

MITIGATION CREDIT PURCHASE AND ESCROW AGREEMENT

THIS MITIGATION CREDIT PURCHASE AND ESCROW AGREEMENT (hereinafter "Agreement") is made this ____ day of ____2018, by and between **Wekiva River Mitigation Bank, LLC.**, (hereinafter "Seller"), whose mailing address is P.O. Box 540285 Orlando, Florida 32854 and **City of Orlando** (hereinafter "Buyer") whose mailing address is 400 S. Orange Avenue, City Hall, Orlando, FL 32802 hereinafter collectively the "Parties").

WITNESSETH:

WHEREAS, the Seller maintains an ecological restoration project located in Lake County, Florida (hereinafter referred to as the "Mitigation Property");

WHEREAS, Seller owns a mitigation bank with freshwater mitigation credits (hereinafter "Credits") available for transfer and sale under Florida Department of Environmental Protection (hereinafter "FDEP") Permit No. 0234803-001 and U.S. Army Corps of Engineers (hereinafter "USACOE") Permit No. SAJ-2002-07490;

WHEREAS, as part of the environmental permitting process involving the St. Johns River Water Management District (hereinafter "SJRWMD") it is anticipated that Buyer's permit from the aforereferenced respective governmental agencies will be conditioned upon purchase of Credits as compensatory mitigation;

WHEREAS, Seller agrees to sell and Buyer agrees to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of project known as **Packing District Park** (hereinafter "Project") **SJRWMD Application No. 153968 & USACE Application No. SAJ-2018-1763**;

WHEREAS, the number of Credits to be purchased by Buyer has been determined by Buyer after consultation with its advisors to be **Four and Thirteen Hundredths (4.13)** Freshwater Forested State and Federal UMAM credits; and

WHEREAS, Seller requires as part of this Agreement for Buyer to remit this Agreement and funds to Seller via Mitigation Marketing in order to allow Seller to submit a minor permit modification (hereinafter "Minor Permit Modification") for a debit of **Four and Thirteen Hundredths (4.13)** Freshwater Forested State and Federal UMAM credits from the seller's FDEP & USACE ledger so that the aforesaid respective Credits can be transferred to the Buyer.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. **Terms of Purchase.** The purchase price (hereinafter "Purchase Price") of the Credits is Four Hundred Fifty Four Thousand Three Hundred dollars U.S. (\$454,300.00) payable in check, wired federal funds or cashier's check. Seller agrees to reserve and sell to the Buyer the aforementioned Credits under this Agreement as may be required by the FDEP & USACE. *A 10% deposit payment of Forty-Five Thousand Four Hundred Thirty Dollars U.S. (\$45,430.00) (hereinafter "Deposit") will be enclosed with this signed agreement to reserve the Credits. All payments shall be paid to the account of Wekiva River Mitigation Bank, Escrow and submitted via Mitigation Marketing P.O. Box 540285 Orlando, Florida 32854 or 1091 W Morse Blvd. Suite 101 Winter Park, Florida 32789.*
2. **Reservation Period.** This reservation shall commence upon the final signature of this Agreement and expire 90 days thereafter or when the SJRWMD and/or USACE Permit(s) are issued, whichever occurs first.
3. **Adjustment of Credit Reservation.** The Seller agrees to reduce the number of credits reserved if the regulatory agency requirement is decreased at no penalty to the Buyer. The Seller also agrees to increase the number of credits reserved, if available, at the rate of \$110,000.00 per Dual or State Only UMAM credit. In the case of a credit reservation adjustment within the reservation period identified above, an addendum to this Agreement will be executed by both the Seller and Buyer.
4. **Covenants of Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's permits from the FDEP for the Mitigation Property. Responsibility for compliance with the Seller's permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. The provisions of this paragraph 3 shall survive the closing hereunder.
5. **Deposit.** Unless otherwise described herein or otherwise agreed, the Deposit shall be credited against the Purchase Price paid by Buyer for the Credits. The Deposit shall be deposited into an escrow account. Said Deposit shall be non-refundable to Buyer except in the case of breach by Seller as set forth in Paragraph 8 below.
6. **Conditions of Transfer of Credit.** Upon payment of the total Purchase Price and receipt of buyers permits, Seller shall provide to Buyer within ten (10) days thereafter documentation as required by the FDEP to effectuate the transfer of Credits as per the conditions of the Buyer's permit (i.e. copy of signed minor permit modification request) for the Project. Buyer is hereby notified that the transfer of Credits generally takes approximately thirty (30) to sixty (60) days to complete.
7. **Debit of Credits and Transfer.** Upon notification of the debit of the Credits by the FDEP, the same shall be transferred to Buyer together with document(s) evidencing such transfer of Credits. The Parties hereby agree that evidence of the Credits being transferred shall be the receipt by Seller from the FDEP of the Minor Permit Modification to its

Environmental Resources Permit (hereinafter "ERP") and/or ledger evidencing the debit of credits and the withdrawal and transfer letter from USACOE. Once transfer has been completed, it is acknowledged that seller's payment is fully earned.

