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WETLAND CREDIT PURCHASE AGREEMENT

This **WETLAND CREDIT PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of this __ day of _____, 2013, by and between The Big Sag Wetland Conservancy, Inc., an Illinois not-for-profit corporation ("Seller") and Lake County, Illinois a body politic, by and through the Lake County DIVISION OF TRANSPORTATION ("Lake DOT") (collectively, "Purchaser").

WHEREAS, Purchaser will apply to either or both the U.S. Army, Corps of Engineers (the "Corps") and/or the Stormwater Commission of Lake County, Illinois ("SMC"), for permission under Section 404 of the Clean Water Act and/or SMC's Ordinances, to permit the discharge of clean, non-toxic fill material into wetlands located in Lake County, Illinois to be impacted by the proposed construction of multiple highway projects in Lake County, Illinois.

WHEREAS, as a condition to such permit, Purchaser is required by law to compensate for the discharges into wetlands, and elects to do so through by purchasing wetland credits from Seller and Seller's permitted Wetland Mitigation Bank located in the Fox River Watershed located in Lake County, Illinois.

WHEREAS, Purchaser represents that it is required to purchase a total of ten acres of non-certified wetland credits in order to compensate for proposed impacts to wetlands resulting from development of various projects in Lake County, Illinois.

WHEREAS, the Corps has issued Permit Number: LRC-2001-21098 to Seller for a Wetland Mitigation Bank, and Seller represents that said Permit is current and valid for the uses and purposes therein set forth.

WHEREAS, Permit LRC-2001-21098 provides that the Seller may develop up to 29.66 acres of mitigation credits in Phase II of the permitted wetland mitigation bank, and that Seller is authorized to sell 20.758 of such credits, of which a maximum of 12.932 acre credits are available for Purchaser.

WHEREAS, Purchaser represents that the proposed wetland impacts are located in the Fox River watershed, in the same watershed as Seller's mitigation bank located in Lake County, Illinois.

NOW, THEREFORE, for and in consideration of the promise to pay and the payment of the Purchase Price hereinafter described, by Purchaser to Seller, and the mutual promise, covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

- 1) <u>RECITALS</u>: The foregoing recitals shall not be construed as mere recitals but as a description of the consideration for this Agreement and are hereby incorporated by this reference.
- 2) <u>Purchase Price</u>: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller a total sum of SIX HUNDRED AND TEN THOUSAND AND NO/100 DOLLARS [\$610,000.00] for ten acres of Seller's Permitted Non-Certified Credits (i.e., \$61,000.00 per credit acre). The Purchase Price shall be paid in the following manner:
 - a.) <u>INITIAL PAYMENT:</u> Upon the execution of this Agreement, Purchaser shall pay to Seller 10% of the Purchase Price in cash, which shall be a non-refundable payment, to be applied as a credit to the Purchase Price in the event that the Purchaser completes the sale as herein provided (otherwise, at Seller's sole discretion, the 10% payment will be kept as liquidated damages, and not as a penalty, to cover Seller's risks with the Corps and the payment of the costs incurred in pursuing this Agreement.
 - b.) **FINAL PAYMENT**. Within thirty (30) business days of this Agreement, Purchaser shall pay to Seller the balance of the Purchase Price (\$610,000.00.00 less the Initial Payment of \$61,000 = \$549,000.00). Upon receipt of the final payment, Seller shall notify the Corps and SMC that Purchase has completed the purchase of ten (10.00) credit acres from Seller and Seller shall deliver to Purchaser a Certificate certifying the purchase that is the subject of this Agreement.

- 3) <u>SELLER'S PERFORMANCE:</u> Upon completion of the sale and purchase contemplated by this Agreement, Seller shall perform its obligations under Permit LRC-2001-21098, and Purchaser shall have no obligation to perform any of the responsibilities or assume any liabilities of Seller under Permit LRC-2001-21098 or any other agreement between the Seller and the Corps or SMC regarding the construction, operation or maintenance of the permitted wetland mitigation bank from which the purchased credits are related.
- 4) <u>NOTICES</u>: Notices required or permitted hereunder shall be sufficient upon delivery if properly addressed, and accomplished by overnight courier, by United States certified mail, return receipt requested, or by electronic mail, delivered as follows:

To Seller: The Big Sag Wetland Conservancy, Inc.

160 Sports Club Drive Hainesville, Illinois 60030 Attn: Robert W. Howden, Jr.

Ph: 847.945.9588 rwhowdenjr@att.net

with copy to: Arnstein & Lehr LLP.

120 South Riverside Plaza

Suite 1200

Chicago, Illinois 60606-3910 Attn: Mr. William J. Anaya

Ph: 312.876.7109 wjanaya@arnstein.com

If to Purchaser: Lake County Division of Transportation

600 W. Winchester Road Libertyville, IL 60048

Attn: Paula J. Trigg, County Engineer

Phone: 847-377-7400 e-mail address:

5) <u>PRIOR AGREEMENTS</u>: This Agreement supersedes all prior understandings, negotiations and agreements (if any) between the parties hereto relating to the subject matter of this

Agreement, whether written or oral, and this Agreement may be amended only by a written

instrument executed by both Seller and Purchaser.

6) **APPLICABLE LAW**. This Agreement shall be governed and interpreted by the laws of the

State of Illinois, subject to the requirements of applicable federal and local law and regulation

affecting wetland credit sales. Changes in federal, state or locals laws which may otherwise impact

this Agreement shall not be enforced retroactively after execution of this Agreement.

7) **SUCCESSORS AND ASSIGNS:** This Agreement shall inure to the benefit of and bind

Seller and Purchaser and their respective successors and assigns. Neither party hereto shall have

authority to assign any interest in this Agreement without the prior written approval of the other party.

8) **CONTRACT ACCEPTANCE**: This Agreement is void if not executed by the parties by

January 30, 2013. This time limitation shall be extended only upon written approval by all parties to

this agreement.

9) **TIME IS THE ESSENCE**: Time is the essence of this Agreement.

10. **NO THIRD PARTY BENEFICIARY.** No individual or entity is an intended third party

beneficiary of this Agreement. Only the parties specifically mentioned and described as Seller and

Purchaser may enforce the terms herein described, and only for their respective interests and

benefit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on

the day and year first above written.

The Big Sag Wetland Conservancy, Inc.

Attest: _____

Michael Baker Its Secretary

By: Robert W. Howden, Jr. It's President	
Date	
RECOMMENDED FOR EXECUTION	
County Engineer Lake County	
Date	
LAKE COUNTY, ILLINOIS	
By Chairman, Lake County Board	Attest: Clerk, Lake County, Illinois
Date	