

RIGHT OF FIRST REFUSAL AGREEMENT
(Bale Slough – Group B)

250150B (FC)

THIS RIGHT OF FIRST REFUSAL AGREEMENT (“**Agreement**”) is made and entered into as of July 10, 2024 (the “**Effective Date**”), by and among NAPA FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district of the State of California (“**District**”) and CLOVER FLAT LAND FILL, INC., a California corporation (“**Clover Flat**”). The District and Clover Flat are sometimes referred to as “**Parties**” and individually as a “**Party**.”

RECITALS

A. Clover Flat is the fee owner of certain real property commonly known as Clover Flat Landfill (“**Landfill**”), located at 4380 Silverado Trail, Calistoga, Napa County, California (“**Property**”).

B. Clover Flat is in the process of complying with Cleanup and Abatement Order No. R2-2019-0027 (“**CAO**”) issued by the Regional Water Quality Control Board (“**RWQCB**”) pertaining to prior unauthorized impacts associated with the discharge of fill, sediment deposition, and removal of riparian vegetation at the Landfill (“**CAO Project**”).

C. The CAO requires Clover Flat to prepare a Restoration, Mitigation, and Monitoring Plan (“**RMMP**”) for restoration of portions of “Creek 2” within the Property. The RWQCB and the California Department of Fish and Wildlife (“**CDFW**”) will review the proposed RMMP to determine whether it is adequate and to establish the amount of mitigation that can be achieved onsite through the RMMP, and the amount of off-site acreage required to mitigate for the impacts to Oak Woodland Riparian Habitat and in-stream impacts identified in the CAO (“**Offsite Mitigation**”).

D. Clover Flat anticipates that Offsite Mitigation will be required in an amount exceeding 3.1 acres, although the exact amount of such Offsite Mitigation acreage has not yet been determined.

E. The Bale Slough-Bear Creek Tributary Restoration Project (“**Bale Slough Restoration**”) is a joint effort being planned by private landowners and the District with the goals of re-establishing floodplain and natural geomorphic and hydrologic processes in the Napa River Watershed, increasing/enhancing ecological function, fish and riparian habitat, stabilizing eroding banks to reduce fine sediment inputs and minimize the need for ongoing channel work, removing non-native/invasive and Pierce's disease host vegetation, improving seasonal wetland hydrologic processes, and working with landowners to address interests in regards to protecting adjacent agricultural property.

F. The Bale Slough Restoration is divided into three construction groups: Groups A, B, and C. These construction groups are further divided into 14 individual restoration sites. The District has secured grant funding for construction of all sites within Groups A and C. Group B still requires construction funding for its implementation. Group B contains the area known as

"Sites 6-11" and consists of the creek restoration as more particularly shown on Exhibit A ("**Group B**").

G. The District requires authorization from individual property owners within Group B prior to commencing construction. The approximate acreage currently shown in Group B is 3.1 acres, but until this authorization is obtained, the District cannot commit to implementation of the Bale Slough Restoration within Group B, nor can the District confirm final acreage or construction costs ("**Group B Acreage**"). As such, the exact number and construction costs for the Group B Acreage for Sites 6-11 will be determined by the District prior to final funding.

H. The estimated cost of construction for all Group B sites is estimated at ONE MILLION FIVE-HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,550,000.00) as shown on the Engineer's Estimate for Group B Sites 6-11 on Exhibit B attached hereto and incorporated herein.

I. For the purpose of securing acreage to satisfy its Offsite Mitigation obligation, Clover Flat would like to fund in full construction of all of the Group B Sites for which the District obtains property owner authorization.

J. The Parties desire to enter into this a right of first refusal to grant to Clover Flat the first opportunity to provide mitigation funding for the Project for the amount of acreage the District is able to obtain and include within Group B of the Bale Slough Project ("**Group B Acreage**").

