

Agreement for Sale of Mitigation Credits

Bald Eagle and Golden Eagle Electrocutation Prevention In-lieu Fee Program

This Agreement is entered into as of the City of José's execution date ("Effective Date") by and between Eagle Electrocutation Solutions, LLC (herein referred to as the "Program Sponsor", a Colorado corporation and the City of San José (herein referred to as the "Authorized User"), each referred to as a "Party" and jointly collectively referred to as the "Parties," as follows:

RECITALS

- A. The Bald Eagle and Golden Eagle Electrocutation Prevention In-lieu Fee Program ("ILF Program") was approved by the U. S. Fish and Wildlife Service ("USFWS") on October 9, 2018, and is currently in good standing with the USFWS; and
- B. The Program Sponsor has received approval from the USFWS to sell mitigation credits ("Credits") for power pole retrofits as compensation for incidental take to Bald Eagles and/or Golden Eagles; and
- C. The Authorized User is seeking to purchase mitigation credits for activities which could incidentally take eagles as set forth in Exhibit A, at the Project listed on Exhibit A ("Project"). To compensate for those impacts, the Authorized User proposes to purchase credits from the ILF Program as authorized and directed by the USFWS; and the Authorized User has been authorized by USFWS to purchase Credits from the ILF Program; and
- D. The Authorized User desires to purchase from the Program Sponsor and the Program Sponsor desires to sell Credits to the Authorized User.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Upon exercise of the Authorized User's right to purchase, further described in Section 5 below, the Program Sponsor will sell to Authorized User and Authorized User will purchase from the Program Sponsor [REDACTED]. Upon full payment, the Program Sponsor will deliver to Authorized User an executed Transaction Receipt in the manner and form as attached hereto and marked Exhibit B.
2. The sale and transfer of the Credits herein is not intended as a sale or transfer to the Authorized User 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. Program Sponsor shall be liable for and have the obligation, and Authorized User shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, or otherwise be obligated or liable for the success or continued expense or maintenance of the Credits sold. The Program Sponsor shall monitor and make reports to the USFWS on the status of any Credits sold to the Authorized User. Program Sponsor represents and warrants that the Credits fulfill Authorized User's permit requirements for eagle compensatory mitigation.

4. The Credits sold and transferred to the Authorized User pursuant to the Agreement shall be non-transferable and non-assignable except for the successor of interest or assignee of the Project specifically referenced in the attached Exhibits A and B. The Credits shall not be used as compensatory mitigation for any other Project or purpose other than as described in Exhibits A and B, except as mutually agreed to by the Parties in a signed written amendment to this Agreement.
5. Indemnification. Program Sponsor shall defend, indemnify, and hold harmless Authorized User, its officers, employees, and agents against any claim, loss, damages, expenses, or liability that - directly or indirectly or in whole or in part – arise out of, pertain to, or result in any way from work performed under this Agreement due to the willful, reckless, or negligent acts (active or passive) or omissions by Program Sponsor's officers, employees, agents, or subcontractors up to the amount of the purchase price in the agreement. The acceptance of said services, duties, or Credits by Authorized User shall not operate as a waiver of such right of indemnification. This provision shall survive this Agreement.
6. This Agreement, including Exhibit A, and Exhibit B, both attached hereto, contain all of the agreements, representations, and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any agreements, quotes, invoices, acknowledgments, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.
7. Counterparts. This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
8. Use of Electronic Signatures. Unless otherwise prohibited by law or City of San José policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City of San José.
9. Within thirty (30) days of the effective date of this Agreement, the Authorized User must exercise its right to purchase the Credits by submitting the Purchase Price to the Program Sponsor. If the Authorized User fails to submit the full Credit Purchase Price to the Program Sponsor within thirty (30) days of the Effective Date of this Agreement, this Agreement shall be null and void.
10. Each Party by executing this Agreement represents that he or she has full right and authority to execute same.
11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule. In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San

José, California. Program Sponsor further agrees that in the event a lawsuit involving this Agreement is filed by Authorized User, Program Sponsor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

CITY OF SAN JOSE

(Authorized User)

By:

× Sarah Zarate
Sarah Zarate (12/10/2021)
Email: sarah.zarate@sanjoseca.gov

Sarah Zarate

Director of the Office of Administration,
Policy, and Intergovernmental Relations

Date: _____

EAGLE ELECTROCUTION SOLUTIONS, LLC

(Program Sponsor)

By:

× Andrew H. Stewart
astewart@edmlink.com (12/9/2021)
Email: astewart@edmlink.com

Andrew H. Stewart

General Manager

Date: _____

APPROVED AS TO FORM

By:

× Cameron Day
Cameron Day (12/9/2021)
Email: cameron.day@sanjoseca.gov

Cameron Day

Deputy City Attorney

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

DESCRIPTION OF PROJECT OR OTHER AUTHORIZED USE
BALD EAGLE AND GOLDEN EAGLE ELECTROCUTION PREVENTION
IN-LIEU FEE PROGRAM

Project Description:

Authorized User Name: City of San José

Project Name: Headworks 3 Project, San José-Santa Clara Regional Wastewater Facility

Project City, State: San Jose, California

Project Township, Section, Range: T06S R01W

USFWS determination of compensatory mitigation requirements for power pole retrofits:

Species	Number of Poles	Eagle Management Unit	Credit length
[REDACTED]			[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

EXHIBIT B

**Transaction Receipt
BALD EAGLE AND GOLDEN EAGLE ELECTROCUTION PREVENTION
IN-LIEU FEE PROGRAM**

Program Sponsor	Eagle Electrocutation Solutions, LLC
Authorized User	City of San José
Project Name or Other Action Name	Headworks 3 Project
Project or Other Action Location	San José-Santa Clara Regional Wastewater Facility, San Jose, California
USFWS Permit or Reference number (if known)	MB88409D
USFWS Region	Region 8
USFWS Migratory Bird Point of Contact	Tracey Borneman

Species	Number of Poles	Eagle Management Unit	Credit length	Credit Fee	Mitigation Fee
██████████					
██████████	█	██████████	██████████	██████████	██████████
Total Mitigation Fees Received					

In consideration of ██████████, receipt of which is hereby acknowledged on _____, the Program Sponsor does hereby bargain, sell, and transfer to the Authorized User all of Program Sponsor's right, title and interest to ██████████ as mitigation for the Project or other authorized activity, from the Bald Eagle and Golden Eagle Electrocutation Prevention In-lieu Fee Program (ILF Program) approved by the USFWS. Such Credits are expressly non-assignable and non-transferrable, except to a successor in interest or assignee of this specific Project listed above.

The Program Sponsor hereby accepts the Mitigation Fees set forth in compliance with the ILF Program and compensatory mitigation of impacts to Bald Eagles and/or Golden Eagles as set forth in this Transaction Receipt.

A Confirmation Document from the USFWS must be attached to this Transaction Receipt for it to be valid for completion of permit requirements.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows.

CITY OF SAN JOSE

(Authorized User)

By:

x Andrew Martin
Andrew Martin (12/9/2021)
Email: andrew.martin@sanjoseca.gov

Andrew Martin

Project Manager

Date: _____

EAGLE ELECTROCUTION SOLUTIONS, LLC

(Program Sponsor)

By:

x Andrew H. Stewart
astewart@edmlink.com (12/9/2021)
Email: astewart@edmlink.com

Andrew H. Stewart

General Manager

Date: _____