

SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM

CREDIT TRANSFER AGREEMENT

Contract #: 00085

This Credit Transfer Agreement ("Agreement") is entered into this 20th day of December, 2018, by and between THE NATIONAL FISH AND WILDLIFE FOUNDATION ("Program Sponsor") and the CITY OF REEDLEY, COMMUNITY SERVICES ("Project Applicant"), jointly referred to as the "Parties," as follows:

RECITALS

A. The Program Sponsor developed the Sacramento District California In-Lieu Fee Program ("ILF Program") covering the geographic area within the jurisdictional limits of the U.S. Army Corps of Engineers, Sacramento District within California; and

B. The ILF Program was approved through execution of the ILF Program Instrument ("Instrument") by the Sacramento District of the U.S. Army Corps of Engineers ("USACE"), Region IX of the U.S. Environmental Protection Agency ("USEPA"), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NMFS"), the State Water Resources Control Board ("State Water Board"), the Central Valley Regional Water Quality Control Board ("Central Valley Water Board"), and the Lahontan Regional Water Quality Control Board ("Lahontan Water Board") (jointly referred to as "Agencies") on October 10, 2014, and the ILF Program is currently in good standing with the Agencies; and

C. The ILF Program has received approval from the Agencies to offer Aquatic Resource Credits and Vernal Pool Credits pursuant to the Instrument, as compensation for impacts to aquatic resources regulated by the Agencies; and

D. Project Applicant is seeking to implement the Cricket Hollow Boat Launch Improvements project located on the Kings River at Cricket Hollow Park, Reedley, Fresno County, California, in accordance with general and special conditions, as set forth in a USACE (SPK-2016-00494) letter to the City of Reedley, Community Services, dated January 23, 2017, ("SPK-2016-00494 Letter"), which authorized "activities in approximately 0.09 acre of waters of the United States, including wetlands." Specifically, the Project Applicant seeks to "mitigate for the loss of 0.09 acre of the Kings River" by purchasing credits from the ILF Program in accordance with such letter, as described in Exhibit "A" attached hereto; and

E. Project Applicant has been authorized by the SPK-2016-00494 Letter referenced in paragraph D above to "purchase 0.18 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the King Aquatic Resource Service Area"; and

F. Given the facts stated in paragraph E above, Project Applicant desires to purchase from the ILF Program and the Program Sponsor desires to transfer to Project Applicant Eighteen Hundredths (0.18) Aquatic Resource Credit in the form of "Unallocated Program Area Advance Credits" (as such term is defined in the Instrument) that the Program Sponsor will allocate to the Kings River Watershed Service Area in accordance with the terms of the Instrument;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Program Sponsor hereby agrees to transfer to Project Applicant from the ILF Program Eighteen Hundredths (0.18) Aquatic Resource Credit ("Purchased Credits") in the form of Unallocated Program Area Advance Credit that the Program Sponsor will allocate to the Kings River Watershed Service Area, for the purchase price of Forty-Five Thousand One Hundred Dollars (\$45,100) ("Purchase Price"). This Agreement is expressly conditioned upon the Program Sponsor's receipt of the Purchase Price for said Purchased Credits, in accordance with this Agreement.

2. The sale and transfer of the Purchased Credits 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 in any of the foregoing.

3. Project Applicant shall have no obligation or right whatsoever by reason of the purchase of the Purchased Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated, informed, or liable for the success or continued expense or maintenance in perpetuity of the Purchased Credits transferred, or the ILF Program. The Program Sponsor shall be fully and completely responsible for satisfying any and all conditions placed on the Purchased Credits transferred and the ILF Program.

4. The Purchased 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 must pay and deliver the Purchase Price to the Program Sponsor by cashier's check or wire transfer (in accordance with written instructions provided to Project Applicant from Program Sponsor) within sixty (60) days of the date of execution of this Agreement. If the Purchase Price is not received by Program Sponsor within such 60-day period, then at any time thereafter Program Sponsor may, unless and until the Purchase Price is received and accepted by Program Sponsor, terminate this Agreement at will by providing no less than three (3) days' advance written notice to Project Applicant of Program Sponsor's intention to so terminate.

6. Upon receipt of the Purchase Price, (a) transfer of the Purchased Credits shall be effectuated and evidenced by Program Sponsor's delivery to Project Applicant of an executed bill of sale ("Bill of Sale") in substantially the form attached hereto and marked Exhibit "B" and (b) Program Sponsor's receipt of the Purchase Price shall be confirmed and evidenced by Program Sponsor's delivery to Project Applicant of a completed payment receipt ("Payment Receipt") in substantially the form attached hereto and marked Exhibit "C."

7. After delivering the Bill of Sale and Payment Receipt in accordance with Section 6 above, the Program Sponsor shall submit to the parties listed in the Notices section of the Instrument, final, executed copies of: (a) this Agreement; (b) the Bill of Sale; (c) the Payment Receipt; and (d) an updated Credit Ledger (as defined under the Instrument) reflecting the transfer of the Purchased Credits to the Project Applicant.

