

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE NORTH EAST TEXAS  
REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 16-64**

WHEREAS, the North East Texas Regional Mobility Authority ("NET RMA") was created pursuant to the request of Gregg and Smith Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.1, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the NET RMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Titus, Van Zandt, Wood, and Kaufman joined the Authority and are represented on the Board of Directors; and

WHEREAS, the NET RMA is responsible for the operation of Toll 49; and

WHEREAS, the NET RMA is currently pursuing the development of the Toll 49, Segment 4 Project (the "Project"); and

WHEREAS, the Interim Executive has determined that the impact of the Project on certain properties and environmental features necessitates the acquisition of stream mitigation units as required under Section 404 of the Clean Water Act ("Section 404"); and

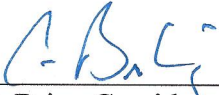
WHEREAS, Wildwood Environmental Credit Company, LLC renders mitigation services to satisfy the Section 404 requirements; and

WHEREAS, the Interim Executive Director recommends entering into the Permittee-Responsible Mitigation Purchase Agreement with Wildwood Environmental Credit Company, LLC, in the form or substantially the same form attached hereto as Attachment "A".

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the NET RMA hereby authorizes the Interim Executive Director to execute the Permittee-Responsible Mitigation Purchase Agreement with Wildwood Environmental Credit Company, LLC, in the form or substantially the same form attached hereto as Attachment "A".

Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 14th day of June, 2016.

Submitted and reviewed by:



C. Brian Cassidy  
General Counsel for the North East  
Texas Regional Mobility Authority

Approved:



Linda Ryan Thomas  
Chair, Board of Directors  
Date Passed 06/14/16

**WILDWOOD ENVIRONMENTAL CREDIT COMPANY, LLC**  
**PERMITTEE-RESPONSIBLE MITIGATION**  
**PURCHASE AGREEMENT AND ACKNOWLEDGMENT**

This Permittee-Responsible Mitigation (“PRM”) Purchase Agreement and Acknowledgement (this “Agreement”) is made as to be effective as of the \_\_\_\_ day of June, 2016, by and between:

“Wildwood”                      Wildwood Environmental Credit Company, LLC  
   P. O. Box 6602  
   Tyler, Texas 75711  
   Contact: Cliff Sunda  
   Tel: (903) 579-9341  
   [Email: cliff@wildwoodcredits.com](mailto:cliff@wildwoodcredits.com)

and

“Purchaser”                      North East Texas Regional Mobility Authority  
   909 ESE Loop 323, Ste. 520  
   Tyler, TX 75701  
   Contact: Everett Owen  
   Agent: Neil Boitnott  
   [Email: neil.boitnott@rsandh.com](mailto:neil.boitnott@rsandh.com)

The purpose of this Agreement is to establish the terms and conditions between Wildwood and Purchaser (jointly referred to as the “**Parties**”) for the generation of TXRAM stream mitigation units from a tract of land located in Henderson County, Texas and referred to herein as the “**Property**” in support of Purchaser’s Nationwide Permit (“NWP”).

**RECITALS**

A.        WHEREAS, Wildwood will use the U.S. Army Corps of Engineers (“USACE”) approved template to generate a mitigation plan (the “**Mitigation Plan**”) attached hereto as **Exhibit A** for creating compensatory mitigation for Segment 4 impacts from construction of Purchaser’s Loop 49 Tollway Project (the “**Project**”).

B.        WHEREAS, the Property identified in the Mitigation Plan for generating Texas Rapid Assessment Method Stream Mitigation Units (“**TXRAM Units**”) is also defined by the map attached hereto as **Exhibit B**.

C.        WHEREAS, Purchaser has requested Wildwood to develop the necessary Mitigation Plan and implement that plan to satisfy the mitigation requirements of Purchaser’s NWP authorization issued under the Clean Water Act. A description of the



Project, including its location and the nature and extent of adverse impacts from the work authorized under the Project will be set forth in Parts I and II of the Mitigation Plan

D. WHEREAS, the Parties recognize that sufficient TXRAM Units for the Project will be generated by successfully carrying out the activities and tasks dictated within the Mitigation Plan and by following the requirements stated therein.

E. WHEREAS, Purchaser and Wildwood desire to enter into this Agreement to set forth the terms and conditions pursuant to which the generation of the TXRAM Units will be created.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Creation of Mitigation Plan ; Purchaser's Responsibilities.**

Purchaser anticipates the need for **773 TXRAM Units** (sum consists of the following: 89 Intermittent, 117 Ephemeral, 567 Perennial Units), subject to the actual compensatory mitigation requirements determined by the USACE at the time of approval of the Mitigation Plan. The total purchase price is set forth on **Schedule 1** attached hereto and made a part hereof for all purposes (the "**Purchase Price**"). Payment shall be made as follows:

a. **Part 1** - Purchaser shall pay Wildwood one hundred thousand one hundred dollars (\$100,100) of the total Purchase Price within seven (7) Business Days after the later of (i) execution of this agreement, (ii) the Purchaser's review and approval, in its sole discretion, of the agreement between Wildwood and the owner of the Property, as shown in Appendix C, and (iii) the Purchaser's review and approval, in its sole discretion, of the title commitment for the property to be provided by Wildwood.

b. **Part 2** - Purchaser shall pay Wildwood six hundred fifty five thousand six hundred dollars (\$655,600) within seven (7) Business Days following the USACE's approval of the Mitigation Plan that contains sufficient TXRAM Units needed to meet the mitigation requirements for the Project.

2. **Wildwood's Responsibilities.**

a. Within 30 days after the payment specified in Section 1.a, Part 1, stated above, Wildwood shall prepare and submit the Mitigation Plan to the USACE and complete the Project Development tasks set forth in Schedule 1. Wildwood shall diligently pursue approval of the Mitigation Plan by the USACE and promptly resolve any issues raised by the USACE.

- b. Upon the USACE's approval of the Mitigation Plan and payment specified in Section 1.b, Part 2, as stated above, Wildwood shall diligently and timely implement the conservation and enhancement measures on the lands within the boundaries of the Property dedicated to Purchaser in accordance with the Mitigation Plan and within the time period agreed to by the USACE in the NWP, and perform all Project Execution tasks contained in Schedule 1. Wildwood will also be responsible for implementation of a long-term maintenance and management plan on the Property, at no additional cost to Purchaser, including invasive species controls, monitoring and reporting requirements, and financial assurances as specified in Part III Section 3.0 of the Mitigation Plan to be approved by the USACE.
3. **Notification of USACE; Cooperation with Wildwood.** Wildwood agrees to abide by the USACE notification, monitoring, and reporting requirements set forth in the Mitigation Plan. Purchaser agrees to provide any information regarding the TXRAM Units reasonably requested by Wildwood or the USACE, or otherwise required pursuant to the Mitigation Plan
4. **Credit Verification.** Wildwood shall be responsible for determining that the Project qualifies for the application of the TXRAM Units and that the quantity of the TXRAM Units is sufficient to satisfy the mitigation requirements of the Project as approved by the USACE in the Mitigation Plan. Wildwood agrees to indemnify, defend, and hold harmless Purchaser from and against any and all costs, expenses, penalties, fees, damages, and liabilities (including fines and reasonable attorney fees) arising from such determination or the failure of Wildwood to produce and maintain the Property which are the basis of the TXRAM Units for the Project, or the failure of Wildwood, or the Property to comply with the Mitigation Plan. Purchaser shall have no obligation whatsoever to the continued success of the Property and will not otherwise be liable for the continued expense or maintenance in perpetuity of the Property dedicated to Purchaser and the Project.
5. **Transfer of Units.** The TXRAM Units are non-transferrable.
6. **Representations of Wildwood.** Wildwood represents and warrants to Purchaser as follows:
- a. **Organization of Wildwood.** Wildwood is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of its formation.
- b. **Authorization; Enforceability.** (a) Wildwood has all requisite company power and authority to execute and deliver this Agreement and to perform all obligations to be performed by it hereunder, (b) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all requisite company action on the part of Wildwood, and (c) this



Agreement has been duly and validly executed and delivered by Wildwood, and this Agreement constitutes a valid and binding obligation of Wildwood, enforceable against Wildwood in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

- c. Brokers' Fees. No broker, finder, investment banker or other person is entitled to any brokerage fee, finders' fee or other commission in connection with the transactions contemplated by this Agreement based upon arrangements made by Wildwood or any of its affiliates except for fees and commissions which are payable by Wildwood under this Agreement.
- d. Litigation. There are no lawsuits or actions before any governmental authority or arbitration proceedings before any other person pending or, to the knowledge of Wildwood, threatened in writing by any person against Wildwood (with respect to the TXRAM Units) and (b) there is no injunction, order or unsatisfied judgment pending against Wildwood (with respect to the TXRAM Units) from any governmental authority.
- e. Taxes. With respect to all purchases: (a) Wildwood has duly and timely filed all tax returns required to be filed by it under applicable law and all such tax returns were correct and complete in all material respects and were prepared in material compliance with all applicable laws, (b) all taxes owed by Wildwood (whether or not shown or required to be shown on any tax return) have been paid, (c) none of such tax returns are now under audit or examination by any tax authority, (d) except for liens for taxes not yet due and payable, there are no liens on any of the Purchased Units that have arisen as a result of any failure (or alleged failure) to pay any tax, (e) there is no dispute or claim concerning any tax liability either (i) claimed or raised by any tax authority in writing or (ii) as to which Wildwood has knowledge, and (f) Wildwood has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency.
- f. No Preference Rights. Wildwood represents and warrants that none of the TXRAM Units to be generated at the Property are subject to any preferential purchase rights which may be applicable to the transactions contemplated by this Agreement.

