

2024-0275

**INTRODUCED BY: MATTHEW JEWELL, PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)**

ORDINANCE NO. 24-8-6

An ordinance approving and authorizing the execution of a Wetlands Mitigation Agreement by and between St. Charles Parish and Delta Land Services, L.L.C., for wetlands mitigation for the Montz Pump Station (Parish Project No. P210301), Montz Pump Station No. 2 (Parish Project No. P210806) and drainage improvements along Highway 61 permitted under the Montz Pump Stations and Drainage Improvement Project in the amount of \$175,800.00.

WHEREAS, the community of Montz, St. Charles Parish, Louisiana has a history of drainage problems; and,

WHEREAS, St. Charles Parish is programmed to construct, operate, and maintain the Montz Pump Station and Drainage Modification Project to protect the property owners in the Montz community; and,

WHEREAS, in order to fulfill the wetlands permitting mitigation requirements, it is necessary to purchase 1.8 LDENR-BLH acres from Cow Branch Coastal Mitigation Bank Amendment One (CBCMBA1) and 2.6 BLH acres from Pontchartrain Basin Umbrella Mitigation Bank (PBUMB) for a total amount of \$175,800.00; and,

WHEREAS, it is the desire of the Parish Council to approve said Agreement to comply with the requirements of U.S. Army Corps of Engineers Permit No. MVN-2021-00822-EPP and Louisiana Department of Energy and Natural Resources Coastal Use Permit Application Number P20210703.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Wetlands Mitigation Agreement by and between St. Charles Parish and Delta Land Services, L.L.C., for wetlands mitigation for the Montz Pump Station (Parish Project No. P210301), Montz Pump Station No. 2 (Parish Project No. P210806) and drainage improvements along Highway 61 permitted under the Montz Pump Stations and Drainage Improvement Project in the amount of \$175,800.00 is hereby approved.

SECTION II. That the Parish President is hereby authorized to execute said Wetlands Mitigation Agreement on behalf of St. Charles Parish.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: MOBLEY, FONSECA, WILSON, PILIE, COMARDELLE, O'DANIELS,
FISHER, DEBRULER
NAYS: NONE
ABSENT: SKIBA

And the ordinance was declared adopted the 19th day of August, 2024, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: Bob Fisher
SECRETARY: Michelle Dupont
DLVD/PARISH PRESIDENT: August 20, 2024
APPROVED: DISAPPROVED:

PARISH PRESIDENT: Matthew Jewell
RETD/SECRETARY: August 21, 2024
AT: 3:05 pm RECD BY: [Signature]

WETLANDS MITIGATION AGREEMENT

by and between

ST. CHARLES PARISH

and

DELTA LAND SERVICES, L.L.C.

This Agreement to Reserve and Purchase Mitigation Acres (the "Agreement") is entered into effective as of the dates set forth on the signature page hereto **St. Charles Parish** (hereinafter sometimes referred to as "Permittee"), mailing address: P.O. Box 302 Hahnville, LA 70057 and **Delta Land Services, L.L.C.** (hereinafter sometimes referred to as "DELTA LAND"), mailing address: 1090 Cinclare Drive, Port Allen, Louisiana 70767. Permittee and DELTA LAND are herein referred to as a "Party" in the singular, and as the "Parties" in the plural.

Recitals

WHEREAS, DELTA LAND desires to provide Permittee with mitigation acres that will satisfy Permittee's obligation to the Louisiana Office of Coastal Management (the "OCM") and the Department of the Army, Corps of Engineers ("USACE") to compensate for wetland impacts occurring as a result of Permittee's activities associated with its Montz Pump Stations (Parish Project Nos. P210301 and P210806) in St. Charles Parish (the "Project");

WHEREAS, to compensate for Permittee's impacts in the Pontchartrain River Basin and within the Louisiana Department of Natural Resources - Office of Coastal Management designated Coastal Zone (the "Coastal Zone"), DELTA LAND intends to provide mitigation acres from its inventory at the Cow Branch Coastal Mitigation Bank Amendment One (the "CBCMBA1" or the "Mitigation Bank");

WHEREAS, to compensate for Permittee's impacts in the Pontchartrain River Basin and outside of the Coastal Zone, DELTA LAND intends to provide mitigation acres from its inventory at the Pontchartrain Basin Umbrella Mitigation Bank (the "PBUMB" or the "Mitigation Bank");

Together the CBCMBA1 and PBUMB shall serve as a Mitigation Banks and shall provide **1.8** Bottomland Hardwood Acres from the CBCMBA1 designated for use of impacts in the Coastal Zone and **2.6** Bottomland Hardwood Acres from the PBUMB (all mitigation acres provided to Permittee from the CBCMBA1 and PBUMB are hereinafter collectively referred to as the "Mitigation Acres") for compensatory mitigation as required by Permittee's USACE Permit No. **MVN-2021-00822-EPP** (the "DA Permit") and as required by the Coastal Use Permit P20210703 (the "CUP" or together the "Permits");

WHEREAS, the CBCMBA1 and PBUMB are mitigation banks within the New Orleans District and are 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 set forth by the USACE; and

