yolo Ranch

The low lying areas onsite are currently managed as cattle pasture and winter waterfowl hunting through the use of perimeter berms and water control structures. This alternative would maintain existing topography and irrigated pasture infrastructure at the Project site to increase hydraulic residency time through increased surface flow complexity and discharge distance to receiving waters. These features would provide the maximum resiliency in the face of sea level rise and regional stressors such as changes in tides, floods, salinity mixing, and invasive species.

Hence, implementation of the TMC alternative would substantially maximize the amount of restored tidal marsh and enhanced seasonal wetland/riparian areas, while minimizing both the disturbance to existing resources and the amount of earth-moving needed to construct the wetland complex. About 44,300 cy of soil would be excavated to achieve a 1,672-ac restored tidal marsh for the delta smelt and salmonids. This alternative would restore over 36 percent more tidal wetland habitat than the proposed Project and would result in the excavation of over 98 percent less soil. Of special note, there would be no offsite disposal of the excavated soil. All of the materials would be placed behind the restricted-height levee in the northwest portion of the Project site.

In addition, approximately 1,248 acres of the Yolo Ranch outside of the construction footprint but on the Project site would continue to support existing agricultural operations. Alternative No. 4 would result in a decrease of about 44 percent with respect to the remaining agricultural lands under the proposed Project (which would include both Yolo Ranch and Yolo Flyway Farms for a total of 2,210 acres).

The TMC alternative's conceptual plan is shown in Figure 5-13 with the acreage and volume estimates presented in Table 5-2. Additionally, this alternative would involve pursuing the implementation of Phase 1 (Yolo Ranch) and the Northeast Field in Network 4 (part of Phase 2). Phase 2 (that portion covering Yolo Flyway Farms) would not be part of this alternative.

Description of Alternative No. 4

Components and Elements of Alternative No. 4

The TMC alternative would maximize ecological productivity by enhancing resiliency, diversity and regional integration. The construction phase would be a subset of previously described features for the proposed Project (refer to Chapter 3, Project Description), as follows:

1. **Restoration Component.** The TMC alternative would include modifications to about 1,790 ac within the 3,423-ac site (only on Yolo Ranch). Restoration would include:
 - a. Restoring approximately 572 ac of tidal marsh, enhancing approximately 28 ac of tidal marsh, enhancing about 1,100 ac of seasonal floodplain wetlands, and enhancing about 49 ac of riparian habitat. Restoration and enhancement measures would involve eliminating or relocating existing water control infrastructure elements, grading some lands to facilitate establishment of intertidal wetlands, excavating new starter tidal channels and swales to connect restored wetland areas to adjacent tidal water bodies, removing irrigation from seasonal wetland features, and removing or restricting grazing within the restored and enhanced areas.

