

CM3239

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (“Agreement”) is made and entered into this 10th day of October, 2022, (the “Effective Date”) by and between THREE RIVERS TIMBER, LLC, a Florida limited liability company (“Seller”) and Nassau County Board of Commissioners, Nassau County, Florida, a political subdivision of the State of Florida (“Purchaser”).

Recitals

WHEREAS, pursuant to permit number 94925-7 issued by the St. Johns River Water Management District (“SJRWMD”), Seller is the sponsor of the Thomas Creek Mitigation Bank, a 594.50-acre mitigation bank located in Nassau County, Florida, within Regional Watershed #3 (Nassau River);

WHEREAS, Purchaser seeks to fulfill the requirements of various permit applications with SJRWMD under Florida Environmental Resource Permits (the “SJRWMD Permits”) to allow the discharge of clean non-toxic fill material into a wetland for the various projects under its direct authority and control (individually, a “Capital Project” and collectively, the “Capital Projects”);

WHEREAS, two such Capital Projects are the William Burgess Boulevard Extension (SJRWMD application# 118853-6) and the Westside Regional Park (SJRWMD application# 190161-1); and

WHEREAS, as a condition of the SJRWMD Permits, the Purchaser will be required to compensate for the proposed impacts to wetlands resulting from the development of the Capital Projects.

Terms of Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1. Purchase Price

Seller hereby agrees to reserve and transfer ten (10) state Forested Freshwater Uniform Mitigation Assessment Method (“UMAM”) credits from the Thomas Creek Mitigation Bank (the “NCBC Mitigation Credits”) for Purchaser to partially or totally fulfill the mitigation requirements of the SJRWMD Permits in consideration of the total sum of one million two hundred and fifty thousand dollars (\$1,250,000.⁰⁰) (the “Purchase Price”), payable in U.S. dollars in cash or legally available funds, subject to the terms herein. The Purchase Price shall be payable to Seller on or before the date which is fifteen (15) days from the Effective Date.

2. **Reservation and Transfer Process**

The NCBC Mitigation Credits will be reserved by Seller and transferred to Purchaser as follows:

A. **Reservation Period.** Upon Seller's timely receipt of the Purchase Price, Seller will reserve the NCBC Mitigation Credits for Purchaser for up to three (3) years from the Effective Date (the "Reservation Period").

B. **Reservation Letter / Notification.** During the Reservation Period and within five (5) business days of receiving a written request from Purchaser, Seller will convey a letter or electronic mail to SJRWMD indicating the number of NCBC Mitigation Credits that have been reserved by Purchaser for application to the mitigation plan for a specific Capital Project (the "Reservation Letter"). Seller shall provide a copy of the Reservation Letter to Purchaser.

C. **Transfer Letter / Notification.** During the Reservation Period and within five (5) business days of receiving a written request from Purchaser, Seller will convey a letter or electronic mail to SJRWMD indicating that the NCBC Mitigation Credits reserved for a specific Capital Project have been transferred to Purchaser for application to the Capital Project's mitigation plan (the "Transfer Letter").

D. **Process.** During the Reservation Period, the Reservation Letter and Transfer Letter notification process described above in sections 2.B. and 2.C. may be repeated for successive Capital Projects until all NCBC Mitigation Credits have been reserved and transferred. Seller will maintain a ledger of all NCBC Mitigation Credits that have been reserved and transferred according to each Capital Project. In no event, however, will the cumulative number of mitigation credits reserved and transferred by Seller for benefit of the Capital Projects exceed ten (10) credits.

3. **Purchaser's Obligations**

Purchaser shall promptly provide to Seller all information and supporting materials regarding the Capital Projects and its mitigation plan for each such Capital Project as reasonably requested by Seller for its business purposes, including compliance with filing and approval requirements. Purchaser shall perform all obligations required to maintain compliance with the terms and conditions of its SJRWMD Permits.

