

WETLAND RESOURCES LLC

ELSIE GRIDLEY MITIGATION BANK

Purchase Agreement for 1.416 acres of seasonal wetlands and 1.839 acres freshwater marsh, and 0.138 acres of intermittent drainage. Total 3.393 acres.

This Agreement ("Agreement") is made and entered into as of _____, by and between the County of El Dorado, a political subdivision of the State of California and Wetland Resources LLC (WRLLC). Other defined terms used herein are defined in the Definitions or upon the first appearance of said term.

In consideration of the mutual promises, covenants and conditions herein, the Parties agree as follows:

1. Definitions

- A. Mitigation Bank. "Mitigation Bank" means the Elsie Gridley Mitigation Bank Facility located in Solano County, California, owned and operated by WRLLC. Army Corps File number 200000614.
- B. Mitigation. "Mitigation" shall mean the per acre unit of the Mitigation Bank allocated to the White Rock Road Realignment Project pursuant to this Agreement as mitigation for impacts to seasonal wetlands and freshwater marsh. ACOE permit number: 200400715.

2. Term of Agreement.

The term of this Agreement shall be in perpetuity.

3. Obligations of WRLLC

WRLLC shall have the following obligations:

- A. Assignment of Mitigation Units. Pursuant to this Agreement the County of El Dorado has purchased certain Mitigation Units equivalent to 1.416 acres of seasonal wetlands, 1.839 acres freshwater marsh, and 0.138 acres of intermittent drainage.
- B. Maintenance and Endowment of the Mitigation Units. WRLLC shall maintain and permanently endow with sufficient funding the long-term maintenance and preservation of the Mitigation Bank property.
- C. Maintain and Permits and Approvals. WRLLC shall obtain and maintain, throughout the term of this Agreement, all permits and approvals for the Mitigation Bank.
- D. Compliance With Laws. WRLLC shall at all times comply with all applicable laws, permits and approvals pertaining to WRLLC's performance under this Agreement, including but not limited to environmental laws, permits and approvals applicable to the development, restoration, management, and maintenance of suitable created seasonal wetland Mitigation Units.

4. Purchase Price and Terms

1.416 acres of seasonal wetlands, 1.839 acres freshwater marsh, and 0.138 acres of intermittent drainage:
Total acres 3.393 for \$491,985.00. Full payment required 30 days from the execution of this contract.

5. Indemnification

WRLLC shall indemnify, defend and hold harmless, the County of El Dorado, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to or death of any person and damage to property or for contribution or indemnity claimed by third parties arising out of or caused in any way, directly or indirectly, by WRLLC's activities as required by this Agreement.

6. Successors And Assigns

The terms, covenants and conditions of this Agreement shall apply to and shall bind the successors and assigns of the County of El Dorado and WRLLC.

7. Notices

Any and all notices to be given under this Agreement, or which any Party may desire to give to another, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other Party's place of business as designated below during regular business hours, or on the third day following deposit in the mail, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

A. If to: **The County of El Dorado**
County of El Dorado
Department of Transportation
Mr. Richard Shepard, Director
2850 Fairlane Court
Placerville., CA 95667

B. If to **WRLLC:**
Mr. Edward Flynn
Wetland Resources LLC
3030 Bridgeway Suite 107,
Sausalito, CA 94965

Changes of address shall be promptly filed with the other Parties.

8. The County Officer or employee with responsibility for administering this Agreement is Russell A. Nygaard, Deputy Director, Engineering, Department of Transportation, or successor.

9. Waiver

The waiver by any Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

10. Applicable Law

The interpretation and effect of this Agreement shall be governed by application of the laws of the State of California.

11. Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded by binding arbitration before JAMS in San Francisco, California, which shall have exclusive jurisdiction over such lawsuits.

12. Time of The Essence

Time is of the essence with this Agreement.

13. Negotiated Agreement

Each Party acknowledges that no other Party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another Party to execute this Agreement. The Parties agree that no provisions or provision may be subject to any rule of construction based upon any Party being considered the Party "drafting" this Agreement.

14. Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

15. Attorneys Fees and Costs

In the event that any legal action is necessary to enforce any terms or conditions of this Agreement, the prevailing party in any such action shall be entitled to an award of reasonable attorneys fees and costs, including all expert witness and consultant's fees as determined by the arbitrator.

16. Ownership of Mitigation Units

The County of El Dorado owns the Mitigation Units free and clear of any claims, liens and encumbrances, and shall have the unqualified right to sell, convey or otherwise transfer said Mitigation Units to any successors in interest of the White Rock Road Realignment project.

Requesting Department Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

IN WITNESS WHEREOF, the Parties make this Agreement as of the Effective Date.

FOR THE COUNTY OF EL DORADO:

By: _____

Dated: _____

Board of Supervisors
"County of El Dorado"

Attest:

Cindy Keck
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

FOR WRLLC:

WETLAND RESOURCES, LLC.

By: _____

Dated: _____

Print Name: Benjamin Winslow
Managing Member