Chapter 5 Alternatives

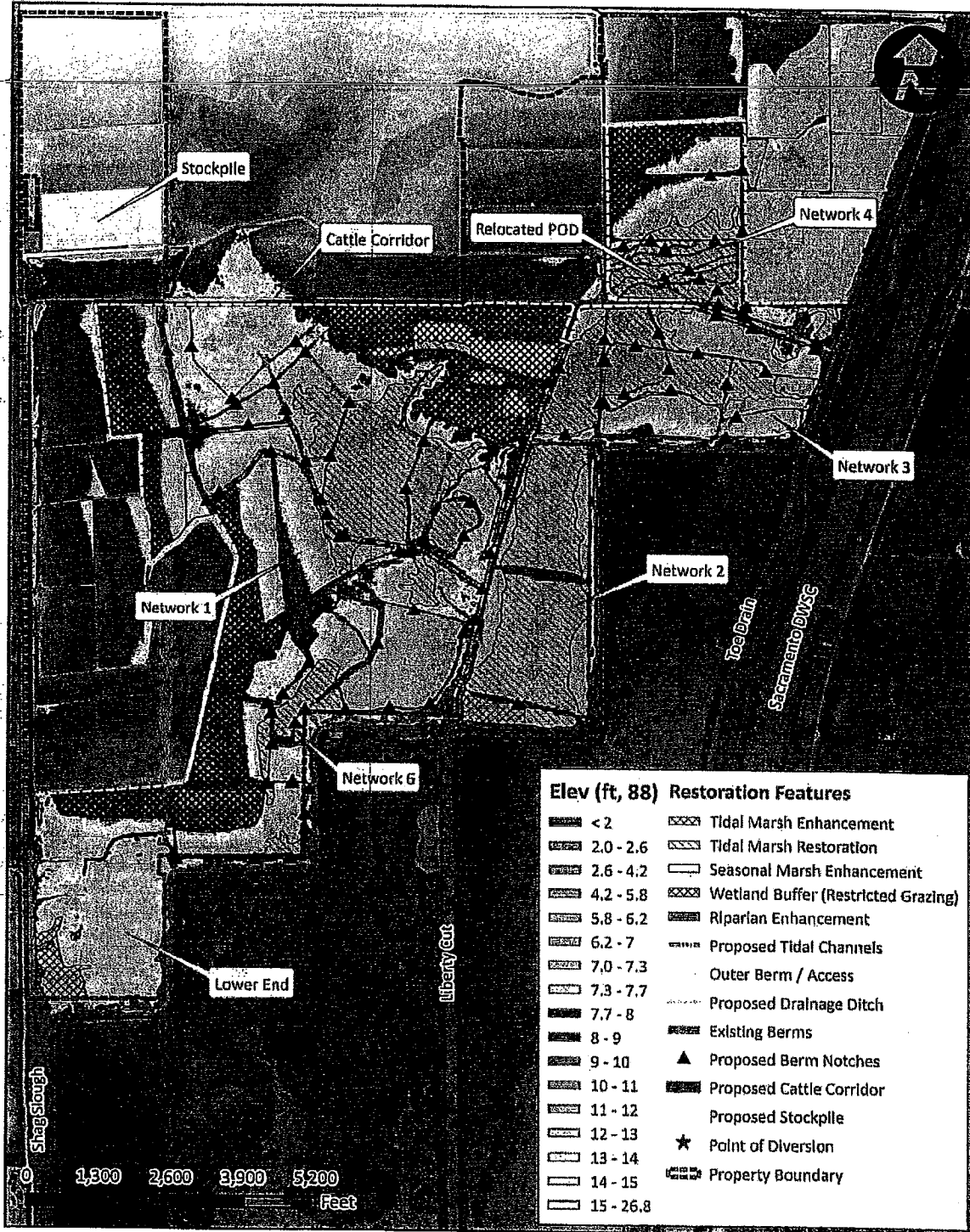


Figure 5-13

Conceptual Overview of the Tidal Marsh Complex Alternative

Table 5-2. Tidal Marsh Complex Alternative¹: Estimated Acres and Volumes of Soils Excavated during the Construction Phase

Tidal Marsh Complex Alternative Components and Elements	Estimated Land Size (acres)
Tidal Marsh Restoration	1,672
Tidal Marsh Enhancement	28
Riparian Enhancement	49
Wetland Buffer	385
Improvements and Modification of Water Infrastructure	38
Soils Stockpile at the Restricted-height Levee	50
Tidal Marsh Complex Alternative Components and Elements	Volumes of Soils Balanced Excavation and Disposal (cubic yards)
Excavation: Intertidal Wetlands Restoration via Notches to Create Starter Tidal Channels	31,200
Excavation: Widen Existing Ditches and Establish New Smaller Ditches	13,100
Disposal: Soils Stockpile at the Restricted-height Levee	44,300

¹The Tidal Marsh alternative would involve pursuing the implementation of Phase 1 (Yolo Ranch) and the Northeast Field in Network 4 (part of Phase 2). Phase 2 (that portion covering Yolo Flyway Farms) would not be part of this alternative.

- b. Removing agricultural irrigation and restricting grazing from about 385 ac of fringe tidal wetlands surrounding the project footprint. Limited grazing would be allowed within this buffer area for invasive plant management, as needed.
- c. Stockpiling excavated soil (approximately 44,300 cy) behind the restricted-height levee in the northwest corner of the Project site (about 50 ac); Relocating one existing tide gate, removing one existing tide gate, and installing one new ditch block to ensure irrigation and drainage needs would be met in the remainder of the site; and
- d. Removing approximately 214 ditch culverts and 344 irrigation spiles⁴⁷.

About 572 ac of the 1,790-ac footprint are currently at intertidal elevations and would be able to support tidal marsh habitat. The varying elevations within this area would be studied to allow for scientific evaluation of the relationship between restored marsh plain elevation and the magnitude of ecosystem function provided.

⁴⁷ Spiles are short pieces of pipe buried in the ditch bank.

Chapter 5 Alternatives

Tidal channels and swales would be excavated to facilitate the movement of tidal water between existing tidal sources (Stair Step, Toe Drain) and restored intertidal and seasonal wetlands. As noted in Figure 5-13, five tidal networks would be created:

- **Network 1:** This tidal network would be located in a natural topographic drainage swale that is currently managed as cattle pasture. The tidal source for this network would be an excavated swale that would connect the lower interior portion of the network with an existing north-south tidally-surcharged irrigation ditch. To promote tidal-channel circulation within and out of the network, low internal and perimeter berms and roads would have 50-ft wide notches excavated at strategic locations. The notches would be created by using an excavator to remove soil to an elevation that would match the surrounding field grades. Afterwards, the notches would be seeded with an appropriate seed mix to stabilize them and prevent erosion.
- **Network 2:** This tidal network would be located in an area of historic tidal marsh that is currently managed as irrigated cattle pasture in the summer and open water and emergent marsh in the winter. The tidal source for this network would be a channel excavated to the junction of Liberty Cut and Shag Slough/Stair Step. The northern portion of this network already experiences limited muted tidal connectivity with a portion of the Stair Step northeast of Liberty Cut through an unmaintained tide gate at its northeast corner. The northern half of the network would be restored to an intertidal pond by retaining most of the existing east-west berm and allowing higher tides to connect with it.
- **Network 3:** This tidal network would be located in an area of historic tidal marsh that is currently managed as irrigated cattle pasture in the summer and irrigated open water emergent marsh in the winter. The primary tidal sources for this network would be two new channels, one connecting to the Stair Step west of its connection with the Toe Drain and the other to the existing north-south tidally-surcharged irrigation ditch referenced above. This flow-through channel arrangement would have two purposes: (1) maximize the efficiency of tidal transport processes from the marsh plain to open water habitats; and (2) provide a fish movement corridor with more complex habitats relative to the Stair Step and Toe Drain. As in Network 1, 50-ft wide notches would be excavated at strategic location on existing internal and perimeter berms, and then seeded with an appropriate mix to stabilize them and prevent erosion.
- **Network 4:** This tidal network would be located in an area of historic tidal marsh that is currently managed as upland pasture. The tidal sources for this network would be a new tidal channel connected to the existing east-west tidally-surcharged irrigation supply ditch. Several 50-ft wide notches would be excavated at strategic locations on existing internal and perimeter berms (see Figure 5-13). Appropriate seed mix would then be added to stabilize the notches and prevent erosion.

