

**AMENDED AND RESTATED SERVICES AGREEMENT**  
**LAND MANAGEMENT**

THIS AMENDED AND RESTATED AGREEMENT is entered into as of the 1st day of January 2013, by and between THE NATOMAS BASIN CONSERVANCY ("TNBC"), a California non-profit public benefit corporation, and JIM SOPWITH, doing business as SOPWITH FARMS, a sole proprietorship having its principal place of business at 4850 Riego Road, Sacramento, CA 95876 (the "Contractor"). This amendment extends the original agreement dated January 1, 2010 for an additional two years.

**Recitals**

A. The Natomas Basin Habitat Conservation Plan ("NBHCP") is the conservation plan required under the federal Endangered Species Act (the "Act") designed to support applications for federal permits under Section 10(a)(1)(B) of the Act for activities covered (the "Covered Activities") under the NBHCP occurring within the approximately 53,537-acre area interior to the toe of levees surrounding the Natomas Basin (the "Permit Area"), located in the northern portion of Sacramento County and the southern portion of Sutter County. The NBHCP also serves a nearly identical purpose under the California state law pursuant to Section 2081(b) of the California Fish and Game Code.

B. TNBC is a nonprofit entity serving as "plan operator" for the NBHCP. TNBC acquires and manages habitat reserve lands and develops and implements Site-Specific Management Plans (SSMP) for each preserve within the Natomas Basin. Currently, TNBC owns and operates 28 properties in the Natomas Basin for a total of over 4,500 acres (the "Preserve Areas"). The Preserve Areas are listed and are shown on **Exhibit A**, attached and incorporated herein by reference. Within the Preserve Areas TNBC owns and operates approximately 890 acres of managed marsh and non-farmed upland areas (the "Subject Areas"). The Subject Areas are listed on **Exhibit B**, attached and incorporated herein by reference. TNBC contemplates the acquisition and conversion of additional real property within the Permit Area for use as Preserve Areas. Any such additional property, once so converted, shall be deemed a "Preserve Area" and shall be incorporated under this Agreement.

C. The NBHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values and incidental take of endangered and threatened species covered by the Agency (the "Covered Species") that could result from urban development, operation and maintenance of irrigation and drainage systems, and certain activities associated with the TNBC's management of its system of reserves. The goal of the NBHCP is to provide mitigation for the impacts of Covered Activities on the Covered Species.

D. TNBC desires to retain the Contractor to perform land management tasks (the "Contract Tasks") in furtherance of the NBHCP. TNBC desires to retain the Contractor to provide such services by reason of its qualifications, experience and cost efficiency, and the Contractor has offered to provide the required services on the terms and in the manner set forth in this Agreement.

#### Agreements

TNBC AND CONTRACTOR HEREBY AGREE AS FOLLOWS:

1. Contract Coordination.

a. TNBC's Field Supervisor shall be the representative of TNBC for all purposes under this Agreement, provided that in the absence of the Field Supervisor, TNBC's Executive Director shall act as the representative of TNBC.

b. The Contractor shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for the Contractor. Jim Sopwith is hereby designated as the Contract Manager for the Contractor.

2. Qualifications of Contractor.

a. The Contract Manager and all employees of Contractor shall have valid licenses to operate any equipment they operate, including motor vehicles, to be used in carrying out the Contract Tasks and other services and/or activities under this Agreement.

b. Contractor shall have available and maintain in proper working order all equipment and supplies necessary to carry out the Contract Tasks specified in the Scope of Contract Tasks. Such equipment shall include, but shall not be limited to:

(i) Pick-up truck equipped with all-wheel drive, four-wheel drive or equivalent vehicle;

- (ii) All terrain vehicle;
- (iii) Tractor with mowing and chopping attachments;
- (iv) Irrigation equipment for trees and shrubs, including hoses, drip emitters and pumps; and for larger irrigated areas, shovels and other necessary equipment;
- (v) Wireless telephone;
- (vi) Hand tools typically required for the Contract Tasks contemplated in this Agreement;
- (vi) Safety equipment typically required for the safe operation and use of vehicles, tools, equipment and supplies which Contractor uses in carrying out the purposes of this Agreement.

