



RIVERPARK MITIGATION BANK
CREDIT RESERVATION AGREEMENT

This Reservation Agreement (“Agreement”) is made and entered into this ____ day of _____, 2023 (“Effective Date”) by and between EIP III CREDIT CO., LLC, a Delaware limited liability company (“Bank Sponsor”) and CITY OF MENIFEE, a Municipal Corporation (Project Proponent), jointly referred to as the “Parties,” as follows:

1. INTRODUCTION.

1.1. Riverpark Mitigation Bank. The Riverpark Mitigation Bank (“Mitigation Bank” or “Bank”) has been authorized by the Army Corps of Engineers, Los Angeles District (“Corps”), United States Fish and Wildlife Service (“USFWS”), California Regional Water Quality Control Board, Region 8 (“RWQCB”) and the California Department of Fish and Wildlife (“CDFW”), collectively the Interagency Review Team, or “IRT”, pursuant to a Mitigation Bank Enabling Instrument (“BEI”) that was fully executed on October 25, 2019, to operate as a mitigation bank with credits (“Credits”) available for sale. The Credits consist of Waters of the U.S., Waters of the State, and Covered Habitat Credits.

1.2. Project Proponent. Project Proponent is seeking to implement the **Holland Road/Interstate 215 Overcrossing** project (“Project”) located within Riverside County, California, which may impact jurisdictional waters, wildlife, and/or habitat values, and seeks to reserve Credits from the Mitigation Bank to compensate for the loss. Project Proponent alone shall be responsible for obtaining the approval of the applicable agencies to mitigate the impacts of its Project(s). In that regard, Bank Sponsor has made no, and makes no, representation, warranty, or guaranty that the applicable agencies will approve the Mitigation Bank as suitable mitigation for the Project.

1.3. Purpose. The purpose of this Agreement is to grant Project Proponent an exclusive right to purchase 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit from the Bank.

1.4. Purchase and Sale Agreements. Bank Sponsor and Project Proponent shall execute a Purchase and Sale Agreement (“Exhibit A”) to provide the Project Proponent with the required Credit amounts indicated in Section 2 below. This form of Purchase and Sale Agreement is as required by the Riverpark Bank Enabling Instrument, and this transaction shall be reported by the Bank Sponsor to the regulatory agencies in accordance with the Riverpark Bank Enabling Instrument.

1.5. Effective Date. The effective date (“Effective Date”) of this Agreement shall be the date that a duly executed copy of this Agreement is entered into by both Parties as indicated by the date entered above and equal to the date of the last signature provided on Page 5 of this Agreement.

2. RESERVATION. Upon execution of this Agreement and delivery of the Reservation Payment (defined below), Bank Sponsor hereby grants Project Proponent an exclusive right (the “Reservation”) to purchase **0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit** from the Bank when they become available as provided for in Section 2.2. Project Proponent must exercise his/her/its right to reserve the Credits and provide the Reservation Payment by **August 31, 2023**.

2.1. Reservation Term. The term (“Reservation Term”) of the Reservation shall commence on the Effective Date and, unless sooner terminated as provided herein, shall end March 31, 2024.

2.2. Exercise. The Reservation shall be exercised by executing the Agreement for Sale of Credits, which is attached as Exhibit A. Such exercise and payment of the remaining Purchase Price balance must be made within 14 days of Bank Sponsor providing notice to Project Proponent that the IRT has released a sufficient number of Credits to satisfy the Reservation and all Credits reserved for other project proponents as of the Effective Date (“Credit Release Notice”).

3. PURCHASE AND SALE. If Project Proponent exercises the Reservation, Bank Sponsor shall sell, and Project Proponent shall buy, the Credits on the terms and conditions as set forth below and in the Agreement for Sale of Credits (Exhibit A).

3.1. Purchase Price. The purchase price (“Purchase Price”) shall be an amount equal to Three Hundred Twenty-seven Thousand Two Hundred Fifty dollars (**\$327,250.00**), which is based upon Four Hundred Twenty-five Thousand dollars (\$425,000.00) per Credit.