- **Network 6:** This tidal network would be located in an area of historic tidal marsh that is currently managed as irrigated pasture. No new channels would be excavated to connect this network with Shag Slough/Stair Step, but notches would be excavated at strategic locations on existing internal and perimeter berms to allow for periodic tidal inundation (see Figure 5-13). Appropriate seed mix would then be added to stabilize the notches and prevent erosion.

The dimensions of the constructed tidal channels would vary according to flow capacity needs, depth of intertidal area the channel would service, and experimental hypotheses associated with each separate network. Deeper channels within Networks 2 and 3 would be excavated to a minimum depth of at least two ft below MLLW to minimize colonization by tules. Deeper channel geometries would also be sized to promote peak ebb tidal flow velocities between 1.6 to 3 ft per second through the networks to actively discourage colonization and establishment of Brazilian waterweed. Deeper channels would be constructed with 1.5:1 (width: height) side slopes, resulting in trapezoidal cross-sections. In some locations, one channel bank may be sloped more gently to provide some littoral habitat on the inside of channel bends well suited to native fish species.

At the terminus of the deeper channels in Networks 2 and 3 and the entrance to Network 4, swales 20 to 30 ft wide with 10:1 side slopes and up to one foot below existing grade would be constructed to facilitate connectivity and exchange of productivity between marsh plain and open water habitats. In Networks 1 and 4, existing irrigation and drainage ditches with intertidal elevations, coupled with selective field berm notching, would be used to maximize tidal inundation and flood water retention.

The Project site has numerous raised ranch roads and internal berms, which would largely be left in place in order to help simulate historic hydroperiod conditions. To accomplish this, about 100-ft wide tidal connections would be excavated in the roads and berms at strategic locations throughout the different networks, to facilitate water exchange in and out of the site. Depending on the season, the predominant water source would be tidal incursion from the surrounding channels or flood events in the Yolo Bypass. The excavated notches, coupled with the site's existing topography and irrigated pasture infrastructure, would increase hydraulic residency time, surface flow complexity and discharge distance to receiving waters.

2. **Irrigation and Drainage Improvements Component.** Currently, a variety of berms, external tide gates, interior flap gates, permanent and portable pumps, and other conveyance structures moderate how water can enter (irrigate) and leave (drain) the Project site during summer and winter. All changes to the water control infrastructure would be designed to maintain irrigation and drainage functions for adjacent properties that rely on the current infrastructure on the Project site for their agricultural operations.

Chapter 5 Alternatives

Modifications to the irrigation and drainage infrastructure would include:

- The truncation of a tidally-charged supply ditch via the relocation of one tide gate and the replacement of a second tide gate with a ditch block.
- The reuse of existing permanent pumps for continued irrigation and grazing outside of the project footprint.
- The removal of several water control structures, apply selective notching of field berms, and reuse of existing irrigation and drainage ditches within the alternative's construction footprint to maximize tidal inundation and flood water retention.
- The rerouting of some drainage ditches outside the alternative's footprint to minimize the sourcing of drain water into the alternative's footprint.
- The construction of a restricted-height perimeter berm to minimize inundation of the remaining grazing lands outside the alternative's footprint by high tides.
- Irrigation of 385 ac of fringe tidal wetlands located adjacent to the alternative's footprint would be eliminated. Instead, seasonal cattle grazing would be utilized in this area as a vegetation management tool.

3. Soils Disposal Component. Implementation of the restoration activities described above would result in the generation of excess of soils. This excavated soil would be placed as a permanent stockpile on the fields within the restricted-height levee in the northwest portion of the Project site. Stockpiled materials would be located and arranged to avoid adverse effects on Yolo Bypass flood flow conveyance. The fields within this location are currently used for summer cattle grazing and hay production. Approximately 44,300 cy of material would be placed over 50 ac at a depth no greater than six inches and contoured for border irrigation to match existing conditions. The slope of the existing field is 0.2 percent with borders spaced 50 ft apart. The irrigation spiles on the field ditch m need to be reset six inches higher.

