

RESOLUTION NO. 2012-380

Adopted by the Sacramento City Council

November 13, 2012

RAMONA AVENUE EXTENSION PROJECT – APPROVAL TO PURCHASE VERNAL POOL MITIGATION CREDITS AND APPROPRIATION OF FEDERAL FUNDS (T15018400)

BACKGROUND

- A. The project must mitigate for vernal pool impacts identified by the U.S. Fish and Wildlife Service (USFWS) by purchasing preservation credits. The biological opinion (81420-2011-F-0715-1) issued by USFWS requires the purchase of 0.012 acres at a 3 to 1 ratio for directly affected, and 0.561 acres at a 2 to 1 ratio of indirectly affected vernal pool crustacean habitat. The total required mitigation purchase is 1.158 acres of preservation credits. After a competitive solicitation of approved mitigation banks, Wildlands Inc. with the Laguna Terrace East Conservation Bank submitted the best offer for the purchase price of \$147,066.
- B. The City has obligated an additional \$90,386 in federal funds to proceed with right-of-way phase of the Ramona Avenue Extension Project (T15018400).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute an agreement with Wildlands Inc. with the Laguna Terrace East Conservation Bank for the purchase of preservation credits at the cost of \$147,066.
- Section 2. The FY2012/13 Capital Improvement Program is amended by appropriating \$90,386 (Fund 3703) to the Ramona Avenue Extension Project (T15018400).

Table of Contents

Exhibit A - Location Map

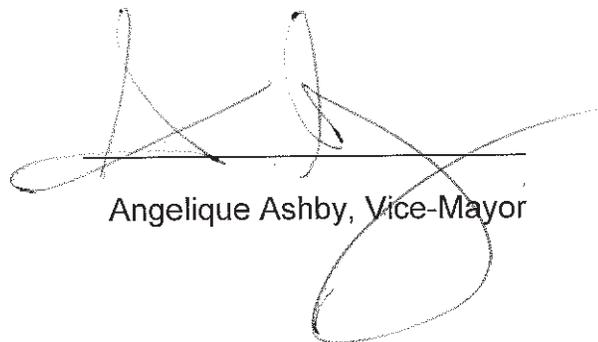
Adopted by the City of Sacramento City Council on November 13, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy and Mayor Johnson

Noes: None.

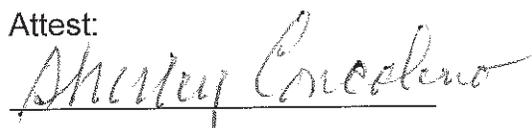
Abstain: None.

Absent: None.



Angelique Ashby, Vice-Mayor

Attest:



Shirley Concolino, City Clerk

**AGREEMENT FOR SALE OF CONSERVATION CREDITS
LAGUNA TERRACE EAST CONSERVATION BANK**

SERVICE File No. 81420-2011-F-0715-1

This Agreement is entered into this 17 day of OCTOBER, 2012, by and between WILDLANDS, INC. (Bank Manager/Operator) and the CITY OF SACRAMENTO (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Manager/Operator has developed the Laguna Terrace East Conservation Bank (Bank) located in Sacramento County, California; and

B. The Bank was approved by the United States Fish and Wildlife Service (Service) on September 26, 2008 and is currently in good standing with said agency; and

C. The Bank Manager/Operator has received approval from the Service to offer vernal pool preservation credits for sale as specified in the Conservation Bank Agreement through the Laguna Terrace East Conservation Bank Agreement (Conservation Bank Agreement); and

D. Project Applicant is seeking to implement the project described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact habitat thereon, and seeks to compensate for the loss of habitat by purchasing credits from Bank Manager/Operator; and

E. Project Applicant has been authorized by the Service, File No. 81420-2011-F-0715-1 to purchase 1.158 vernal pool preservation credits upon confirmation by the Bank Manager/Operator of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank Manager/Operator and Bank Manager/Operator desires to sell to Project Applicant 1.158 vernal pool preservation credits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank Manager/Operator hereby sells to Project Applicant and Project Applicant hereby purchases from Bank Manager/Operator 1.158 vernal pool preservation credits for the purchase price of \$147,066.00 (Purchase Price). The Purchase Price for said credits shall be paid by wire transfer of funds or by check payable to "Wildlands, Inc." Upon receipt of the Purchase Price, Bank Manager/Operator will deliver to Project Applicant an executed Bill of Sale in the form attached hereto and marked Exhibit "B."

