

Recommendation re: Wetland Credit Purchase Agreement – Lakeland Park Drive Connector

Public Works and engineering consultant, CivilSurv Design Group, Inc., have completed the development of construction plans for the extension of Lakeland Park Drive to Carpenters Way. As a condition to the issuance of the Permits by the U.S. Army Corps of Engineers (Corps) and Southwest Florida Water Management District (SWFWMD), Lakeland is required to compensate for wetland impacts, and we have elected to do so through the purchase of wetland Credits. The Corps and SWFWMD have determined that Lakeland shall be required to purchase a total of 1.25 State Forested Wetland Credits and 1.25 Corps Forested Wetland Credits due to the proposed impacts to wetlands resulting from the development of our roadway extension.

EIP Credit Co., LLC, is the Sponsor of the Peace River Mitigation Bank and the Boran Ranch Mitigation Bank and both are located within the Peace River Watershed of Florida. EIP Credit Co., LLC has 1.25 State Forested Wetland Credits and 1.25 Corps Forested Wetland Credits available and has agreed to sell the Credits to Lakeland for the amount of \$227,500.

Funding for this purchase is provided in the FY 2016 Transportation Fund budget.

It is recommended that the City Commission authorize the appropriate City officials to execute the subject Wetland Credit Purchase Agreement with EIP Credit Co., LLC in the amount of \$227,500.00.



Peace River and Boran Ranch

Wetland Mitigation Banks

WETLAND CREDIT PURCHASE AGREEMENT

THIS WETLAND CREDIT PURCHASE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2016, (the "Effective Date") by and between **EIP CREDIT CO., LLC**, a Delaware limited liability company, having an address of 2002 Clipper Park Road, Suite 201, Baltimore MD 21211 ("Seller"), and **THE CITY OF LAKELAND**, having an address of 228 S. Massachusetts Avenue, Lakeland, FL 33881 ("Buyer").

RECITALS:

WHEREAS, Seller's affiliate, EIP Credit Co., LLC is the Sponsor of the Peace River Mitigation Bank, located in Hardee County, Florida, within the Peace River Watershed of Florida (HUC 03100101) and permitted by the Southwest Florida Water Management District ("SWFWMD") under Chapters 40D-1 and 40D-4, F.A.C. and as provided in District Permit No. 43029983.000, and permitted by the U.S. Army Corps of Engineers ("Corps") pursuant to the Mitigation Banking Instrument ("MBI") (Permit No. SAJ-2006-4057) authorized under Section 404 of the Clean Water Act; and

WHEREAS, Seller's affiliate, EIP Credit Co., LLC is the Sponsor of the Boran Ranch Mitigation Bank, located in DeSoto County, Florida, within the Peace River Watershed of Florida (HUC 03100101) and permitted by the Southwest Florida Water Management District ("SWFWMD") under Chapters 40D-1 and 40D-4, F.A.C. and as provided in District Permit No. 49026121.000, and permitted by the U.S. Army Corps of Engineers ("Corps") pursuant to the Mitigation Banking Instrument ("MBI") (Permit No. SAJ-1996-01134) authorized under Section 404 of the Clean Water Act; and

WHEREAS, Buyer seeks to fulfill the requirements of permit # **43042182.000** from the Southwest Florida Water Management District ("SWFWMD") under a Florida Environmental Resource Permit ("ERP") ("State Permit") and permit # **SAJ-2015-02558** from the Corps under Section 404 of the Clean Water Act ("Corps Permit") (collectively, "Permits") so as to allow the discharge of clean non-toxic fill material into a wetland in HUC 03100101 for the Lakeland Park Drive Connector project ("Project"); and

WHEREAS, as a condition to the issuance of the Permits by the Corps and SWFWMD, the Buyer is required to compensate for wetland impacts, and elects to do so through the purchase of wetland Credits from Seller under the provisions of this Agreement; and

WHEREAS, the Corps and SWFWMD have determined that Buyer shall be required to purchase a total of **1.25** State Forested Wetland Credits and **1.25** Corps Forested Wetland

Credits (as defined below) due to the proposed impacts to wetlands resulting from the development of its project; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1) RECITALS: The recitals are hereby incorporated herein by this reference and made a part of this Agreement.

2) DEFINITIONS: The following terms shall have the following meanings in this Agreement:

a) CREDITS: "Credits" shall mean credits sold from the Wetland Bank as determined by SWFWMD and/or the Corps using the Uniform Mitigation Assessment Method ("UMAM"). "Dual Credits" shall mean Credits approved by both SWFWMD and the Corps.

b) WETLAND BANK: "Wetland Bank" shall mean the bank sponsored by Seller with wetland mitigation Credits for sale to the open market in connection with ERP/Corps Section 404 Dredge and Fill permitted projects, as provided for by the MBI.

3) CREDITS PURCHASED: Subject to the terms and conditions of this Agreement, Buyer shall purchase from Seller and Seller shall sell to Buyer **1.25** State Forested Wetland Credits and **1.25** Corps Forested Wetland Credits.

4) COMPENSATION: In exchange for the Credits being purchased hereunder, Buyer shall, subject to the terms and conditions of this Agreement, pay to the Seller a sum total of **Two Hundred Twenty Seven Thousand Five Hundred Dollars (\$227,500.00)** (the "Purchase Price").

a) PAYMENT OF DEPOSIT AND PURCHASE PRICE: Buyer shall pay to Seller a fifteen percent (15%), which is Thirty Four Thousand One Hundred Twenty Five Dollars (\$34,125), non-refundable deposit ("Deposit"), applicable to the Purchase Price, in exchange for a ninety (90) day reservation period ("Reservation Period"). If Buyer wishes to extend the Reservation Period by another ninety (90) days, Buyer shall pay to Seller an additional fifteen percent (15%), which is another Thirty Four Thousand One Hundred Twenty Five Dollars (\$34,125), non-refundable deposit ("Second Deposit"), applicable to the Purchase Price, for a maximum one hundred eighty (180) day Reservation Period, at the end of which the balance of the Purchase Price less the Deposit(s) (the "Balance of Purchase Price") is due from Buyer to Seller.

b) PAYMENT METHOD: All payments hereunder shall be made to **EIP CREDIT CO., LLC**. Buyer shall pay the Deposit(s), Purchase Price, and Balance of Purchase Price by either a wire transfer or Automated Clearing House (ACH) transfer. Seller shall

not accept payment in any form of check. In no instance shall Credits be transferred by Seller prior to Seller having received full payment of the Purchase Price. Wire / ACH payment instructions are located in Exhibit A.

- c) RESERVATION LETTER: Upon execution of this Agreement and the receipt of the Deposit, Seller will convey a letter to Buyer indicating that the Credits have been reserved by Buyer ("Reservation Letter"). Seller will convey a Reservation Letter for 1.25 State Forested Wetland Credits and 1.25 Corps Forested Wetland Credits to Buyer within 3 business days upon receipt of Deposit.
- d) TRANSFER OF CREDITS: Upon receipt by Seller of Buyer's Corps and SWFWMD permit and the Balance of Purchase Price, Seller shall initiate a minor modification of the SWFWMD Mitigation Bank Permit to withdraw Credits in favor of Buyer's State and Corps Permit ("Permit Modification"). Seller shall provide a copy of the Permit Modification to Buyer. Seller shall notify the Corps that Credits have been withdrawn in favor of Buyer's Corps Permit ("Corps Correspondence"). Seller shall provide a copy of the Corps Correspondence to Buyer.
- e) TERMINATION: At Seller's discretion, this Agreement shall automatically terminate if Buyer does not pay the Purchase Price or the Deposit to Seller on or before ten (10) days from the Effective Date of this Agreement. In any event, this Agreement must be fully executed on or before July 28, 2016, or, at the discretion of the Seller, any and all obligations of the Seller shall be terminated.

5) SELLER'S COVENANTS AND REPRESENTATIONS: Seller represents that it is authorized by Corps and SWFWMD to sell Credits from the Peace River Mitigation Bank in accordance with the MBI and SWFWMD permit. Seller shall be responsible for the development and maintenance of the Credits and the Wetland Bank in accordance with the requirements of the MBI and SWFWMD and other applicable laws. Seller has good and sufficient title to the Credits it will sell to Buyer. Buyer shall have no rights or obligations to perform any of the responsibilities of the Seller now or hereafter set forth by the Corps and SWFWMD regarding the development and maintenance of the Credits or the Wetland Bank nor shall Buyer have any rights or obligations to enforce any of the responsibilities of the Seller under the MBI.

6) NOTICES: Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested, by facsimile or electronic mail to the parties hereto as follows:

If to Seller:

EIP CREDIT CO., LLC
Katherine Birnie, Director of Markets
c/o Ecosystem Investment Partners
2002 Clipper Park Road, Suite 201
Baltimore, MD 21211
(443) 921-9441
katherine@ecosystempartners.com

If to Buyer:

CITY OF LAKELAND
Greg James
228 S. Massachusetts Avenue
Lakeland, FL 33811
(863) 834-6040
greg.james@lakelandgov.net

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by First Class United States mail, return receipt requested, shall be effective as of the third business day following its posting, and any notice given pursuant hereto by facsimile or electronic mail shall be effective as of receipt of a confirmation by the sending party.

7) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written document stating the specifics of such amendment, executed by both Seller and Buyer.

8) APPLICABLE LAW: Seller and Buyer shall be contractually bound to this Agreement, which shall be governed by the laws of the State of Florida and subject to the requirements of any applicable federal laws or regulations. Changes in federal, state, or local laws, which might have otherwise impacted this Agreement, shall not be enforced retroactively after execution of this Agreement. Each party shall be held harmless for damages sustained by the other party as a result of changes in federal, state, or local laws pertaining to this transaction or the interpretation or enforcement of said changes.

9) ATTORNEYS' FEES: In the event any action, suit, or other proceeding at law or in equity is brought to enforce the covenants and agreements contained in this Agreement or to obtain monetary damages for breach thereof, and such action results in an award judgment for monetary damages, or the granting of any equitable relief in favor of any party hereto, all

expenses, including reasonable attorney's fees, of the successful party in such action, suit, or other proceeding shall, upon demand of such party, be paid by the other party.

10) SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Buyer, as the case may be, and their respective successors and assigns. Neither party hereto shall assign any interest hereunder without the prior written approval of the other, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

SELLER:

NAME: **EIP CREDIT CO., LLC**

By: Nicholas Dilks

Title: Manager

Date:

BUYER:

NAME: **CITY OF LAKELAND**

By:

Title:

Date:

Exhibit A

Wire / ACH Payment Instructions

EIP Credit Co., LLC

Bank Name: Silicon Valley Bank

Bank Address: 3003 Tasman Drive
Santa Clara, CA 95054

ABA: 121140399

Account Name: EIP Credit Co, LLC

Account Number: 3301000228

Attn: Ashley Todd Relationship Advisor Private Equity Services
Phone 617.796.6971