3. Scope of Contract Tasks.

The Contractor shall perform the following services ("Standard Services") in accordance with the terms and conditions set forth in this Agreement:

- a. Regular Site Visits. The Contractor shall inspect each of the listed Subject Areas at least twice per week.
- b. Vegetation Management. The Contractor shall carry out vegetation control to include: chopping or mowing of vegetation in upland areas, use of string trimmers where chopping or mowing is impracticable, herbicide application according to State and Federal regulation and in consultation with TNBC, coordination of livestock used in vegetation management (not including care of livestock), aquatic weed management, water level management to control vegetation and burning in consultation with TNBC.
- c. Irrigation. Under direction from the Field Supervisor, crews will conduct irrigation activities on marsh complexes, including drip irrigation on trees and shrubs.
- d. Clean up. Contractor crews shall be responsible for site clean-up; provided that in the event crews encounter debris which appears to be dangerous or toxic, or which is larger than a pickup truck bed will accommodate, the crews shall immediately contact TNBC for disposal.

e. Site Maintenance. Contractor will be responsible for site maintenance, including looking for debris, weed escapes, fence breaks, sign destruction and similar matters that need attention.

f. Miscellaneous. Contractor shall carry out minor repairs to fences, tree and shrub pruning and/or clearance from time to time, road smoothing after such perimeter roads are rutted up over winter and creating fire breaks as may be needed.

g. Equipment. Contractor shall furnish all equipment and supplies needed to carry out the terms of this Agreement.

4. Directory Resources from TNBC. TNBC shall furnish the Contractor with maps, surveys, keys, lock combinations, telephone contact information and other similar information in possession of TNBC covering the Contract Tasks required under this Agreement.

5. Time of Performance. The services of the Contractor are to commence on January 1, 2013 and to terminate on December 31, 2014, and shall be undertaken and completed within the time limits set forth herein, or as otherwise mutually agreed upon by TNBC and the Contractor. TNBC and Contractor shall meet in October 2014 to determine if a one-year extension to this Agreement is warranted.

6. Compensation. The Contractor shall be compensated in the amount of \$5,000.00 per month for satisfactory completion of the Standard Services. Contractor shall be paid within 30 days of presenting a statement for contractor's monthly services to TNBC.

Compensation for additional land management services ("Additional Services") which may be required by TNBC and/or performed at TNBC's direction shall be on a time and materials basis. Mr. Sopwith's time for Additional Services shall be billed at the rate of \$100.00 per hour. Persons carrying out a foreman function for Contractor shall be billed at the rate of \$40.00 per hour. Persons hired by Contractor to perform field labor shall be billed at the rate of \$35.00 per hour. Materials purchased for the purposes of carrying out Additional Services shall be billed through to TNBC at Contractor's actual cost. The combined total of Standard Services and Additional Services shall not exceed \$25,000.00 per month without prior written approval from TNBC. Such written approval may include email.

7. Liability of Members and Employees of TNBC. No Board member, officer, employee or agent of TNBC shall be personally liable to the Contractor or any successor in

interest or to any other parties, whether transacting matters with the Contractor or otherwise, in the event of any default or breach of TNBC or for any amount which may become due to the Contractor or any successor in interest or for any obligations directly or indirectly incurred under the terms of this Agreement.

8. Contractor Not an Agent of TNBC. The Contractor is an independent contractor and is not an agent of TNBC, and TNBC retains all rights of approval and discretion with respect to any project to which this Agreement pertains. The Contractor, its officers, employees and agents shall not have any power to bind or commit TNBC to any decision or course of action, and the Contractor, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of TNBC or that it or they have the power to bind or commit TNBC.

