

IRELAND FEE PARADIS (049765)

PARADIS MITIGATION BANK AREA

ST. CHARLES PARISH, LOUISIANA

UNITED STATES OF AMERICA

MITIGATION PARTICIPATION AGREEMENT

BETWEEN

CHEVRON U.S.A. INC.

AND

PARISH OF ST. CHARLES

Effective Date : October __, 2012

MITIGATION PARTICIPATION AGREEMENT

THIS MITIGATION PARTICIPATION AGREEMENT (“Contract”) is entered into this _____ day of October, 2012 (the “Effective Date”), by and between Chevron U.S.A. Inc., a Pennsylvania corporation (“Seller”), with a mailing address at 1400 Smith, Houston, Texas 77002 and Parish of St. Charles, with a mailing address at P.O. Box 302, Hahnville, Louisiana 70057 (“Permittee”).

RECITALS

- A. Seller is the Sponsor of the Paradis Mitigation Bank (the “Bank”) as that term is defined in the Mitigation Banking Instrument (“MBI”) and in such capacity has agreed to perform all necessary work to enhance and restore wetland functions and maintain wetland habitats and transitional buffers, if applicable, in accordance with the provisions of the MBI.
- B. Seller is responsible for maintaining accounting records and monitoring the Bank for success and providing this information in reports documenting bank usage and the results of monitoring.
- C. The Bank is established to provide compensation for impacts to bottomland hardwood wetlands and Cypress swamps, within the Alluvial Valley of the Mississippi River within the Hydrologic Cataloging Unit 8090301.
- D. Permittee has filed an application with the U.S. Army Corps of Engineers for a Wetlands Use Permit for construction of storm surge protection in Sections 5, 6, 37, and 57 T 14S, R21E; Sections 48, 50, and 57, T13S, R21E; Sections 93 and 119, T13S, R20E; and Section 1, T13S, R21E, said permit to be conditioned to require mitigation for impacts that are likely to occur and which are of importance to the human or aquatic environment.
- E. The U.S. Army Corps of Engineers New Orleans District has approved the use of the Bank to fulfill Permittee’s compensatory mitigation requirements as outlined in US COE Basefile # MVN-2010-2326-EOO permit.

AGREEMENT

1. DEFINITIONS, INTERPRETATIONS, AND EXHIBITS

- 1.1 **Definitions.** As used in this Contract, these words or expressions have the following meanings:

“Affiliate” means any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to “control” another if it owns directly or indirectly at least fifty percent of either of the following:

- (A) The shares entitled to vote at a general election of directors of such other entity.
- (B) The voting interest in such other entity if such entity does not have either shares or directors.

“Bank” means the Paradis Mitigation Bank. Its location is shown on Exhibit C and it is more specifically described in the MBI.

“Claim” means any claim, liability, loss, demand, damages, Lien, cause of action of any kind, obligation, costs, judgment, interest and award (including recoverable legal counsel fees and costs of litigation of the Person asserting the Claim), whether arising by law, contract, tort, voluntary settlement or otherwise.

“COE” means the U.S. Army Corps of Engineers New Orleans District.

“Dispute” means any dispute or controversy arising out of this Contract or the performance of services hereunder, including a Claim under this Contract and any dispute or controversy regarding the existence, construction, validity, interpretation, enforceability or breach of this Contract.

“Effective Date” means the date defined as “Effective Date” in the introductory paragraph of this Contract.

“Exhibit” means the documents referred to in Section 1.3(A).

“MBI” means the Paradis Mitigation Banking Instrument dated June 9, 2005, between Chevron U.S.A. Inc., the U.S. Army Corps of Engineers New Orleans District, et al.

“Party” means Seller or Buyer and “Parties” mean both of them.

“Permittee” means the Person defined as “Permittee” in the introductory paragraph of this Contract and Permittee’s successors, and assigns.

“Person” means an individual, corporation, company, state, statutory corporation, partnership, trust, unincorporated organization, association, government entity or any other legal entity.

“Records” means information in any recorded form, whether electronic or otherwise, including books, papers, documents, contracts, financial accounts, ledgers, recordings, purchase orders, invoices, vouchers, receipts, manifests, correspondence, memoranda, instructions, plans, drawings, personnel records, timesheets, payroll records, inspection records, registers, statements, reports, written and other information, computer data and other data.

