

**CITY OF SANTA ROSA
CALIFORNIA TIGER SALAMANDER MITIGATION CREDITS
PURCHASE AGREEMENT WITH DAVIS PRESERVE, LLC
("AGREEMENT")**

This "Agreement" is made as of this ____ day of _____, 2020 by and between the City of Santa Rosa, a municipal corporation ("Project Proponent"), and Davis Preserve, LLC, a California Limited Liability Company, ("Bank Sponsor"), herein collectively referred to as "Parties."

RECITALS

- A. Bank Sponsor has developed Swift/Turner Conservation Bank ("Bank") located in Sonoma County, California, for the purpose of providing mitigation credits.
- B. Bank was approved by the U.S. Fish and Wildlife Service ("Service") and the California Department of Fish and Wildlife ("CDFW"), collectively referred to as the "Approving Agencies" on December 1, 2006.
- C. Bank Sponsor has received approval from the Approving Agencies to offer California Tiger Salamander mitigation credits ("CTS Credits") for sale as compensation for the loss of California Tiger Salamander ("CTS") habitat type as specified in the Conservation Bank Agreement ("CBA"). The CBA establishes guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank by Bank Sponsor.
- D. Project Proponent desires to purchase 2.02 acres of CTS Credits for the Lower Colgan Creek Restoration – Phase 2 as described in Exhibit A ("Project"), which Project will unavoidably impact CTS habitat, and Project Proponent seeks to compensate for the loss of such CTS habitat by purchasing CTS Credits.
- E. Project Proponent desires to purchase the CTS Credits from Bank Sponsor's Bank as described above in accordance with the terms of this Agreement.
- F. Bank Sponsor represents to Project Proponent that the Bank was approved by the Approving Agencies, is in good standing with the Approving Agencies, has good and marketable title to the CTS Credits, and is fully qualified to sell the CTS Credits described herein.
- G. Project Proponent has received approval by the Approving Agencies and any other required agencies to purchase 2.02 acres of CTS Credits as mitigation for the Project, and the Service File No. is 08ESMF00-2017-F-2674.
- H. The Parties have negotiated upon the terms pursuant to which Project Proponent will purchase and Bank Sponsor will sell CTS Credits and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, Project Proponent and Bank Sponsor agree as follows:

1. Project Proponent agrees to purchase from Bank Sponsor's Bank 2.02 acres of CTS Credits (with 1.00 CTS Credit equivalent to 1.00 acre) at a cost of \$168,000 (One Hundred Sixty-Eight Thousand Dollars) per CTS Credit, for a total cost of \$339,360 (Three Hundred Thirty-Nine Thousand Three Hundred Sixty Dollars). Bank Sponsor shall present an invoice to Project Proponent in the proper amount, and Project Proponent shall make payment to Bank Sponsor within thirty calendar days after receipt of invoice, at which point the sale of the CTS Credits will become final.
2. After receipt of payment, Bank Sponsor shall provide an executed "Bill of Sale" to Project Proponent in the form attached as Exhibit B, and provide an executed "Payment Receipt" in the form attached as Exhibit C to the Approving Agencies, both to be provided within ten calendar days after Bank Sponsor receives payment.
3. Project Proponent shall have no obligation whatsoever by reason of the purchase of the CTS 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 CTS Credits sold, or for the Bank, other than as expressly provided in the CBA. Pursuant to the CBA for the Bank, Bank Sponsor shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Proponent. Bank Sponsor shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the compensatory CTS Credits by the Approving Agencies, including any further actions required by the Approving Agencies.
4. Bank Sponsor hereby represents that the CTS Credits to be conveyed herein are in good standing and available for transfer to the Project Proponent in accordance with the terms of this Agreement and agrees not to enter into any agreement that would "over-sell" the interest in the Bank or diminish the number of CTS Credits allocated to and purchased by Project Proponent under this Agreement.
5. The purchase of CTS Credits is not intended as a purchase 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.
6. The CTS Credits purchased shall be non-transferable and non-assignable and shall not be used as mitigation for any other project or purpose, except as set forth herein.
7. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the State of California's trial court located in Sonoma County, and the Bank Sponsor and Project Proponent consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.
8. Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on the Bank Sponsor or the Project Proponent hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class

postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

Project Proponent

Steve Brady
Senior Environmental Specialist
City of Santa Rosa
69 Stony Circle
Santa Rosa, CA 95401
Phone: (707) 543-3919
Email: sbrady@srcity.org

