

**JOINT POWERS AGREEMENT  
OF THE  
YOLO COUNTY HABITAT/NATURAL COMMUNITY CONSERVATION PLAN  
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This Agreement (“Agreement”) is made by and between THE COUNTY OF YOLO, THE CITY OF DAVIS, THE CITY OF WEST SACRAMENTO, THE CITY OF WINTERS, and THE CITY OF WOODLAND (hereinafter collectively called the “Member Agencies”), for the purpose of implementing the “Agreement Regarding Mitigation Impacts to Swainson’s Hawk Foraging Habitat in Yolo County”, assisting in the planning, preparation and subsequently administering and implementing the Yolo County Habitat Conservation and Natural Community Conservation Plan (hereinafter the “YCHCP/NCCP”).

RECITALS

WHEREAS, each of the parties hereto is a public agency authorized and empowered to contract for the joint exercise of powers under Government Code Sections 6500, *et seq.* of the State of California.

WHEREAS, each of the Member Agencies is authorized to regulate the use of land, acquire open space and conservation easements, exercise general planning and zoning powers, enter into contracts and take other actions to provide and maintain habitat for wildlife and plant resources.

WHEREAS, the United States Fish and Wildlife Services (the “USFWS”) and/or the California Department of Fish and Game (the “CDFG”) has listed or may list certain wildlife and plant species which are present in Yolo County as endangered or threatened. In order for the Member Agencies to obtain permits for incidental takings of the Covered Species and their habitats, the Member Agencies are developing an YCHCP/NCCP for the protection of habitat

occupied by the Covered Species. This Agreement creates a joint powers agency composed of the Cities and County to plan, prepare, administer and implement the YCHCP/NCCP.

## 1. PURPOSE AND POWERS

1.1 Creation of Habitat JPA. There is hereby created a joint powers agency known as the Yolo County Natural Community Conservation Plan Joint Powers Agency, hereinafter called the “Habitat JPA”. The Habitat JPA is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. (Gov. Code §§ 6500, *et seq.*)

1.2 Purpose. The purpose of the Habitat JPA is to establish a separate public agency to (a) implement the Mitigation Agreement; and (2) assist in the planning and preparation of the YCHCP/NCCP and then to administer and implement the YCHCP/NCCP if one is approved by the Member Agencies and then by CDFG and an HCP if one is approved by the Member Agencies and then by USFWS. These purposes may be enlarged or expanded only by the unanimous vote of the Member Agencies.

1.3 Powers. The Habitat JPA shall have the power to exercise any power common to all the Member Agencies consistent with the purpose of the JPA, with the exception of the power of eminent domain. These powers shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the City of Davis. The Habitat JPA is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers and all other acts authorized by law, including but not limited to any or all of the following:

1.3.1 To make and enter into contracts;

1.3.2 To employ personnel, agents, consultants, and attorneys, and contract with Member Agencies for the use of employees of the Member Agencies on mutually agreeable

terms and conditions.

1.3.3 To acquire property and any interest in property, both real and personal, by purchase, gift, lease, option, grant, bequest, devise or otherwise, but not by eminent domain, and to hold and dispose of such property;

1.3.4 To implement the Mitigation Agreement, to prepare, develop and implement the YCHCP/NCCP, and to conduct and direct studies and plans to complement, modify or supplement the YCHCP/NCCP;

1.3.5 To incur and pay debts, liabilities, and obligations;

1.3.6 To sue and be sued in its own name;

1.3.7 To be an applicant, make applications for, and receive grants from governmental and private entities and to participate in State bond issues;

1.3.8 To prepare reports and applications, to qualify for grants, and to enter into grant contracts and to do all other things necessary to comply with State and Federal laws and regulations with respect to grants;

1.3.9 To borrow or receive advances of funds from the member Agencies or from such other sources as may be permitted by law;

1.3.10 To exercise all other powers common to the Member Agencies not specifically mentioned above which may be necessary to carry out the purposes of this Agreement; however, in no event shall the Habitat JPA exercise the power of eminent domain.

## 2. TERMS

2.1 Effective Date. This Agreement shall become effective and the Habitat JPA shall be created on the first day following the approval of this Agreement by the last of the Member Agencies.