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and of other good and valuable consideration, the receipt and sufficiency of which the Parties hereto acknowledge, the Parties hereby agree as follows:

Section 1. Right of First Refusal.

A. For the consideration amount of ONE HUNDRED DOLLARS (\$100.00) ("**ROFR Consideration**"), the District hereby grants to Clover Flat a right of first refusal to provide the Project funding for up to 3.1 acres (the exact amount of acreage to be determined by the District) of mitigation area ("**ROFR**") for the amount of ONE MILLION FIVE-HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,550,000.00) ("**ROFR Price**"). The ROFR Consideration shall be paid by Clover Flat to the District within three (3) days of the Effective Date. The ROFR Consideration is for the opportunity to fund Group B and shall be non-refundable to Clover Flats in all circumstances and no applicable to the ROFR Price. The ROFR Price shall be by Clover Flat to the District upon Clover Flat's exercise of the ROFR as set forth in Section 1B below.

B. Within thirty (30) days of the District's receipt of written authorization from property owners, in the form of executed Temporary Construction Easement (TCE), within Group B to proceed with construction of the Bale Slough Restoration, the District shall provide Clover Flat a term sheet describing the exact amount of Group B Acreage that the District will be restoring as part of Group B implementation, the funding amount for such Group B Acreage ("**Funding**") and any other material terms related to the Funding ("**ROFR Notice**"). Clover Flat shall have a period of thirty (30) days after receipt of the ROFR Notice ("**ROFR Period**") to: (i) elect to

exercise the ROFR on the terms set forth therein by providing written notice to the District (the "Acceptance Notice"). The Acceptance Notice shall specify the amount of Group B Acreage Clover Flat would like to fund. If Clover Flat timely delivers the Acceptance Notice, Clover Flat and the District shall work in good faith to execute a funding agreement, substantially in the form attached hereto as **Exhibit C** (the "Funding Agreement"), within thirty (45) days of the delivery of the Acceptance Notice.

C. If the District receives an offer from a third party ("Third Party") to finance or fund Group B or any part thereof ("Third-Party Offer") that it desires to accept, the District shall deliver to Clover Flat a written notice (the "Third-Party Notice") which states that it has received a Third-Party Offer and describe the salient terms and conditions of such Third-Party Offer. Clover Flat shall have a period of thirty (30) days after receiving the Third-Party Notice to deliver an Acceptance Notice to District agreeing to fund the Group B on the same terms and conditions as set forth in the Third-Party Notice. If Clover Flat timely delivers such Acceptance Notice, the District and Clover Flat shall use good faith efforts to execute the Funding Agreement within thirty (30) days. If Clover Flat fails to timely deliver the Acceptance Notice, then Clover Flat shall be deemed to reject the offer set forth in the Third-Party Notice, and the District shall be free to enter into a Funding Agreement or similar document with such Third-Party for the same amount and terms as set forth in the Third-Party Notice. The District may make changes in the terms and conditions set forth in the Third-Party Offer so long as such changes are not materially more favorable to such Third Party. Any Third-Party funding with (i) an amount ten percent (10%) or less than the amount set forth in the Third-Party Notice, or (ii) on materially more favorable terms to such Third-Party, shall be a new Third-Party Offer subject to all the terms of this Section 1(C).

Section 2. Term.

This Agreement shall terminate upon the earlier of: (A) the execution of the Funding Agreement by and between the District and Clover Flat; (B) the execution of a Funding Agreement by and between the Third-Party and the District (subject to the restrictions set forth in Section 1(B)) for all of the Project; (C) Clover Flat's written notice to District terminating this Agreement for any or no reason; or (D) October 30, 2025, unless terminated earlier in accordance with terms set forth in Section 1.

Section 3. Assignment.

The rights of Clover Flat hereunder may be assigned to any entity engaged in mitigation efforts on behalf of the CAO Project.

Section 4. Notice.