3.2. Project Proponent shall provide payment of Thirty-two Thousand Seven Hundred Twenty-five dollars (**\$32,725.00**), which is 10% of the total Purchase Price (“Reservation Payment”), in accordance with Section 2, above. The Reservation Payment is nonrefundable except as described in Section 3.3 below. The remaining Purchase Price balance, \$ 294,525.00, must be made within 14 days of Bank Sponsor providing Credit Release Notice to Project Proponent. Upon Credit Release Notice, should Project Proponent fail to exercise his/her right to purchase the total number of Credits reserved (i.e., partial purchase), at the election of the Bank Sponsor this reservation may be declared terminated and the Reservation Payment shall remain nonrefundable.

3.3 Refund and Credit Release Requests. If Bank Sponsor receives the full amount of the Reservation Payment in accordance with the Provisions of Section 3.1 but does not provide Project Proponent the Credit Release Notice by the end of the Reservation Term, then Bank Sponsor would, at the election of the Project Proponent, either: (a) extend the Agreement, or (b) refund to the Project Proponent the Reservation Payment.

3.4. Termination. If Bank Sponsor has not received the Reservation Payment by August 31, 2023, Bank Sponsor shall automatically be released from its obligation to reserve the Credits for Project Proponent, and Project Proponent shall have no further right to any of the Credits from Bank Sponsor.

In the event of a termination under this Section 3.4, the Parties shall have no further rights or obligations with respect to each other.

4. LIMITATION OF OBLIGATIONS, RIGHTS OF PROJECT PROPONENT.

4.1. Limitation of Obligations. Project Proponent shall have no obligation whatsoever by reason of the use of the Mitigation Bank, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of that site.

4.2. Limitation of Rights. Nothing in this Agreement shall result in Project Proponent having any right, title, or interest in the Mitigation Bank greater than that specifically granted by this Agreement. Project Proponent's sole right shall be to purchase Credits from the Bank Sponsor that serve as the required mitigation for the Project.

4.3. Joint Use. Bank Sponsor shall reserve the Credits for the sole use of the Project Proponent. This reservation shall in no way restrain Bank Sponsor from selling mitigation values or credits at the Mitigation Bank to others, so long as the aggregate number of mitigation values or credits sold to all parties, including Project Proponent, does not exceed the aggregate number of mitigation values or credits that are either anticipated in future credit releases or authorized for sale.

4.4. Project Approvals. Project Proponent alone shall be responsible for obtaining the approval of the applicable agencies to mitigate the impacts of the Project with the Mitigation Bank. In that regard, neither Bank Sponsor nor the Bank make any representation, warranty, or guaranty that the applicable agencies will approve the Mitigation Bank as suitable mitigation for the Project. Notwithstanding the foregoing, Bank Sponsor shall reasonably cooperate with Project Proponent's efforts to obtain applicable agencies' approval for use of the Credits by providing information required by applicable agencies and executing documents required by the applicable agencies. Bank Sponsor shall not be obligated to bear any cost greater than a nominal expense or incur any additional liability in connection with such cooperation.

4.5. Limitations on Assignment; Transfer. Project Proponent acknowledges that Bank Sponsor is not willing to sell mitigation values or the Credits which could be resold in competition with the remaining mitigation values or Credits available for sale within the Mitigation Bank. This Reservation Agreement applies solely to the Project and cannot be transferred to another project.

5. MISCELLANEOUS PROVISIONS

5.1. Notices. Any notices, requests, demands, or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be

considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received a return receipt signed by the Party so notified, or has other written evidence of receipt), and upon the second business day after mailing, if mailed to the Party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

Bank Sponsor:

Joseph Williams
EIP III Credit Co., LLC
5550 Newbury Street, Suite B
Baltimore, MD 21209
Telephone: (410) 982-0240
Email: joe@ecosystempartners.com

Project Proponent:

Mr. Carlos Geronimo
City of Menifee
29844 Haun Road
Menifee, CA 92586,
Telephone: (951) 672-6777
Email: cgeronimo@cityofmenifee.us

Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

5.2. Modification. No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing.

5.3. Payments. Any and all obligations of the Project Proponent under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by the Project Proponent. Nothing herein shall be deemed to prevent the Project Proponent from making any payments from any other legally available source. The financial obligations of the Project Proponent payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

5.4. Jurisdiction. The Parties hereby consent to the exclusive jurisdiction of Riverside County, California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each Party further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in Section 5.1 of this Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

5.5. Non-Binding Mediation. In the event that the Parties are unable to resolve any differences concerning the terms of this Agreement, the Parties agree to participate in nonbinding mediation concerning such differences prior to the commencement of litigation.