The post-construction phase would be similar in nature as previously described for the proposed Project (refer to Section 3.5, Post-construction Activities). Of special note would be:

1. **Long-term Operations and Maintenance Component.** A long-term operations and maintenance plan would be developed to include, but not be limited to:
 - General management of agricultural activities outside of the restoration footprint;
 - Maintenance and management of cattle exclusionary devices (i.e., fencing) around restored areas;
 - Maintenance and management of water control structures;
 - Control of invasive or undesirable vegetation within both restored and remaining upland areas with reduced cattle grazing uses; and

- Physical, biological, and water quality monitoring plan to determine this alternative's outcomes relative to the Project goals and objectives, and to conduct associated adaptive management science activities, as applicable.

2. Project Outcome Verification Monitoring Component. To monitor the TMC alternative's outcome with implementation, e.g., demonstrating the site's benefits of providing new sources of food and shelter for several fish species, including delta smelt and salmonids.

3. Regional Science Support Component. Through collaborative and cooperative arrangements with trustee agencies and scientific organizations, the TMC alternative would provide educational and scientific opportunities to study wetland ecosystem functions such as habitat for fish and wildlife, water quality improvements, erosion control, flood attenuation, landscape enhancements, and other ancillary benefits.

Construction Activities for Alternative No. 4

The construction activities for the TMC alternative are a subset of the activities described in Chapter 3 for the proposed Project and are briefly noted below.

Construction Equipment for the TMC Alternative

The construction of the restoration elements would require several types of earth-moving equipment. Conditions in the field at the time of construction would influence the type of equipment that would be best suited for the work. The list of equipment presented below includes the entire suite of machinery that may be used:

- Standard-reach excavator (1).
- Agricultural tractor and towed scraper (3).
- Low ground pressure bulldozer (1).
- Water truck (1).

All equipment would be delivered to the site by flatbed truck and access the work areas via existing roads. Staging/storage areas would be located in upland areas outside of sensitive habitats. The location of all staging areas would be determined by the contractor and design team at the time of construction based on field conditions. These areas would be clearly delineated in the field and appropriate erosion control BMPs (e.g., weed-free, rice straw wattles, and/or silt fences) would be installed around them in accordance with the SWPPP and SPCP to prevent the transport of sediments and/or construction contaminants into surrounding areas. All refueling, maintenance, and storage of equipment when not in use would occur within these staging/storage areas. Construction water would be supplied from pumping water from existing irrigation ditches on the Project site.

Attachment 3**Geodetic Branch, Division of Engineering, Department of Water Resources
Procedures, Guidelines, Standards, and Requirements for Land Acquisition
Boundary Surveys, Legal Descriptions and Mapping**

It is the responsibility of the Geodetic Branch of the Department of Water Resources (DWR) to prepare, maintain and manage accurate land records, mapping, and continuity with existing records of land rights under the control of the Department of Water Resources (State of California). These records are an integral part of the DWR Geographic Information System (GIS) and are used extensively by the Department staff in maintaining the vast inventory of land rights for all DWR facilities. It is the further responsibility of the branch to review and approve all land boundary, legal descriptions, and maps prepared by others prior to the conveyance of any real property rights to DWR. When entities other than DWR are acquiring real property rights to be transferred to DWR, there is a critical two-step process that must be followed to ensure a smooth transfer of those rights to DWR. Prior to negotiated acquisition or eminent domain action by the entity, the cadastral land net, boundary survey, legal description and proposed deed of the real property right to be conveyed must be reviewed and approved by the Geodetic Branch to ensure the real property rights being conveyed are correctly and completely surveyed and described according to the Geodetic Branch standards. This will help streamline the transfer of the real property rights to the Department reducing delays and additional expense. The following standards and documentation are required for new acquisitions of real property rights under the control of the Department.

1. All affected boundaries shall be surveyed prior to the acquisition deed being written and the resulting land surveys shall comply with the State of California Professional Land Surveyors Act and Public Resources Code as required, as well as any additional requirements in the standards quoted below. A land survey map of the boundary, existing encumbrances, and the proposed acquisition shall be prepared and submitted for review. In cases where real property rights are being purchased over multiple parcels, a land net survey of the boundary, existing encumbrances, and the proposed acquisition may be developed covering multiple parcels in one document. All surveys shall be reviewed and approved prior to submittal of the proposed legal descriptions and deeds.
2. Once the proposed legal description has been approved, final legal description with DWR Parcel No. shall be sealed, signed and dated by a land surveyor or engineer licensed to practice land surveying in California. For transfer of acquisitions to DWR, the Geodetic Branch staff will provide the appropriate deed cover and signature pages.
3. Descriptions shall include the following:
 - a) Preamble with general location references such as Section, Township and Range, City, County, and State.
 - b) DWR Parcel Number assigned by Geodetic Branch staff shall be added between the preamble and the body of the final description.
 - c) The Point of Beginning shall be referenced to a basis of bearing based on two found property monuments of record including recording or filing information. Courses that intersect or adjoin an existing senior deed or

ownership line of record shall call to or along that line citing deed and/or map of record information.

