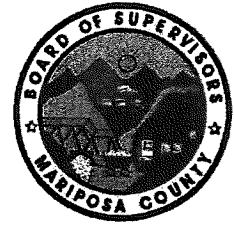


MARIPOSA COUNTY

Public Works · 209-966-2498



RESOLUTION - ACTION REQUESTED 2021-562

MEETING: October 5, 2021
TO: The Board of Supervisors
FROM: Shannon Hansen, Interim Director of Public Works & Transportation
RE: Approve Credit Transfer Agreement with the National Fish and Wildlife Foundation

RECOMMENDATION AND JUSTIFICATION:

Approve Credit Transfer Agreement with The National Fish and Wildlife Foundation in the Amount of \$55,500.00 for the Purchase of 0.14 Acres Riparian/Aquatic Resource Credits to Offset Impacts from the Darrah Road Bridge Replacement Project; and Authorize the Interim Director of Public Works & Transportation to Sign the Agreement.

The Darrah Road Bridge Project is removing 0.07 acres of aquatic resource functions due to the wider bridge and rock riprap footprint. The County was notified by the United States Army Corps of Engineers (USACE) and the Regional Water Quality Control Board (RWQCB) that the County must purchase credits at a ratio of 2:1 in lieu of fees to offset the impacts of the permits issued.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved signing the Program Supplement Agreement with the State of California Department of Transportation for the Darrah Road Bridge Project with Board Resolution #2020-324.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve and the County will need to develop an alternative mitigation method that will satisfy the USACE and RWQCB.

FINANCIAL IMPACT:

This project is funded through the Highway Bridge Replacement Program at a reimbursable rate of 88.53%, with a local match required of 11.47%.

ATTACHMENTS:

Mariposa County Public Works - CTA Final 9-14-21 (PDF)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM

CREDIT TRANSFER AGREEMENT

Contract #: 00153

This Credit Transfer Agreement (“Agreement”) is entered into this 8th day of November, 2021, by and between THE NATIONAL FISH AND WILDLIFE FOUNDATION (“Program Sponsor”) and MARIPOSA COUNTY PUBLIC WORKS (“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 Darrah Road Bridge Replacement project in Mariposa County, California, in accordance with Nationwide Permit Number 14, applicable regional conditions, and special conditions, as set forth in a USACE (SPK-2017-00649) letter to “Mariposa County Public Works,” dated November 7, 2017, (“SPK-2017-00649 Letter”), and as set forth in Central Valley Water Board (WDID 5B22CR00038) letter to “County of Mariposa,” dated December 19, 2017, (“WDID 5B22CR00038 Letter”). The SPK-2017-00649 Letter authorized the project, which “involves the discharge of fill material into 0.07 acre of waters of the U.S. for the construction of a new bridge.” The WDID 5B22CR00038 Letter authorized the project, which “is proposing to replace the existing structure with a single span, cast-in-place, post-tensioned, and reinforced concrete slab bridge.” Specifically, the Project Applicant seeks to “compensate for the loss of 0.07 acre of scrub shrub riparian and open water” (as described in the SPK-2017-00649 Letter) and to “compensate for the loss of 0.07 acre of scrub shrub riparian and open water” (as described in the WDID 5B22CR00038 Letter) by purchasing credits from the ILF Program in accordance with such letters, as described in Exhibit “A” attached hereto;

E. Project Applicant has been authorized by the SPK-2017-00649 Letter referenced in paragraph D above to purchase “0.14 aquatic resource credits from the National Fish and Wildlife Foundation’s (NFWF) Sacramento District California In-Lieu Fee Program for the San Joaquin aquatic resource Service Area.” Project Applicant has been authorized by the WDID 5B22CR00038 Letter

referenced in paragraph D above to purchase “0.14 aquatic resource credits from the National Fish and Wildlife Foundation’s (NFWF) Sacramento District California In-Lieu Fee Program for the San Joaquin 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 Fourteen Hundredths (0.14) Aquatic Resource Credit in the San Joaquin River Watershed Service Area;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:


1. The Program Sponsor hereby agrees to transfer to Project Applicant from the ILF Program Fourteen Hundredths (0.14) Aquatic Resource Credit in the San Joaquin River Watershed Service Area (“Purchased Credits”) for the purchase price of Fifty-Five Thousand Five Hundred Dollars (\$55,500) (“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: ^{SF29F59D94F}
 Timothy DiCintio Date: 11/08/2021
Timothy J. DiCintio, Senior Vice President
Impact-Directed Environmental Accounts

