

## MITIGATION CREDIT SALES AGREEMENT

This Mitigation Credit Sales Agreement (the “Agreement”) is entered into by and between Wetlands Management, L.P., a Texas limited partnership (“Wetlands”), and City of Frisco, (the “Purchaser”).

### RECITALS:

- A. This Agreement is entered into pursuant to that certain Mitigation Banking Instrument Agreement dated April 30, 2008, (the “MBI”) between, among others, Wetlands Management, L.P., a Texas limited partnership (“Wetlands”), as the sponsor, and the U.S. Army Corp of Engineers (“USACE”) which established the Bunker Sands Mitigation Bank (BSMB) under Permit Number SWF-2004-00420 (the “Bank”).
- B. Pursuant to the terms of the MBI, Wetlands intends to develop, restore, enhance, create and preserve wetlands, and open water habitat on certain real property described in the MBI in exchange for mitigation bank credits authorized by USACE (the “Credits”).
- C. The Purchaser is constructing certain roadway infrastructure, and in conjunction with such construction, USACE has required that the Purchaser provide off-site wetland mitigation to compensate for impacts to USACE jurisdictional waters.
- D. The Purchaser desires to purchase 3.4 credits to satisfy the Purchaser’s mitigation obligation for 1.4 acres of impact to low quality wetland habitat and 0.97 acre of impact to medium quality wetland habitat. The Purchaser’s Permit Number is SWF-2007-00281.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and Wetlands agree as follows:

- 1. Sale of the Credits. Wetlands hereby agrees to sell and assign, and does hereby sell, assign, transfer and convey to the Purchaser, and the Purchaser hereby agrees to purchase and accept, and does hereby purchase, accept, acquire and receive from Wetlands, 3.4 credits.
- 2. Payment for Credits. In consideration of the delivery of the Credits, the Purchaser agrees to pay to Wetlands the sum of Sixty Eight Thousand Three Hundred Eighty Eight and No/100 (\$68,388) for all of the Credits purchased pursuant to this Agreement.

3. Representations.

- (a) Representations of Wetlands. Wetlands represents to the Purchaser the following:
- (i.) The Credits are free and clear of all liens, pledges, security interests or other encumbrances other than those imposed by the MBI;
  - (ii.) Wetlands has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement;
  - (iii.) Wetlands shall issue to Purchaser such documentation as is required by USACE to show the purchase of 3.4 Credits was consummated by Purchaser in accordance with the MBI;
  - (iv.) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of Wetlands, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights; and
  - (v.) Wetlands is operating and will continue to operate the Bank in accordance with all applicable USACE laws, regulations, orders, permit requirements, agreements and guidance, including, without limitation, the MBI and Permit Number SWF-2004-00420.

Other than as expressly set forth above, Wetlands does not make any representations or warranties to Purchaser, including, without limitation, the suitability of the Credits or whether or not the Credits will satisfy, in whole or part, any mitigation obligation of the Purchaser.

- (b) Representations of Purchaser. The Purchaser represents to Wetlands the following:
- (i.) The Purchaser has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
  - (ii.) This Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of the Purchaser, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights.

Other than as expressly set forth above, Purchaser does not make any representations or warranties to Wetlands.

1. Confidentiality. The Purchaser shall keep absolutely confidential the existence of this Agreement, its terms, and all information regarding the MBI, Wetlands, the Credits and the Bank that the Purchaser learned, was provided or was otherwise disclosed to Purchaser in connection with the negotiation, execution and consummation of this Agreement, except for the disclosure of those items that are already in the public domain, where disclosure is otherwise required by law, or the disclosure is approved by Wetlands in writing. Wetlands acknowledges that the Purchaser is subject to the Texas Public Information Act, and that the Purchaser's confidentiality obligations hereunder are subject and subordinate to the Purchaser's obligations under that act.
2. Notices. Notices or other communications under this Agreement by either party to the other shall be given or delivered sufficiently if they are in writing and are delivered personally, or are dispatched by registered or certified mail, postage pre-paid, or facsimile, addressed or delivered to the other party as set forth on the signature pages to this Agreement.
3. Binding Agreement; Assignment. This Agreement, and its benefits and obligations, shall inure to and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement may not be assigned by Wetlands or the Purchaser without the written consent of the other.
4. Restriction on Recordation. Neither this Agreement nor any notice, memorandum nor notation thereof shall be recorded or disclosed by Wetlands or the Purchaser in any public records or in any document made public, except where disclosure is otherwise required by law.
5. Attorney's Fees. If there is a dispute between the Purchaser and Wetlands under this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees, paralegal's fees and appellate and post-judgment proceedings and all costs thereof.
6. Final Agreement. This Agreement embodies the whole agreement of the Purchaser and Wetlands. This Agreement shall supersede all previous communications, discussions, representations, advertisements, proposals or agreements either verbal or written, between the Purchaser and Wetlands not otherwise contained in this Agreement.

7. Captions. The captions in this Agreement are included for convenience only and shall be given no legal effect whatsoever.
8. Modification. This Agreement may not be modified except by written instrument executed by both the Purchaser and Wetlands.
9. Choice of Laws: Venue. This Agreement shall be governed by the laws of the State of Texas, and the venue for all disputes with respect to this Agreement shall be in Dallas, Dallas County, Texas.
10. Partial Invalidity. Should any part of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such a determination shall not render void, invalid or unenforceable any other part of this Agreement, provided, however, that the parties receive the full consideration bargained for hereunder.
11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

*(the remainder of this page intentionally left blank)*

IN WITNESS WHEREOF, the Purchaser and Wetlands have executed this Agreement effective for all purposes as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

WETLANDS:

WETLANDS MANAGEMENT, L.P.

By: \_\_\_\_\_

John M. Dziminski

Its: President

Address: 2101 Cedar Springs Road  
Suite 1600  
Dallas, TX 75201

Telephone: 214-849-9144

THE PURCHASER:

City of Frisco

By: \_\_\_\_\_

George Purefoy

Its: City Manager

Address: 6101 Frisco Square Blvd.  
Frisco, TX 75034

Telephone: 972-292-5105