4. **Seller's Obligations**

Seller represents that it is authorized by SJRWMD to convey the NCBC Mitigation Credits from Thomas Creek Mitigation Bank in accordance with its SJRWMD permit and that it has good and sufficient title to the NCBC Mitigation Credits that it will convey to Purchaser. Seller shall be responsible for the development and maintenance of the NCBC Mitigation Credits in accordance with the requirements of the SJRWMD. Except as otherwise provided in this Agreement, Purchaser shall have no rights or obligations to perform any of the responsibilities of the Seller now or hereafter set forth by the SJRWMD regarding the development and maintenance of the NCBC Mitigation Credits or the Thomas Creek Mitigation Bank.

5. **Disclaimer and Acknowledgement**

Seller does not warrant that the NCBC Mitigation Credits will be adequate to satisfy Purchaser's mitigation plan for the Capital Projects and is not obligated to transfer to Purchaser any additional wetlands mitigation credits that might be available from Thomas Creek Mitigation Bank even if the NCBC Mitigation Credits are not adequate to satisfy Purchaser's mitigation plans. Purchaser acknowledges that the NCBC Mitigation Credits are applicable only to SJRWMD jurisdiction wetlands within its Basin 3 and cannot be used to mitigate the impact to wetlands that are under the jurisdiction of the United States Army Corps of Engineers permitting system. Purchaser further acknowledges that NCBC Mitigation Credits conveyed to Purchaser are non-transferrable and, except as otherwise provided in this Agreement, the Purchase Price paid for the NCBC Mitigation Credits is non-refundable.

6. **Brokers**

Seller and Purchaser represent to each other that neither they nor anyone on their behalf has dealt with or consulted with any broker, agent or other person in connection with this matter, and that no commission or finder's fee will be payable as a result of the execution of this Agreement or the consummation of the transaction contemplated hereby. In the event a broker, agent or other person claims to have dealt with one of the parties contrary to the foregoing representation, the party with whom the broker, agent or other person claims to have dealt or consulted with agrees to indemnify and hold the other party harmless against any such claims or demands, including reasonable attorneys' fees and costs incurred by such other party.

7. **Notices**

Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by First Class United States mail with return receipt requested or electronic mail to the parties hereto as follows:

If to Seller:

Three Rivers Timber, LLC
1548 The Greens Way, Suite 6
Jacksonville Beach, Florida 32250
Attention: William R. Lanius
Telephone: (904) 482-1113
Email: wrlanias@arendale.com

If to Purchaser:

Robert T. Companion, PE
Deputy County Manager - County Engineer
Board of County Commissioners - Nassau County, FL
96135 Nassau Place
Yulee, Florida 32097
Email: rcompanion@nassaucountyfl.com

Any notice given by overnight courier shall be effective as of delivery. Any notice given by First Class United States mail with return receipt requested, shall be effective as of the third business day following its posting, and any notice given by electronic mail shall be effective as of receipt of a confirmation by the sending party.

8. Default and Remedy

Purchaser's failure to make the payments due under this Agreement within the time periods required herein shall constitute the Purchaser's default of this Agreement. In the event of Purchaser's default hereunder, Seller shall be entitled to terminate the Agreement and retain any portion of the Purchase Price previously paid and all NCBC Mitigation Credits reserved on Purchaser's behalf as its sole remedy.

If Seller defaults hereunder, Purchaser's sole remedy shall be to terminate this Agreement and obtain a refund of the Purchase Price paid less an amount representing the pro rata portion of the Purchase Price applicable to the total number of NCBC Mitigation Credits that have been reserved by Purchaser for its Capital Projects. The parties agree and acknowledge that the SJRWMD has exclusive jurisdiction to enforce Seller's compliance with the terms and conditions of its permit authorizing the Thomas Creek Mitigation Bank, and Purchaser agrees it shall not be entitled to sue Seller, and hereby covenants not to sue Seller, to enforce compliance with the terms and conditions of the SJRWMD permit.

