



# Peace River and Boran Ranch

Wetland Mitigation Banks

5550 Newbury Street, Suite B  
Baltimore, MD 21209  
P: 443.921.9441  
F: 410.235.1503

## WETLAND CREDIT PURCHASE AGREEMENT

THIS WETLAND CREDIT PURCHASE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, (the "Effective Date") by and between **EIP CREDIT CO., LLC**, a Delaware limited liability company, having an address of 5550 Newbury Street Suite B, Baltimore MD 21209 ("Seller"), and the **CITY OF WAUCHULA** having an address of 126 South 7th Avenue Wauchula, FL 33873 ("Buyer").

### RECITALS:

WHEREAS, Seller is the Sponsor of the Boran Ranch Mitigation Bank, located in DeSoto County, Florida, within the Peace River subbasin of Florida (HUC 03100101) and permitted by SWFWMD under Chapters 40D-1 and 40D-4, F.A.C. and as provided in its State Bank Permit, Permit No. 49026121.000 ("State Bank Permits"), and permitted by the U.S. Army Corps of Engineers ("Corps") pursuant to its 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 application number 757536 from SWFWMD under a Florida Environmental Resource Permit ("ERP") ("State Permit") and a permit 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 Crews Riverside Park project ("Project"); and

WHEREAS, as a condition of the Corps Permit and State Permit, the Buyer is required to compensate for wetland impacts, and elects to do so through the purchase of Wetland Credits (defined below) from Seller under the provisions of this Agreement; and

WHEREAS, the Corps Permit and State Permit require the Buyer to purchase a total of **0.30 Dual Non-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) WETLAND CREDITS. "Wetland Credits" shall mean mitigation credits sold from the Wetland Banks as determined by SWFWMD ("State Credits") and/or the Corps ("Corps Credits"). Forested credits and state non-forested credits were determined using the Uniform Mitigation Assessment Method ("UMAM"), and the Corps non-forested credits were determined using the Wetland Rapid Assessment Procedure ("WRAP"). "Dual Credits" shall mean a set (in equal numbers) of State Credits and Corps Credits. "Orphaned Credits" are the remaining credits, whether State Credits or Corps Credits, that remain on Seller's ledger after the other portion of

the Dual Credits are transferred as described in Section 4.c, including any extra Wetland Credits purchased outside of the Dual Credits as part of this Agreement.

- b) WETLAND BANKS. "Wetland Banks" shall mean the banks sponsored by Seller with Wetland Credits for sale to the open market in connection with ERP/Corps Section 404 Dredge and Fill permitted projects, as provided for by the MBIs.
- 3) COMPENSATION. Subject to the terms and conditions of this Agreement, Buyer shall purchase from Seller and Seller shall sell to Buyer 0.30 Dual Non-Forested Wetland Credits.
- a) PURCHASE PRICE. In exchange for the Wetland Credits being purchased hereunder, Buyer shall, subject to the terms and conditions of this Agreement, pay to the Seller a unit price of \$140,000.00 per Dual Freshwater Non-forested Credit, for a sum total of **Forty Two Thousand Dollars (\$42,000)** (the "Purchase Price").
  - b) DEPOSIT. In order to secure a Reservation Period (as defined below), Buyer shall pay Seller a deposit of fifteen percent (15%) of the Purchase Price, which is **Six Thousand Three Hundred Dollars (\$6,300.00)** ("Deposit"). If Buyer wishes to extend the Reservation Period as provided for below, Buyer may pay Seller another deposit of Six Thousand Three Hundred Dollars (\$6,300.00) ("Second Deposit"). The Deposit and the Second Deposit are non-refundable and are applicable to the Purchase Price.
  - c) PAYMENT TIMING. **On or before ten (10) days from the Effective Date of this Agreement, Buyer shall pay Seller the Deposit or the Purchase Price.** The balance of the Purchase Price less the Deposit and the Second Deposit (the "Balance of Purchase Price") is due from Buyer to Seller upon the end of the Reservation Period.
  - d) PAYMENT METHOD. All payments hereunder shall be made to EIP CREDIT CO., LLC. Buyer shall pay the Deposit, Second Deposit, 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 transfer / ACH payment instructions are attached as Exhibit A.**
  - e) OTHER TERMS. Wetland Credits purchased are non-refundable and non-transferrable.
- 4) PROCESS
- a) RESERVATION PERIOD. Upon Seller's receipt of the Deposit, Seller will reserve the Wetland Credits for Buyer for ninety (90) days from the Effective Date ("Reservation Period"). If Buyer wishes to extend the Reservation Period by an additional ninety (90) days, Buyer shall pay to Seller the Second Deposit, for a maximum Reservation Period of one hundred eighty (180) days from the Effective Date, at the end of which the Balance of Purchase Price is due from Buyer to Seller.
  - b) RESERVATION LETTER. Within 3 business days of receiving a request from Buyer, Seller will convey a letter to Buyer indicating that the Wetland Credits have been reserved by Buyer for the then-applicable Reservation Period ("Reservation Letter").