PROJECT APPLICANT:
Mariposa County Public Works

By: ^{SF29F59D93B}
 Shannon C Hansen Date: 11/08/2021

Approved as to Legal Form:


^{SF29F59D931}
 Steven W. Dahlem
Steven W. Dahlem, County Counsel
Mariposa County

Exhibit "A"

**DESCRIPTION OF PROJECT
REQUIRING COMPENSATORY MITIGATION**

Department of the Army, U.S. Army Corps of Engineers, Sacramento District (SPK-2017-00649) letter to "Mariposa County Public Works," dated November 7, 2017, ("SPK-2017-00649 Letter"), authorized the Darrah Road Bridge Replacement project in Mariposa County, California, a project that "involves the discharge of fill material into 0.07 acre of waters of the U.S. for the construction of a new bridge." Central Valley Regional Water Quality Control Board (WDID 5B22CR00038) letter to "County of Mariposa," dated December 19, 2017, ("WDID 5B22CR00038 Letter"), authorized the project, which "is proposing to replace the existing structure with a single span, cast-in-place, post-tensioned, and reinforced concrete slab bridge." The SPK-2017-00649 Letter requires the purchase of "0.14 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the San Joaquin aquatic resource Service Area" to "compensate for the loss of 0.07 acre of scrub shrub riparian and open water." The WDID 5B22CR00038 Letter requires the purchase of "0.14 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the San Joaquin aquatic resource Service Area" to "compensate for the loss of 0.07 acre of scrub shrub riparian and open water."

5 B "

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

Contract # 00153

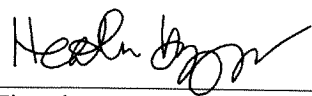
In consideration of the sum of Fifty-Five Thousand Five Hundred Dollars (\$55,500), receipt of which is hereby acknowledged, the National Fish and Wildlife Foundation ("Program Sponsor") does hereby sell and transfer to Mariposa County Public Works ("Project Applicant") Fourteen Hundredths (0.14) Aquatic Resource Credit in the San Joaquin 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 Fourteen Hundredths (0.14) Aquatic Resource Credit in the San Joaquin 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: 11/08/2021

National Fish and Wildlife Foundation, Program Sponsor

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

- 2 -

**SACRAMENTO DISTRICT CALIFORNIA IN-LIEU FEE PROGRAM
Payment Receipt**

PROJECT APPLICANT INFORMATION

Name: Mariposa County Public Works
Address: 4639 Ben Hur Road, Mariposa, CA 95338
Telephone: (209) 742-1150 or mhespenheide@mariposacounty.org
Contact: Matt Hesperheide

PROJECT INFORMATION

Project Description: Mitigation to “compensate for the loss of 0.07 acre of scrub shrub riparian and open water” as required by USACE (SPK-2017-00649) letter to “Mariposa County Public Works,” dated November 7, 2017, (“SPK-2017-00649 Letter”), and to “compensate for the loss of 0.07 acre of scrub shrub riparian and open water” as required by the Central Valley Water Board (WDID 5B22CR00038) letter to “County of Mariposa,” dated December 19, 2017, (“WDID 5B22CR00038 Letter”), for the Darrah Road Bridge Replacement project in Mariposa County, California.

Project Location: Latitude 37.4704°, Longitude -119.8797° (from USACE SPK-2017-00649); Section 17, Township 5 South, Range 19 East, Mount Diablo Base and Meridian, Latitude 37.47063°, Longitude -119.87917° (from Central Valley Water Board WDID 5B22CR00038), Mariposa County, California

Agency File Numbers: USACE SPK-2017-00649
Water Board WDID 5B22CR00038

Credits Transferred: Fourteen Hundredths (0.14) Aquatic Resource Credit

ILF Program Service Area: San Joaquin River Watershed Service Area

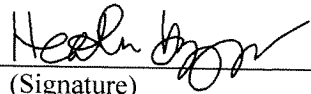
PAYMENT INFORMATION

Payee: National Fish and Wildlife Foundation

Payor: County of Mariposa

Amount: Fifty-Five Thousand Five Hundred Dollars and Zero Cents (\$55,500.00)

Method of payment: Electronic Funds Transfer Check No. 1100035 Money Order No. _____

Received by:  on behalf of _____ Date: 11/02/2021
(Signature)

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