Bank Sponsor's Agent

Harvey O. Rich
Managing Member
Davis Preserve, LLC
336 Bon Air Center, #232
Greenbrae, CA 94904
Phone: (415) 472-1086
Email: tridevser@att.net

9. Project Proponent must exercise its right to purchase within ninety calendar days after the date of this Agreement, which shall be the date of City Council approval. After the ninety-day period, if the purchase right has not been exercised this Agreement will be considered null and void.
10. This Agreement may be executed in multiple identical counterparts, and by scanned or electronic signatures, each of which shall be deemed an original, and the counterpart signature pages may be detached and assembled to form a single original Agreement.

PURPOSELY LEFT BLANK

BANK SPONSOR:

DAVIS PRESERVE, LLC
a California Limited Liability Company

Signature of Authorized Person:

Harvey O. Rich
By: Harvey O. Rich (Nov 2, 2020 15:36 PST)

Name: Harvey O. Rich

Title: Managing Member

Taxpayer I.D. No. 20-26340245

PROJECT PROPONENT:

CITY OF SANTA ROSA
a Municipal Corporation

By: _____

Name: Jennifer Burke

Title: Director of Water

APPROVED AS TO FORM:

Jennifer Burke (Nov 5, 2020 11:30 EST)
Office of the City Attorney

- Attachments:
Exhibit A – Description of Project
Exhibit B - Bill of Sale
Exhibit C - Payment Receipt

APPROVED BY:

SERVICE:

This Agreement fulfills 2.02 acres of California Tiger Salamander mitigation requirement, as specified under Service File No.: 08EESMF00-2017-F-2674.

