

AGREEMENT FOR SALE OF CREDITS FROM THE SANTA RIVER WATERSHED IN-LIEU FEE PROGRAM

This Agreement is entered into this ____ day of _____, 2021 (“Execution Date”) by and between Southwest Resource Management Association (“SRMA”) and San Bernardino County (“Project Proponent”) (collectively the “Parties”), as follows:

RECITALS

A. SRMA is a cosponsor of the Santa Ana River Watershed In-Lieu Fee Program (the “Program”); and

B. The Program was approved by the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Regional Water Quality Control Board, Region 8 (“RWQCB”) (jointly referred to as the Interagency Review Team (the “IRT”)) on July 26, 2012 and is currently in good standing with the IRT; and

C. SRMA has received approval from the IRT to sell Credits (as further defined herein) from the Program to offset impacts associated with resource-impacting projects; and

D. Project Proponent is seeking to purchase Compensatory Mitigation Credits (“Credits” also referred to as “Rehabilitation Credit”) from the Program for impacts to the Waters of the U.S. that result from activities of the Project Proponent authorized under sections 401 and 404 of the Clean Water Act (Permits attached hereto as Exhibit “A”).

E. The Project Proponent is purchasing credits to offset impacts associated with the Project Proponent’s project to construct Phase III of the Santa Ana River Trail (SART) (“Project”), which is a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the City of San Bernardino and California Avenue in the City of Redlands (“Impact Location”) which is described in Exhibit “B” attached hereto. The Project Proponent will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit pursuant to SARWQCP Project No 362017-22 dated March 19, 2018, attached in Exhibit “A”; and

F. Pursuant to the Project Proponents Permit No. SPL-2017-00262-SLP, dated May 1, 2018 this Project will comply with NWP No 14: Linear Transportation Projects to mitigate for impacts stemming from the Project at the Impact Location, which is described in; and

G. Pursuant to a California Department of Fish & Wildlife (CDFW) SAA 1600-2017-0073-R6 (Rev 3), CDFW is requiring Project Proponent to purchase 2.94 offsite Rehabilitation Credits for impacts to water of the state at the Impact location caused by the Project and the SAA is attached hereto in Exhibit “A”; and

H. Project Proponent desires to purchase from SRMA, and SRMA desires to sell and convey to Project Proponent, Credits from the Program and the Parties wish to enter into this Agreement to document the funding by the County for Mitigation of the Project to be paid to the SRMA.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subject to the terms and conditions herein, SRMA agrees to sell to Project Proponent and Project Proponent agrees to purchase from SRMA 0.21 Rehabilitation ILFP Credits from the Program, as well as sufficient funds to allow for an additional 2.73 acres of CDFW Rehabilitation Credits to be undertaken by SRMA to satisfy SAA 1600-2017-0073-R6 (Rev 3) for the purchase price of SEVEN HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED AND NO/100'S DOLLARS (\$779,100.00). The Project Proponent shall transfer the funds to SRMA either by wire or check. The Parties shall mutually agree to a "Closing Date" by which the Credit sale transaction will be completed, which shall be no later than sixty (60) days from the Execution Date unless otherwise mutually extended by the parties in writing." On the Closing Date, SRMA shall transfer to Project Proponent evidence that the Credits have been allocated to the Project by Bill of Sale in the form attached as Exhibit C, and Project Proponent shall pay the Purchase Price specified above.

2. In the event Project Proponent has not delivered the Purchase Price to SRMA on or before the Closing Date, this Agreement shall automatically terminate without need for any further action by SRMA and SRMA shall have no further obligations to Project Proponent under this Agreement.

3. 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, nor the granting of any interest of the foregoing.

4. Project Proponent shall have no obligation whatsoever by reason of the purchase of the Credits to support, pay, fix, 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 mitigation property associated with Credits sold, or the Program.

5. The Credits herein sold and conveyed to Project Proponent shall be non-transferable and non-assignable, and shall be used as compensatory mitigation only in connection with the Project. Any excess Credits shall not be utilized for the benefit of any other project, nor shall they be traded or otherwise retained by SRMA for future use by the Project Proponent or any other person or entity.

6. All representations, warranties, and covenants embodied in this Agreement shall survive the transfer of the Credits hereunder.

7. SRMA shall cooperate and assist Project Proponent by providing documentation required by the IRT, and other regulatory agencies to establish that the Credits may be used to compensate for the Project's impacts described above. SRMA shall provide USACE with a Statement of Sale of Credit in the form of the attached Exhibit D no later than 30 days after the Closing Date of a successful sale.

