

WETLANDS MITIGATION AGREEMENT

by and between

ST. CHARLES PARISH

and

DELTA LAND SERVICES, L.L.C.

This Wetlands Mitigation Agreement (the "Agreement"), effective as of the _____ day of _____ 2015, by and between **St. Charles Parish** (hereinafter referred to as "Permittee"), with a mailing address of 15045 River Road, Hahnville, LA 70057, and **Delta Land Services, L.L.C.** (hereinafter referred to as "DELTA LAND"), with a mailing address of 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 U.S. Army Corps of Engineers (the "USACE") and Louisiana Office of Coastal Management (the "OCM") to compensate for wetland impacts occurring as a result of Permittee's activities associated with its levee project (the "Project").

WHEREAS, The Laurel Valley Coastal Mitigation Bank ("LVCMB") shall serve as a mitigation bank and shall provide **18.5** mitigation acres (the "Mitigation Acres") for compensatory mitigation as required by the Permittee's Department of the Army Permit MVN-2010-2326-EOO and Coastal Use Permit P20100821 [modified] (the "DA Permit" and the "CUP" together the "Permits").

WHEREAS, the LVCMB is a mitigation bank within the New Orleans District and will be 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.

WHEREAS, the LVCMB is awaiting the release of Mitigation Acres associated with the signing of the Mitigation Banking Instrument (the "MBI") and acceptance of the as-built report. The initial release upon the signing of the MBI shall consist of 41.4 Mitigation Acres of Bottomland Hardwood and 49.0 Mitigation Acres of Cypress Swamp. Additionally, the release with the acceptance of the as-built report shall consist of a release of an additional 13.8 Bottomland Hardwood and 16.4 Cypress Swamp Acres.

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 premises and the payments hereinafter set forth, Permittee and DELTA LAND hereby agree as follows:

Agreement

1. **Recitals.** The foregoing Recitals are hereby incorporated into and made a part of this Agreement.
2. **Reservation of Acres from the Mitigation Banks.** Subject to the terms and conditions of this Agreement, Permittee and DELTA LAND agree that a total of **18.5** Mitigation Acres (14.3 Cypress Swamp & 4.2 Bottomland Hardwood) shall be reserved from the LVCMB for purchase by Permittee. The Mitigation Acres shall consist of **14.3** Cypress Swamp & **4.2** Bottomland Hardwood Mitigation Acres and are subject to the actual compensatory mitigation requirements in the Permits. Delta Land warrants that at the time of transfer of the Mitigation Acres to Permittee, the Mitigation Bank has been approved by the USACE and that the Mitigation Acres have been released for transfer by the USACE and have not previously been reserved for or transferred to any other party.
3. **Responsibilities of DELTA LAND.**
 - a. DELTA LAND shall assume responsibility for the compensatory mitigation requirements of the Permits, for which it transfers acres, once Permittee has provided the appropriate number and type of 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 LVCMB, has accepted the responsibility for providing the compensatory mitigation as required in the Permits.
 - 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.
4. **Acceptance of Responsibility.** Upon DELTA LAND's receipt of all payments due from Permittee under this Agreement, DELTA LAND agrees to accept sole

responsibility for all wetland mitigation requirements of Permittee under the Permits and in accordance with the terms provided in this Agreement.

5. **Pricing.** The price to be paid by Permittee to DELTA LAND per Mitigation Acre (the "Per Acre Price") shall be **Forty Five Thousand and 00/100 (\$45,000.00) Dollars** for a total cost to the Permittee of **Eight Hundred Thirty Two Thousand Five Hundred and 00/100 (\$832,500.00) Dollars**.
6. **Deposit.** Upon execution and delivery of this Agreement, Permittee shall pay DELTA LAND, by certified check, a cash deposit equal to 50% of the product of the Per Acre Price and the number of Mitigation Acres reserved pursuant to Section 2 hereof (the "Deposit"). This 50% Deposit payment is equal to **Four Hundred Sixteen Thousand Two Hundred Fifty and 00/100 (\$416,250.00) Dollars**. Subject only to the limitations set forth in Section 7 below, the Deposit is non-refundable and will be credited towards the final purchase price as described in Section 8 below.
7. **Deposit Refund.** The Deposit is refundable only in the event of one of the following:
 - a. If the USACE does not release the Mitigation Acres for sale by June 1, 2015, the Deposit shall become refundable at the Permittee's option on June 1, 2015; or
 - b. If the USACE releases the Mitigation Acres for sale by June 1, 2015, 50% of the Deposit (which equals **Two Hundred Eight Thousand One Hundred Twenty Five and 00/100 [\$208,125.00] Dollars**) shall be refundable only if Permittee cancels the Project and provides written evidence of the same to DELTA LAND within fourteen (14) days of doing so.
8. **Purchase of Mitigation Acres; Payment.** Within two (2) business days following the issuance of the DA Permit, Permittee shall purchase from DELTA LAND, and DELTA LAND shall transfer and sell to Permittee, the Mitigation Acres required by the Permits, and concurrently therewith, Permittee shall pay to DELTA LAND, in cash by certified check, an amount equal to the product of the final Mitigation Acres determined by the Permits times the Per Acre Price. Following completion of the purchase of the final Mitigation Acres, DELTA LAND shall promptly notify the USACE and OCM of the transaction and record the transaction in the Regulatory In Lieu Fee and Bank Information Tracking System. The Deposit shall be held by DELTA LAND as a deposit under this Agreement and applied toward the price or retained by DELTA LAND as set forth herein. In the event that the total, final purchase price does not exceed the amount of the Deposit, an amount equal to the Deposit less the total, final purchase price shall be refunded to the Permittee.

9. **Agreement by DELTA LAND to Maintain Lands.** At the time the Mitigation Acres are transferred to Permittee, DELTA LAND will have entered into an agreement with the USACE, which provides that DELTA LAND, and its successors or assigns, shall be the authorized agent responsible for maintaining and protecting lands contained within the LVCMB. 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 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.
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 the 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 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, 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: St. Charles Parish
Attention: V. J. St. Pierre, Jr.
P.O. Box 302
Hahnville, LA 70057

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, agency or joint venture relationship between Permittee and DELTA LAND.
15. **Indemnification.** DELTA LAND shall indemnify and hold Permittee harmless from and against: (i) 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 performance of the specific mitigation services under this Agreement; and (ii) all claims to which Permittee may become subject that result from or arise out of: (a) the inability or failure by DELTA LAND to perform the tasks as described in this Agreement or as required by the USACE or (b) the negligence of DELTA LAND. Any indemnification pursuant to this Section shall be limited to the total purchase price of the Mitigation Acres ultimately transferred to Permittee pursuant to this Agreement.
16. **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 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 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 _____ day of _____, 2015.

ST. CHARLES PARISH

By: _____

Name: V. J. St. Pierre, Jr.

Title: Parish President

Agreed to and accepted this _____ day of _____, 2015.

DELTA LAND SERVICES, L.L.C

By: _____

Name: George J. Guerin

Title: Manager