9. Employees of Contractor. If, in the performance of this Agreement, any third persons are employed as employees of the Contractor, such persons shall be employed by and shall be entirely and exclusively under the direction, supervision and control of the Contractor. All terms of employment of said persons, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, shall be made by the Contractor, and TNBC shall have no right or authority over said persons or the terms of such employment.

TNBC is committed to establishing and maintaining a workplace that is free from unlawful harassment and discrimination. As required by law, TNBC has developed an "Anti-Harassment and Anti-Discrimination Policy" applicable to all independent contractors that is attached hereto as **Exhibit C** to this Agreement. Contractor shall be responsible for informing all of its employees, representatives, contractors, and/or agents who will be entering and performing work pursuant to this Agreement about this policy. In the event Contractor acquires information to suggest that this policy is being violated, Contractor shall promptly notify TNBC.

10. Insurance/Indemnification. The Contractor shall, during the entire term of this Agreement, maintain its own automobile insurance, maintain workers' compensation insurance as required by State law, maintain general liability insurance in a minimum amount of \$2,000,000. The Contractor shall indemnify and hold TNBC harmless from any and all

claims and liabilities related to or arising as a result of the Contractor's negligence and/or willful misconduct in the performance of its obligations pursuant to this Agreement.

11. Assignment Prohibited. Neither TNBC nor the Contractor may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

12. Termination of Agreement. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by either party upon *thirty (30) days'* advance written notice to the other party via U.S. mail, hand-delivery or facsimile. In the event of such termination, the Contractor shall not be entitled to any additional compensation over that already paid or owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that the Contractor shall be entitled to compensation for work in progress at the time of termination.

13. Amendment. This Agreement may be amended or extended from time to time by the written agreement of the parties hereto.

14. Notices. Written notices and communications between the parties shall be sufficiently given if dispatched by first class mail, postage prepaid, addressed as follows:

TNBC:                      John R. Roberts, Executive Director  
                                    The Natomas Basin Conservancy  
                                    2150 River Plaza Drive, Suite 460  
                                    Sacramento, CA 95833  
                                    916.649.3331 telephone  
                                    916.649.3322 fax

CONTRACTOR:              Jim Sopwith, dba Sopwith Farms  
                                    4850 Riego Road  
                                    Sacramento, CA 95876  
                                    916.929.7657 telephone  
                                    916.488.4251 fax

15. Integration. This Agreement is integrated, and contains all of the terms, considerations, understandings and promises of the parties with respect to the subject matter hereof; it shall be read as a whole.

16. Attorneys' Fees. In any action brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

17. Nondiscrimination. No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

**IN WITNESS WHEREOF**, TNBC and the Contractor have executed this Agreement as of the date first above written.

THE NATOMAS BASIN CONSERVANCY, a  
California non-profit public benefit corporation

By   
John R. Roberts, Executive Director

"TNBC"

JIM SOPWITH, dba SOPWITH FARMS

By   
Jim Sopwith

"CONTRACTOR"

