

Credit Sale and Transfer Agreement

This Credit Sale and Transfer Agreement (“**Agreement**”) is entered into this [Enter Day] day of [Enter Month], 20XX, by and between [Enter Bank Sponsor Name] (“**Bank Sponsor**”) and the [Enter Purchaser Name] (“**Purchaser**”), jointly referred to as the “**Parties**,” as follows:

RECITALS

A. The Bank Sponsor has developed the [Bank Name] located in the city of [City Name], [County Name] County, California (“**Bank**”); and

B. The Bank has been developed pursuant to that certain [choose: Bank Enabling Instrument (“**BEI**”) or Conservation Banking Enabling Instrument (“**CBEI**”)] entered into by and among the Bank Sponsor, the _____ (“**Property Owner**”), and [Select all that apply: the U.S. Army Corps of Engineers (“**USACE**”), the U.S. Environmental Protection Agency (“**USEPA**”), the National Marine Fisheries Service (“**NMFS**”), the U.S. Fish and Wildlife Service (“**USFWS**”), the California Department of Fish and Wildlife (“**CDFW**”), the State Water Resources Control Board (“**State Water Board**”), and the California Regional Quality Control Board (“**Regional Water Board**”)] referred to individually sometimes as a “**Signatory Agency**,” and collectively as the “**Signatory Agencies**,” on [enter BEI/CBEI execution date]; and

C. The Bank is currently in good standing with the Signatory Agencies; and

D. The Bank Sponsor previously received approval from the Signatory Agencies to offer [list Credit types here] credits from the Bank (“**Credits**”) for Sale (defined below) pursuant to the terms of the [Choose BEI or CBEI] and any amendments thereto; and

E. The [Choose BEI or CBEI] defines “**Sale**” as the sale of Credits by the Bank Sponsor, and a “**Transfer**” as the use or application of Credits to mitigate for a particular project’s impacts by a person or entity seeking the Transfer (the “**Permittee**”); and

F. Pursuant to the terms of the [Choose BEI or CBEI], a Transfer may occur only if the Bank Sponsor has received: (i) a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the specified purchased Credits; and (ii) written notice from the Permittee that it is electing to use the specified purchased Credits toward the permit(s)/approval(s)/authorization(s) obligation (“**Notice**”); and Bank Sponsor has accepted the legal responsibility for providing the required compensatory mitigation of such permit(s)/approval(s)/authorization(s), if required; and

G. The Purchaser, as Permittee, is seeking to implement the project described in Exhibit A attached hereto (“**Project**”), which would unavoidably and adversely impact _____ [species/habitat to be impacted by the Project, e.g., streams], and seeks to compensate for the loss of _____ [species/habitat affected, e.g., streams] by purchasing [enter number of credits and credit type] Credits (“**Specified Credits**”); and

H. The Purchaser and the Bank Sponsor wish to complete a Sale of the Specified Credits; and

I. The Purchaser, as Permittee, wishes to Transfer the Specified Credits and to effect the Transfer, has provided to the Bank Sponsor a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the Specified Credits, identified in Exhibit A, copies of which are attached hereto as Exhibit B and incorporated herein by reference, to compensate for impacts resulting from the Project.

J. Requests for Credit Transfers associated with a CDFW, USFWS, and/or a NFMS permit or authorization must first be approved by CDFW, USFWS, and/or NMFS, as indicated on page 4 below, prior to full execution of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Purchase Price: The purchase price for the Specified Credits shall be \$ _____ (the “**Purchase Price**”). The Purchase Price shall be paid by means acceptable to the Bank Sponsor on the Closing Date (defined below).

2. Acknowledgement of Sale and Transfer. On the Closing Date, Bank Sponsor shall deliver to Purchaser a fully executed Bill of Sale (Exhibit C) and Payment Receipt (Exhibit D).

3. Closing; Closing Date. The closing will occur on or before _____, **20**__, or such other date to which the Purchaser and the Bank Sponsor mutually agree in writing (the “**Closing Date**”). On the Closing Date, the Purchaser shall pay the Purchase Price to the Bank Sponsor and, upon receipt of the Purchase Price, the Transfer of the Specified Credits to mitigate for the Project shall occur and the Bank Sponsor shall deliver the fully executed Bill of Sale and Payment Receipt to Purchaser.

4. Submission to Signatory Agencies. Upon the Sale and Transfer of the Specified Credits, the Bank Sponsor shall submit to the Signatory Agencies and upload into the cyber repository in the Regulatory In-Lieu Fee and Bank Information Tracking System (“**RIBITS**”), copies of: a) this Agreement; b) the Bill of Sale; c) the Payment Receipt; and d) an updated ledger as required by the terms of the [choose: BEI or CBEI]. The Bank Sponsor shall enter this Sale and Transfer into the ledger in RIBITS.

5. Transfer. The Transfer of the Specified Credits shall be only for compensatory mitigation of the Project, and the Specified Credits may not be used as compensatory mitigation for any other project or purpose, except as set forth herein.

6. Responsibility for Compensatory Mitigation. Except for any permit/approval/authorization issued by CDFW, upon Transfer, the Bank Sponsor accepts the legal responsibility for providing the compensatory mitigation specified in the permit(s)/approval(s)/authorization(s) identified in Exhibit A and attached as Exhibit B. The Purchaser, as Permittee, retains responsibility for providing the compensatory mitigation specified in any permit/approval/authorization issued by CDFW, identified in Exhibit A, and attached as Exhibit B.

7. Notice. This Agreement constitutes the notice provided for in Recital F.

8. Integration. The Parties agree that all negotiations, discussions, understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits attached hereto, and this written Agreement alone fully and completely expresses their agreement with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties relating to the subject matter of this Agreement.