5.6. Governmental Immunity and Limitations. No term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, of any of the immunities, rights, benefits, protections, or other provisions of the California Constitution or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, as applicable now and hereafter amended.

5.7. Interpretation; Entire Agreement. The headings or captions to the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part thereof. This Agreement sets forth the entire understanding between the Parties as to the subject matter of the Agreement and merges all prior discussions, negotiations, letters of understanding, or other promises, whether oral or in writing.

5.8. Attorneys' Fees. In the event any of the Parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the prevailing Party in such proceeding shall be entitled to court costs and reasonable attorneys' fees. Without limiting the generality of the foregoing, the prevailing Party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other Party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification, or termination of the automatic stay).

IN WITNESS WHEREOF, the Parties have executed this Credit Reservation Agreement as of the Effective Date.

BANK SPONSOR

EIP III CREDIT CO., LLC, a Delaware
limited liability company

By: _____
Name: Joseph Williams
Its: Assistant Director of Markets

Date: _____

PROJECT PROPONENT

CITY OF MENIFEE, a Municipal
Corporation

By: _____
Name: Armando G. Villa
Its: City Manager

Date: _____

EXHIBIT A

DRAFT CREDIT PURCHASE AND SALE AGREEMENT TEMPLATE

Riverpark Mitigation Bank



DRAFT

AGREEMENT FOR SALE OF CREDITS

This Agreement is entered into this ____ day of _____, 2023, by and between EIP III CREDIT CO., LLC, a Delaware limited liability company (Bank Sponsor) and CITY OF MENIFEE, a Municipal Corporation (Project Proponent), jointly referred to as the “Parties,” as follows:

RECITALS

A. The Bank Sponsor has developed the Riverpark Mitigation Bank (Bank) located in Riverside County, California; and

B. The Bank has been developed pursuant to a Bank Enabling Instrument (BEI) entered into by and between Bank Sponsor, the Los Angeles District of the U.S. Army Corps of Engineers (USACE) (File No. SPL-2015-00318), United States Fish and Wildlife Service (USFWS), the California Regional Water Quality Control Board, Region 8 (Regional Water Boards), and the California Department of Fish and Wildlife (CDFW) (Tracking No. 1798-2015-01-R6), on December 17, 2019, and

C. Project Proponent is seeking to implement the project described on Exhibit “A” attached hereto (Project), which would unavoidably and adversely impact Riverine Wetland, and seeks to compensate for the loss of Riverine Wetland by purchasing Credits from Bank Sponsor; and

D. Project Proponent has been authorized by Holland Road/Interstate 215 Project DBESP to purchase from the Bank 0.38 re-establishment CDFW mitigation Credit, and 0.39 rehabilitation CDFW mitigation Credit; and CDFW: RIV-27016 R6 to purchase from the Bank 0.02 re-establishment CDFW mitigation Credit (which is a subset of the RCA/MSHCP 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit and not in addition to the 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit), upon confirmation by the Bank Sponsor of Credit availability/adequate balance of Credits remaining for Transfer; and

E. Project Proponent desires to purchase from Bank Sponsor and Bank Sponsor desires to sell to Project Proponent 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank Sponsor hereby sells to Project Proponent and Project Proponent hereby purchases from Bank Sponsor 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit. The Bank Sponsor will upon receipt of the Purchase Price deliver to Project Proponent an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The Purchase Price for said Credits shall be paid by ACH payment or wire transfer of funds according to written instructions provided by Bank Sponsor to Project Proponent.

2. The sale and transfer herein are not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Proponent shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Credits sold, or the Bank. Pursuant to the BEI and any amendments thereto, Bank Sponsor shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Proponent. Bank Sponsor shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Proponent shall be non-refundable, non-transferable and non-assignable to any project other than the one listed herein and shall not be used as compensatory mitigation for any other project or purpose, except as set forth herein.

5. Project Proponent must exercise his/her/its right to purchase the Credits within 14 days of the date this Agreement is provided to the Project Proponent. Without Bank Sponsor approval, after the 14-day period this Agreement will be considered null and void.