2.2 Board of Directors. This Agreement and the Habitat JPA created hereby shall be administered by the governing body of the Habitat JPA which shall be known as the “Board of Directors of the Yolo County Habitat/Natural Community Conservation Plan Joint Powers Agency,” herein called the “Board”.

The Board shall be composed of two members of the Yolo County Board of Supervisors and one member of each of the City Councils of the City of Davis, the City of West Sacramento, the City of Winters and the City of Woodland. Each Member Agency shall also appoint an alternate for each of its representatives on the Board, who shall also be an elected member of the Member Agency’s governing board. Board representatives and their alternates shall serve at the pleasure of their appointing bodies. In the absence of the regular representative of a Member Agency, the alternate representative of such Agency shall, if present, participate in a meeting of the Board the same as if the alternate were the regular representative.

The University of California, Davis (“UCDavis”) may appoint a person to serve as a nonvoting ex officio member of the Board. Upon the formal request of UCDavis, and subject to concurrence of the governing board of each Member Agency, UCDavis may join the Board as a regular voting member.

Board representatives and their alternates’ compensation, if any, and expenses for attendance at Board meetings shall be borne by the Member Agency appointing such Board representative or alternate. All other expenses, including expenses incurred on behalf of the Habitat JPA, shall be borne by the Habitat JPA.

2.3 Meetings of the Board of Directors

2.3.1 Regular Meetings. The Board shall provide for the dates, hour, and place of its regular meetings by resolution, and a copy of such resolution shall be furnished to each

Member Agency.

2.3.2 Ralph M. Brown Act. All meetings of the Board, including without limitation, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

2.3.3 Minutes. The Habitat JPA shall cause to be kept minutes of all meetings of the Board, shall cause the minutes of all meetings to be ratified by the Board, and shall cause a copy of the ratified minutes to be forwarded to each member of the Board and to each of the Member Agencies.

2.3.4 Voting and Quorum. Each director shall have one vote. Representation at meetings of at least a majority of the voting members of the Board constitutes a quorum for the transaction of business; except that less than a quorum may adjourn from time to time. The affirmative vote of at least four members of the Board shall be required to take any action.

2.3.5 Establishment of Priority Areas. Each jurisdiction may establish Priority Areas for the acquisition of land or easement using funds generated from that jurisdiction. The JPA shall make a good faith effort to find properties in that Priority Area meeting the site selection criteria of the YHCP/NCCP prior to using those funds elsewhere in the County. Until such time as the HCP/NCCP is approved by CDFG and USFWS, the Habitat JPA shall obtain CDFG's prior written approval for the acquisition of land or easement, including approval of the biological suitability of the habitat proposed for protection. All land and easements acquired by the Habitat JPA must be located wholly within the boundaries of the County of Yolo.

2.4 Officers. The Board shall elect its own officers, which shall include a chairperson, vice-chairperson, and secretary. The chairperson and vice-chairperson shall be

members of the Board and the secretary may, but need not, be a member of the Board.

2.5 Treasurer. The Treasurer of the Habitat JPA shall be the Treasurer of the County of Yolo, or the Habitat JPA may designate a treasurer from one of the other Member Agencies or a certified public accountant. The Treasurer may charge the Habitat JPA a reasonable fee for performing services on behalf of the Habitat JPA.

2.6 Auditor. The auditor of the Habitat JPA shall be the Auditor/Controller of the County of Yolo or such other auditor as the Habitat JPA Board may appoint consistent with Gov. Code §§ 6505.5 and 6505.6. The Auditor-Controller may charge the Habitat JPA a reasonable fee for performing services on behalf of the Habitat JPA.

2.7 Land Manager. The Habitat JPA Board may appoint a Land Manager, who shall serve at the pleasure of the Board. The Land Manager shall make recommendations on potential mitigation sites and carry out all functions necessary to purchase mitigation sites, implement approved site management plans, monitor mitigation sites, and perform other duties as directed by the Board.

2.8 Official Bond. The public officer, officers or persons who have charge of, handle, or have access to any property of the Habitat JPA shall file an official bond in an amount to be fixed by the Board.