9. Termination. In the event the Purchaser has not delivered the Purchase Price to the Bank Sponsor on or before the Closing Date, this Agreement shall automatically terminate without the need for any further action by the Bank Sponsor, and the Bank Sponsor shall have no further obligations to the Purchaser under this Agreement. In addition, the Parties agree that if this Agreement terminates as set forth in this section, no Sale or Transfer of the Specified Credits shall have occurred.

10. Amendments and Modifications. This Agreement may not be amended or modified except by an agreement in writing signed by the Parties. Promptly after execution of this Agreement, the Bank Sponsor shall provide the Signatory Agencies a copy of each amendment or modification and upload the amendment or modification into the cyber repository in RIBITS. All amendments and modifications shall be appended to this Agreement.

11. Counterparts. This Agreement may be executed and delivered in any number of identical counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

12. Effective Date. This Agreement will become effective when signed by the last Party.

13. Miscellaneous.

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

B. The Specified Credits shall be non-transferable and non-assignable and shall not be used as compensatory mitigation except as set forth in this Agreement.

C. By reason of the Sale and Transfer of the Specified Credits, Purchaser shall not assume the obligations of Bank Sponsor or Property Owner under the [Choose BEI or CBEI].

D. Any notice or other written communication given pursuant to this Agreement shall be delivered to the other Party by first class U.S. mail, certified or registered U.S. mail, facsimile mail, electronically, or _____, with mailed copy as follows:

Bank Sponsor:
[Add contact information]

Purchaser:
[Add contact information]

E. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any bylaw, covenants, and/or other restrictions placed upon them by their respective entities.

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

BANK SPONSOR:

By: _____ Date: _____
NAME
TITLE

PURCHASER:

By: _____ Date: _____
NAME
TITLE

UNITED STATES FISH AND WILDLIFE SERVICE APPROVAL:

This Transfer fulfills a portion of the Permittee's proposed _____ (listed species) habitat conservation measures, as described in the USFWS's Biological Opinion or Permit; USFWS File Number _____ dated _____. The USFWS verifies that the _____ Bank is in good standing as of the signature date of this approval.

By: _____ Date: _____

Printed Name: _____

Title: _____

NATIONAL MARINE FISHERIES SERVICE APPROVAL

This Transfer fulfills a portion of the Permittee's proposed _____ (listed species) habitat conservation measures, as described in the NMFS's Biological Opinion or Permit; NMFS File Number _____ dated _____. The NMFS verifies that the _____ Bank is in good standing as of the signature date of this approval.

By: _____ Date: _____

Printed Name: _____

Title: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE APPROVAL

The CDFW verifies that the [enter Bank Name] Bank is in good standing as of the date of the signature below.

This Agreement fulfills a portion of the Project Applicant's proposed [enter names of listed species] habitat conservation measures, as described in CDFW'S Permit; Permit Number [enter CDFW Permit Number/authorization] dated _____.

By: _____ Date: _____

Printed Name: _____

Title: _____

California Department of Fish and Wildlife

Region _____

Exhibit "A"
Description of Project to be Mitigated

A. Project information:

Project Name:

Project Address and County:

Project Type/Description:

Amount and Type of Specified Credits being used:

B. Permit(s)/Approval(s)/Authorization(s) File Information:

Agency Name	Permit/Approval Number	Date of Permit/Approval	Compensatory Mitigation Obligations
<input type="checkbox"/> USACE			
<input type="checkbox"/> USEPA			
<input type="checkbox"/> NMFS			
<input type="checkbox"/> USFWS			
<input type="checkbox"/> CDFW			
<input type="checkbox"/> State Water Board			
<input type="checkbox"/> Regional Water Board			
<input type="checkbox"/> Other:			

Exhibit "B"
Copy(ies) of Permit(s)/Approval(s)/Authorization(s)

Exhibit "C"

[NAME OF BANK]

BILL OF SALE

Contract # [Bank Reference Number]

In consideration of \$[Enter Amount], receipt of which is hereby acknowledged, [Enter Name] ("Bank Sponsor") does hereby recognize that [Enter Name] ("Purchaser"), has acquired [enter # and credit type] credits from the [Enter Bank Name] ("Specified Credits") in the city of [City Name], [County Name] County, California.

The Bank Sponsor represents and warrants that it has good title to the Specified Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Bank Sponsor has received: (i) a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the Specified Credits identified in Exhibit B and attached as Exhibit C to the Sale and Transfer Agreement entered into by and between the Parties on [enter date] (the "Agreement"); (ii) written notice from the Purchaser, as permittee, that it is electing to use the Specified Credits toward the permit(s)/approval(s)/authorization(s) obligation; and (iii) Bank Sponsor has accepted the legal responsibility for providing the required compensatory mitigation of such permit(s)/approval(s)/authorization(s), if required.

The Bank Sponsor covenants and agrees to warrant and defend the Sale and Transfer (as defined in the Agreement) of the Specified Credits hereinbefore described against all and every person and persons whomsoever lawfully claiming the same.

The Bank Sponsor hereby Transfers the Specified Credits to compensate for impacts resulting from the project described in Exhibit A to satisfy the permit(s)/approval(s)/authorization(s) obligation identified in Exhibit A and attached as Exhibit B to the Agreement.

DATED: _____

BANK SPONSOR

Add legal name of Bank Sponsor

By: _____
NAME and TITLE

Exhibit "D"

[Name of Bank]

PAYMENT RECEIPT

PURCHASER INFORMATION

Name:

Address:

Telephone:

Contact:

PAYMENT INFORMATION

Payee:

Payer:

Amount:

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

Received by: _____ Date:
(Bank Sponsor Signature)

Print Name:

Title: