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Contract Number

10676

SAP Number



## San Bernardino County Flood Control District

<b>Department Contract Representative</b>	<u>Harold Zamora, Division Chief</u>
<b>Telephone Number</b>	<u>909-387-8109</u>
<b>Contractor</b>	<u>CALMAT CO., a Delaware corporation dba VULCAN MATERIALS COMPANY, WESTERN DIVISION</u>
<b>Contractor Representative</b>	<u>Sheri Ortega</u>
<b>Telephone Number</b>	<u>323-637-2569</u>
<b>Contract Term</b>	<u>August 25, 2020 – October 24, 2020</u>
<b>Original Contract Amount</b>	<u>\$1,800,000</u>
<b>Amendment Amount</b>	<u>\$0.00</u>
<b>Total Contract Amount</b>	<u>\$1,800,000</u>
<b>Cost Center</b>	<u>1910002518, 1920002522, 1930002526</u>

**Briefly describe the general nature of the contract:** Agreement with CALMAT CO., a Delaware corporation dba VULCAN MATERIALS COMPANY, WESTERN DIVISION to purchase 6 credits / acres for \$1,800,000 to mitigate of impacts to the Los Angeles Pocket Mouse from the First Line of Defense Basins Project (Project). The Project consists of 39 regional flood control basins distributed along the foothills of the San Gabriel and San Bernardino Mountains from the City of Upland east to the City of Yucaipa, in the County of San Bernardino.

Contract amount for 6 acres of mitigation: \$1,800,000

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Cynthia O'Rourke  
Sophie A. Akins, County Counsel

Date 8/21/20

Reviewed for Contract Compliance

Andy Silao  
Andy Silao, P.E.

Date 9/24/2020

Reviewed/Approved by District

Brendon Biggs  
Brendon Biggs, Chief Flood Control Engineer

Date 9/24/2020

## **AGREEMENT FOR SALE OF CONSERVATION CREDITS FOR THE CAJON CREEK CONSERVATION BANK**

This Agreement for Sale of Conservation Credits for the Cajon Creek Conservation Bank ("**Agreement**") is made and entered into this 18th day of August, 2020 ("**Effective Date**") by and between CALMAT CO., a Delaware corporation dba VULCAN MATERIALS COMPANY, WESTERN DIVISION ("**CalMat**") and SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT ("**Project Proponent**") as follows:

### **RECITALS**

A. CalMat has developed and manages the Cajon Creek Conservation Bank located in San Bernardino County, California (the "**Conservation Bank**"); and

B. CalMat developed the Conservation Bank pursuant to United States Army Corps of Engineers (the "**Corps**") Permit No. 91-00248-AJS; the Memorandum of Understanding and Implementation Agreement for the Cajon Creek Habitat Conservation Management Area dated July 26, 1996, as amended (the "**IA**"), with the California Department of Fish and Wildlife, formerly known as the California Department of Fish and Game (the "**CDF&W**"), the United States Fish and Wildlife Service (the "**Service**") and the Corps (collectively, the "**Public Agencies**"); and a Memorandum of Understanding with the CDF&W dated October 1, 1996 (the "**MOU**"), and has the approval of the Public Agencies to sell Habitat Conservation Credits on the land within the Conservation Bank ("**Credits**"). One Credit unit represents one (1) acre of land in the Conservation Bank; and

C. Under the IA, as amended, the land within the Conservation Bank is required to be covered by a temporary conservation easement in favor of the CDF&W until such date as CalMat delivers written notice to the Public Agencies of its intent to terminate the MOU and after that time by a permanent conservation easement in favor of the CDF&W, unless the subject lands are ultimately conveyed in fee to the CDF&W or to the Service; and

D. CalMat has received approval from the Public Agencies to offer Credits for sale as compensation for the loss of Riversidian alluvial fan sage scrub ("**RAFFS**") habitat, waters of the State, and the habitat for 45 sensitive species including the San Bernardino Kangaroo Rat, Santa Ana River woolly star, and Los Angeles pocket mouse ("**LAPM**"); and

E. Project Proponent is seeking to implement the project described on **Exhibit "A"** attached hereto (the "**Project**"), which would unavoidably and adversely impact RAFFS habitat for LAPM, and seeks to compensate for the loss of such habitat by purchasing Credits from CalMat; and