“Seller” means the Person defined as “Seller” in the introductory paragraph of this Contract.

1.2 **Interpretation.** Unless the context expressly requires otherwise, all of the following apply to the interpretation of this Contract:

- (A) The plural and singular words each include the other.
- (B) The masculine, feminine and neuter genders each include the others.
- (C) The word “or” is not exclusive.
- (D) The word “includes” and “including” are not limiting.
- (E) References to matters “arising” (or which “arise” or “arises”) “out of this Contract” include matters which arise in connection with this Contract or have a causal connection with or which flow from this Contract or which would not have arisen

or occurred but for the entering into this Contract or the performance of or failure to perform obligations under this Contract.

- (F) The headings in this Contract are included for convenience and do not affect the construction or interpretation of any provision of, or the rights or obligations of a Party under, this Contract.

1.3 Exhibits.

- (A) All of the Exhibits that are attached to the body of this Contract are an integral part of this Contract and are incorporated by reference into this Contract, including:
 - (1) Exhibit A – Specifications
 - (2) Exhibit B – Permittee’s COE Permit
 - (3) Exhibit C – Location Map of the Bank
- (B) If a conflict exists between the body of this Contract and the Exhibits, the body prevails to the extent of the conflict.

2. SELLER SERVICES

- 2.1 Seller owns and operates the Bank and is prepared to and upon the payment specified in Section 3.1(B), shall commence to render all services and shall satisfy all of the terms and conditions specified in Exhibit A.

3. PAYMENTS

- 3.1 Permittee will compensate Seller for the services to be performed in accordance with the terms and conditions of this Contract as follows:
 - (A) Permittee desires to acquire 34.20 acres of cypress/tupelo gum swamp and 15.00 acres of bottomland hardwood credits from the Bank as specified in COE permit attached as Exhibit B.
 - (B) Concurrent with the execution of this Contract, Permittee shall pay Seller in U.S. Dollars the amount of NINE HUNDRED EIGHTY-FOUR THOUSAND DOLLARS (\$984,000).

4. WARRANTEE

- 4.1 Seller hereby warrants that it has record title to the Bank and that it has all rights to perform the obligations undertaken by Seller in this Contract. The Parties hereto warrant to each other that they have the right to enter into this Contract.

5. GOVERNMENTAL COMPLIANCE

- 5.1 Seller warrants and agrees to comply with any and all laws, ordinances, orders, rules, regulations, standards, licensing requirements or otherwise of any state, federal, municipal or local authority or agency thereof, now in force and effect, or which may be passed, enacted, issued, revised, required or promulgated hereinafter, incident to, arising out of or

in any way connected with the Bank and/or any activities conducted under, pursuant to or by virtue of this Contract.

6. GOVERNING LAW AND RESOLUTION OF DISPUTE

- 6.1 **Governing Law.** This Contract is governed by, and interpreted under the laws of the State of Louisiana, without regard to its choice of law rules, except that the substantive and procedural rules of the Federal Arbitration Act, 9 U.S.C. §§ 1 – 16 (“the Act”) shall govern Section 6.
- 6.2 **Resolution of Disputes.** If any Dispute arises out of or in relation to this Contract and if the Dispute cannot be settled by direct negotiations, either Party may initiate mediation. If the Parties fail to settle the Dispute within thirty days of notice of mediation, either Party may initiate binding arbitration. The following provisions shall apply to arbitration proceedings pursuant to Section 6:
- (A) The place of arbitration will be New Orleans, Louisiana.
 - (B) One arbitrator will conduct the arbitral proceedings in accordance with The International Institute for Conflict Prevention & Resolution (“CPR”) Rules and CPR is the appointing authority.
 - (C) The arbitrator does not have the power to award, nor shall the arbitrator award, any punitive, indirect or consequential damages (however denominated). Each Party will bear its own costs of legal representation and witness expenses.
 - (D) The arbitrator must render a reasoned award in writing. This award shall be based upon a decision which must detail the finding of fact and conclusions of law on which it rests. The award is final and binding.
 - (E) The Dispute will be resolved as quickly as possible. The arbitration award must be issued within three months from completion of the hearing, or as soon as possible thereafter.