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given and received (i) one (1) business day after being deposited in the United States mail and sent by overnight mail, postage prepaid, (ii) on the day sent by email transmission, read receipt requested, or (iii) on the day delivered personally, in each case, to the Parties at the addresses set forth below or at such other addresses as such Parties may designate by notice to the other Party:

If to the District:

Napa Flood Control and Water Conservation District
Attn.: Jeremy Sarrow
804 1st St.
Napa, California 94559
Email: Jeremy.Sarrow@countyofnapa.org

If to Clover Flat:

Waste Connections
Attn: John M. Perkey
Associate General Counsel – Director of Compliance
3 Waterway Square Place, Suite 110
The Woodlands, Texas 77380
Email: John.Perkey@WasteConnections.com

Section 5. Severability of Provisions.

Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

Section 6. Binding Provisions.

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective Parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 7. Counterparts.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties have not signed the original or the same counterpart.

Section 8. Governing Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.

Section 9. Headings.

All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

Section 10. Amendments.

This Agreement shall not be amended except by written agreement between the District and Clover Flat.

Section 11. Time.

Time is of the essence with respect to this Agreement, and all provisions relating thereto shall be so construed.

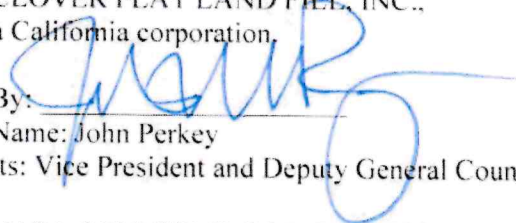
Section 12. Legal Fees.

Except as otherwise provided herein, in the event that legal proceedings are commenced by the District or by the Clover Flat against the other Party in connection with this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover all reasonable attorney's fees and expenses.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first stated above.

CLOVER FLAT:

CLOVER FLAT LAND FILL, INC.,
a California corporation.

By: 
Name: John Perkey
Its: Vice President and Deputy General Counsel

DISTRICT:

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,
a special district of the State of California

By: _____
SCOTT SEDGLEY, Chair of the Board of
Directors.

APPROVED AS TO FORM
Office of District Counsel

By: Shana A. Bagley
Deputy District Counsel
Date: June 18, 2024
[PL No 114640.5]

