

ORIGINAL

17-54619
#435-01710

**COSUMNES FLOODPLAIN MITIGATION BANK
AGREEMENT FOR SALE OF MITIGATION CREDITS**

Permit Number: 1600-2016-0217-R2

This Agreement is entered into this 5 day of May, 2016, by and between WESTERVELT ECOLOGICAL SERVICES, LLC (Bank Owner) and COUNTY OF EL DORADO (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Owner has developed the Cosumnes Floodplain Mitigation Bank (Bank) located in Sacramento County, California; and

B. The Bank was approved by the U.S Army Corps of Engineers (USACE), U.S Environmental Protection Agency (USEPA) and California Department of Fish and Wildlife (CDFW) (jointly referred to as "Agencies") on **September 30, 2009**, and is currently in good standing with these agencies; and

C. The Bank has received approval from the Agencies to offer riparian wetlands and seasonal wetlands under the Clean Water Act and riparian forest, scrub-shrub, and Shaded Riverine Aquatic (SRA) credits through the *Cosumnes Floodplain Mitigation Bank Enabling Instrument* (Bank Agreement); and

D. Project Applicant is seeking to implement the **Diamond Springs Parkway Phase 1A Project** described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact riparian scrub-shrub habitat and seeks to compensate for the loss of said habitat by purchasing credits from the Bank; and

E. Project Applicant has been authorized by California Department of Fish and Wildlife, Permit number 1600-2016-0217-R2, to purchase from the Bank **0.43 Floodplain Riparian Habitat credits** upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant **0.43 Floodplain Riparian Habitat credits**.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank **0.43 Floodplain Riparian Habitat credits** for the purchase price of **\$36,550.00**. The Bank will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B." The purchase price for said credits shall be paid by cashier's check or, at the option of Bank, wire transfer of funds according to written instructions by Bank to Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Applicant. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant hereby commits to purchase the Credits and in association therewith shall tender payment for the Credits no later than thirty (30) days from the date of this Agreement.

6. Upon purchase of the credits specified in paragraph E above, the Bank shall submit to the parties listed in the Notices section of the Bank Agreement / Bank Enabling Instrument, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Service File Number; vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory / ledger should include all sales data from bank opening/establishment to the present.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK:

WESTERVELT ECOLOGICAL SERVICES, LLC
Cosumnes Floodplain Mitigation Bank Owner

By:  _____ Date: 3/29/2017

PROJECT APPLICANT:

COUNTY OF EL DORADO

By:  _____ Date: 3/9/17
Shiva Frentzen, Chair
Board of Supervisors
"County"

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

By:  _____ Date: 5/9/17
Deputy Clerk

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The project consists of the realignment of State Road 49 (SR-49)/Diamond Road from Pleasant Valley Road to north of Lime Kiln Road. SR-49/Diamond Road will be aligned to the west to create a frontage road for residences along the east. The realigned road will be improved with two 12-foot lanes and 8-foot shoulders. This project comprises Phase 1A of the larger Diamond Springs Parkway Project, which is a proposed future four-lane divided roadway connecting Missouri Flat Road to SR-49.

The road realignment will require the filling of 0.089 acre of stream channel and removal of 0.212 acre of riparian/upland vegetation. In order to maintain drainage for the realigned roadway and to minimize the impact to biological resources, a new channel will be created and vegetated to the east of the realigned roadway.

Exhibit "B"

BILL OF SALE

In consideration of **\$36,550.00**, receipt of which is hereby acknowledged, *Westervelt Ecological Services, LLC* does hereby bargain, sell and transfer to the *County of El Dorado*, **0.43 Floodplain Riparian Habitat credits** from the *Cosumnes Floodplain Mitigation Bank* in Sacramento County, California, developed, and approved by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and California Department of Fish and Wildlife.

Westervelt Ecological Services, LLC represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Westervelt Ecological Services, LLC covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: _____

Westervelt Ecological Services, LLC
Cosumnes Floodplain Mitigation Bank Owner

By: _____

Exhibit "C"

**Cosumnes Floodplain Mitigation Bank
PAYMENT RECEIPT**

PARTICIPANT INFORMATION

Name: County of El Dorado
Address: 2850 Fairlane Court
Placerville, CA 95667
Telephone: (530) 621-5136
Contact: Jeff Nettleton, PE

PROJECT INFORMATION

Project Description: Diamond Springs Parkway Phase 1A Project
Permit Number: 1600-2016-0217-R2
Species/Habitat Affected: riparian habitat
Credits to be Purchased: **0.43 Floodplain Riparian Habitat credits**
Payment Amount: \$36,550.00
Project Location: Along State Route 49, north of Black Rice Road, and south of Bradley Drive; within the community of Diamond Springs, County of El Dorado.
County/Address: East of State Route 49, between Black Rice Road and Bradley Drive

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC
Payer: El Dorado County
Amount: Thirty Six Thousand Five Hundred and Fifty Dollars (\$36,550.00)
Method of payment: Cash Check No. Money Order No.

Received by: _____ Date: _____
(Signature)

Name: _____ Title: _____