

AGREEMENT CONCERNING WETLANDS MITIGATION

by and between

FORT BEND COUNTY

and

DELTA LAND SERVICES, L.L.C.

This Agreement Concerning Wetlands Mitigation (the "Agreement") is entered into effective as of the dates set forth on the signature page hereto between **Fort Bend County** (hereinafter sometimes referred to as "Permittee"), mailing address: 301 Jackson Street, Suite 400 Richmond, Texas 77469 and **Delta Land Services, L.L.C.** (hereinafter sometimes referred to as "Delta Land"), mailing address: 1090 Cinclare Drive, Port Allen, Louisiana 70767.

Recitals

WHEREAS, Permittee's improvements to Chimney Rock Road Between McHard Road & Trammel Fresno Road (the "Project") will result in certain wetlands being disturbed;

WHEREAS, Permittee expects to incur compensatory mitigation obligations to be established by the US Army Corps of Engineers (the "USACE") in connection with the Project;

WHEREAS, Delta Land is the Sponsor of and authorized agent for Danza del Rio Mitigation Bank (the "Mitigation Bank");

WHEREAS, Delta Land and EIP III Credit Co., LLC ("EIP") are currently pursuing a change in Sponsorship of the Mitigation Bank with the USACE from Delta Land to EIP;

WHEREAS, Permittee, desires to purchase "Functional Capacity Units" ("FCUs") from the Mitigation Bank for compensatory wetland mitigation associated with the Project and Delta Land desires to cause the Mitigation Bank to sell to Permittee such FCUs, all pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, the Mitigation Bank is established and operated in accordance with all regulatory requirements found at 33 CFR Parts 325 and 332, and 40 CFR Part 230, (Processing Department of the Army Permits and Compensatory Mitigation for Losses of Aquatic Resources: Final Rule, April 10, 2008), as well as other requirements deemed essential by the USACE;

NOW THEREFORE, for and in consideration of the premises and the payments hereinafter set forth, Delta Land and Permittee hereby agree as follows:

Agreement

1. **Recitals.** The foregoing Recitals are hereby incorporated into and made a part of this Agreement.
2. **Purchase of FCUs from the Mitigation Bank.** Subject to the terms and conditions of this Agreement, Permittee and Delta Land agree that a total of **1.4** FCUs shall be purchased from the Mitigation Bank by Permittee, subject to the actual compensatory mitigation requirements determined by the USACE at the time of issuance of a permit in connection with the Project. The type and number of FCUs hereby is set forth in the table below:

Phillips Creek Mitigation Bank	
Functional Capacity Unit (FCU) Type	Projected No. of FCUs
Physical FCU	0.5
Biological FCU	0.4
Chemical FCU	0.5

3. **FCU Pricing.** The fixed purchase price per FCU is set forth in the table below.

FCU Type	Price/FCU	No. of FCUs	Total Pricing by FCU
Physical	\$33,000.00	0.5	\$16,500.00
Biological	\$33,000.00	0.4	\$13,200.00
Chemical	\$33,000.00	0.5	\$16,500.00
Total Purchase Price			\$46,200.00

Purchase price payments shall be made to Delta Land upon delivery of FCUs by the Mitigation Bank as set forth below, pursuant to the wire instructions set forth on Exhibit A.

4. **Payment.** Upon execution and delivery of this Agreement, Permittee shall pay DELTA LAND the cash sum of **Forty-Six Thousand Two Hundred and 00/100 (\$46,200.00) Dollars**
5. **Agreement to Purchase and Sell.** For the fixed purchase price per FCU set forth in Section 3, Delta Land agrees to cause the Mitigation Bank to sell and transfer to Permittee, and Permittee hereby agrees to purchase from the Mitigation Bank an aggregate of **1.4** FCUs (of the type described in Section 2) that will satisfy Permittee's obligations for compensatory wetlands mitigation under the permit

SWG-2016-00788, issued by the USACE in connection with the Project (the "Project Permit").

6. **Delivery by the Mitigation Bank of FCUs.** Delta Land shall cause the Mitigation Bank to purchase and ultimately transfer and deliver the Mitigation Credits to the Permittee at such time as Permittee or Permittee's Agent has delivered in writing the number and type of FCUs required by the USACE and Permittee has paid the Purchase Price for such FCUs.
7. **Responsibilities of Delta Land.**
 - a. Upon transfer and delivery by the Mitigation Bank of the FCUs to Permittee, Delta Land shall assume responsibility for compensatory mitigation requirements under the Project Permit and Delta Land shall promptly provide to the USACE documentation that confirms that Delta Land, as sponsor of the Mitigation Bank, has accepted the responsibility for providing the compensatory mitigation required under the Project Permit.
 - b. Delta Land shall perform all necessary work to restore, enhance and/or preserve wetland functions and maintain wetland habitats in accordance with the provisions of the approved mitigation banking instrument.
 - c. Delta Land shall debit the FCUs described in this Agreement from the RIBITS ledger for the Mitigation Bank and promptly notify the USACE of this action. Delta Land shall have fully performed its obligations to Permittee upon entering the debit into RIBITS and with the completion of notification to the USACE.
8. **Acceptance of Responsibility.** Upon its receipt of all payments due from Permittee for FCUs purchased under this Agreement, Delta Land agrees to accept sole responsibility for all wetland mitigation requirements of Permittee under the Project Permit on the terms provided in this Agreement.
9. **Authorized Agent.** Delta Land agrees to enter into an agreement with the USACE that provides that Delta Land, and its successors or assigns, shall be the authorized agent responsible for maintaining and protecting lands contained within the Mitigation Bank. This responsibility includes, but is not limited to, lands subject to this Agreement, in perpetuity, unless said lands are transferred to a state or federal resource agency or non-profit conservation organization.
10. **Termination.**
 - a. This Agreement may be terminated by the mutual written agreement of the parties.
 - b. At Delta Land's election, if Permittee has not signed this Agreement on or before January 15th, 2019, any and all obligations of Delta Land shall be terminated.