- 7. Conservation Obligations. Wildwood covenants and agrees that it shall, in accordance with its obligation, perpetually provide for the conservation and shall carry out all of its obligations in accordance with the applicable terms and conditions set forth therein, all applicable laws and regulations, this Agreement, and the NWP for the Project which has been provided to Wildwood. Wildwood

shall fully indemnify, save and hold Purchaser harmless from and against all liability, liquidated damages and expenses, including reasonable attorney's fees, which arise out of claims or demands made by the USACE or any other person or entity against Purchaser directly related to the mitigation requirements provided for in this Agreement and/or to Purchaser's obligation to satisfy the mitigation credits as determined by the USACE.

8. **Assignability.** No Party shall assign this Agreement or any part hereof, except to an affiliate or a wholly-owned subsidiary company of such Party, without the prior written consent of the other Party, such written consent not to be unreasonably withheld, and any purported assignment in contravention of this Section shall be null and void *ab initio*. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. In the event Purchaser decides to assign the Purchased Units to a subsequent buyer and such assignment is approved by Wildwood, Ltd; Purchaser and such subsequent buyer shall execute a Credit Purchase Agreement and Acknowledgement substantially similar to this document except that such Agreement shall also include a requirement that the subsequent buyer is obligated to provide to Wildwood the information set forth in Section 3, above. Wildwood shall send notice to the USACE of the assignment of Purchased Units to the subsequent buyer in accordance with the terms of the 404 Permit. Purchaser agrees to indemnify, defend and hold harmless Wildwood from and against any and all costs, expenses, penalties, fees, damages, and liabilities (including fines and reasonable attorney fees) arising from the failure of the Purchased Units to qualify for assignment.
9. **Reciprocal Indemnities.** Each Party is liable to, and to the extent permitted by law, shall indemnify, defend and hold harmless the other Party and the other Party's directors, officers, employees, and representatives from and against all claims to the extent that such claims arise out of or are attributable to: (i) any negligent act or omission, willful misconduct, or breach of this Agreement by the indemnifying Party or its directors, officers, employees, representatives, contractors, or subcontractors, and the costs thereof, including, without limitation, all reasonable legal expenses, except to the extent such claims are caused by the negligence, willful misconduct, or breach of this Agreement by the other Party; and (ii) any taxes and third party obligations payable by the indemnifying Party as a result of this Agreement, or for any related contributions and penalties imposed on the other Party by any governmental or other authority having jurisdiction. Nothing herein shall be constructed to waive principles of government immunity that may be asserted by Purchaser.
10. **Further Assurances.** Wildwood agrees to execute and deliver any and all additional documents, forms or notices necessary to demonstrate compliance with the NWP as may be reasonably requested by Purchaser, or required by USACE in connection with the Project. Each Party will execute and deliver or cause to be executed and delivered to the other Party such further instruments of transfer, assignment and conveyance and take such other action as the other Party



may reasonably require to more effectively carry out the consummation of the transactions contemplated by this Agreement.

11. **Severability.** The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
12. **Provisions Cumulative.** The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the Parties.
13. **Notices.** For purposes of this Agreement, notices may be provided to either Party by overnight courier service or certified mail, return-receipt requested, addressed as set forth on the first page of this Agreement, or to such other address designated by Purchaser or Wildwood, as the case may be, by delivering written notice of such change as set forth above. All notices shall be deemed delivered and effective upon actual receipt if delivered by overnight courier, or upon deposit with the United States Postal Service if given by mail.
14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any facsimile copies hereof or signatures hereon shall, for all purposes, be deemed originals.
15. **Expenses.** Except as otherwise provided herein, each Party shall bear its own expenses incurred in connection with this Agreement and the transactions herein contemplated whether or not such transactions shall be consummated, including all fees of its legal counsel, financial advisers and accountants.
16. **Amendments.** This Agreement may be amended or modified in whole or in part, and terms and conditions may be waived, only by a duly authorized agreement in writing which makes reference to this Agreement executed by each Party.
17. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed in accordance with the Laws of the State of Texas without regard to the Laws that might be applicable under conflicts of laws principles. The Parties agree that the appropriate, exclusive and convenient forum for any disputes between any of the Parties hereto arising out of this Agreement or the transactions contemplated hereby shall be in any state or federal court in Smith County, Texas, and each of the Parties hereto irrevocably submits to the jurisdiction of such courts solely in respect of any legal proceeding arising out of or related to this Agreement. The Parties further agree that the Parties shall not bring suit with respect to any disputes arising out of this Agreement or the transactions contemplated hereby in any court or jurisdiction other than the above specified courts; provided, however, that the foregoing shall not limit the rights of the Parties to obtain execution of judgment in any other jurisdiction. The Parties further agree, to the extent permitted by law, that a final and unappealable judgment against a Party in any action or proceeding contemplated above shall be



conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.


18. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter herein, and any previous communications or agreements between the Parties (whether written or oral) related thereto are hereby superseded.

IN WITNESS WHEREOF, Purchaser and Wildwood have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

WILDWOOD ENVIRONMENTAL CREDIT COMPANY LLC

By: \_\_\_\_\_  
Name: Larry R. Dixon  
Its: Managing Member

NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY

By:   
Name: EVERETT OWEN  
Its: Interim Executive Director