

**HATCHINEHA RANCH MITIGATION BANK
CREDIT PURCHASE AND DEPOSIT
AGREEMENT**

THIS CREDIT PURCHASE AND DEPOSIT AGREEMENT (“Agreement”) is entered as of the Effective Date (defined in Section 10, below) **Polk County, a political subdivision of the state of Florida** whose address is 330 West Church Street Bartow, FL 33830 (“Permittee”) and **The Nature Conservancy**, a nonprofit conservation organization established under the laws of the District of Columbia with its local address of 1035 S. Semoran Blvd. Suite 2-1021B Winter Park, FL 32792 (“Owner”).

WHEREAS, The Nature Conservancy is the owner in fee simple of approximately 2,057 acres of real property located in Polk County, Florida (the “Property”) which has been permitted as a Mitigation Bank under South Florida Water Management District (“SFWMD”) Permit No. 53-00003-M (the “Mitigation Bank”).

WHEREAS, the Mitigation Bank provides permanent conservation and protection of forested and herbaceous wetlands, and has freshwater forested and herbaceous mitigation credits (“Credits”) available for transfer and sale; and

WHEREAS, the Mitigation Bank has been approved by the SFWMD as an acceptable option for providing off-site compensatory mitigation for the permitted loss of forested and herbaceous wetlands within the Mitigation Bank’s mitigation service area; and

WHEREAS, Owner agrees to sell and Permittee agrees to purchase Credits available from the Mitigation Bank on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of a project known as **Marigold Avenue Widening** (hereinafter “Project”) **SFWMD Application No. 230630-39279**; and

WHEREAS, the number of Credits to be purchased by Permittee has been determined by Permittee after consultation with its advisors to be **Three and Forty-Seven Hundredths (3.47) State Only Forested UMAM** credit(s).

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained and subject to the terms and conditions set forth below, Permittee and Owner do hereby contract and agree as follows:

1. The non-refundable purchase price (hereinafter the “Purchase Price”) of the Credits is **Four Hundred Thirty-Three Thousand Seven Hundred Fifty Dollars (\$433,750.00)** payable in check, wired federal funds or cashier’s check. Purchase Price is based on the price of One Hundred Twenty-Five Thousand and No/Dollars (\$125,000.00) per State Only UMAM Credit (the “Credit Price”). The Purchase Price may be adjusted up or down by multiplying the final number of Credits required by SFWMD for this project by the Credit Price (the “Final Purchase Price”). Permittee acknowledges and agrees that Permittee is responsible for ensuring that the number and type of credits purchased complies with the terms of Permittee’s permit listed above and any rules, regulations, or requirements of the SFWMD.
2. Within 15 days following occurrence of the following i) approval of this Agreement by the Polk County Board of County Commissioners (BOCC) and ii) the issuance of the SFWMD Permit (**SFWMD Application No. 230630-39279**), Permittee shall deliver the sum of \$433,750.00 and **No/100 Dollars (\$433,750.00), as adjusted pursuant to Section 1 above**, to Owner in certified funds as the Final Purchase Price of the Credits to be sold to Permittee by Owner. Notwithstanding anything contained herein to the contrary, in the event that Permittee has not delivered the Final Purchase Price to Owner in certified funds or by wire transfer on or before October 2, 2024 (the “Payment Date”), this Agreement shall automatically be deemed null and void and of no further force and effect, and the Owner and Permittee shall notify SFWMD accordingly. All payments shall be paid to the account of The Nature Conservancy and submitted to The Nature Conservancy, Attention: Eppie Bang, 1035 S. Semoran Blvd. Suite 2-1021B, Winter Park, FL 32792.

3. Upon receipt of the Final Purchase Price and this signed Agreement, Owner agrees to reserve **Three and Forty-Seven Hundredths (3.47) State Only Forested UMAM Credits** within the Mitigation Bank, as part of this Agreement. Upon receipt by Owner of the Final Purchase Price and issuance of the SFWMD Permit (**SFWMD Application No. 230630-39279**), Owner further agrees to provide to Permittee within ten (10) days thereafter documentation as required by the SFWMD to effectuate the transfer of Credits for the Project. Permittee is hereby notified that the transfer of Credits generally takes approximately thirty (30) days to complete.
4. If the balance of the Final Purchase Price is not received in certified funds or by wire transfer on or before the Payment Date, this Agreement shall automatically be deemed null and void and of no further force and effect, and the Owner and Permittee shall notify SFWMD accordingly.
5. Intentionally Deleted.
6. Any notices given under this Agreement to either party shall be made in writing, and delivered in person or by (i) United States certified mail, return receipt requested, or (ii) Federal Express Corporation or other nationally recognized overnight courier for next day delivery to each party at their address set forth above. Any notice delivered as above will be deemed given upon (i) its personal delivery, (ii) three (3) days after deposit into the custody of the U.S. Postal Service if sent via certified mail, or (iii) one (1) day after deposit with Federal Express Corporation or other nationally recognized overnight courier, as applicable.
7. This Agreement shall be governed by and construed under the laws of the State of Florida, and shall be binding upon and inure to the benefit of the successors and assigns of Permittee and Owner. Neither party hereto shall assign this Agreement without the prior written consent of the other party.
8. 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.
9. 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 Owner or Permittee 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.
10. The relationship between Owner and Permittee is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose. 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. This Agreement is effective on the date on which the last of the parties signs this Agreement (“the Effective Date”).
11. 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.
12. Time is of the essence under the terms of this Agreement. If the time period or date by which or on which any right or election provided under this Agreement must be exercised, or by which or on which any act required hereunder must be performed, or by which or on which any notice or demand must be given or received, expires or occurs on a Saturday, Sunday or holiday observed by local, state or federal governments or state chartered or national banks in the State of Florida, then such time period or date shall be automatically extended through the end of the next day which is not a Saturday, Sunday or such a holiday.
13. The Permittee may not use The Nature Conservancy’s name and/or logo in any way.

14. During the course of the performance of this Agreement, the Permittee may have access to materials, data, strategies, other information relating to Owner and its programs, or systems, which are intended for internal use only. Subject to the requirements of Chapter 119, Florida Statutes, any such information acquired by the Permittee shall not be used, published, or divulged by the Permittee to any person, firm, or corporation or in any advertising or promotion regarding the Permittee or the Permittee's services, or in any manner or connection whatsoever. Owner acknowledges that the Permittee, as a local government entity and political subdivision of the State of Florida, is subject to broad public records obligations under Article 1, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, including, without limitation, the requirement to release public records to members of the public upon request and comply in the handling of public records materials. Owner further acknowledges that the aforementioned constitutional and statutory provisions control over the terms of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Owner and Permittee have caused this Agreement to be executed as of the Effective Date.

SIGNATURES

POLK COUNTY, a political subdivision of the State of Florida

By: _____

Print Name: _____

As its: _____

Date: _____

THE NATURE CONSERVANCY

By: _____

Print Name: _____

As its: _____

Date: _____

LEGAL REVIEW: LPR 7/25/2024