c. In the event: (i) a petition is filed for bankruptcy by or against Permittee, (ii) there is an appointment of a receiver for Permittee or (iii) of the insolvency of Permittee prior to Permittee's full performance hereunder, this Agreement shall automatically and immediately terminate without the necessity of any action or notice by or from Delta Land.

11. Default by Permittee. In addition to any remedies that DELTA LAND may have in law or at equity and in the event that Permittee does not make any payment specified herein, Delta Land shall not be obligated to issue FCUs to Permittee until such payment due has been received by DELTA LAND. In the event that more than fourteen (14) days pass from the point of payment being due, Delta Land shall have the right to rescind this Agreement and any obligation to sell, transfer and/or assume the wetland mitigation liability associated with the Permits in favor of the Permittee as outlined above.

12. Notices. Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by reputable overnight delivery service, mailed first-class, postage prepaid, registered or certified mail, or sent by email, as follows:

DELTA LAND: Delta Land Services, L.L.C.
Attention: George J. Guerin
1090 Cinclare Drive
Port Allen, Louisiana, 70767
Email: george@deltaland-services.com

With a copy to: Delta Land Services, L.L.C.
Attention: Codi Moore
1090 Cinclare Drive
Port Allen, Louisiana, 70767
Email: codi@deltaland-services.com

PERMITTEE: Fort Bend County Engineering Department
Attention: County Engineer
301 Jackson Street, Suite 400
Richmond, Texas, 77469

With a copy to: Fort Bend County
Attention: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

13. Indemnification. Delta Land shall indemnify and hold Permittee harmless from and against such claims, damages, litigation and expenses that result from, arise out of

or are caused by, and only to the extent of, Delta Land's negligence or intentional misconduct. This indemnification shall be limited to the Total Purchase Price.

14. No Agency. Permittee and Delta Land are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture or agency relationship between Permittee and Delta Land.

15. Miscellaneous.

- a. Prevailing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to conflicts of law principles of such State.
- b. Amendment; Waiver. This Agreement may not be amended, modified or altered without the written consent of the parties hereto. Any waiver of any provision or requirement hereunder shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.
- c. Entire Agreement. This Agreement sets forth the entire Agreement and understanding of the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings related to the subject matter hereof. No representation, promise or inducement or statement of intention has been made by any party which is not embodied in this Agreement or in the exhibits or schedules hereto. No party hereto shall be bound by or liable for any alleged representation, promise or inducement or statement of intention not so set forth. The Schedules and Exhibits hereto are incorporated herein and form a part of the Agreement.
- d. Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of all other parties hereto.
- e. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.
- f. No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

- g. Counterparts; Electronic Transmissions. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or electronic (i.e., PDF) transmission will constitute effective execution and delivery of this Agreement and may be used instead of the original Agreement for all purposes.
- h. Expenses. Each of the parties will bear its own costs and expenses, including legal fees and expenses, incurred in connection with this Agreement and the transactions contemplated hereby.
- i. Attorneys' Fees. Permittee does not agree to pay any and/or all attorney fees incurred by Delta Land in any way associated with this Agreement.
- j. No Consequential or Punitive Damages. Neither party shall be liable to the other for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, whether by statute, in tort or contract or otherwise in respect of this Agreement or otherwise in connection with this transaction.
- k. Designated Representative. Pursuant to the Irrevocable Resolutions of Delta Land Services, L.L.C. dated July 13, 2018, EIP has the authority to "engage in any and all transactions and/or actions deemed necessary or desirable by EIP ... as designated representative of Delta Land Services, L.L.C., including but not limited to entering into and executing mitigation credit sales agreements" pertaining to certain mitigation banks and planned sponsorship of planned banks, including the Mitigation Bank.
- l. Certain State Law Requirements for Contracts.
 - (i) Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Delta Land verifies Delta Land does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - (ii) Texas Government Code Section 2251.152 Acknowledgment: By signature below, Delta Land represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

(Signature Page Follows)

Agreed to and accepted this _____ day of _____ 2018.

FORT BEND COUNTY

By: _____

Name: _____

Title: _____

Agreed to and accepted this _____ day of 12/19/2018 | 14:50:34 EST 2018.

DELTA LAND SERVICES, L.L.C

By: *EIP III Credit Co., LLC*
Its: *Designated Representative*

By: DocuSigned by:
Katherine Birnie
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Name: Katherine Birnie

Title: Managing Director