2.9 Technical Advisory Committee. The Board shall form a Technical Advisory Committee (hereinafter the "TAC") within 120 calendar days of the Effective Date of the JPA Agreement, whose membership shall include, but is not limited to, representatives of each Member Agency, the USFWS, the CDFG, UC Davis, a member of the agricultural community, a member of the environmental community, and other stakeholders in the YCHCP/NCCP as determined by the Board. The TAC shall advise the Board on technical, policy, economic and

implementation aspects of the YCHCP; recommend site-specific management plans for prospective mitigation sites; and identify habitat management and/or enhancement criteria and criteria by which to measure the success of the mitigation on a particular site. The TAC's role is advisory only; the Board shall have sole authority to approve or disapprove individual mitigation sites and management plans, or to take any action without referring the matter to the TAC.

2.10. Nonprofit Organization to Hold Title. If the Department of Fish and Game does not elect to hold title, as soon as practicable, the Habitat JPA shall select one or more private, nonprofit organizations eligible to hold title pursuant to Civil Code section 815.3 to hold title to conservation easements and lands in fee title which are acquired by the Habitat JPA. The Habitat JPA shall utilize a competitive selection process to identify organization(s) which will be acceptable to all of the Member Agencies. If no nonprofit organization is identified, then the Habitat JPA Board, with the prior written consent of the Department, shall determine the entity to hold title which may be any public or private, nonprofit entity eligible to hold title pursuant to Civil Code section 815.3.

All deeds granting conservation easements and fee title interests to the nonprofit organization(s) selected by the Habitat JPA to hold title (hereinafter the "Non-Profit") shall, at a minimum, provide that: (1) the Habitat JPA shall have a right to enforce the terms and use restrictions contained in the deed; (2) the interest conveyed may not be transferred, conveyed, encumbered or hypothecated without the express written consent of the Habitat JPA or the Department of Fish and Game; (3) the Habitat JPA shall be the Non-Profit's successor-in-interest to the property conveyed; and (4) the Department of Fish and Game shall be a third party beneficiary with the right to enforcement of the easement.

2.11 Contributions/Annual Work Plan.

2.11.1 Contribution of Mitigation Fees. The Member Agencies have imposed a mitigation fee on certain types of development within their jurisdictions pursuant to a Memorandum of Understanding entered into in December, 1993 and pursuant to an Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County entered into in \_\_\_\_\_, 2002. All such mitigation fees collected by the Member Agencies prior to the effective date of this Agreement shall be deposited into the treasury of the Habitat JPA within sixty (60) days of such effective date. All mitigation fees collected from and after the effective date of this Agreement shall be forwarded to the Habitat JPA within sixty (60) days after receipt thereof by the Member Agency, or as otherwise required by the Implementing Agreement entered into or to be entered into by the Member Agencies, the USFWS and CDFG.

2.11.2 Use of Contributions. All mitigation fee revenues shall be used for the sole purpose of acquiring, monitoring, managing and enhancing habitat conservation land in Yolo County consistent with CDFG approval and the Mitigation Agreement. Mitigation fee revenues shall not be used to pay overhead or other administrative costs, except as specifically permitted in the Mitigation Agreement, and shall not be used to pay costs of preparing or revising the YCHCP/NCCP. All other non-mitigation fee revenues received by the Habitat JPA including, but not limited to, grants and other contributions, may be used to further any of the purposes of the Habitat JPA.

2.11.3 Annual Work Plan and Budget. As soon as practicable after the effective date of this Agreement and no later than April 1 of each year thereafter, the Board shall prepare a proposed work plan and estimated budget for the upcoming fiscal year. The proposed work plan and budget shall be forwarded to the governing bodies of the Member Agencies for their review

and comment. The Habitat JPA Board shall consider the comments of the Member Agencies and may make appropriate revisions to the work plan and budget. The Board shall endeavor to approve a final work plan and budget as soon as practicable after the effective date of this Agreement and on or before July 1 of each year thereafter.

2.12 Annual Review. After adoption of the YCHCP/NCCP, the Habitat JPA shall carry out all activities required by it under the Mitigation Agreement and the YCHCP/NCCP.