7. GENERAL PROVISIONS

- 7.1 **Entire Agreement.** This Contract comprises the complete and exclusive agreement between the Parties regarding the subject matter of this Contract, and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into before the Effective Date.
- 7.2 **Notices.** All notices required or permitted under this Contract must be in writing and delivered by mail (postage prepaid) or by hand delivery to the address of the receiving Party set out in the signature page to this Contract. Notice may also be delivered by facsimile sent to the facsimile number of the receiving Party set out in the signature page to this Contract provided that the original notice is promptly sent to the recipient by mail (postage prepaid) or by hand delivery. Notices sent by email are ineffective. Notices are effective when received by the recipient during the recipient’s regular business hours. Notices which do not comply with the requirements of this Contract are ineffective.

- 7.3 **Amendment.** Neither this Contract nor any provision hereof may be altered, amended, modified, superseded, canceled, changed, waived, renewed, extended, discharged or terminated, except in a writing duly executed by the Parties.
- 7.4 **Successors and Assigns.** This Contract will be binding upon and inure to the benefit of the Parties and their respective Affiliates, heirs, legal representatives, successors and assigns.
- 7.5 **Drafting.** Preparation of this Contract has been a joint effort of the Parties and the resulting Contract must not be construed more severely against one of the Parties than against the other.
- 7.6 **Authorized Representatives.** Each Party represents and warrants that the Contract has been duly executed and delivered by its authorized officer or other representative and constitutes its legal, valid and binding obligation enforceable in accordance with its terms, and no consent or approval of any other person is required in connection with its execution, delivery and performance of this Contract.
- 7.7 **Severability.** Each provision of this Contract is severable. If any provision is determined to be invalid, unenforceable or illegal under any existing or future law by a court, arbitrator of competent jurisdiction or by operation of any applicable law, this invalidity, unenforceability or illegality will not impair the operation of or affect those portions of this Contract that are valid, enforceable and legal.
- 7.8 **Conflict of Interest.**
- (A) No director, employee, or agent of either Party may engage in any of the following activities without the other Party's prior written consent:
- (1) Give to or receive from any director, employee or agent of the other Party or any Affiliate of that Party either of the following:
- (a) Any gift, entertainment or other benefit of significant cost or value.
- (b) Any commission, fee or rebate.
- (2) Enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate of that Party (other than as a representative of the Party or its Affiliate).

For the period of two years after the Effective Date either Party, or its authorized representatives, may audit the applicable Records of the other Party for the purpose of determining whether there has been compliance with this Section 7.8. The provisions of this Section 7.8 will survive termination of this Contract.

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The Parties have executed this Contract in duplicate as evidenced by the following signatures of authorized representatives of the Parties:

**SELLER:
CHEVRON U.S.A. INC.**

Signature:

Name: _____

Title: _____

ADDRESS FOR NOTICES:

1400 Smith
Houston, Texas 77002

Attention: A&D Manager

Telephone: (281) 372-1700

Facsimile: (866) 741-5436

**PERMITTEE:
PARISH OF ST. CHARLES**

Signature:

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

Title: Parish President

ADDRESS FOR NOTICES:

P.O. Box 302
Hahnville, LA 70057

Attention: Parish President

Telephone: (985) 783-5000

Facsimile: (985) 783-2067

EXHIBIT A - SPECIFICATIONS

Chevron U.S.A. Inc. (“Seller”) and the Sponsor of the Paradis Mitigation Bank located in St. Charles Parish, Louisiana, on behalf of Parish of St. Charles (“Permittee”), shall perform the following wetland mitigation in fulfillment of the Permittee’s U.S. Army Corps of Engineers Permit attached hereto as Exhibit B and shall enhance 49.2 acres of lands located in the Paradis Mitigation Bank as follows:

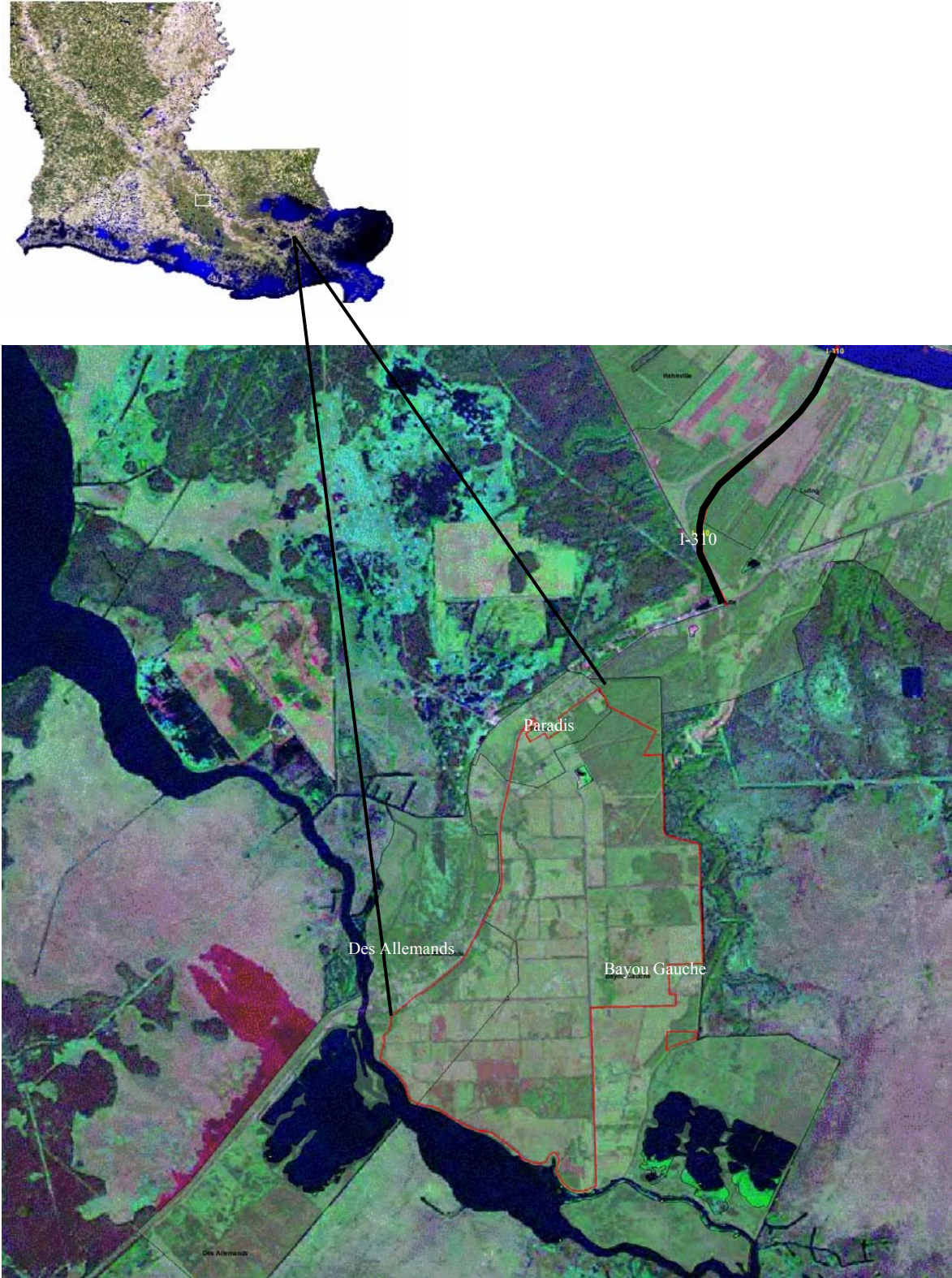
1. Planting will be conducted during the non-growing season which is defined as December 15th through March 15th.
2. Wetland rehabilitation will be conducted in accordance with the approved Mitigation Banking Instrument for the Paradis Mitigation Bank.
3. If any portion of the 49.2 acres is destroyed or adversely impacted by activities and/or occurrences, other than by Acts of God, the U.S. Army Corps of Engineers shall be so advised in writing by Seller and restoration shall be made by Seller to the affected area or equal mitigation shall be implemented by Seller, as approved by the U.S. Army Corps of Engineers.
4. Seller has or shall immediately record a Conservation Servitude in accordance with the terms of the MBI to ensure that, in the event the 49.2 acres of land is sold, the new owner of the mitigation area will be aware of limitations pertaining to activities within the mitigation site. The Conservation Servitude will be filed in the conveyance records of St. Charles Parish, Louisiana.

End of Exhibit A

EXHIBIT B – U.S. ARMY CORPS OF ENGINEERS PERMIT

(permit letter follows this page- remainder of page intentionally left blank)

EXHIBIT C - LOCATION PLAT OF THE PARADIS MITIGATION BANK



Legend
— Boundary