- d) Area shall be depicted in acres or square feet (if under 0.02 acre).
- e) The Basis of Bearing shall be the California Coordinate System, CCS83, and shall comply with the California Public Resources Code (Section 8801-8819).
- f) Distances shall be California Coordinate System grid distances in US survey feet.
- g) Each legal description shall have an accompanying exhibit map.

- 4. CCS83 coordinates must be determined by ties to at least 3 California Spatial Reference Network (CSRN) monuments. In areas where ground movement or subsidence may be occurring, ties to the CSRN must be made with minimum 2 hour observations of the CSRN Continually Operating Reference Stations (CORS) or California Spatial Reference Center (CSRC) Continues Global Position System (CGPS) stations. The epoch used must be the same for all three primary control points and must be 2010.00 or newer. The names and values of primary control points and the epoch utilized shall be shown on the map. If current date of survey mid-epoch is used, the method used to establish current epoch must also be stated.
- 5. Elevations (Orthometric Heights) shall be shown on the North American Vertical Datum of 1988 (NAVD88) utilizing Geoid 12b or newer. Method for establishing vertical datum must be stated.
- 6. To translate existing CCS27 coordinates to CCS83 coordinates, field surveyed ties to a minimum of two applicable found monuments that have previously surveyed CCS27 values is required. Calculated conversions from models (CORPSCON, etc.) are unacceptable.
- 7. All survey monuments referenced in an existing DWR deed that may be affected or lie adjacent to or adjoining the new deed shall be surveyed.
- 8. All survey monuments of existing record surveys of the subject properties shall be located and shown on the map. This includes monuments from record maps of adjoining properties. If monuments are not available on the parcel or adjoining parcels the survey must reach far enough to re-establish the cadastral land net.
- 9. Water boundaries when required must include a description of the method utilized to determine ordinary high water. If the subject property lies in tidal areas, ties to tidal benchmarks must be shown on the map and description of process for determining mean high tide including elevation on NAVD 1988 survey epoch must be stated on the map.
- 10. Contact the Department of Water Resources, Division of Engineering, Geodetic Branch for existing DWR survey monumentation and mapping information that may be applicable to the project.
- 11. Monumentation shall be set along the new DWR right of way and/or property boundaries, and a Record of Survey shall be filed in accordance with local and

state regulatory requirements. Contact the Geodetic Branch for monumentation requirements. A draft copy of the Record of Survey map shall be submitted to DWR for review prior to submittal to the county surveyor, regulatory agency or county recorder.

12. When requesting review provide copies of the following:

- a) Title reports of Grantor ownerships (including DWR property)
- b) All documents referred to in title reports or referenced in the documents referred to in the title reports, with a list of title exceptions stating how they affect the subject parcel and/or that they do not affect the subject parcel.
- c) Maps of Record used for boundary resolution and property ties.
- d) Area and alignment calculations with CCS83 coordinates.
- e) Field survey notes showing primary control points utilized, found monuments and any ties to other non published survey control.

13. MicroStation (.dgn) CAD file or importable AutoCAD (.dwg) file and all associated .cogo and/or coordinate data files, with legal description and affected property boundaries delineated, including but not limited to the following:

- a) Basis of Bearing with geodetic survey control points used to determine same.
- b) Mapping orientation – North to the top of file.
- c) Vicinity Map.
- d) State Plane Coordinate grid marks.
- e) Existing easements and/or encumbrances, as listed in title reports, shall be delineated with reference to the specific title report and exception number.
- f) Corner ties shall be shown.
- g) Significant topographic features, i.e. Public roads, major water courses, existing utilities, population centers, buildings, fences and other evidence of occupation shall be shown.
- h) Map Legend showing:
 - Primary survey control monuments.
 - Found monuments.
 - Set monuments.

Please contact Geodetic Branch staff for current required CAD mapping standards. The Geodetic Branch staff is using the information required above to create a standard DWR property management map and Geographic Information System. All information provided shall be kept for Department records. Contacting Geodetic Branch staff directly for questions regarding these standards and the review and approval of land surveying deliverables is encouraged. It is our goal to be involved from the beginning of the project to assist and streamline your review and approval process.

*Daniel K. Mardock, PLS
Chief, Geodetic Branch
California Department of Water Resources
1416 Ninth St., Room 445
Sacramento, CA 95814
Mobile 916-704-6914
daniel.mardock@water.ca.gov*

CHIEF, GEODETIC BRANCH
CALIFORNIA DEPARTMENT OF WATER RESOURCES

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RECEIVED

**EXHIBIT A, ATTACHMENT 2
 WORK AUTHORIZATION**

Lower Yolo Ranch Tidal Habitat Restoration Project

Department of Water Resources	Work Authorization No. xxxx
	DWR Contract No. xxxxx

Title of Work Authorization: _____

Contractor shall exercise a good-faith effort to identify and list in this Work Authorization Deliverables that require development or are impacted by this Work Authorization.

Contractor shall develop or revise as applicable each identified Deliverable. Contractor shall complete the development or revision within a reasonable timeframe to be mutually agreed upon by the Parties. This Form is intended to only be used in the event that DWR required modifications to the Project design or restoration add more than two-hundred and fifty thousand dollars (\$250,000) to the Project's total cost and shall be borne by DWR pursuant to the term of the Purchase Agreement.