Prior to Seller or Purchaser exercising their respective remedies above, the other party shall provide the defaulting party with written notice and ten (10) days to cure the default prior to enforcing its remedies set forth above, except that no such cure period shall apply to or be available with respect to any failure of Purchaser to timely pay the Purchase Price.

Neither Purchaser nor Seller shall have recourse to any other remedies nor shall either party be liable for any consequential, special, punitive and exemplary damages of any nature under this Agreement.

9. Waiver of Jury Trial; Venue

EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. PURCHASER AND SELLER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY FLORIDA STATE COURT OR FEDERAL COURT SITTING IN JACKSONVILLE, DUVAL COUNTY, FLORIDA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREE THAT VENUE FOR ANY SUCH ACTION OR PROCEEDING SHALL BE IN DUVAL COUNTY, FLORIDA. PURCHASER AND SELLER EACH HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO

SUCH VENUE AS BEING AN INCONVENIENT FORUM.

10. **Assignment and Reversion**

Neither party to this Agreement shall assign any interest hereunder without the prior approval of the other party. Upon expiration of the Reservation Period, all remaining credits that are not subject to a Reservation Letter shall revert back to Seller and Purchaser shall execute any documents reasonably required in connection therewith.

11. **Non-Waiver**

No delay or omission in the exercise of any right or remedy accruing to Seller or Purchaser upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any other breach occurring before or after such breach. The waiver by Seller or Purchaser of any breach of any term, covenant or condition stated in this Agreement shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

12. **Entire Agreement and Amendments**

This Agreement constitutes the entire agreement of the parties and shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written document stating the specifics of such amendment, executed by both Seller and Purchaser. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance which it relates and shall not be deemed to be a continuing or future waiver.

13. **Partial Invalidity**

In the event that any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Agreement shall remain in full force and effect.

14. **Time**

If any date described in this Agreement falls on a Saturday, Sunday or national holiday, that date shall be automatically extended to the next day that is not a Saturday, Sunday or national holiday.

15. **Headings**

The headings inserted at the beginning of sections and paragraphs herein are for convenience only and do not add to or subtract from the meaning of the contents thereof.

16. **No Third-Party Beneficiaries**

This Agreement constitutes an agreement solely between the parties hereto, and is not intended to and will not create any third-party beneficiary or confer any rights, remedies, obligations or liabilities, legal or equitable, on any person other than the parties hereto and their respective successors or assigns. This Agreement shall benefit and bind the successors and assigns of the parties hereto.

17. **Construction of Terms**

This Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel and/or management for one of the parties.

18. **Confidentiality**

Neither party shall disclose the material terms of this Agreement except to their officers, managers, directors and employees and to their attorneys, accountants, lenders and other consultants who have a need to know such information or as required by law.

19. **Survival**

The rights and obligations of the parties under this Agreement that would by their nature survive the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

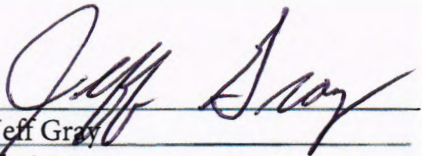
20. **Counterparts**

This Agreement may be executed in counterparts by the parties hereto and each shall be considered an original, but all such counterparts shall be construed together as representing one agreement between the parties hereto. Electronic copies of signatures on this Agreement shall be deemed to be originals.

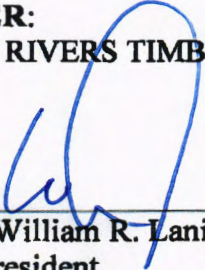
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates specified below.

PURCHASER:
Nassau County Board of Commissioners, Nassau County, Florida, a political subdivision of the State of Florida

By: 
Name: Jeff Gray
Title: Chairman
Date: 10/10, 2022

SELLER:
THREE RIVERS TIMBER, LLC, a Florida limited liability company

By: 
Name: William R. Lanus
Title: President
Date: 10/18, 2022