EXHIBIT A

GROUP B

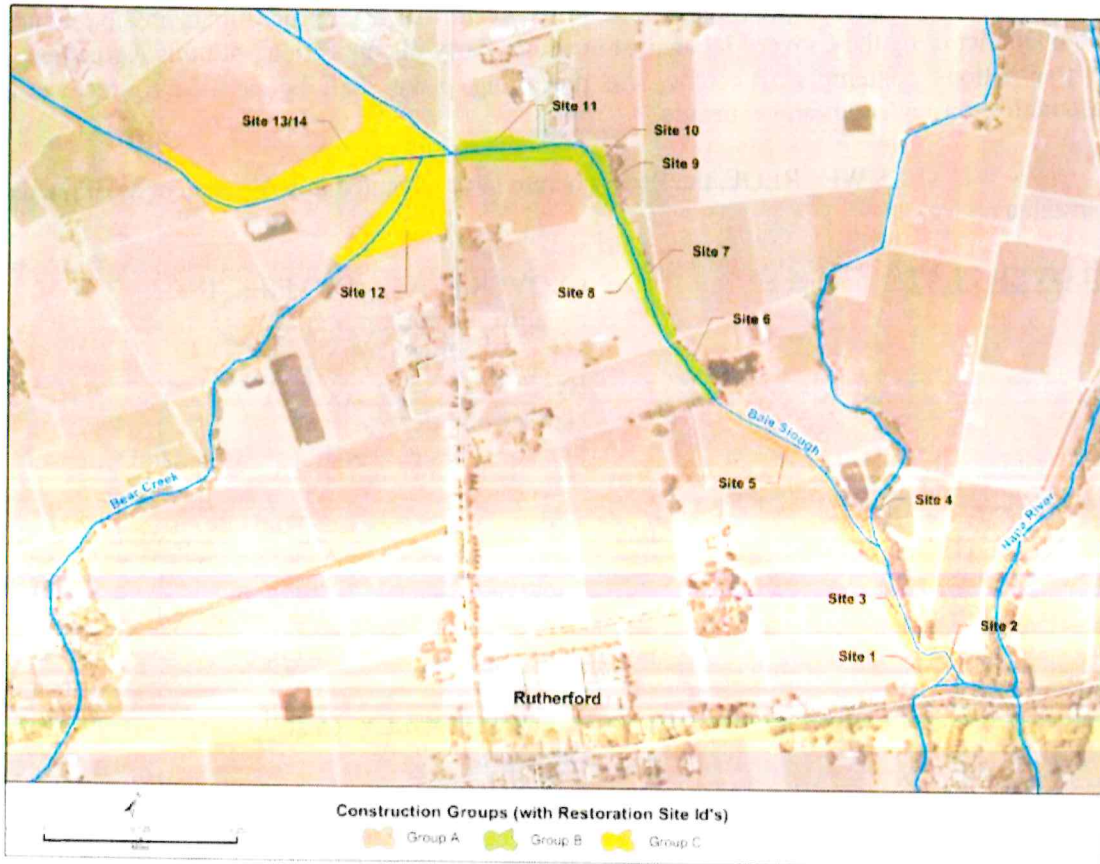


EXHIBIT B

ENGINEER'S ESTIMATE FOR GROUP B SITES 6-11

Construction Cost Estimation*
Napa Valley - Bale slough Restoration
Group B - Cost Estimate Site 6-11

Item Description	Unit	Quantity	Unit Price	Item Total
Mobilization & Creek management (includes SWPPP)	LS	1	\$ 112,300	\$ 112,300
Site Survey and Layout/As-built topo	LS	1	\$ 18,000	\$ 18,000
Demolition	LS	1	\$ 30,000	\$ 30,000
Tree removal and Salvage	LS	1	\$ 35,000	\$ 35,000
Channel excavation	CY	9,000	\$ 22	\$ 198,000
Off Haul	CY	7,560	\$ 45	\$ 340,200
Fill placement	CY	1,440	\$ 25	\$ 36,000
Channel bank stabilization (biodegradable toe treatment)	LF	3,000	\$ 85	\$ 255,000
Willow baffles	EA	33	\$ 4,500	\$ 148,500
Erosion Control (seed & straw rolls)	AC	3.1	\$ 10,000	\$ 31,000
Erosion control blankets	Sq. ft.	20,750	\$ 2.00	\$ 41,500
Woody debris/Habitat Structures	EA	23	\$ 6,500	\$ 149,500
Drip Irrigation	AC	3.1	\$ 50,000	\$ 155,000
Revegetation Planting	AC	3.1	\$ 40,000	\$ 124,000
Exotic vegetation management	AC	0.6	\$ 20,000	\$ 12,000

Does not include construction monitoring, Management, or Supervision

Contingency	15%	\$	252,900
Total Price		\$	1,550,000

EXHIBIT C
FUNDING AGREEMENT

[Attached on Following Page]

**AGREEMENT TO FUND A PORTION OF THE
NAPA RIVER RESTORATION PROJECT**

AGREEMENT NO. _____

This Agreement is entered into by and between CLOVER FLAT LAND FILL, INC., a California corporation ("**Clover Flat**") and Napa Flood Control and Water Conservation District, a special District of the State of California (the "**District**") as of _____, 2024, (the "**Effective Date**"). The District and Clover Flat are sometimes referred to as "**Parties**" and may be individually referred to as "**Party**."