8. **Release of Escrow.** Upon receipt by Escrow Agent of above evidence acknowledging the transfer of mitigation credits, obligations to buyer, it is acknowledged that the release of funds deposited with Escrow Agent to Seller is authorized. The Escrow Agent shall, without further direction of any party, disburse to Seller or its appointee all sums held in escrow under this Agreement (hereinafter "Escrow Property").
9. **Breach of Seller.** If, for any reason, the Credits have not been conveyed to Buyer due to breach by Seller of the Agreement, then the Escrow Agent shall disburse the deposit to the buyer upon written notice of said breach. Notwithstanding the foregoing, Seller shall have twenty (20) days to remedy said breach; and if not cured the Escrow Agent shall refund deposit to Buyer.
10. **Interpleader.** If the Parties shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, in its sole discretion, continue to hold the funds until it receives joint directions signed by both parties or file an action of interpleader to resolve said disagreement. The Escrow Agent shall be indemnified for all costs, including reasonable attorneys' fees, in connection with the aforesaid interpleader action, and shall be fully protected in suspending all or a part of its activities under this Agreement, consistent with Florida law, until a Final Judgment in the interpleader action is received.
11. **Duties of Escrow Agent.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall only be liable for actual fraud or gross negligence.
12. **Reliance of Escrow Agent.** The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions hereof has been duly authorized to do so.
13. **Indemnification of Escrow Agent.** Buyer and Seller hereby agree to indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or charges of any character or nature which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement, and in connection therewith, to indemnify the Escrow Agent against any and all expenses.

14. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
15. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.
15. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: Wekiva River Mitigation Bank, LLC
P.O. Box 540285
Orlando, Florida 32854

With a copy to: Mitigation Marketing, LLC
Attn: Alex Preisser
P.O. Box 540285 *USPS*
Orlando, Florida 32854
1091 W Morse Blvd *Physical*
Suite 101
Winter Park, Florida 32789
407-481-0677 phone
Alex@mitigationmarketing.com

Notices to Buyer shall be sent to: Richard Howard
Public Works Director
City of Orlando
400 S. Orange Ave
City Hall
Orlando, FL 32802
407-246-3222 Phone
Richard.Howard@CityofOrlando.net

With a copy to: Darla Miller
Modica & Associates
302 Mohawk Road
Clermont, FL 34715
352-394-2000 Phone
darla@modica.cc

With a copy to:

Brent Daubach
SC Advisors
545 Delany Ave, Bldg 3
Orlando, FL 32801
(305)725-2242
bdaubach@sc-advisors.com

Notice to Escrow Agent
shall be sent to:

Harris, Harris, Bauerle, Ziegler & Lopez
Attn: Stumpy Harris
250 South Orange Avenue
Suite 100P
Orlando, Florida 32801
407-843-0404 phone
407-843-0444 fax

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. All Parties agree that any notice may be faxed to any of the above Parties or their attorneys. Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

16. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.
17. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

18. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither party shall hold itself out as an agent, partner or joint venturer with the other and each party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this paragraph.
19. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
20. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
21. **Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement. If more than 30 days have transpired between the first and last signature, this agreement is null and void.
22. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.
24. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
25. **Agreement Not Recordable.** This Agreement shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said party in default hereof.

SIGNATURE PAGES FOR MITIGATION CREDIT PURCHASE AND ESCROW AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

Signed, sealed and delivered in the presence of:

SELLER:
WEKIVA RIVER MITIGATION BANK, LLC

Witness Signature

By: _____
Mr. Dennis K. Benbow, Managing Member

Witness Name

Executed on _____, 2018

BUYER:
CITY OF ORLANDO

Witness Signature

By: _____
Mr. Richard Howard

As Its: Public Works Director

Witness Name

Executed on _____, 2018

ACKNOWLEDGMENT BY ESCROW AGENT

Receipt is hereby acknowledged of the deposit sum of _____
Dollars (\$_____) from Buyer and, if by check, such receipt is subject to clearance.

DATED this _____ day of _____, 2018.

Harris, Harris, Bauerle, Ziegler & Lopez

By: _____
Mr. Stumpy Harris

Project Name:

Packing District Park