

Grasslands Mitigation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS
Permit Number: SPK-2011-00977

THIS AGREEMENT is made and entered into effective this ____ day of _____, 2016, by and between WESTERVELT ECOLOGICAL SERVICES, LLC., a Delaware limited liability corporation (the "**Bank Owner**"), and the CITY OF FRESNO, a California municipal corporation (the "**Project Applicant**") (jointly referred to as the "**Parties**").

RECITALS

WHEREAS, the Bank Owner has developed the Grasslands Mitigation Bank located in Merced County, California (the "**Bank**"); and

WHEREAS, the Bank was approved by the United States Fish and Wildlife Service (Service), the United States Army Corps of Engineers (the "**Corps**"), the Environmental Protection Agency (the "**EPA**"), and the California Department of Fish and Wildlife (CDFW) (jointly referred to as "**Resource Agencies**") on **July 8, 2015**, and is currently in good standing with these agencies; and

WHEREAS, the Bank Owner has received approval from the Resource Agencies to offer Giant Garter Snake Credits for sale as compensation for the loss of giant garter snake (*Thamnophis gigas*) and its habitat, and Seasonal Wetland Credits as compensation for impacts to wetlands regulated by the federal Clean Water Act, through the *Grasslands Mitigation Bank Enabling Instrument* (the "**Bank Agreement**"); and

WHEREAS, the Project Applicant desires to implement the project described in Exhibit "A" attached hereto (the "**Project**"), which would unavoidably and adversely impact 0.485 acres of waters of the United States, and seeks to compensate for the loss of said habitat by purchasing Seasonal Wetland Credits from the Bank Owner; and

WHEREAS, the Project Applicant has been authorized by the Corps, Permit Number: **SPK-2011-00977**, to purchase from the Bank Owner, 0.485 Seasonal Wetland Credits (the "**Credits**") upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

WHEREAS, the minimum credit unit for purchase at the Bank Owner is no less than one hundredth of a credit; and

WHEREAS, the Project Applicant desires to purchase from the Bank Owner, and the Bank Owner desires to sell to the Project Applicant, 0.49 Seasonal Wetland Credits.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. The Bank Owner hereby sells to the Project Applicant and the Project Applicant hereby purchases from the Bank Owner, **0.49 Seasonal Wetland Credits** for the purchase price of **\$73,500.00**. The Bank Owner will then deliver to the 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 the Bank Owner, wire transfer of funds according to written instructions by the Bank Owner to the Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to the 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. The 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, the Bank Owner shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to the Project Applicant. The Bank Owner shall be fully and completely responsible for satisfying any and all conditions placed on the the Bank Owner or the Credits by all state or federal agencies.

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

6. Upon purchase of the Credits, the Bank Owner shall submit to the Parties listed in the Notices section of the Bank Agreement/Bank Enabling Instrument, copies of: (a) the Agreement for Sale of Credits; (b) the Bill of Sale; (c) the Payment Receipt; and (d) an updated ledger. The updated inventory/ledger must detail: (i) the Project Applicant; (ii) Project Name; (iii) Status (i.e., sale complete/sale not complete); (iv) Credit Sale Date; (v) Service File Number; (vi) United States 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.

CITY OF FRESNO,
a municipal corporation

WESTERVELT ECOLOGICAL
SERVICES, LLC.,
a Delaware Limited Liability Corporation

By: _____
Thomas C. Esqueda Date
Director of Public Utilities

By:  5/25/2016
Travis Hemmen Date
Vice President

ATTEST
YVONNE SPENCE, CMC
City Clerk

By:  5/24/16
Ray F. Robbins, III Date
Secretary

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney


By:  05/26/16
Seth Mehrten Date
Deputy City Attorney

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The City of Fresno seeks to implement the Fresno Raw Water Pipeline project. The approximately 113.269-acre project site is located on the Friant-Kern Canal, and along a linear right of way between the Friant-Kern Canal and the City of Fresno's Northeast Surface Water Treatment Plant, Fresno County, California.

The project involves the construction of a 60-inch raw water pipeline to deliver water from the Friant-Kern Canal to the City of Fresno's Northeast Surface Water Treatment Plant.

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Exhibit "B"

BILL OF SALE

Permit Number: SPK-2011-00977

In consideration of **\$73,500.00**, receipt of which is hereby acknowledged, *Westervelt Ecological Services, LLC.*, does hereby bargain, sell, and transfer to *City of Fresno* (Project Applicant), **0.49 seasonal wetland** credits in the *Grasslands Mitigation Bank* in Merced County, California, developed, and approved by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, 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.

WESTERVELT ECOLOGICAL SERVICES, LLC.
a Delaware Limited Liability Corporation

By: _____
Travis Hemmen Date
Vice President

Grasslands Mitigation Bank
MITIGATION CREDITS: PAYMENT RECEIPT

PARTICIPANT INFORMATION

Name: City of Fresno, DPU, Water Division

Address: 2101 G Street, Building A
Fresno, CA 93706

Telephone: (559) 621-1622

Contact: Michael Carbajal, Manager

PROJECT INFORMATION

Project Description: Fresno Raw Water Pipeline Project

Permit Number: SPK-2011-00977

Habitat Affected: 0.485 acres of waters of the United States

Credits to be Purchased: 0.49 seasonal wetland

Payment Amount: \$73,500.00

Project Location: Friant-Kern Canal, and along a linear right of way between the Friant-Kern Canal and the City of Fresno's Northeast Surface Water Treatment Plant

County/Address: Fresno County

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC.

Payer: City of Fresno

Amount: Seventy-Three Thousand Five hundred Dollars (\$73,500)

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

Received by: _____ Date: _____
(Signature)

Name: _____ Title: _____