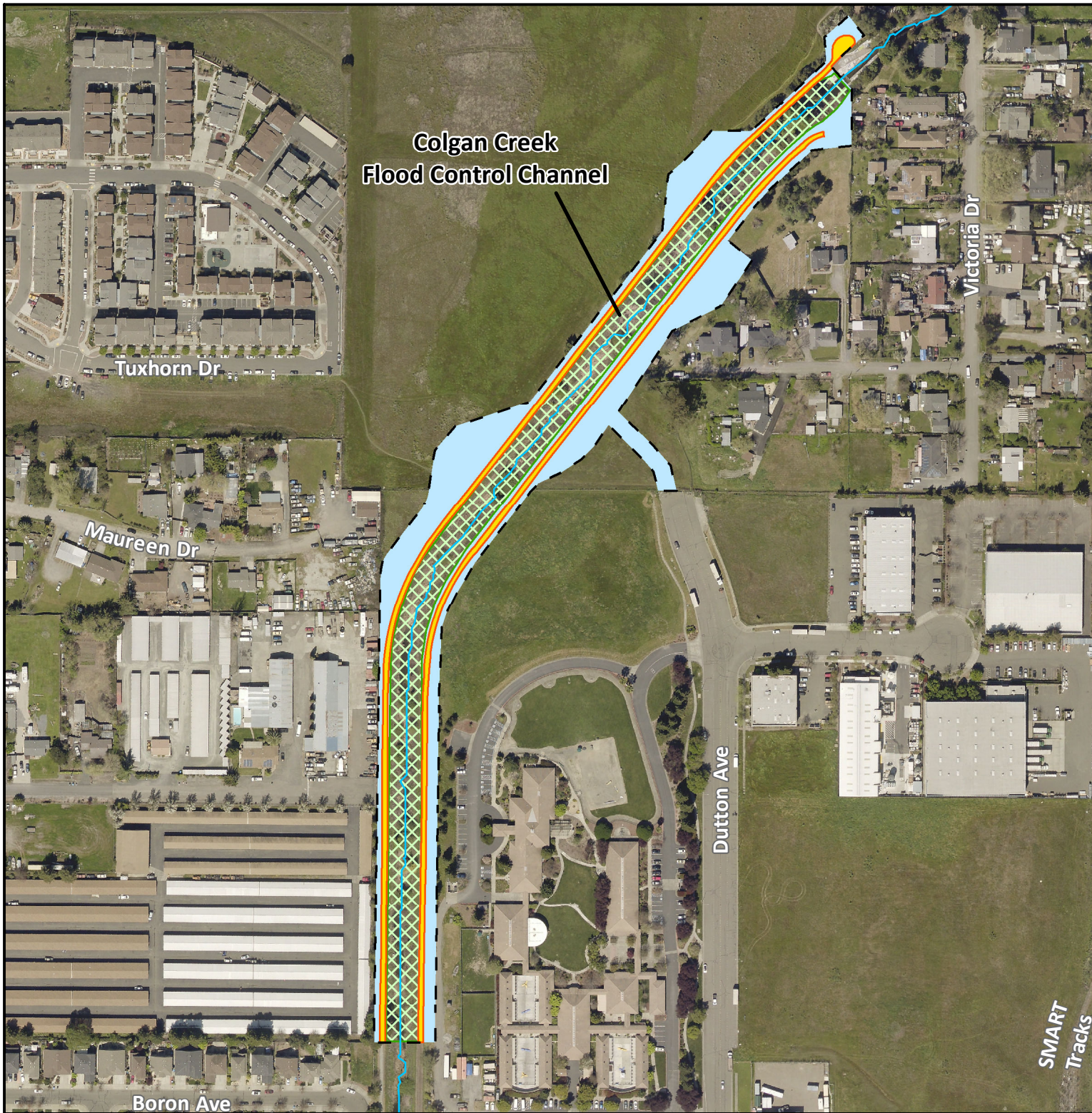
UNITED STATES DEPARTMENT OF THE
INTERIOR FISH AND WILDLIFE SERVICE

By: _____ Title: _____ Dated: _____

EXHIBIT A

PROJECT DESCRIPTION:

- **PROJECT PROPONENT:** City of Santa Rosa, CA, a California Municipal Corporation
- **PROJECT NAME:** Lower Colgan Creek – Phase 2
- **PROJECT LOCATION:** Lower Colgan Creek
- **ASSESSOR'S PARCEL NUMBERS:** 043-200-005, 043-200-007, 043-200-009, & \ 043-135-002
- **SERVICE'S FILE NUMBER:** 08ESMF00-2017-F-2674
- **CORPS' FILE NUMBER:** SPN-2013-00218
- **RWQCB'S FILE NUMBERS:** WDID-1B161072WNSO & ECM PIN CW 827322
- **CDFW'S FILE NUMBER:** 2018-2016-043-03



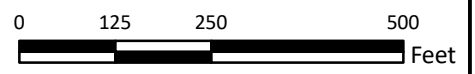
Colgan Creek
Flood Control Channel

LEGEND

- PROJECT LIMITS
- NON-CTS: TRAPEZOID CHANNEL
- NON-CTS: EXISTING GRAVEL PATH
- CTS HABITAT MITIGATION AREAS
- STREAM CENTERLINE

NOTES

AREAS AND LOCATIONS SHOWN ON THIS MAP WERE COMPILED FROM NUMEROUS GIS DATA LAYERS WHICH ARE NOT SURVEY ACCURATE.



