

DRAFT

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) **RECITALS**: 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) **Purchase Price**: 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.) **INITIAL PAYMENT**: 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.

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