EXHIBIT A  
PRESERVE AREAS

2013 BASE MAP

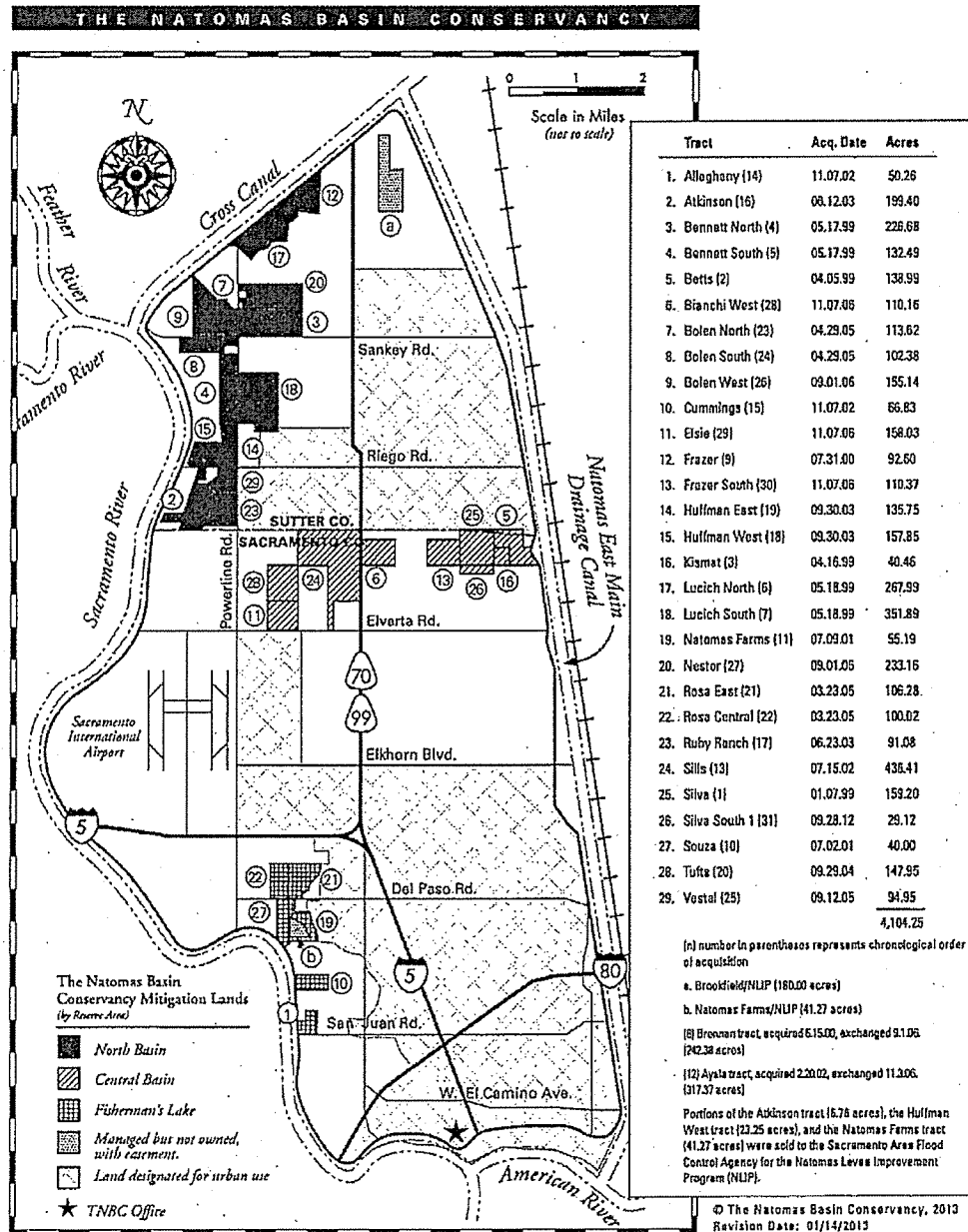




EXHIBIT B

LIST OF SUBJECT AREAS

Betts, Kismat and Silva, 328 acres (192.5100 acres marsh, 145.9750 acres upland)  
Fraser North, 92.6 (68.4 acres marsh, 24.2000 acres upland)  
Lucich North, 267 acres (247.3060 acres marsh, 20.6800 acres upland)  
Bennett North, 74.2400 acres marsh, 0.5100 acres upland  
Bennett South, 22.74 acres marsh, 29.0460 upland  
Lucich South, 16.4500 acres marsh, 19.5390 acres upland  
Natomas Farms, 51.7 acres marsh, 44.7600 acres upland  
Cummings, 41 acres marsh, 25.8307 acres upland  
Other TNBC-owned land within the Natomas Basin which may be mutually agreed to by both Contractor and TNBC (See Exhibit A for a complete list of TNBC-owned land).