Schedule Dates	
Start Date	Completion Date*

Costs				
Personnel To Be Assigned	Job Classification/Skill Level	Labor Hours	Labor Hour Rate	COST

Description of work to be done. Detail changes from the original design, detailed pricing for the original work, details of the proposed new work, and detailed pricing for the proposed new work. Provide a list of deliverables. Additional documentation may be requested. Use additional pages if necessary.

Description of Work:

Deliverables:

State responsibilities: Participate in and oversee the Contractor tasks and responsibilities. These tasks will be performed in accordance with this Work Authorization and the applicable provisions of DWR contract No. 46XXXXXXXX

APPROVALS:
STATE OF CALIFORNIA

Name
DWR Program Manager

Date

CONTRACTOR

Name
Project Director
COMPANY NAME

Date

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS
PUBLIC ENTITIES**

A. INVOICING AND PAYMENT

Contractor shall submit three copies of the invoice to the State only after receiving written notice of satisfactory completion or acceptance of work by the DWR Contract Manager. **The State will not accept an invoice for work that has not been approved and will return the invoice as a disputed invoice to the Contractor.**

Invoices shall be submitted upon completion of tasks or deliverables, in arrears, bearing the contract number.

Contractor must submit three copies of each invoice to the following address in order to expedite approval and payment:

DWR Accounting Office
Contracts Payable Unit
P.O. Box 942836
Sacramento, California 94236-0001

DWR Accounting Office
Contracts Payable Unit
P.O. Box 942836
Sacramento, California 94236-0001

Undisputed invoices shall be **paid** within 45 days of the date received by the DWR Accounting Office.

B. BUDGET CONTINGENCY CLAUSE

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

**EXHIBIT B, ATTACHMENT 1
COST SHEET**

Habitat Acreage Credits (x)	Cost per Acreage Credit (=)	Total Cost
1679.5	\$23,815.00	\$39,997,292.50
Additional Services (as needed)*		\$4,002,707.50
	Total Cost	\$44,000,000.00

*Per the Credit Development and Purchase Agreement, page 5-6

8. Restoration Construction Process and DWR Oversight

c. Westlands will consult with DWR in good faith throughout the process to enable DWR to evaluate and provide guidance and input regarding the construction of the Project, including potential opportunities to maximize Habitat Acreage Credits and ecological values by incorporating adjacent restoration efforts, including Yolo Flyway Farms hydrologic connections. DWR may require reasonable, cost-effective changes to the Project, provided, that the costs of such changes, which in the aggregate, add more than two-hundred, fifty thousand dollars (\$250,000) to the Project's total cost shall be borne by DWR.

GTC 04/2017**EXHIBIT C****GENERAL TERMS AND CONDITIONS**

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:** Time is of the essence in this Agreement.

13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded

by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**EXHIBIT D—Special Terms and Conditions for
Department of Water Resources
(Local Public Entities - Payables)**

1. **RESOLUTION OF DISPUTES:** In the event of a dispute, Contractor shall file a "Notice of Dispute" with the Director or the Director's Designee within ten (10) days of discovery of the problem. The State and Contractor shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the State and Contractor are unable to resolve the dispute, the decision of the Deputy Director of Business Operations shall be final, unless appealed to a court of competent jurisdiction.

In the event of a dispute, the language contained within this agreement shall prevail over any other language including that of the bid proposal.

2. ~~**PAYMENT RETENTION CLAUSE:** Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Section 10346 pending satisfactory completion of all services under the contract.~~

3. ~~**RENEWAL OF CCC:** Contractor shall renew the Contractor Certification Clauses or successor documents of (3) years or as changes occur, whichever occurs sooner.~~

4. **AGENCY LIABILITY:** The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

5. **POTENTIAL SUBCONTRACTORS:** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.

6. **SUBCONTRACTING:** "Should it be necessary to subcontract for supplemental services or specialists, the Contractor shall obtain prior written consent from DWR. If the subcontracts total more than \$50,000 or 25% of the total contract, whichever is less, then the Contractor must certify that the subcontractor has been selected by the Contractor pursuant to a bidding process requiring at least three bids from responsible bidders or pursuant to the procedures set forth in Government Code Section 4525 et seq., as applicable. If Contractor is unable to obtain three competitive bids or three Statement of Qualifications, Contractor shall submit a written explanation to DWR. DWR will then decide whether to seek authorization to allow Contractor to proceed with the proposed subcontract. Contractors shall assure that all administrative fees for subcontracts are reasonable considering the services being provided and the oversight required. Contractor shall only pay overhead charges on the first \$25,000 for each subcontract."

