

ORIGINAL

#3704

Cosumnes Floodplain Mitigation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS

Permit Number: 1600-2018-0291-R2

This Agreement is entered into this 12th day of March, 2019 by and between WESTERVELT ECOLOGICAL SERVICES, LLC (Bank Owner) and the El Dorado County Department of Transportation (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), National Marine Fisheries Service (NMFS) 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 **Oak Hill Road at Squaw Hollow Creek Bridge Replacement project** described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact waters of the U.S. and seeks to compensate for the loss by purchasing Credits from the Bank; and

E. Project Applicant has been authorized by the California Department of Fish and Wildlife (Permit Number: 1600-2018-0291-R2), to purchase from the Bank **0.06 Floodplain Riparian Habitat Credits** upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. The minimum credit unit for purchase at the bank is no less than one hundredth of a credit; and

G. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant **0.06 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 **0.06 Floodplain Riparian Habitat Credits** for the purchase price of **\$5,100.00**. 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 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: 2/7/2019

PROJECT APPLICANT:

EL DORADO COUNTY

By:  Date: 3/12/2019

Board of Supervisors
"County"

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

By:  Date: 3/12/2019

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

Permit No. 1600-2018-0291-R2

The project is limited to replacing an existing two-lane, 19.6-foot-wide and 24-foot-long reinforced concrete deck/girder bridge with a new bridge. The new bridge, which will be located slightly west of the existing bridge, will have two 12-foot-wide travel lanes with 3-foot-wide shoulders on each side. The vertical alignment of the bridge may raise approximately 5 feet. The foundation of the new bridge will consist of spread footings. The bridge abutments will be located on the banks of Squaw Hollow Creek and will not be in the active channel. Rock slope protection may be placed around the new abutments to protect them from scouring and erosion. Excavation for the abutments is not expected to exceed approximately 20 feet below the existing ground surface. Eleven alder trees and one oak will be removed from the banks of Squaw Hollow Creek.

Exhibit "B"

BILL OF SALE

In consideration of \$5,100.00, receipt of which is hereby acknowledged, *Cosumnes Floodplain Mitigation Bank* Sponsor does hereby bargain, sell and transfer to the [Project Applicant] El Dorado County Community Development Services **0.06 Floodplain Riparian Habitat credits** in 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, California Department of Fish and Wildlife, and National Marine Fisheries Service.

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: El Dorado County Department of Transportation

Address: 2850 Fairlane Court, Placerville, CA 95667

Telephone: (530) 621-3829

Contact: Donna Keeler

PROJECT INFORMATION

Project Description: Oak Hill Road at Squaw Hollow Creek Bridge Replacement

Project File Number: 1600-2018-0291-R2

Species/Habitat Affected: Floodplain Riparian Habitat

Credits to be Purchased: 0.06

Payment Amount: \$5,100.00

Project Location: 0.6 mile south of Oak Hill Road-Pleasant Valley Road intersection

County/Address: El Dorado County

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC

Payer: County of El Dorado Department of Transportation

Amount: Five Thousand Seven Hundred Dollars

Method of payment: Cash Check No. Money Order No.

Received by: _____ Date: _____
(Signature)

Name: _____ Title: _____