F. Project Proponent has been authorized by the CDF&W to purchase from CalMat six (6) Credits for LAPM; and

G. Project Proponent desires to purchase from CalMat and CalMat desires to sell to Project Proponent six (6) Credits for LAPM.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CalMat hereby sells to Project Proponent and Project Proponent hereby purchases from CalMat six (6) Credits for LAPM ("**LAPM Credits**") for the purchase price of One Million Eight Hundred Thousand Dollars (\$1,800,000.00) (the "**Purchase Price**"). The Purchase Price shall be paid to CalMat within sixty (60) calendar days of the Effective Date by cashier's check or, at the option of CalMat, wire transfer of funds according to written instructions created or approved by CalMat. For purposes of this Agreement, confirmation of receipt of said payment by CalMat shall constitute the sale of the LAPM Credits. Upon completion of the sale, CalMat will deliver to Project Proponent an executed Bill of Sale in the form attached hereto as **Exhibit "B"**. In the event Project Proponent has not paid the Purchase Price within sixty (60) days of the Effective Date, this Agreement shall be automatically deemed null and void, and neither CalMat nor Project Proponent shall have any further rights or responsibilities hereunder.

2. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, or the granting of any other real property interest.

3. Project Proponent shall have no obligation whatsoever by reason of the purchase of the LAPM 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 Conservation Bank. As required by law, CalMat shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Proponent. CalMat shall be fully responsible for satisfying any conditions placed on the Conservation Bank or the Credits by all state or federal jurisdictional agencies. CalMat shall indemnify Project Proponent for all such obligations described in this paragraph.

4. The LAPM Credits shall be nontransferable and non-assignable, and shall not be used as compensatory mitigation for any project other than the Project, or for any other purpose.


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

**[signatures on following page]**

CALMAT CO.

By:   
Michael Linton, Vice President

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

By:   
Curt Hagman, Chairman  
Board of Directors  
San Bernardino County Flood Control District


Dated: AUG 25 2020

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By:   
 Lynn Monell, <sup>COB</sup> Secretary

**APPROVED AS TO LEGAL FORM:**

Michelle D. Blakemore, County Counsel

By:   
Sophie A. Akins  
Deputy County Counsel

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT TO BE MITIGATED**

Project is located along the foothills of the San Gabriel and San Bernardino Mountains from the City of Upland, east to the City of Yucaipa, in the County of San Bernardino. The project includes ongoing routine maintenance within the 39 flood control basins.

(form of Bill of Sale)

**EXHIBIT "B"**

**BILL OF SALE**

**Contract No. CAJON 20-02**

In consideration of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), receipt of which is hereby acknowledged, CalMat Co., a Delaware corporation dba VULCAN MATERIALS COMPANY, WESTERN DIVISION ("CalMat Co.") does hereby bargain, sell and transfer to SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT ("Buyer") six (6) acres/units of conservation credits, for Los Angeles Pocket Mouse in the Cajon Creek Conservation Bank in San Bernardino County, California, developed and approved under the authority of the United States Fish and Wildlife Service, the California Department of Fish and Wildlife, and the United States Army Corps of Engineers.

CalMat Co. 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.

CalMat Co. covenants with Buyer to defend the sale of the credits hereinbefore described against any person claiming the same.

DATED: \_\_\_\_\_, 2020

CALMAT CO., DBA  
VULCAN MATERIALS COMPANY,  
WESTERN DIVISION

•  
By: \_\_\_\_\_

**INFORMATION WORKSHEET**

**PARTICIPANT INFORMATION**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Contact: \_\_\_\_\_

**PROJECT INFORMATION**

Project Description: \_\_\_\_\_  
CDF&W File No.: \_\_\_\_\_  
Species/Habitat Mitigating For: \_\_\_\_\_  
Units Required: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
County: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**PAYMENT INFORMATION**

Payee: \_\_\_\_\_  
Payer: \_\_\_\_\_  
Amount: \$ \_\_\_\_\_

Method of Payment: Cash \_\_\_\_\_ Check No. \_\_\_\_\_ Cashiers Check No. or  
Money Order No. \_\_\_\_\_

Received By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_