

# AGREEMENT CONCERNING WETLANDS MITIGATION

by and between

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

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 Toll Road Authority** (hereinafter sometimes referred to as "Permittee"), mailing address: P.O. Box 1307 Richmond, Texas 77406 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 activities (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 Danze 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 **2.8** 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	0.8
Biological FCU	1.1
Chemical FCU	0.9

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	0.8	\$26,400.00
Biological	\$33,000.00	1.1	\$36,300.00
Chemical	\$33,000.00	0.9	\$29,700.00
<b>Total Purchase Price</b>			<b>\$92,400.00</b>

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 **Ninety-Two Thousand Four Hundred and 00/100 (\$92,400.00) 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 **2.8** FCUs (of the type described in Section 2) that will satisfy Permittee's obligations for compensatory wetlands mitigation under the permit

**SWG-2009-00650**, 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 November 16, 2018, 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](mailto: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](mailto:codi@deltaland-services.com)

PERMITTEE: Fort Bend County Toll Road Authority  
Attention: \_\_\_\_\_  
P.O. Box 1307  
Richmond, Texas, 77406  
Email: \_\_\_\_\_

**13. Specific Performance.** The obligations of the parties hereto may be specifically enforced. In the event of default by either party hereto, the non-defaulting party shall have the right to enforce specific performance of the obligations of the defaulting party or seek such other relief as may be provided by law or equity, or both, and the non-prevailing party shall be responsible for all costs incurred by the prevailing party, including reasonable attorneys fees.

**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

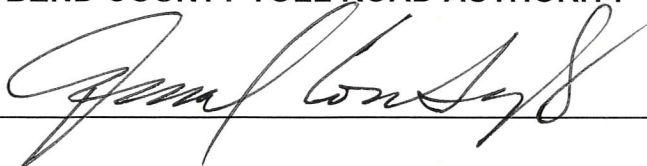
of copies of this Agreement and of signature pages by facsimile or electronic (i.e., PDF) transmission will constitute effective execution and delivery of this Agreement and may be used instead of the original Agreement for all purposes.

- 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. If any legal action, arbitration, mediation or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, then the successful or substantially prevailing party or parties will be entitled to recover reasonable attorneys' fees and other costs, including court costs, incurred in that action or proceeding, in addition to any other relief to which the successful or substantially prevailing party or parties may be entitled.
- 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.

*(Signature Page Follows)*

Agreed to and accepted this 27th day of January 2019.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

By: 

Name: James Condrey, DDS

Title: Chairman

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**DELTA LAND SERVICES, L.L.C**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and accepted this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**FORT BEND COUNTY TOLL ROAD AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and accepted this \_\_\_\_\_ day of 2/11/2019 | 12:37:16 EST 2019.

**DELTA LAND SERVICES, L.L.C**

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

By: DocuSigned by:  
*Katherine Birnie*  
\_\_\_\_\_

Name: Katherine Birnie

Title: Managing Director

**EFFECTIVE DATE**

THIS AGREEMENT IS EFFECTIVE ON THE DATE IT IS APPROVED BY THE FORT BEND COUNTY COMMISSIONERS COURT, AND IF NOT SO APPROVED SHALL BE NULL AND VOID.

DATE OF COMMISSIONERS COURT APPROVAL: \_\_\_\_\_

AGENDA ITEM NO.: \_\_\_\_\_

**Exhibit A**

Wire Transfer Instructions for **EIP III Credit Co., LLC** – *DELTA PORTFOLIO*

Bank Name: Silicon Valley Bank  
Bank Address: 3003 Tasman Drive  
Santa Clara, CA 95054

ABA: [REDACTED]  
Account Name: EIP III Credit Co, LLC  
Account Number: [REDACTED]

Attn: Kara Shaver  
Silicon Valley Bank  
Phone 480.303.4520

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.  
 Delta Land Services, LLC  
 Port Allen, LA United States

Certificate Number:  
 2019-451730

Date Filed:  
 02/12/2019

Date Acknowledged:  
 2/12/19

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.  
 Fort Bend County Toll Road Authority

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.  
 SWG-2009-00650  
 Wetland Mitigation Credits

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

### 6 UNSWORN DECLARATION

My name is D. Winship Songy, and my date of birth is [REDACTED]

My address is [REDACTED]  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in West Baton Rouge Parish County, State of Louisiana, on the 12 day of February, 2019.  
(month) (year)

D. Winship Songy  
Digitally signed by D. Winship Songy  
 DN: cn=D. Winship Songy, o=Delta Land Services, LLC, ou, email=winship@deltalandservices.com, c=US  
 Date: 2019.02.12 13:55:15 -0600  
 Signature of authorized agent of contracting business entity (Declarant)