

# WETLAND RESOURCES LLC

ELSIE GRIDLEY MITIGATION BANK

## Purchase Agreement for Mitigation Units Equivalent to 0.824 Acres of Seasonal Wetlands

This Agreement ("Agreement") is made and entered into as of June 5, 2007, by and between City of Sacramento (the "City") and Wetland Resources LLC ("WRLLC"). Other defined terms used herein are defined in Section 1 below or when they first appear.

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, U. S. Army Corps of Engineers permit number 200000614.
- B. Mitigation Units. "Mitigation Units" means the per-acre units of the Mitigation Bank allocated to the City pursuant to this Agreement as mitigation for impacts to seasonal wetlands in connection with the City's project number SPK – 2007-21-SO.

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 City has purchased Mitigation Units equivalent to 0.824 acres of seasonal wetlands.
- B. Maintenance and Endowment of the Mitigation Bank Property. WRLLC shall maintain the Mitigation Bank property and shall 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 wetlands.

4. Purchase Price and Terms.

The full purchase price for Mitigation Units equivalent to 0.824 acres of seasonal wetlands is \$138,930. This includes the City's full payment for the performance of WRLLC's obligations under Section 3, above. The City shall pay the purchase price in full within 30 days after the date the City and WRLLC have both executed this Agreement.

5. Indemnification.

WRLLC shall indemnify, defend and hold harmless, the City and 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 City and WRLLC.

7. Notices.

Notices to be given under this Agreement, or which any Party may desire to give to another, shall be in writing. Notices shall be deemed given when 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, by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

A. If to: City of Sacramento  
1030 15<sup>th</sup> Street, Suite 250  
Sacramento, CA. 95814

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. 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 or of any subsequent breach of violation of the same or any other provision.

9. Applicable Law.

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

10. Arbitration.

Any disputes 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 disputes.

11. Time of The Essence.

Time is of the essence with this Agreement.

12. 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.

13. 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.

14. Attorneys Fees and Costs.

If 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.

15. Ownership of Mitigation Units.

The City 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 the Mitigation Units to any successors in interest of the project number SPK 2007-21-SO, otherwise known as the Fulton Avenue Development.

IN WITNESS WHEREOF, the Parties make this Agreement as of the date set forth in the preamble.

**CITY OF SACRAMENTO**

**Approved for Legal Form**

By: \_\_\_\_\_  
John Dangberg  
Assistant City Manager

By: \_\_\_\_\_  
Senior Deputy City Attorney

**WETLAND RESOURCES, LLC.**

By: \_\_\_\_\_  
Benjamin Winslow  
Managing Member