## EXHIBIT C

### ANTI-HARASSMENT AND ANTI-DISCRIMINATION POLICY

The Natomas Basin Conservancy (TNBC) maintains a workplace free of harassment and discrimination. Although you are not an employee of TNBC, you do work as an independent contractor, have access to TNBC workplace, and, at times, interact with employees and other workers. As a result, you are obligated to adhere to TNBC's Anti-Harassment and Anti-Discrimination Policy. It is your obligation to inform all of your employees, representatives, contractors, and/or agents who will be entering and performing work on the Owner's property about this policy. Nothing in this memo or accompanying policy is intended to alter your independent contractor status, nor is it intended to create an "employer/employee" relationship.

#### **Anti-Harassment and Anti-Discrimination Policy**

All employees, applicants, and independent contractors ("workers") of The Natomas Basin Conservancy ("TNBC") are to be treated with respect and dignity. TNBC is committed to providing a work environment free of unlawful harassment and discrimination. TNBC policy prohibits all harassment and discrimination because of sex, gender, race, religious creed, color, national origin or ancestry, genetic condition, physical or mental disability, medical condition, including AIDS, marital status, age, sexual orientation or any other basis protected by federal, state or local law or ordinance or regulation. All such harassment or discrimination is unlawful. TNBC's anti-harassment and discrimination policy applies to all persons involved in the operation of TNBC and prohibits unlawful harassment or discrimination by any worker of TNBC.

Prohibited unlawful harassment includes, but is not limited to:

- a. Verbal conduct such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments;
- b. Visual conduct such as derogatory and/or sexually-oriented posters, photography, cartoons, drawings or gestures;
- c. Physical conduct such as assault, unwanted touching, blocking normal movement or interfering with work because of sex, race or any other protected basis;
- d. Threats and demands to submit to sexual requests as a condition of continued employment, or to avoid some other loss, and offers of employment benefits in return for sexual favors; and
- e. Retaliation for opposing, reporting or threatening to report unlawful harassment, or for participating in an investigation, proceeding or hearing conducted by the Fair Employment and Housing Commission.

You may have a claim of prohibited harassment even if you have not lost a job or some other economic benefit. Prohibited harassment that impairs your working ability or emotional well-being at work violates this policy and will not be tolerated.

**Complaint Procedure.** In adopting the above policy, TNBC assures its workers that every reasonable step will be taken to prevent harassment from occurring. However, if a worker believes that he or she has been harassed or discriminated against, the worker is urged to immediately do the following:

When possible, confront the harasser, communicate that the conduct is unwelcome, and persuade him or her to stop.

Provide a written or oral complaint to the Executive Director as soon as possible after any incident you feel violates this policy. Your complaint should include details of the incident or incidents, names of the individuals involved and names of any witnesses. If you do not feel comfortable submitting the complaint to the Executive Director, you can submit the complaint to the President.

After a worker reports unlawful harassment or discrimination, TNBC will undertake a prompt and thorough investigation of the harassment allegations.

If TNBC determines that unlawful harassment has occurred, appropriate remedial action will be taken in accordance with the circumstances involved. Any worker determined by TNBC to be responsible for unlawful harassment will be subject to disciplinary action, up to and including termination of the employment or contractor relationship. Whatever action is taken against the harassed will be made known to the worker lodging the complaint. TNBC will not retaliate against anyone for reporting, in good faith, any suspected violation of this policy or for participating in an investigation. TNBC will not knowingly tolerate or permit retaliation by management or co-workers.

TNBC encourages all workers to report any incidents of harassment forbidden by this policy immediately so that complaints can be quickly and fairly resolved. You should also be aware that the Federal Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing investigate and prosecute complaints of prohibited harassment in employment. These agencies may accept, investigate and prosecute complaints. Damages and other remedies (such as back pay, reinstatement, and/or fines) can be awarded in appropriate cases. If you think you have been harassed or that you have been retaliated against for resisting or complaining, you may file a complaint. The nearest office of the Department of Fair Employment and Housing is: 2000 "O" Street, Sacramento, CA 95814-5212 (916/445-9918)