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

PROGRAM SPONSOR:

National Fish and Wildlife Foundation

By: Timothy J. DiCintio on behalf of _____ Date: 12/20/18
Timothy J. DiCintio, Senior Vice President, IDEA

PROJECT APPLICANT:

City of Reedley, Community Services

By: [Signature] _____ Date: 12/12/18

Exhibit "A"

**DESCRIPTION OF PROJECT
REQUIRING COMPENSATORY MITIGATION**

Department of the Army, U.S. Army Corps of Engineers, Sacramento District (SPK-2016-00494) letter to the City of Reedley, Community Services, dated January 23, 2017, ("SPK-2016-00494 Letter"), authorized the Cricket Hollow Boat Launch Improvements project located on the Kings River at Cricket Hollow Park, Reedley, Fresno County, California, a project involving authorized "activities in approximately 0.09 acre of waters of the United States, including wetlands," and requires the purchase of "0.18 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the King Aquatic Resource Service Area" to "mitigate for the loss of 0.09 acre of the Kings River."

**SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM
BILL OF SALE**

Contract # 00085

In consideration of the sum of Forty-Five Thousand One Hundred Dollars (\$45,100), receipt of which is hereby acknowledged, the National Fish and Wildlife Foundation ("Program Sponsor") does hereby sell and transfer to the City of Reedley, Community Services ("Project Applicant"), Eighteen Hundredths (0.18) Aquatic Resource Credit in the form of Unallocated Program Area Advance Credit that the Program Sponsor will allocate to the Kings River Watershed Service Area of the Sacramento District California In-Lieu Fee Program ("ILF Program"), which was approved through execution of the ILF Program Instrument ("Instrument") by the Sacramento District of the U.S. Army Corps of Engineers ("USACE"), Region IX of the U.S. Environmental Protection Agency ("USEPA"), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NMFS"), the State Water Resources Control Board ("State Board"), the Central Valley Regional Water Quality Control Board ("Central Valley Water Board"), and the Lahontan Regional Water Quality Control Board ("Lahontan Water Board") (jointly referred to as "Agencies").

Program Sponsor represents and warrants that the ILF Program is in good standing with the Agencies and has available the specified number of Eighteen Hundredths (0.18) Aquatic Resource Credit in the form of Unallocated Program Area Advance Credit for allocation to the Kings River Watershed Service Area to transfer to the Project Applicant.

Program Sponsor also represents and warrants to the Project Applicant that it has all right, title, and interest in the Credits necessary to transfer them to the Project Applicant.

DATED: 1/9/19

National Fish and Wildlife Foundation, Program Sponsor

By:  on behalf of
Timothy J. DiCintio, Senior Vice President, IDEA

SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM
Payment Receipt

PROJECT APPLICANT INFORMATION

Name: City of Reedley, Community Services
Address: 1733 Ninth Street, Reedley, CA 93654
Telephone: 559-637-4200 ext. 229
Contact: Linda Thao

PROJECT INFORMATION

Project Description: Mitigation for "the loss of 0.09 acre of the Kings River" as required by USACE SPK-2016-00494 letter to the City of Reedley, Community Services, dated January 23, 2017, ("SPK-2016-00494 Letter") for the Cricket Hollow Boat Launch Improvements project located on the Kings River at Cricket Hollow Park, Reedley, Fresno County, California, a project involving "activities in approximately 0.09 acre of waters of the United States, including wetlands."

Project Location: Latitude 36.5814°, Longitude -119.4609° (from USACE SPK-2016-00494), Reedley, Fresno County, California

Agency File Numbers: USACE SPK-2016-00494

Credits Transferred: Eighteen Hundredths (0.18) Aquatic Resource Credit

ILF Program Service Area: Unallocated Program Area for allocation to the Kings River Watershed Service Area

PAYMENT INFORMATION

Payee: National Fish and Wildlife Foundation

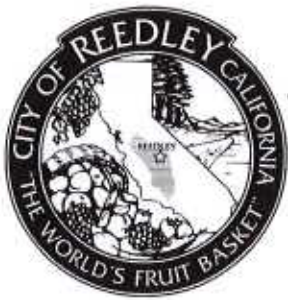
Payor: City of Reedley

Amount: Forty-Five Thousand One Hundred Dollars (\$45,100)

Method of payment: Electronic Funds Transfer Check No. 044161 Money Order No.