2.13 Mitigation Monitoring. The Habitat JPA may allocate a larger portion of the mitigation fee collected to mitigation monitoring, or recommend to the Member Agencies an increase in the amount of the fee to cover the costs of mitigation monitoring beyond the monitoring described in the YCHCP/NCCP. In addition, the Habitat JPA may determine to seek outside funding to cover the cost of additional species monitoring on easements or lands which are acquired by the Habitat JPA pursuant to the YCHCP/NCCP.

2.14 Consultant Contracts. The Habitat JPA shall, upon request of the County, accept assignment of all consultant contracts which the County has entered into for the preparation and implementation of the YCHCP/NCCP and Implementing Agreement.

2.15 Accounting and Audits.

2.15.1 Fiscal Year. The fiscal year of the Habitat JPA shall be from July 1 through the following June 30.

2.15.2 Accounting Procedures and Audit. Full books and accounts shall be maintained for the Habitat JPA in accordance with practices consistent with those utilized by like public agencies.

2.16 Withdrawal. Any Member Agency may withdraw from the Habitat JPA by

giving the Habitat JPA sixty (60) days written notice of its withdrawal. Upon withdrawal of any Member Agency from the Habitat JPA, the withdrawing member shall not receive any distribution, partial or otherwise, of cash or other assets of the Habitat JPA. The withdrawal of any Member Agency shall not affect the validity or enforceability of this Agreement, the YCHCP/NCCP, or the Mitigation Agreement as they relate to the remaining Member Agencies and land within the jurisdiction of the remaining Member Agencies.

2.16.0.1 Dissolution. This Agreement automatically terminates and the Habitat JPA dissolves in two years from the effective date of this Agreement unless the Board votes to continue the Agreement. In addition, this Agreement may be terminated and the Habitat JPA dissolved at any time by written consent of a majority of the Member Agencies evidenced by certified copies of resolutions of their governing boards. Any such dissolution shall be effective at the end of the fiscal year in which the action was taken.

Upon dissolution or termination, the assets of the Habitat JPA may be distributed in kind or assets may be sold and the proceeds thereof distributed to the Member Agencies at the time of dissolution or termination; provided, however, that any distribution of assets shall be subject to the prior discharge of enforceable liability incurred by the Habitat JPA. Subject to the foregoing, upon dissolution or termination of the Habitat JPA, each member shall receive its proportionate share of the assets of the Habitat JPA as the same appear on the books of the Habitat JPA. Each member's proportionate share shall be based upon such member's contributions to the Habitat JPA. In the event that there are conservation easements and lands in fee title held by the Habitat JPA at the time of dissolution or termination of this Agreement, then title to those easement and lands along with the resulting responsibility for monitoring and maintaining the habitat conservation activities required by the YCHCP/NCCP and/or CDFG,

shall be distributed to the Member Agencies in a manner to be determined by a vote of the Habitat JPA Board. In any such vote, the monetary contributions of each Member Agency shall be the primary consideration for distribution of title to these easements and lands.

2.17 Liabilities. The debts, liabilities and obligations of the Habitat JPA shall be the debts, liabilities and obligations of the Habitat JPA alone, and not of the Member Agencies. Should a court determine, notwithstanding the foregoing, that the Member Agencies are liable for injuries or damages resulting from the tortious activity of the JPA or agents of the JPA, each member shall contribute equally to satisfy such liability.

2.18 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given in writing and addressed to the principal office of the Habitat JPA.

2.19 Validity. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall by any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

2.20 Amendment. This Agreement shall not be amended except by an agreement in writing signed by all parties.

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DATED: \_\_\_\_\_

COUNTY OF YOLO

By: \_\_\_\_\_  
Chairman of the Board  
of Supervisors

ATTEST:

\_\_\_\_\_  
CLERK OF THE BOARD

DATED: \_\_\_\_\_

THE CITY OF DAVIS

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

DATED: \_\_\_\_\_

THE CITY OF WEST SACRAMENTO

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

DATED: \_\_\_\_\_

THE CITY OF WINTERS

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

DATED: \_\_\_\_\_

THE CITY OF WOODLAND

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK