

**BANK CREDIT PURCHASE AGREEMENT
UPPER CLEAR CREEK MITIGATION BANK**

This Bank Credit Purchase Agreement (“Agreement”) is made by and between the Port of Tacoma, a Washington municipal corporation (“Bank Sponsor”), and CRP / VDC Freeman Logistics Owner, L.L.C. (“Buyer”), each a “Party” and collectively the “Parties”.

1. RECITALS

- 1.1. Bank Sponsor is the owner of the Upper Clear Creek Mitigation Bank (“UCCMB”), created and administered pursuant to the Mitigation Banking Instrument (“MBI”) signed by the Bank Sponsor and by the Washington State Department of Ecology (“Ecology”), U.S. Army Corps of Engineers (“Corps”), and National Marine Fisheries Service (“NMFS”), (collectively the “Regulatory Agencies”, and the Co-Chairs of the Interagency Review Team (“IRT”) under the MBI), and certified June 24, 2020.
- 1.2. The UCCMB is established to operate in the State of Washington, within Universal Credit and Fish Conservation Credit (DSAY) Service Areas (collectively, “Service Areas”), as defined by the MBI.
- 1.3. The purpose of the UCCMB is to provide off-site mitigation for unavoidable impacts to wetlands, fish habitat, and other critical areas associated with certain activity within the respective Service Areas.
- 1.4. Bank Sponsor is authorized to operate the UCCMB and to obtain, hold, sell, and transfer universal bank credits (“Universal Credits”) and fish conservation bank credits (“DSAY Credits”), said credits being units of trade representing the increase in ecological value of a site, as measured by acreage, functions, and/or values (collectively, “bank credits”).
- 1.5. Buyer contemplates undertaking certain activity within the Service Areas (the “Project”), which will require permits and/or approvals (“Permit(s)”) from regulatory agencies and which activity may cause unavoidable impacts to wetlands, fish habitat, or other aquatic habitat, and may require mitigation.
- 1.6. Buyer wishes to purchase from Bank Sponsor, and Bank Sponsor wishes to sell to Buyer, Universal Credits or DSAY Credits from the UCCMB for the Project, on and subject to the terms and conditions contained in this Agreement.

2. AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Bank Sponsor and Buyer agree as follows:

2.1. Purchase/Sale of Bank Credits

2.1.1. **Purchase/Sale.** Bank Sponsor hereby sells to Buyer, and Buyer hereby buys from Bank Sponsor, on and subject to the terms, covenants, and conditions set forth in this Agreement, the following bank credits (the “Bank Credits”):

_____ (_____) Universal Credits
_____ (_____) DSAY Credits)

2.1.2. **Purchase Price.** The Purchase Price for the Bank Credits is as follows:
_____ (US\$ _____ .00) for Universal Credits, minimum value of \$350,000 regardless of the number of Universal Credits purchased.
_____ (US\$ _____ .00) for DSAY Credits

The above Purchase Price shall be subject to adjustment as follows: **[INSERT APPLICABLE PURCHASE PRICE ADJUSTMENT PROVISION]**

2.1.3. **Payment.** **ALTERNATIVE A – IMMEDIATE CLOSING:** Buyer agrees to pay the Purchase Price to Bank Sponsor as provided in this Agreement.

ALTERNATIVE B – EXTENDED CLOSING: Within five (5) days after the Effective Date of this Agreement, Buyer shall pay five percent (5%) of the above Purchase Price to Bank Sponsor by wire or other electronic transfer, to be held by Bank Sponsor as a Deposit. The Deposit shall be applicable to the Purchase Price, and shall be partially refundable to Buyer as provided in Section 2.5.1. below. Buyer agrees to pay the balance of the Purchase Price to Bank Sponsor as provided in this Agreement. Any interest earned on the Deposit shall be retained by Bank Sponsor.

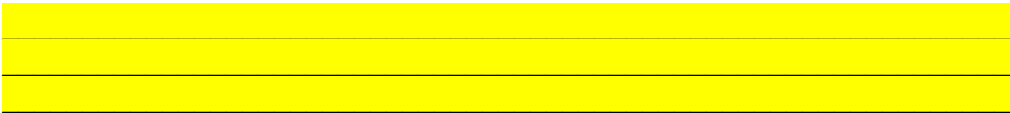
2.2. Project Information; Limitation on Transfer.

2.2.1. **Bank Credits for Project.** Buyer shall be solely responsible for obtaining determinations from applicable agencies as to whether the Bank Credits may be used for the Project and the Permit(s). Bank Sponsor makes no representations or warranties of any kind, express or implied, as to the suitability, utility, applicability, sufficiency, or otherwise, of the Bank Credits to the Project or Permit(s), and any and all such representations and warranties are hereby expressly disclaimed by Bank Sponsor and waived by Buyer. Buyer acknowledges and agrees that Bank Sponsor is selling the Bank Credits specifically for the Project and Permit(s) identified in Section 2.2.2 below, and that this Agreement and the Bank Credits shall not be transferable by Buyer.

2.2.2. **Project.** The Project, Permit(s), and related information is as follows:

2.2.2.1. Buyer’s name, address, & telephone number: Tyler Litzenberger, President, CRP / VDC Freeman Logistics Owner, L.L.C., (425) 968-5115, TLitz@vectorrecorp.com

2.2.2.2. **Permitting Agency(ies) name(s), address(es), telephone number(s):**



2.2.2.3. Permit(s):

Permitting Agency	Permit Number	Date of Issuance

2.2.2.4. Project Name & Location: Freeman Road Logistics, The Freeman Logistics Project is located east of Freeman Road and west of the future Washington State Department of Transportation (WSDOT) SR 167 Extension project in Puyallup, WA. Approximately 5117 Freeman Road E, Puyallup, WA 98371. The Project includes redevelopment of 15 adjacent parcels (parcel numbers 0420174075, 0420201040, 0420201039, 0420201045, 0420201066, 0420201101, 0420205003, 0420205017, 0420201027, 0420201052, 0420201034, 0420201036, 0420201042, 0420205004, 0420205016).

2.2.2.5. Brief Description of Impact(s) to be Compensated for by the Bank Credits:



2.2.3. **Disclosure.** Buyer acknowledges and agrees that Bank Sponsor may, as part of the process for transferring the Bank Credits, disclose the information provided under Section 2.2.2 above to the permitting agency(ies) described in Section 2.2.2, the Pierce County Auditor, the Regulatory Agencies, and the IRT. Bank Sponsor is also subject to the State of Washington Public Records Act, as described below.

2.3. Representations and Warranties

Bank Sponsor represents and warrants to Buyer that:

- 2.3.1. Bank Sponsor is authorized by the Regulatory Agencies to operate the UCCMB and to obtain, hold, sell, and transfer Bank Credits; and
- 2.3.2. Bank Sponsor owns the Bank Credits and has the right to sell and is authorized to sell the Bank Credits to Buyer.
- 2.3.3. Any interest of Bank Sponsor in the Bank Credits is free and clear of conditions or restrictions, except as otherwise provided in this Agreement, the Bill Of Sale, or the MBI.
- 2.3.4. Bank Sponsor, and its successors and assigns, will maintain the UCCMB in accordance with the MBI and assume responsibility for accomplishment and maintenance of the permittee's (Buyer's) compensatory mitigation requirements associated with the transferred credits for the impacting project, upon completion of the credit transfer.

2.3.5. Except for the express representations and warranties in this Agreement, Seller makes no representations or warranties regarding the Bank Credits; Bank Sponsor hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Bank Credits, including but not limited to the suitability, utility, applicability, sufficiency, or otherwise, of the Bank Credits to the Project or Permits for which Buyer intends to use the Bank Credits.

2.4. Closing

2.4.1. Closing and Closing Date. **ALTERNATIVE A – IMMEDIATE CLOSING:**

Buyer shall pay the total Purchase Price for the Bank Credits to Bank Sponsor all in cash by wire transfer or other form of immediately available funds acceptable to Bank Sponsor within thirty (30) days of the Effective Date of this Agreement. If the total Purchase Price is not so paid to Bank Sponsor, then this Agreement shall automatically terminate, and Bank Sponsor shall have no further obligation to sell the Bank Credits to Buyer under this Agreement. Upon Bank Sponsor's receipt of the total Purchase Price as provided above, Bank Sponsor shall, within 14 days of such receipt, deliver a Bill Of Sale to Buyer transferring the Bank Credits to Buyer. The "Closing" or "Closing Date", and the transfer of the Bank Credits, shall occur when the Bill Of Sale is delivered to Buyer.

ALTERNATIVE B – EXTENDED CLOSING: The Closing Date shall be a date to be selected by Buyer which shall be within thirty (30) days of Buyer receiving both the necessary Permit(s) for the Project and approval from all applicable governmental agencies to use the Bank Credits for the Project; provided, however, that in no event shall the Closing Date be sooner than twenty one (21) days after Buyer's notice to Bank Sponsor of Buyer's selection of the Closing Date ("Buyer's Closing Notice"), or later than _____ (the "Expiration Date" of this Agreement). Buyer shall pay the total Purchase Price for the Bank Credits to Bank Sponsor all in cash by wire transfer or other form of immediately available funds acceptable to Bank Sponsor within seven (7) days of the date of Buyer's Closing Notice. If the total Purchase Price is not so paid to Bank Sponsor, then this Agreement shall automatically terminate, and Bank Sponsor shall have no further obligation to sell the Bank Credits to Buyer under this Agreement. Upon Bank Sponsor's receipt of the total Purchase Price as provided above, Bank Sponsor shall, on or before the Closing Date selected by Buyer, deliver a Bill Of Sale to Buyer transferring the Bank Credits to Buyer. The "Closing" or "Closing Date", and the transfer of the Bank Credits, shall occur when the Bill Of Sale is delivered to Buyer.

2.4.2. **Limits on Closing Date.** The Closing Date shall not be modified without the written approval of Bank Sponsor and Buyer.

2.4.3. **Conveyance; Notice of Transfer.** At Closing, Bank Sponsor shall convey to Buyer the Bank Credits, free of conditions or restrictions, except as expressly provided for in this Agreement, the Bill Of Sale, or the MBI. Conveyance shall be in the form of a Bill Of Sale. In addition, Bank Sponsor will send a letter and updated

bank credit ledger to the Buyer and Regulatory Agencies notifying them that the Bank Credits have been transferred by the Bank Sponsor to the Buyer for the Permits and Project detailed in Section 2.2.2 of this Agreement.

2.4.4. **Taxes; Costs.** Buyer shall pay any sales tax or other tax due from the sale or purchase of the Bank Credits under this Agreement, and shall defend, indemnify, and hold harmless Bank Sponsor from any and all claims, costs, fees (including but not limited to attorney fees), and expenses related to such taxes; Buyer's obligation under this section shall survive Closing. Except as provided above, each Party shall pay its own costs and attorney fees related to this Agreement and the transaction thereunder.

2.5. Termination; Default; Remedies

2.5.1. **Termination.** This Agreement may be terminated by Buyer at any time upon prior written notice to Bank Sponsor. Upon termination by Buyer, Bank Sponsor shall refund to Buyer that portion of the Deposit equal to the number of days from the effective date of Buyer's termination of this Agreement through the Expiration Date of this Agreement, divided by the number of days from the Effective Date of this Agreement through the Expiration Date of this Agreement; Bank Sponsor shall also refund to Buyer any other money received by Bank Sponsor from Buyer towards the Purchase Price of the Bank Credits; and otherwise neither Party shall have any further obligation to the other under this Agreement.

2.5.2. **Default by Buyer.** If Buyer fails, without legal excuse or termination of this Agreement, to complete the purchase of the Bank Credits in accordance with the terms of this Agreement, then Bank Sponsor may terminate this Agreement and keep the entire amount of any Deposit as liquidated damages as the sole and exclusive remedy available to Bank Sponsor for such failure. Bank Sponsor shall not be entitled to consequential damages such as lost profits or damages, or any other remedy, for such failure.

2.5.3. **Default by Bank Sponsor.** If Bank Sponsor fails, without legal excuse, to complete the sale of the Bank Credits, then Buyer may terminate this Agreement and recover the entire amount of any Deposit paid by Buyer whether or not it was identified as refundable or applicable to the Purchase Price, and any other money paid by Buyer to Bank Sponsor for the Bank Credits, as liquidated damages as the sole and exclusive remedy available to Buyer for such failure. Buyer shall not be entitled to specific enforcement of transfer of the Bank Credits, or consequential damages such as lost profits or damages, or any other remedy, for such failure or for any other claim related to this Agreement.

2.6. Notice

2.6.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested, and addressed as set forth below; (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below; or

(d) by email if a Party agrees to notice by email and provides an email address. Either Party may change its address by notifying the other Party in writing of the change of address. Notice shall be effective upon receipt or refusal of delivery by the addressee for notice delivered in person or sent by U.S. Mail or courier, and shall be effective upon the addressee's written acknowledgement of receipt other than by an automated response for notice sent by email.

2.6.2. If to Bank Sponsor: Port of Tacoma
Attn: Director of Environmental and Planning
P.O. Box 1837
Tacoma, WA 98401

With copy to: Burgess Phillips PLLC
Attn: Heather Burgess
PO Box 5496
Tacoma WA 98415

2.6.3. If to Buyer: CRP / VDC Freeman Logistics Owner, L.L.C.
Attn: Tyler Litzenberger
11411 NE 124th Street, Suite 190
Kirkland, WA 98034

2.7. Miscellaneous

2.7.1. **Effective date.** The Effective Date of this Agreement shall be the earliest date by which both Bank Sponsor and Buyer have executed this Agreement.

2.7.2. **Assignment.** Buyer's rights under this Agreement, and any Bank Credits to be purchased or purchased by Buyer under this Agreement, shall not be assigned, sold, gifted, alienated, encumbered, apportioned, transferred, or otherwise disposed of (collectively "assign"), in whole or in part, either voluntarily or by operation of law, to any other person or entity, and any Bank Credits to be purchased or purchased by Buyer under this Agreement shall not be used for any Project or purpose other than as stated in this Agreement, without the prior written consent of Bank Sponsor, in its sole and absolute discretion. Any attempt to assign or otherwise transfer or use the Bank Credits shall be null and void. This provision shall survive Closing and shall not be merged into the Bill Of Sale. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

2.7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the Bank Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.

2.7.4. **Time.** Time is of the essence of this Agreement.

2.7.5. **Governing Law; Venue.** This Agreement shall be construed and interpreted in

accordance with the laws of the State of Washington, without regard to its conflicts of laws principles. Venue of any dispute shall be in Pierce County, Washington.

- 2.7.6. **Amendment; Waiver.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver constitute a waiver of any preceding, succeeding, or continuing occurrence or condition, unless expressly stated in the waiver.
- 2.7.7. **Captions.** The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.
- 2.7.8. **Severability.** The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.
- 2.7.9. **Computation of Time.** If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or legal holiday as defined in RCW 1.16.050, then such date shall be automatically extended to the next succeeding weekday that is not such a holiday.
- 2.7.10. **Attorneys' Fees.** In the event either Party to this Agreement finds it necessary to bring an action at law or other proceeding against the other Party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, the prevailing party in any such action or proceeding (and any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other Party. This provision shall survive Closing and shall not be merged into the Bill of Sale.
- 2.7.11. **Acts Beyond Party's Control.** Neither Party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such Party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such Party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such Party could not reasonably have expected to avoid; provided, however, that the foregoing shall not apply with respect to any actions taken or events caused by such Party's own employees, or with respect to the payment of any amount due to the other Party under this Agreement.
- 2.7.12. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement

between Buyer and Bank Sponsor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

2.7.13. Counterparts/Faxes. This Agreement may be executed in one or more counterparts with like effect as if all signatures appeared on one copy. Facsimile transmission of any signed original document (other than the Bill of Sale), and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, the Parties shall confirm facsimile transmitted signatures by signing an original document.

2.7.14. Commissions. Each Party represents and warrants that it is not represented by any broker, agent, or other person in connection with any of the transactions contemplated by this Agreement, and that it has not dealt with any broker, agent, or other person to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, and that insofar as it knows, no broker, agent, or other person is entitled to any commission, charge, or fee in connection with any of the transactions contemplated by this Agreement. Each Party agrees to indemnify, defend, and hold harmless the other Party against any loss, liability, damage, cost, claim, or expense, including interest, penalties, and reasonable attorney fees, that the other Party incurs or suffers by reason of a breach by the first Party of the representations and warranties set forth in this section.

2.7.15. Disclosure of Public Records. The Parties understand and acknowledge that the Port of Tacoma is subject to the State of Washington Public Records Act. If either Party, or any person to whom a Party transmits any information pursuant to this Agreement, is legally required to disclose such information, including without limitation information subject to the State of Washington Public Records Act, then such Party will provide prompt written notice to the other Party prior to any such disclosure so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. Unless such protective order is obtained and provided to the Party subject to the disclosure request, the Party will release to the public the requested information, including any confidential information.

2.7.16. Port of Tacoma Authority. The sale of personal property by the Port of Tacoma is subject to all applicable requirements of RCW Title 53 and all other statutes, regulations, rules, orders, and law of any kind applicable to a sale of personal property by the Port of Tacoma, and Port of Tacoma resolutions and policies regarding the sale of personal property, including those related to the sale of mitigation bank credits. The Port of Tacoma's authority to enter into this Agreement, to sell the Bank Credits, and to perform its obligations under this Agreement, is subject to the approval of this Agreement and all terms of this transaction, or the delegation of authority for such approvals, by the Port of Tacoma Port Commission in open public meeting, and the successful completion of all appropriate notice, approval, and review processes necessary for the sale by the Port of Tacoma, including any appeals.

PORT OF TACOMA, Bank Sponsor

_____, Buyer

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____