8. 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 or facsimile mail with mailed copy as follows:

Project Proponent: San Bernardino County
385 North Arrowhead Avenue Fifth Floor
San Bernardino, CA 92415
Telephone: (909) 387-3841
Facsimile: (909) 387-4554

Copy To: Dawn Martin
Deputy County Counsel
385 North Arrowhead Avenue Fourth Floor
San Bernardino, CA 92415
Telephone: (909) 387-4322
Email: dawn.martin@cc.sbcounty.gov

SRMA: Shelli Lamb, Chief Executive Officer
4500 Glenwood Drive
Riverside, CA 92501-3042
Telephone: (951) 300-2844
Facsimile: (951) 683-3814

Copy To: Shaye Diveley, General Counsel, SRMA
Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607
Telephone: (510) 808-2000

9. It is agreed that all prior understandings and agreements between the Parties respecting the transactions contemplated by this Agreement are merged in this Agreement, which fully and completely expresses the agreement of the Parties. There are no representations, warranties, or agreements except as specified and expressly set forth herein, in the exhibits annexed hereto, or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

10. Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his or her individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation, duly adopted by its Board of Directors and transcribed in full in the minutes of said corporation. Any individual signing this Agreement on behalf of a partnership or business entity other than a corporation represents that such other entity has power and authority to enter into this Agreement, and by such person's act is bound hereby.

11. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

12. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument

**SIGNATURE PAGE FOR THE AGREEMENT FOR SALE OF CREDITS FROM THE
SANTA ANA RIVER WATERSHED IN-LIEU FEE PROGRAM TO THE SAN
BERNARDINO COUNTY FLOOD CONTROL DISTRICT**

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

SRMA:

PROJECT PROPONENT:

By: _____
Paul Rodriguez
Chairperson, Board of Directors

By: _____
Curt Hagman, Board Chairman
San Bernardino County Board of
Supervisors

Dated: _____

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

Lynna Monell, Secretary

By: _____
Deputy

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel

By: _____
Dawn Martin
Deputy County Counsel

EXHIBIT

Exhibit A-1

EXHIBIT B

PROJECT DESCRIPTION

The Project Proponent is purchasing credits to offset impacts associated with the Project Proponent's project to construct Phase III of the Santa Ana River Trail ("Project"), which is a 3.8 mile segment of the SART in San Bernardino County on the south side of the Santa Ana River Channel, between Waterman Avenue in the City of San Bernardino and California Avenue in the City of Redlands ("Impact Location"). The project proponent will mitigate the 0.071-acre permanent impact through the purchase of 0.21-acre of rehabilitation credit pursuant to SARWQCP Project No 362017-22 dated March 19, 2018.

EXHIBIT C

BILL OF SALE

Contract No. _____

In consideration of the payment of SEVEN HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED AND NO/100'S DOLLARS (\$779,100.00), receipt of which is hereby acknowledged, SRMA does hereby recognize that the San Bernardino County Department of Public Works (the "Project Applicant"), has acquired 2.94 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program (the "Program"), developed and approved by the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency and the California Regional Water Quality Control Board, Region 8.

SRMA, administrator of the Program, 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.

DATED: _____

By: _____
Chief Executive Officer

EXHIBIT D

Statement of Sale of Credit

SRMA letterhead

[date]

U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017

Subject: Statement of Sale for 0.21 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program to the San Bernardino County Flood Control District (SART Phase III Trail Project)

The Southwest Resource Management Association has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of 0.21 Rehabilitation Credits. These credits are being used as compensatory mitigation for permanent impacts to 0.071 acre to waters to the United States. By selling credits to the above permittee, SRMA is the party responsible for fulfilling the mitigation as authorized by RWQCB Clean Water Act Section 401 Water Quality Standards Certification No. 362017-22, dated March 19, 2018.

Signed

cc: R.J. Van Sant, Project Manager/Biologist, Regulatory Division, U.S. Army Corps of Engineers, Carlsbad Field Office

James Mace, Senior Project Manager, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District

Marc Brown, Regional Planning Programs, Regional Water Quality Control Board-Santa Ana Region.

Sarvy Mahdavi, Environmental Protection Specialist, Wetlands Regulatory Office, U.S. EPA, Region 9

Scott Wilson
Department of Fish & Wildlife
Inland Deserts Region
3602
Los Angeles, CA 90017

Subject: Statement of Sale for 2.94 Rehabilitation Credits from the Santa Ana River Watershed In-Lieu Fee Program to the San Bernardino County Department of Public Works (SART Phase III Trail Project)

This letter confirms the sale of 2.94 Rehabilitation Credits from the Southwest Resource Management Association to the County of San Bernardino, Department of Public Works. This mitigation is being used to satisfy SAA 1600-2017-0073-R6 (Rev 3), under 3. Compensatory Measures, 3.1 Habitat Rehabilitation – Offsite, page 8.

Please let us know if you have any questions about this mitigation.

Sincerely,

SHELLI LAMB
Chief Executive Officer