- c) TRANSFER OF CREDITS. Upon receipt by Seller of Buyer's State Permit and Purchase Price or Balance of Purchase Price, Seller shall initiate a minor modification of the State Bank Permit(s) to withdraw State Credits in favor of Buyer's State Permit ("Permit Modification"). Seller shall provide a copy of the Permit Modification to Buyer. Upon receipt by Seller of Buyer's Corps permit and the Balance of Purchase Price, Seller shall notify the Corps that Corps Credits have been withdrawn in favor of Buyer's Corps Permit ("Corps Correspondence"). Seller shall provide a copy of the Corps Correspondence to Buyer.

If after transfer of the State Credits or Corps Credits, the Buyer has not received its State Permit or Corps Permit for the Project by the end of a Reservation Period, Seller will hold the applicable Orphaned Credits on Seller's credit ledger for a period not to exceed the Holding Period (as defined below), until such time as Seller receives the State Permit or Corps Permit from Buyer.

- d) HOLDING PERIOD. Seller will reserve the Orphaned Credits on Seller's credit ledger(s) for one year from the Effective Date ("Holding Period"). At Seller's discretion, at the end of the Holding Period, Seller will no longer reserve the Orphaned Credits. However, if Buyer notifies Seller before the end of the Holding Period that Buyer wishes to extend the Holding Period, Seller will extend the Holding Period by an additional one hundred eighty (180) days. The Holding Period may be extended for up to three (3) years from the Effective Date unless otherwise agreed to by Seller.
- 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 April 27, 2018**, 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 Wetland Credits from the Peace River Mitigation Bank and the Boran Ranch Mitigation Bank in accordance with their MBIs and SWFWMD permits. Seller shall be responsible for the development and maintenance of the Wetland Credits and the Wetland Banks in accordance with the requirements of the MBIs and SWFWMD and other applicable laws. Seller has good and sufficient title to the Wetland 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 Banks nor shall Buyer have any rights or obligations to enforce any of the responsibilities of the Seller under the MBIs.

- 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**  
c/o Ecosystem Investment Partners  
5550 Newbury Street Suite B  
Baltimore, MD 21209  
Attn: Katherine Birnie  
410.982.9441  
katherine@ecosystempartners.com

If to Buyer:

**CITY OF WAUCHULA**  
c/o Kimley-Horn & Associates  
116 S. Kentucky Avenue  
Lakeland, FL 33801  
Attn: Bo Conerly  
863.226.6857  
bo.conerly@kimley-horn.com

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:

BUYER:

**EIP CREDIT CO., LLC**

**CITY OF WAUCHULA**

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By: Katherine Birnie

By: -----

Its: Managing Director

Its: -----

Dated: -----

Dated: -----

**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: 3302047198  
Attn: Ashley Todd  
Relationship Advisor  
Private Equity Services  
Phone 617.796.6971