RECITALS

WHEREAS, Clover Flat intends to mitigate impacts at Clover Flat Landfill in Napa County, California, more commonly known as Assessor Parcel Number XXX-XXX-XXX, pursuant to that Napa District use permit (XXXXXX)

WHEREAS, to mitigate for impacts to a unnamed drainage at the Clover Flat Landfill a Section 401 Water Quality Certification ("**Certification**") from the SF Bay Regional Water Quality Control Board ("**RWQCB**") and a Lake Streambed Alteration Agreement (LSAA) from the California Department of Fish and Wildlife (CDFW);

WHEREAS, the Certification and LSAA requires Clover Flat to mitigate for the impacts to the unnamed drainage, which lies within the Napa River Watershed;

WHEREAS, the District will undertake the Bale Slough- Bear Creek Restoration Project, Group B, a project with high aquatic and biological resource values, within the Napa River Watershed (the "**Project**");

WHEREAS, Clover Flat the RWQCB and CDFW have agreed that the Certification and LSAA's mitigation requirements can be satisfied by Clover Flat providing funds to the District for the purpose of supporting the Project; and

WHEREAS, the District desires to accept Clover Flat funding for the Project in a one-time payment to the District.

TERMS

NOW, THEREFORE, for valuable consideration, the Parties agree as follows:

1. **Funding.** Clover Flat shall pay \$1,550,000 to the District for the sole purpose of funding the activities in support of the Project as described and depicted in **Exhibit A** (the "**Project Description**") attached hereto and incorporated by this reference.

2. **Payment Date.** Clover Flat shall transmit the funding payment in full to the District no later than 90 days after the Effective Date (the "Payment Date").

3. **Permitting and Environmental Review.** The District has obtained all permits and performed the necessary environmental review for the Project. Clover Flat shall be responsible for any permitting or environmental review associated with the their mitigation needs.

4. Mitigation and Monitoring Reports. The District shall submit, or direct a third party to submit, a Mitigation and Monitoring report documenting the progress of the Project to the RWQCB by March 31st every year, as described in regulatory permits issued for the Project following the District's implementation of the Project for the first five years.

5. Obligations to Run with the Land. All rights, privileges, duties, and obligations of Clover Flat under this Agreement shall inure to and shall benefit and burden Clover Flat's successors and assigns.

6. Indemnity. The Parties shall indemnify and hold the other harmless from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, and causes of actions, including reasonable attorney's fees and costs, ("**claims**") asserted against or incurred by either party (an "**Indemnified Party**") from any cause arising out of or relating directly or indirectly to the performance or breach of this Agreement by the other party (or its agents, contractors, officers, or employees), other than claims caused by the negligence or willful misconduct of Indemnified Party.

7. Enforcement. If any Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover their reasonable attorney's fees and costs of suit from the losing party.

8. Further Assurances. Each Party shall take all actions that may be necessary or proper to achieve the purposes and objectives of this Agreement.

9. Complete Agreement; Amendments. This is the complete and final Agreement between the Parties and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties.

10. Relationship of Parties. Neither Party is acting as the agent of the other in any respect hereunder and each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the Parties.

11. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement was executed by the Parties as of the date first above written.

CLOVER FLAT:

CLOVER FLAT LAND FILL, INC., a
California corporation

By: _____
XXXX,
President

DISTRICT:

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, a
special District of the State of California

By: _____
XXXX,
Chair of the Board of Supervisors

APPROVED AS TO FORM Office of District Counsel By: _____ Deputy District Counsel Date: _____	APPROVED BY THE NAPAISTRICT BOARD OF SUPERVISORS Date: _____ Processed By: _____ _____ Clerk of the Board	ATTEST Clerk of the Board By: _____
--	--	---

Exhibit A

Project Description

Purpose of Funds: Funds under the Agreement will be applied to the Bale Slough Bear Creek Restoration Project (Project), including "Construction Group B" as shown on the attached Figure A-1. Construction Group B is scheduled for implementation beginning in June of XXXX.

