

Credit Sale Agreement
[SALE WITHOUT A TRANSFER]

This Credit Sale Agreement (“**Agreement**”) is entered into this **Enter Day** day of **Enter Month**, 20**XX**, 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 **[enter 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 Bank Sponsor; _____ (“**Property Owner**”); and [Select all that apply: U.S. Army Corps of Engineers (“**USACE**”), U.S. Environmental Protection Agency (“**USEPA**”), National Marine Fisheries Service (“**NMFS**”), U.S. Fish and Wildlife Service (“**USFWS**”), California Department of Fish and Wildlife (“**CDFW**”), State Water Resources Control Board (“**State Water Board**”), and the California Regional Quality Control Board (“**Regional Water Board**”)] referred to individually sometimes as “Signatory Agency,” and collectively as “**Signatory Agencies**,” on **[enter date approved]**; 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 (“**Permittee**”); and

F. Pursuant to the terms of the **[Choose BEI or CBEI]**, a Transfer may occur only if 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; 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. Purchaser has not yet secured any permits, approvals, and/or authorizations for any particular project impact(s); and

H. Bank Sponsor wishes to sell and Purchaser wishes to purchase **[enter number of credits and credit type]** Credits (“**Purchased Credits**”) before securing any permits, approvals, and/or authorizations for any particular project impact(s).

NOW, THEREFORE, the Parties agree as follows:

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

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

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

4. Submission to Signatory Agencies. Upon the Sale 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 into the ledger in RIBITS.

5. 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.

6. Termination. In the event Purchaser has not delivered the Purchase Price to Bank Sponsor on or before the Closing Date, this Agreement shall automatically terminate without the need for any further action by Bank Sponsor and Bank Sponsor shall have no further obligations to Purchaser under this Agreement.

7. Transfer.

A. Purchaser acknowledges that a Sale without a Transfer does not guarantee that the Purchased Credits will be acceptable compensatory mitigation for any particular project(s).

B. Purchaser may request a Transfer(s) of the Purchased Credits from Bank Sponsor by providing the following: (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 Purchaser, as Permittee, that it is electing to use the specified Purchased Credits toward the permit(s)/approval(s)/authorization(s) obligation.

[CHOOSE AN OPTION FOR SUBPARAGRAH C BELOW:]

[*OPTION*] C. All Transfer requests by Purchaser shall be made [Choose one: within [insert appropriate number of years] (the “**Sunset Date**”) after the Closing Date or by [insert date] (the “**Sunset Date**”)]. Bank Sponsor agrees not to close the Bank before the Sunset Date. Purchaser understands and agrees that upon Bank closure, no further Transfer of the Purchased Credits shall be allowed. If the Bank remains open past the Sunset Date, Purchaser and Bank Sponsor may agree to either buy back the remaining Purchased Credits or extend the Sunset Date in accordance with Section 7 below. The Bank Sponsor must provide Signatory Agencies with written notice in accordance with [Choose BEI or CBEI] of any proposed buy back of remaining Purchased Credits not less than 60 days prior to the buy back.

[OPTION] C. Bank Sponsor agrees not to propose Bank closure before the Transfer of all Purchased Credits.

D. Purchaser and Bank Sponsor acknowledge and agree that legal responsibility for providing compensatory mitigation for any particular project(s) is not transferred unless and until there is a Transfer associated with a specific permit, approval, or authorization made pursuant to a written Credit Transfer Agreement, in the form of Exhibit C attached hereto and incorporated herein, or substantially similar form approved in writing by the Signatory Agencies. Unless otherwise stated in the Credit Transfer Agreement, Purchaser retains legal responsibility for providing the compensatory mitigation associated with its project(s). Notwithstanding the foregoing, legal responsibility for providing compensatory mitigation required by CDFW remains with the Permittee upon Transfer.

8. 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.

9. 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.

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

11. Miscellaneous.

A. The Sale herein is not intended as a sale or transfer to 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 Purchased Credits shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation except as set forth in Exhibit C.

C. By reason of the Sale of the Purchased 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

Exhibit "A"
Attach to Credit Sale Agreement
[Sale without a Transfer]

[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] in the city of [City Name], [County Name] County, California.

Bank Sponsor 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.

Bank Sponsor covenants and agrees with the Purchaser 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: _____

BANK SPONSOR

Add legal name of Bank Sponsor

By: _____
NAME and TITLE

Exhibit "B"
To be attached to Credit Sale Agreement
[Sale without a Transfer]

[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: _____
(Bank Sponsor Signature)

Date:

Print Name:

Title:

Exhibit "C"