WHEREAS, pursuant to this Agreement between Permittee and DELTA LAND, DELTA LAND, for the price outlined herein and to be paid by Permittee, will provide compensation for adverse wetland impacts as required by the Permits and further commits to enhance and restore wetland functions and maintain wetland habitats in accordance with the provisions of the Permits. Upon payment of the full Purchase Price described herein, DELTA LAND will assume the legal responsibility for the compensatory mitigation requirements of the Permits for which it transfers Mitigation Acres to Permittee. Additionally, DELTA LAND will provide to the USACE and OCM the documentation that confirms DELTA LAND has accepted the responsibility for providing the required compensatory mitigation.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Permittee and DELTA LAND, each intending to be legally bound, do hereby warrant and agree as follows:

Agreement

1. **Recitals.** The foregoing Recitals are hereby incorporated into and made a part of this Agreement.
2. **Purchase of Mitigation Acres from the ICMB.** Subject to the terms and conditions of this Agreement, Permittee and DELTA LAND agree that a total of **1.8** Bottomland Hardwood Mitigation Acres from the CBCMBA1 and **2.6** Bottomland Hardwood Mitigation Acres from the PBUMB shall be purchased by Permittee, as documented by a letter the USACE and OCM will provide Permittee (the "Mitigation Determination Letter(s)").
3. **Responsibilities of DELTA LAND.**
 - a. DELTA LAND has taken, and will continue to take, all reasonable actions necessary to maintain the Mitigation Bank(s), including submitting all necessary paperwork to the USACE related thereto and diligently pursuing the same.
 - b. Upon full payment, DELTA LAND shall assume responsibility for the compensatory mitigation requirements of the Permit, for which it transfers acres, once Permittee has provided the appropriate number and type of Mitigation Acres that have been derived and confirmed by the USACE and OCM. DELTA LAND shall provide to the USACE and OCM, documentation

which confirms that DELTA LAND, as Sponsor of the Mitigation Banks, has accepted the responsibility for providing the compensatory mitigation as required in the Permits.

- c. DELTA LAND shall debit the Mitigation Acres described in this Agreement from the RIBITS ledger for the Mitigation Banks and promptly notify the USACE and OCM. 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 and OCM.
4. **Acceptance of Responsibility.** Upon DELTA LAND's receipt of the full Purchase Price from Permittee under this Agreement, DELTA LAND agrees to accept sole responsibility for all wetland mitigation requirements of Permittee under the Permit in accordance with the terms provided in this Agreement.
 5. **Pricing.** The price to be paid by Permittee to DELTA LAND per Bottomland Hardwood Mitigation Acre for use in the Coastal Zone (the "Per CBCMB BLH Acre Price") shall be **Fifty Thousand and 00/100 (\$50,000.00) Dollars** and the price to be paid by Permittee to DELTA LAND per Bottomland Hardwood Mitigation Acre outside of the Coastal Zone (the "Per PBUMB BLH Acre Price") shall be **Thirty Three Thousand and 00/100 (\$33,000.00) Dollars** for a total cost at the Mitigation Bank to the Permittee of **One Hundred Seventy-Five Thousand Eight Hundred and 00/100 (\$175,800.00) Dollars** (the "Purchase Price").
 6. **Purchase of Mitigation Acres; Payment.** With full execution of this Agreement and at any point on or before October 18, 2024, Permittee shall pay to DELTA LAND, in cash by wire transfer in accordance with the instructions on **Exhibit A**, an amount equal the Purchase Price. Both Parties agree that in the event the mitigation requirements change before payment is made that the Purchase Price shall be adjusted to reflect the final requirements times the Per Acre Price at each Mitigation Bank.
 7. **Agreement to Purchase and Sell.** For the Purchase Price set forth in Section 5, 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 **4.4** Mitigation Acres (of the type described in Section 2) that will satisfy Permittee's obligations for compensatory wetland mitigation under the Permits.
 8. **Termination.**
 - a. This Agreement may be terminated by a mutual written agreement executed by the Parties.
 - b. 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.

9. **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 Mitigation Acres 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.
10. **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, 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

PERMITEE: St. Charles Parish
Attention: St. Charles Parish President
P.O. Box 302
Hahnville, LA 70057
Email: mlj@stcharlesgov.net

Director of Public Works
100 River Oaks Drive
Destrehan, LA 70047
Email: mbingham@stcharlesgov.net

Department of Legal Services
P. O. Box 302
Hahnville, LA 70057
Email: cmoubre@stcharlesgov.net

11. **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.
12. **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, agency or joint venture relationship between Permittee and DELTA LAND.
13. **Miscellaneous.**
 - a. Prevailing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana, 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 exhibit 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 exhibit hereto is incorporated herein and forms 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 and such consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, any Party may assign this Agreement, without the consent of the other Party, to any (i) entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control of that Party, (ii) entity to whom grantee has assigned all or substantially all of its assets or (iii) bank, financing institution or other lender, or group thereof,

pursuant to the terms of any financing agreements.

- 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 from 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.

(Signature Page to Follow)

Agreed to and accepted this 21 day of August, 2024.

ST. CHARLES PARISH

By: Math Jewell

Name: Matthew Jewell

Title: Parish President

Agreed to and accepted this 29th day of August, 2024.

DELTA LAND SERVICES, L.L.C

By: D. Winship Songy

Name: D. Winship Songy

Title: CFO

Exhibit A

Wire Transfer Instructions

Synergy Bank
210 Synergy Center Boulevard
Houma, Louisiana 70360

ABA No.: 065405297
SWIFT No: SYNEUS44 (For International Wires)

Beneficiary: Delta Land Services, LLC
Account Number: 0118621