Description: The Napa River is one of the few large watersheds in the San Francisco Bay Area which has not been significantly urbanized and supports a wide range of wildlife and habitats. Prior to agriculture and development in the Napa Valley, the Napa River, its floodplain, and riparian corridor supported extensive forest and wetland habitats. Much of this habitat has been reduced over time. Prior to development, the Napa River was a broad, shallow river system with multiple channels. The Napa River is now generally confined to a single channel that is deeply incised by 12-15 ft. in some reaches. Much of the river corridor is bound by flood berms at the top of the river banks to protect neighboring properties from flooding. This confinement keeps the channel zone fairly homogenous in terms of instream complexity features, such as bars, benches, pools, alcoves, etc. This lack of geomorphic complexity results in a less diverse riparian community and reduced quality and quantity of instream habitat for native aquatic species, such as Chinook salmon, steelhead, and California freshwater shrimp. The constricted channel condition has resulted in bank erosion and slumping in several locations resulting in the loss of valuable riparian habitat and vineyard land and infrastructure.

The Project has several design elements that are intended to restore physical and biological processes to the Napa River, including channel widening, floodplain and wetland restoration, biotechnical stabilization, instream habitat structures, managed retreat, and native vegetation enhancement. The overall objective of the Project is to implement the adopted Napa River Sediment TMDL by reducing fine sediment and polluted runoff within the Napa River watershed and to restore habitat and beneficial uses, including spawning and rearing habitat for Chinook salmon and steelhead trout. The Project reach has been divided into three Construction Groups A-C encompassing 14 distinct restoration sites. Implementing construction of the entire Project would restore up to XX acres of transitional riparian and aquatic habitat and reduce fine sediment loading from channel erosion. The goals of this joint public-private project are to reduce property damage and sediment delivery associated with ongoing bank erosion processes, restore and enhance long-term river and floodplain functioning, and improve the quality and resilience of aquatic and terrestrial riparian habitat.

Groups A is constructed and in the vegetation establishment phase. Design plans for the remaining construction phases. Groups B and C, include the following restoration outputs.

- XX acres total of riparian expansion, restoration and revegetation
- X acres of frequently activated new floodplain and off channel alcove areas
- XXX linear feet of secondary and high flow channel
- XXXX linear feet of actively stabilized banks
- X acres of freshwater wetland enhancement and expansion
- XX acres of managed retreat and revegetation

Permits:

CEQA: The Project is considered a project under California Environmental Quality Act (CEQA). The District is the lead agency that prepared the CEQA IS-MND. The Project CEQA document was adopted by the Napa Flood District Board of Supervisors in XXXX (State Clearing House #).

NEPA: National Environmental Protection Act (NEPA) consistency (ESA Section 7 and NHPA Section 106) is conducted by the United States Army Corps of Engineers through the approval of a Nationwide Permit for each construction phase of the Project. USFWS and NMFS have completed Biological Opinions (BOs) for the entire Project.

Section 1600: California Department of Fish and Wildlife (CDFW) reviews each construction group of the Project through the Section 1600- Lake or Streambed Alteration Agreement (LSAA) process. A CDFW LSAA has been issued for the entire Project, Groups A-C.

Section 401: SF Bay Regional Water Quality Control Board (RWQCB) issued Water Quality Certification of Waste Discharge Requirements for the project in April 2019.

Monitoring and Maintenance:

The District will be responsible for the long-term monitoring and maintenance of the Project. The *Bale Slough Bear Creek restoration Project Monitoring Plan* describes the monitoring protocols and frequency of monitoring and maintenance surveys that will be used to evaluate and report on the Project's effectiveness. Monitoring will include Cross Section Transect Surveys, Habitat Assessment, and Vegetation Surveys. Additionally a maintenance program has been developed to guide adaptive management needs for installed and created restoration features within the project reach. Monitoring results will be reported to the RWQCB, along with other project stakeholders, as part of the annual monitoring report by March 31 each year.

Group Exhibit A
Project Description
Figure A-1

[site map included on following page]