6. Upon purchase of the Credits specified in Recital D above, the Bank Sponsor shall submit to the parties listed in the Notices section of the BEI, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated ledger must detail: i) Project Proponent; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Permitting Agency File/Tracking Number; vi); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The ledger should include all sales data from bank establishment to the present.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

BANK SPONSOR

EIP III CREDIT CO., LLC, a Delaware limited liability company

By: _____

Name: Joseph Williams

Its: Assistant Director of Markets

PROJECT PROPONENT

CITY OF MENIFEE, a Municipal Corporation

By: _____

Name: Armando G. Villa

Its: City Manager



Exhibit "A"
DESCRIPTION OF PROJECT TO BE MITIGATED

Name of Project:

Holland Road/Interstate 215 Overcrossing

Project Location:

The project is located on Holland Road between Haun Road and Hanover Lane in the City of Menifee, Riverside County, California (Latitude 33.67070, longitude - 117.17095)

Permitting Agencies File/Tracking Number:

CDFW File No. RIV-27016 R6

Holland Road/Interstate 215 Project DBESP

Project Description:

The project proposes to construct a four-lane bridge to cross over the I-215 to connect the east and west sides of Holland Road from Haun road to Hanover Lane. The project also proposes to realign Willowood Way, re-striping Hanover Lane and Albion Lane, and constructing an access road on the west side of the I-215 and relocating associated utility infrastructure.

Species/Habitat Affected:

Riparian-Riverine Resources	Permanent Impact (acres)*
Ephemeral drainages	0.59
Ephemeral depression	0.16
Perennial Wetlands	0.005
Total	0.755
* No temporary impacts on MSHCP riparian-riverine resources are proposed.	

Credits to be Purchased:

0.38 re-establishment

0.39 rehabilitation

Method of payment:

Wire Transfer X ACH Payment

“Exhibit B”
BILL OF SALE
Riverpark Mitigation Bank

Contract # 23__-RP

Permitting Agency File/Tracking Nos. CDFW: RIV-27016 R6 and Holland Road/Interstate 215 Project DBESP.

In consideration of \$327,250.00, receipt of which is hereby acknowledged, EIP III Credit Co., LLC (Bank Sponsor), does hereby bargain, sell and transfer to CITY OF MENIFEE (Project Proponent), for the Holland Road/Interstate 215 Overcrossing project, 0.38 re-establishment CDFW mitigation Credit and 0.39 rehabilitation CDFW mitigation Credit in the Riverpark Mitigation Bank in Riverside County, California, developed, and approved under the authority of the Los Angeles District of the U.S. Army Corps of Engineers (USACE), United States Fish and Wildlife Service (USFWS), the California Regional Water Quality Control Board, Region 8 (Regional Water Boards), and the California Department of Fish and Wildlife (CDFW), as mitigation for the Project described in Attachment 1.

Bank Sponsor represents and warrants that it has good title to the Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Bank Sponsor covenants and agrees with the Project Proponent to warrant and defend the sale of the Credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: _____

EIP III CREDIT CO., LLC, a Delaware limited liability company

By: _____

Name: Joseph Williams

Its: Assistant Director of Markets

SAMPLE

Attachment 1
Riverpark Mitigation Bank
WETLAND CREDITS: PAYMENT RECEIPT

PROJECT PROPONENT INFORMATION

Name:

City of Menifee

Address:

29844 Haun Road
Menifee, CA 92586
Telephone: (951) 672-6777
Fax: (951) 679-3843

Contact:

Carlos Geronimo

Email cgeronimo@cityofmenifee.us

PROJECT INFORMATION

Project Description:

The project proposes to construct a four-lane bridge to cross over the I-215 to connect the east and west sides of Holland Road from Haun road to Hanover Lane. The project also proposes to realign Willowood Way, re-striping Hanover Lane and Albion Lane, and constructing an access road on the west side of the I-215 and relocating associated utility infrastructure.

Project Location:

The project is located on Holland Road between Haun Road and Hanover Lane in the City of Menifee, Riverside County, California (Latitude 33.67070, longitude - 117.17095)

Agency File/Tracking Number(s):

CDFW File No. RIV-27016 R6
RWQCB: Waived
RCA/MSHCP

Species/Habitat Affected:

Riparian-Riverine Resources	Permanent Impact (acres)*
Ephemeral drainages	0.59
Ephemeral depression	0.16
Perennial Wetlands	0.005
Total	0.755
* No temporary impacts on MSHCP riparian-riverine resources are proposed.	

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0.38 re-establishment
0.39 rehabilitation