

Grasslands Mitigation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS
Permit Number: SPK-2015-00713

This Agreement is entered into this ____ day of _____, 2016, by and between WESTERVELT ECOLOGICAL SERVICES, LLC (Bank Owner) and CITY OF FRESNO (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

- A. The Bank Owner has developed the Grasslands Mitigation Bank located in Merced County, California; and
- B. The Bank was approved by the U. S. Fish and Wildlife Service (Service), U.S Army Corps of Engineers (Corps), Environmental Protection Agency (EPA) and 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
- C. The Bank has received approval from the Resource Agencies to offer Giant Garter Snake Credits for sale as compensation for the loss of giant garter snake (*Thamnopsis 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* (Bank Agreement); and
- D. Project Applicant is seeking to implement the project described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact 0.513 acres of waters of the United States, and seeks to compensate for the loss of said habitat by purchasing seasonal wetland credits from Bank; and
- E. Project Applicant has been authorized by the Corps, Permit Number: **SPK-2015-00713**, to purchase from the Bank **1.02 seasonal wetland** 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 **1.02 seasonal wetland** credits;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank **1.02 seasonal wetland** credits for the purchase price of **\$153,000**. 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 process 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
Grasslands Mitigation Bank Owner

By:  DATE: 5/3/2016
TRAVIS HEMMEN
Vice President

PROJECT APPLICANT:

City of Fresno

By: _____
THOMAS C. ESQUEDA DATE
Director of Public Utilities

ATTEST
YVONNE SPENCE CMC
City Clerk

By: _____
DATE

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney


By:  5/4/16
BRANDON M. COLLET DATE
Deputy City Attorney

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The City of Fresno seeks to implement the Kings River Pipeline (KRP) and Southeast Surface Water Treatment Facility (SESWTF) projects. The KRP project site begins at the Fresno Canal, and extend 13 miles west along E. Belmont Avenue to the SESWTF project site, at the intersection of N. Armstrong Avenue and E. Olive Avenue, located in Fresno County, California. SPK-2015-00713.

Exhibit "B"

BILL OF SALE

Permit Number: SPK-2015-00713

In consideration of **\$153,000**, receipt of which is hereby acknowledged, *Westervelt Ecological Services, LLC* does hereby bargain, sell and transfer to *City of Fresno* (Project Applicant), **1.02 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.

DATED: _____

Westervelt Ecological Services, LLC
Grasslands Mitigation Bank Owner

By: _____

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: Kings River Pipeline and Southeast Surface Water Treatment Facility
Projects

Permit Number: SPK-2015-00713

Habitat Affected: 0.513 acres of waters of the United States

Credits to be Purchased: 1.02 seasonal wetland

Payment Amount: \$153,000

Project Location: The Kings River Pipeline project begins at the Fresno Canal, and extends 13 miles west along E. Belmont Avenue to the Southeast Surface Water Treatment Facility project site at the intersection of N. Armstrong Avenue and E. Olive Avenue.

County/Address: Fresno County

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC

Payer: City of Fresno

Amount: One Hundred and Fifty-Three Thousand Dollars (\$153,000)

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

Received by: _____ Date: _____
(Signature)

Name: _____ Title: _____