2. The sale and transfer herein 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 of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the 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 credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank Manager/Operator shall monitor and make reports to the appropriate agency or agencies on the status of any credits sold to Project Applicant.

Bank Manager/Operator shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the credits by all state or federal jurisdictional agencies.

4. The 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 exercise his/her/its right to purchase the credits within 30 days of the date of this Agreement. After the 30-day period, this Agreement will be considered null and void.

6. Upon purchase of the credits specified in paragraph E above, the Bank Manager/Operator shall submit to the parties listed in the Notices section of the Bank Agreement, copies of the: a) Agreement for Sale of Conservation Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated inventory ledger. The updated inventory ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Service File Number; vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory ledger should include all sales data from Bank opening/establishment to the present.

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

Bank Manager/Operator:

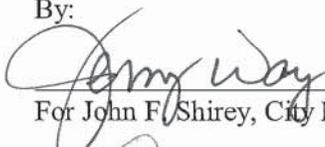
WILDLANDS, INC.

By: 

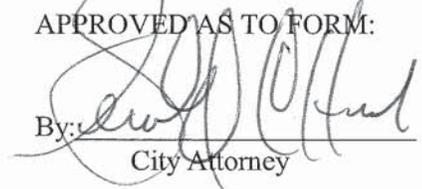
Name: **Wildlands, Manager**
Its: **Mark Heintz, Manager**

Project Applicant:

CITY OF SACRAMENTO

By: 
For John F. Shirey, City Manager

APPROVED AS TO FORM:

By: 
City Attorney

ATTEST:

By: _____
City Clerk

APPROVED

SERVICE:

This Agreement fulfills the Conservation Measure to purchase 1.158 acres of fairy shrimp habitat preservation credits as compensation for direct impacts to 0.012 acre at a ratio of 3:1 ($0.012 \times 3 = 0.036$ acre) and indirect impacts to 0.561 acre at a ratio of 2:1 ($0.561 \times 2 = 1.122$ acres) of seasonal wetland fairy shrimp habitat, as specified in the Biological Opinion, Service File No. 81420-2011-F-0715-1 dated May 23, 2012.

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

By: _____

Title: _____

Dated: _____

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE MITIGATED**

The City of Sacramento and California Department of Transportation propose to widen Folsom Boulevard between U.S. 50 and the Union Pacific Railroad tracks undercrossing. Project activities also include improvements of Ramona Avenue between Brighton Avenue and Cucamonga Avenue, and a new extension of Ramona Avenue that will connect to Folsom Boulevard. The project is located south of State Highway 50, west of Ramona Avenue, and east and west of the Southern Pacific Railroad right-of-way in the City of Sacramento, California.

Exhibit "B"

BILL OF SALE

Contract # LTECB-12-___

SERVICE File No. 81420-2011-F-0715-1

In consideration of \$147,066.00, receipt of which is hereby acknowledged, Wildlands, Inc. does hereby bargain, sell and transfer to the CITY OF SACRAMENTO 1.158 vernal pool preservation credits in the Laguna Terrace East Conservation Bank in Sacramento County, California, developed, and approved by the U.S. Fish and Wildlife Service.

Wildlands, Inc. 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.

Wildlands, Inc. covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: _____

WILDLANDS, INC., a Delaware Corporation

By: _____

Name:

Its:

Exhibit "C"

**LAGUNA TERRACE EAST CONSERVATION BANK
VERNAL POOL PRESERVATION CREDITS: PAYMENT RECEIPT**

PARTICIPANT INFORMATION

Name: CITY OF SACRAMENTO

Address: 915 I Street, 2nd Floor
Sacramento, CA 95814

Telephone: (916) 808-6897

Contact: Jesse Gothan, Civil/Traffic Engineer

PROJECT INFORMATION

Project Description: Ramona Avenue Extension and Folsom Boulevard Widening

Service File Number: 81420-2011-F-0715-1

Species/Habitat Affected: Vernal pool fairy shrimp

Credits to be Purchased: 1.158

Payment Amount: \$147,066.00

Project Location: City of Sacramento, Ramona Avenue and Folsom Boulevard

County/Address: Sacramento

PAYMENT INFORMATION

Payee: WILDLANDS, INC.

Payer: CITY OF SACRAMENTO

Amount: \$147,066.00

Method of payment: Cash Check No. _____ Wire Transfer No. _____

Received by: _____ Date: _____
(Signature)

Name: _____ Title: _____