Initial
DM
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7. **COMPUTER SOFTWARE:** For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
8. **REPORT OF RECYCLED CONTENT CERTIFICATION:** In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required products to the Department at the conclusion of the services specified in this contract. Form DWR 9557 is attached to this Exhibit and made a part of this contract by this reference.
9. **REIMBURSEMENT CLAUSE:** If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be:
10. ~~**TERMINATION CLAUSE:** The State may terminate this contract without cause upon 30 days advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.~~
11. **CONTRACTOR COOPERATION DURING INVESTIGATION:** Contractor agrees to cooperate fully in any investigation conducted by or for DWR regarding unsatisfactory work or allegedly unlawful conduct by DWR employees or DWR contractors. The word "cooperate" includes but is not limited to, in a timely manner, making Contractor staff available for interview and Contractor records and documents available for review.
12. **CONFLICT OF INTEREST:**
- a. **Current and Former State Employees:** Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
- (1) **Current State Employees:** (PCC §10410)
- (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- (2) **Former State Employees:** (PCC §10411)
- (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.



b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

The Contractor must disclose to the DWR Program Manager any activities by contractor or subcontractor personnel involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DWR may immediately terminate this contract if the contractor fails to disclose the information required by this section. DWR may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

e. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

f. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

13. COMMERCIAL DRIVER MEAL PERIOD AND REST PERIOD: To comply with Supreme Court case *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, Contractor shall ensure that commercial drivers employed or subcontracted for under this contract shall receive meal periods and rest periods commensurate with those required by Department of Industrial Relations Wage Order 9, sections 11 and 12: <https://www.dir.ca.gov/IWC/IWCArticle9.pdf>.

14. ORDER OF PRECEDENCE: In the event of any inconsistency between the terms, specifications, provisions or attachments which constitute this Contract, the following order of precedence shall apply:

- a) The General Terms and Conditions;
- b) The Std. 213;
- c) The Scope of Work;
- d) Any other incorporated attachments in the Contract by reference

1. Postconsumer material comes from products that were bought by consumers, used, then recycled. For example: a newspaper that has been purchased and read, next recycled, and then used to make another product would be postconsumer material.

If the product does not fit into any of the product categories, enter "N/A". Common N/A products include wood products, natural textiles, aggregate, concrete, electronics such as computers, TV, software on a disk or CD, telephone.

2. Product category refers to one of the product categories listed below, into which the reportable purchase falls. For products made from multiple materials, choose the category that comprises most of the product by weight, or volume.

Note: For reuse or refurbished products, there are no minimum content requirements.

For additional information visit www.ciwmb.ca.gov/BuyRecycled/

Description Product Categories	Minimum Content Requirement
Paper Products – Recycled	30 percent postconsumer fiber, by fiber weight
Printing and Writing – Recycled	30 percent postconsumer fiber, by fiber weight
Compost, Co-compost, and Mulch – Recycled	80 percent recovered materials i.e., material that would otherwise be normally disposed of in a landfill
Glass – Recycled	10 percent postconsumer, by weight
Re-refined Lubricating Oil – Recycled	70 percent re-refined base oil
Plastic – Recycled	10 percent postconsumer, by weight
Printer or duplication cartridges	a. Have 10 percent postconsumer material, or b. Are purchased as remanufactured, or c. Are backed by a vendor-offered program that will take back the printer cartridges after their useful life and ensure that the cartridges are recycled and comply with the definition of recycled as set forth in Sections 12200-12217, et seq. and 12153-12156, et seq. of the Public Contract Code.
Paint – Recycled	50 percent postconsumer paint (exceptions when 50 percent postconsumer content is not available or is restricted by a local air quality management district, then 10 percent postconsumer content may be substituted)
Antifreeze – Recycled	70 percent postconsumer material
Retreated Tires – Recycled	Use existing casing that has undergone retreading or recapping process in accordance with Public Resource Code (commencing with section 42400).
Tire – Derived – Recycled	50 percent post consumer tires
Metals – Recycled	10 percent postconsumer, by weight

**EXHIBIT E
ADDITIONAL PROVISIONS**

1. COPYRIGHT

All rights in copyright works created by the Contractor in the performance of work under this agreement are the property of the State.

2. PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

3. PROTECTION OF CONFIDENTIAL AND SENSITIVE INFORMATION: This shall apply to all Contractors whose terms with the Department require or permit access to Confidential or Sensitive Information in conducting business with the Department or performing duties under a Contract with the Department. Contractor shall impose all the requirements of this provision on all of its officers, employees, and Affiliates with access to Confidential and/or Sensitive Information in accordance with Attachment 1. Also a Nondisclosure Certificate, Attachment 2, must be signed by all personnel with access to Confidential and Sensitive Information and submitted to the Department prior to being allowed such access.