Received by: (Signature) [Signature] on behalf of Date: 1/7/19

Name: Timothy J. DiCintio Title: Senior Vice President, IDEA



REEDLEY CITY COUNCIL

- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 17

DATE: December 11, 2018

TITLE: CONSIDERATION OF ITEMS PERTAINING TO THE CRICKET HOLLOW BOAT LAUNCH FACILITY IMPROVEMENT PROJECT:

(A) APPROVING AND AUTHORIZING CITY MANAGER TO EXECUTE A CREDIT TRANSFER AGREEMENT WITH THE NATIONAL FISH AND WILDLIFE FOUNDATION'S SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM FOR THE CRICKET HOLLOW BOAT LAUNCH FACILITY IMPROVEMENTS PROJECT

(B) ADOPT RESOLUTION NO. 2018-104 AMENDING THE FISCAL YEAR 2018-2019 BUDGET TO APPROPRIATE AVAILABLE FUNDS IN THE AMOUNT OF \$45,100 TO FUND THE NATIONAL FISH AND WILDLIFE FOUNDATION'S SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM FOR THE CRICKET HOLLOW BOAT LAUNCH FACILITY IMPROVEMENTS PROJECT

SUBMITTED: Linda Thao, Senior Engineering Assistant
Engineering Department *LT*

SUBMITTED: John S. Robertson, City Engineer
Engineering Department *JSR*

APPROVED: Nicole Zieba
City Manager *NZ*

RECOMMENDATION

Staff recommends that the City Council take the following actions:

(A) Approving and authorizing City Manager to execute a Credit Transfer Agreement with the National Fish and Wildlife Foundation's Sacramento District California In-Lieu Fee Program for the Cricket Hollow Boat Launch Facility Improvements project.

(B) Adopt Resolution No. 2018-104 amending the fiscal year 2018-2019 budget to appropriate available funds in the amount of \$45,100 to fund the National Fish and Wildlife Foundation's

Sacramento District California In-Lieu Fee Program for the Cricket Hollow Boat Launch Facility Improvements project.

BACKGROUND

In 2014, the City received approximately \$900,000 of funds from the Division of Boating and Waterways (DBW) for the scoping and construction of improvements for the boat launch facility at Cricket Hollow. Over the last few years, staff and several consultants have worked to finalize the required scope of services, obtain all required permits from state and federal agencies, and complete the construction documents.

Permits from the following agencies were obtained: US. Army Corps of Engineers (Corps) Letter of Permission, Kings River Conservation District Endorsement, Central Valley Flood Protection Board, Central Valley Regional Water Quality Control Board, California State Lands Commission Agreement, California Department of Fish and Wildlife Streambed Alteration Agreement.

The Corps permit authorizes the project activities in approximately 0.09 acre of waters of the United States, including wetlands, for the Cricket Hollow Boat Launch Improvements project. The permit had multiple Special Conditions. One Special Condition was put in place to mitigate for the loss of 0.09 acre of Kings River wetlands. This Special Condition required the purchase of 0.18 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the King Aquatic Resources Service Area. According to the NFWF, this 0.18 aquatic resource credit has a purchase price of \$45,100.

PRIOR COUNCIL ACTIONS

On October 9, 2018, the City Council approved Budget Amendment Resolution No. 2018-043 to allocate City funds to be used with the grant funds to fully fund the Project, contingencies, and construction management services. The total amount to cover the costs listed above is estimated at approximately \$992,132. The local funds allocated to this project are from the Development Impact Fees - Fire, Measure C funds (flexible and pedestrian/trail) and Sewer Capital Enterprise funds.

On October 23, 2018, the City Council adopted Resolution No. 2018-089 awarding a construction contract to Cushman Contracting Corporation of construction of Cricket Hollow Boat Launch Facilities in the amount of \$848,000 and granted the City Manager the authority to approve change orders up to an amount approximately equal to 10% of the construction contracted amount.

FISCAL IMPACT

The local fund allocated to this project is from the Development Impact Fee – Park & Recreation Facilities fund. The funding source has the fund balance to cover this amount.

ATTACHMENTS

1. Budget Amendment Resolution 2018-104

Motion: _____

Second: _____

**BUDGET AMENDMENT
RESOLUTION 2018-104**

The City Council of the City of Reedley does hereby amend the 2018-19 Budget as follows:

Section I - Additions:

FUND-DEPT.OBJECT	AMOUNT
109-4279.5089	\$45,100

Purpose: The resolution is necessary in order to pay for the 0.18 aquatic resource credits from the National Fish and Wildlife Foundation's Sacramento District California In-Lieu Fee Program for the King Aquatic Resource Service Area. The aquatic resource credits are to mitigate for the loss of 0.09 acre of the Kings River related to the Cricket Hollow Boat Launch Facility Improvement project. This fee will be paid through the Development Impact Fee – Park & Recreation Facilities fund.

Section II – Source of Funding:

FUND BALANCE	AMOUNT
109-2710	\$45,100

Impact: The fund amounts will be reduced by the amounts listed above. There are enough funds in the fund balance for the required payment.

REVIEWED:


Assistant City Manager

RECOMMENDED:


City Manager

The foregoing resolution was approved by the City Council of the City of Reedley on December 11, 2018, by the following vote:

AYES: Beck, Soleno, Betancourt, Fast, Pinon.

NOES: None.

ABSENT: None.

ABSTAIN: None.

APPROVED:


Anita Betancourt, Mayor

ATTEST:


Sylvia Plata, City Clerk