Job Name: COLGAN CREEK RESTORATION PHASE 2, SANTA ROSA, CA	
Description: CTS IMPACTS MITIGATION EXHIBIT SPRING 2018 SONOMA COUNTY ORTHOIMAGERY	
Drawn By: JS	Checked By: JMD
Scale: 1" = 250'	Date: 10/14/2020
Job Number: 5946-08	Sheet: 1 OF 1

Document Path: Y:\3046\GIS\Map\Figures\ColganCreekRestoration\ColganCreekRestorationPhase2_CTS impacts_8.5x11.mxd

SMART
Tracks

Exhibit B

Davis Preserve, LLC

**336 Bon Air Center - Box 232, Greenbrae, CA 94904
(415) 472-1086**

BILL OF SALE

Buyer: City of Santa Rosa, CA – Santa Rosa Water – Environmental Services –
Storm Water & Creeks

Type and Amount of Credits: 2.02 Acres of CTS Credits

Project Name: Lower Colgan Creek – Phase 2

Project Assessor's Parcel Numbers: 043-200-005, 043-200-007, 043-200-009 & 043-135-002

Contract Date: _____

Service File Number: 08ESMF00-2017-F-2674

Army Corps Number: SPN-2013-00218

RWQCB Number: WDID-1B161072WNSO & ECM PIN CW-8273220

CDFW: 2081-2016-043-03

In consideration of \$339,360 (Three Hundred Thirty-Nine Thousand Three Hundred Sixty Dollars), receipt of which is hereby acknowledged, Davis Preserve, LLC, a California Limited Liability Company, does hereby bargain, sell and transfer to City of Santa Rosa, a California Municipal Corporation, herein referred to as "Buyer," 2.02 acres of California tiger salamander credits ("CTS Credits") in the Swift/Turner Conservation Bank, in Sonoma County, California, developed and approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.

Davis Preserve, LLC represents and warrants that it has good title to the CTS Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Davis Preserve, LLC covenants and agrees with the Buyer to warrant and defend the sale of the CTS Credits herein before described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED:

Davis Preserve, LLC
A California Limited Liability Company

By: _____
Harvey O. Rich
Its: Managing Member

Exhibit C

Davis Preserve, LLC
336 Bon Air Center - Box 232
Greenbrae, CA 94904
(415) 472-1086

PROJECT: SWIFT/TURNER CONSERVATION BANK

PAYMENT RECEIPT: 2.02 ACRES OF CTS CREDITS

PARTICIPANT INFORMATION:

Name: City of Santa Rosa, a California Municipal Corporation
Address: 69 Stony Circle, Santa Rosa, CA 95401
Telephone: 707-543-3919
Contacts: Steve Brady, Senior Environmental Specialist

PROJECT INFORMATION:

Project Description: Restoration of Lower Colgan Creek Phase 2
Army Corps File Number: SPN-2013-00218
Service Number: 08ESMF00-2017-F-2674
RWQCB Number: WDID-1B161072WNSO & ECM PIN CW 827322
CDFW: 2018-2016-043-03
Species/Habitat Affected: California tiger salamander
Credits Purchased: 2.02 Acres of CTS Credits
Payment Amount: \$339,360 (Three Hundred Thirty-Nine Thousand Three Hundred Sixty Dollars)
Project Location: Between Boron Avenue and Victoria Drive, Santa Rosa, CA 95407
County: Sonoma County
Assessor's Parcel Number: 043-200-005, 043-200-007, 043-200-009, & 043-135-002

PAYMENT INFORMATION:

Payee: Davis Preserve, LLC, a California Limited Liability Company
Payor: City of Santa Rosa, a California Municipal Corporation
Amount: \$339,360 (Three Hundred Thirty-Nine Thousand Three Hundred Sixty Dollars)
Method of Payment: Check in Exchange for Bill of Sale and Payment Receipt

RECEIVED:

Davis Preserve, LLC,
A California Limited Liability Company

By: _____
Harvey O. Rich
Its: Managing Member
Date: _____