Protection of Confidential and Sensitive Information

1. For purposes of this Exhibit, "Contractor" means any contractor or researcher, including a Non-State Entity contractor or researcher, receiving funds from, doing business with, conducting research for, or performing services for the Department of Water Resources ("Department") pursuant to a contract, purchase order, research agreement, grant or loan agreement, joint powers agreement, public works contract, or other contractual vehicle (collectively "Contract"). The term "Contractor" also includes Contractor's officers and employees and Affiliates. For purposes of this Exhibit, the term "Affiliate" means a person or entity forming a partnership, joint venture, subcontract, sales contract, or other legal relationship with Contractor to carry out the terms of the Contract.
2. This Exhibit shall apply to all Contractors the terms of whose Contracts with the Department require or permit access to Confidential or Sensitive Information in conducting business with the Department or performing duties under a Contract with the Department.
3. Contractor shall impose all the requirements of this Exhibit on all of its officers, employees and Affiliates with access to Confidential and/or Sensitive Information.
4. For purposes of this Exhibit, "Non-State Entity" shall mean a business, organization or individual that is not a State entity, but requires access to State information assets in conducting business with the State. This definition includes, but is not limited to, researchers, vendors, consultants, and their subcontractors, officers, employees, and entities associated with federal and local governments and other states.
5. For purposes of this Exhibit, "Confidential Information" means information, the disclosure of which is restricted or prohibited by any provision of State or federal law or which is treated as privileged or confidential under such laws. Such Confidential Information includes, but is not limited to, information that is exempt from disclosure under the California Public Records Act (Government Code sections 6250-6255), privileged information as provided by California Evidence Code sections 900-968, public social services client information described in California Welfare and Institutions code section 10850, and "personal information" about individuals as defined in California Civil Code section 1798.3 of the Information Practices Act (IPA) if the disclosure of the "personal information" is not otherwise allowed by the IPA. Such Confidential Information may also include financial, statistical, personal, technical, and other data and information relating to operation of the Department.
6. For purposes of this Exhibit, "Sensitive Information" means information that requires special precautions to protect it from unauthorized modification or deletion. Sensitive information may be either public records or Confidential Information. Examples include statistical reports, financial reports, and logon procedures.
7. Contractor shall take all reasonably necessary measures to protect Confidential or Sensitive Information to which it or its Affiliates gain access from unauthorized access (accidental or intentional), modification, destruction, or disclosure. These measures may include, but are not limited to: password protection of electronic data, encrypted transmission of electronic data, and secure mailing and locked storage of paper and taped copies. Such measures may also include establishment of secure workstations and maintenance of a secure workstation access log.

Contractors shall also apply appropriate security patches and upgrades and keep virus software up-to-date on all systems on which Confidential or Sensitive Information may be used.

8. Contractors shall ensure that all media, including electronic media, containing Confidential or Sensitive Information, to which they are given access are protected at the level of the most confidential or sensitive piece of data on the media.
9. Contractor and Affiliate personnel allowed access to Confidential and Sensitive Information shall be limited to those persons with a demonstrable business need for such access. Contractor shall maintain a current listing of all Contractor and Affiliate personnel with access to Confidential and Sensitive Information.
10. Contractor shall notify Department promptly if a security breach involving Confidential or Sensitive Information occurs or if Contractor becomes legally compelled to disclose any Confidential Information.
11. Contractor shall comply with all State policies and laws regarding use of information resources and data, including, but not limited to, California Government Code section 11019.9 and Civil Code sections 1798 et seq. regarding the collection, maintenance and disclosure of personal and confidential information about individuals.
12. If Contractor obtains access to Confidential Information containing personal identifiers, such as name, social security number, address, date of birth, race/ethnicity and gender of individuals, Contractor shall substitute non-personal identifiers as soon as possible.
13. All data, reports, information, inventions, improvements and discoveries used, compiled, developed, processed, stored or created by Contractor or Contractor's Affiliates using Confidential and/or Sensitive Information shall be treated as Confidential and/or Sensitive Information by the Contractor and Contractor's Affiliates. No such data, reports, information, inventions, improvements or discoveries shall be released, published or made available to any person (except to the Department) without prior written approval from the Department.
14. At or before the termination date of the Contract, Contractor shall either (a) destroy all Confidential and Sensitive Information in accordance with approved methods of confidential destruction; or (b) return all Confidential and Sensitive Information to the Department; or (c) if required by law to retain such information beyond the termination date of the contract, provide for the Department's review and approval a written description of (i) applicable statutory or other retention requirements; (ii) provision for confidential retention in accordance such requirements and the terms of this Exhibit and (iii) provision for eventual destruction in accordance with all applicable provisions of State and federal law using approved methods of confidential destruction.
15. Contractor shall cooperate with the Department's Information Security Officer or his designee in carrying out the responsibilities set forth in this Exhibit.
16. Failure to adhere to these requirements may be grounds for termination of the Contract and for imposition of civil and criminal penalties.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential and Sensitive Information is provided to me pursuant to the terms and restrictions of the **Protection of Confidential and Sensitive Information**, Exhibit E, Attachment 1 of Contract No. 4600012954 between Westlands Water District and the California Department of Water Resources. I hereby agree to be bound by those terms and restrictions. I understand that all Confidential and Sensitive Information, as defined in the **Protection of Confidential and Sensitive Information**, and any notes or other memoranda, or any other form of information, electronic or otherwise that copies or discloses Confidential Information, shall not be disclosed to anyone other than in accordance with the **Exhibit E, Attachment 1**. I acknowledge that a violation of this certificate may result in termination of the Contract and/or imposition of civil or criminal penalties.

Signed: Thomas W. Birmingham

Thomas W. Birmingham

Typed Name and Title: _____

Representing (give name of Contractor/Affiliate): westlands water district

Date: 6/3/2019