

Dutchman Creek Conservation Bank
AGREEMENT FOR SALE OF MITIGATION CREDITS
ITP No. 2081-2014-056-04
Service File No. 08ESMF00-2008-F-1764

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

RECITALS

- A. The Bank Owner has developed the Dutchman Creek Conservation Bank located in Merced County, California; and
- B. The Bank was approved by the U.S. Fish and Wildlife Service (Service) and California Department of Fish and Wildlife (CDFW) on *May 16, 2014*, and is currently in good standing with these agencies; and
- C. The Bank has received approval from the U.S. Fish and Wildlife Service (Service) and California Department of Fish and Wildlife (CDFW) to offer vernal pool fairy shrimp, vernal pool tadpole shrimp, Conservancy fairy shrimp, San Joaquin kit fox, California tiger salamander, western spadefoot toad, Swainson's hawk, and western burrowing owl credits for sale as compensation for the loss of federally listed vernal pool habitats as specified in the Dutchman Creek Conservation Bank Enabling Instrument (Bank Agreement); and
- D. Project Applicant is seeking to implement the project described in Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact California tiger salamander habitat, and seeks to compensate for the loss of California tiger salamander habitat by purchasing California tiger salamander credits from Bank; and
- E. Project Applicant has been authorized by **CDFW Incidental Take Permit No. 2081-2014-056-04**, to purchase from the Bank **0.47 VPFS, VPTS, COFS & CTS (CDFW - approved Covered Species breeding habitat) credits, 1.18 VPFS, VPTS, & CTS/WSFT (CDFW - approved Covered Species breeding habitat) credits, and 16.38 SJKF, BUOW, SWHA & CTS/WSFT (CDFW - approved Covered Species upland refugia 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 **0.47 VPFS, VPTS, COFS & CTS (CDFW - approved Covered Species breeding habitat) credits, 1.18 VPFS, VPTS, & CTS/WSFT (CDFW - approved Covered Species breeding habitat) credits, and 16.38 SJKF, BUOW, SWHA & CTS/WSFT (CDFW - approved Covered Species upland refugia habitat) credits;**

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank **0.47 VPFS, VPTS, COFS & CTS (CDFW - approved Covered Species breeding habitat) credits, 1.18 VPFS, VPTS, & CTS/WSFT (CDFW - approved Covered Species breeding habitat) credits, and 16.38 SJKF, BUOW, SWHA & CTS/WSFT (CDFW - approved Covered Species upland**

refugia habitat) credits for the purchase price of \$247,500 for the breeding credits and \$152,000 for the upland credits, totaling \$399,500. 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 D 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
Dutchman Creek Conservation Bank

By: _____

Date: _____

PROJECT APPLICANT:

City of Fresno

THOMAS C. ESQUEDA
Director of Public Utilities

DATE

ATTEST
YVONNE SPENCE CMC
City Clerk

By: _____

DATE

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

BRANDON M. COLLET
Deputy City Attorney

DATE

UNITED STATES FISH AND WILDLIFE SERVICE:

This Agreement fulfills a portion of the Project Applicant's proposed California tiger salamander habitat conservation measures, as described in the Service's Biological Opinion; Service File Number 08ESMF00-2008-F-1764 dated November 24, 2015. The Service verifies that the Dutchman Creek Conservation Bank is in good standing as of the date of this Agreement.

By: _____

Date: _____

Sacramento Fish and Wildlife Office

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The City of Fresno seeks to implement the Raw Water Pipeline Project in central Fresno County. The project will involve the construction of an underground raw water pipeline which will convey raw (untreated) water from the existing Friant-Kern Canal to the existing City of Fresno surface water treatment facility. Specifically, the Project will include: 1) construction of a 4.6-mile long, 60-inch diameter, underground, gravity-flow pipeline within a 60.84-acre construction easement (Project Area); 2) connecting the new underground pipeline to the existing canal and surface water treatment facility; 3) installing the aboveground flow/surge control, air/vacuum release, and corrosion testing appurtenances along its length; 4) construction the hydropower plant at the surface water treatment facility; 5) constructing a compacted gravel access roadway over portions of the pipeline; and 6) Operation and Maintenance (O&M) of the new underground pipeline. Although it is considered unlikely, O&M could include 7) activities to expose and repair the pipeline in the event of a failure at some point during the term of the ITP.

Exhibit "B"

BILL OF SALE

CDFW ITP No. 2081-2014-056-04
Service File No. 08ESMF00-2008-F-1764

In consideration of **\$247,500 for the breeding credits and \$152,000 for the upland credits, totaling \$399,500**, receipt of which is hereby acknowledged, *Westervelt Ecological Services* does hereby bargain, sell and transfer to *City of Fresno* (Project Applicant), **0.47 VPFS, VPTS, COFS & CTS (CDFW - approved Covered Species breeding habitat) credits, 1.18 VPFS, VPTS, & CTS/WSFT (CDFW - approved Covered Species breeding habitat) credits, and 16.38 SJKE, BUOW, SWHA & CTS/WSFT (CDFW - approved Covered Species upland refugia habitat) credits** in the Dutchman Creek Conservation Bank in Merced County, California, developed, and approved by the U. S. Fish and Wildlife Service and California Department of Fish and Wildlife.

Westervelt Ecological Services 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 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
Dutchman Creek Conservation Bank

By: _____

Exhibit "C"
Dutchman Creek Conservation Bank
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: Raw Water Pipeline Project

CDFW Permit Number: ITP No. 2081-2014-056-04
Service File No. 08ESMF00-2008-F-1764

Species/Habitat Affected: California tiger salamander habitat

Credits to be Purchased: 0.47 VPFS, VPTS, COFS & CTS (CDFW - approved Covered Species breeding habitat) credits, 1.18 VPFS, VPTS, & CTS/WSFT (CDFW - approved Covered Species breeding habitat) credits, and 16.38 SJKF, BUOW, SWHA & CTS/WSFT (CDFW - approved Covered Species upland refugia habitat) credits

Payment Amount: \$247,500 for the breeding credits and \$152,000 for the upland credits, totaling \$399,500

Project Location: North of the City of Clovis

County: Fresno County

PAYMENT INFORMATION

Payee: Westervelt Ecological Services, LLC

Payer: City of Fresno

Amount: Three Hundred and Ninety-Nine Thousand Five Hundred Dollars

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

Received by: _____ Date: _____
(Signature)

Name:

Title: