



Interoffice Memorandum

November 22, 2019

TO: Mayor Jerry Demings
and the Board of County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT PERSON: Raymond L.A. Williams, P.E., Manager
Public Works Engineering Division

PHONE NUMBER: (407) 836-7909

SUBJ: Mitigation Credits Purchase Agreement by and between UMAM LLC, and Orange County for the Shingle Creek Regional Trail - Phase 1, Segment 3.

The Orange County portion of the Shingle Creek Trail is approximately 12 miles. The trail continues north through the City of Orlando for 4 miles and south through the Osceola County and City of Kissimmee. The Shingle Creek Regional Trail, Phase 1, Segment 3 (Trail) is multi-use trail up to 14 feet wide between Central Florida Parkway and SR 528, for a total distance of 0.931 miles. The project impacts Class I wetland areas which require mitigation in the amount of 0.05 fresh water forested federal mitigation credits.

The Orange County Comprehensive Plan Conservation Element, Section 1.4.6, states "Off-Site Mitigation for wetland impacts will be considered only when the mitigation site is located within Orange County. This applies to all Class I wetland areas, wetland and upland preservation, enhancement and creation of wetlands. For Class II and III wetlands impacts mitigation shall be allowed out of the County unless the impacts will result in secondary and cumulative impacts. All impacts associated with Orange County Capital Improvement Projects must be mitigated for within Orange County. The Board of County Commissioners may approve out of County mitigation area on a case by case basis; this includes mitigation banks, which benefit the County resources."

Orange County staff has evaluated the proposal of using the Shingle Creek Mitigation Bank, owned by UMAM LLC. The property is located in Osceola County, but within the same hydrologic basin as the impacted area. There are currently no approved mitigation banks within Orange County within the hydrologic basin. Other alternatives such as land acquisition, preservation and enhancement were investigated but were determined not to be feasible. Therefore staff determined that utilizing a Bank outside of the County was the only feasible option.

The Public Works Engineering Division and the County Attorney's office have reviewed the agreement and find their terms acceptable.

Action Requested: Approval and execution of Mitigation Credits Purchase Agreement (Shingle Creek Regional Trail - Phase 1, Segment 3) by and between UMAM LLC and Orange County. District 1.

JCK/RLAW/JC/ilc

Attachments

BCC Mtg. Date: January 14, 2020

MITIGATION CREDITS PURCHASE AGREEMENT
(Shingle Creek Regional Trail - Phase 1, Segment 3)

THIS MITIGATION CREDITS PURCHASE AGREEMENT (the “**Agreement**”) is by and between **UMAM LLC**, a Georgia limited liability company, whose business address is 5607 Glenridge Dr. NE, Suite 200, Atlanta, Georgia 30342 (“**Seller**”), and **Orange County**, a charter county and political subdivision of the State of Florida (“**County**”), whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (Seller and County are sometimes collectively referred to in this Agreement as the “**Parties**”).

W I T N E S S E T H:

WHEREAS, County is permitting a project known as “Shingle Creek Regional Trail - Phase 1, Segment 3” located in Orange County, Florida (the “**Project**”); and

WHEREAS, as part of the Project, the County has submitted a permit application with the South Florida Water Management District (the “**SFWMD**”) under ERP Application No. 190422-1363; and

WHEREAS, the Parties anticipate that the County’s permit from SFWMD for the Project (the “**Permit**”) will be conditioned upon purchase of mitigation credits to offset wetland impacts associated with the Project; and

WHEREAS, the County, after consultation with its advisors, expects that the Permit will require the County to purchase 0.05 State Uniform Mitigation Assessment Method (UMAM) Forested Freshwater mitigation credits; and

WHEREAS, pursuant to SFWMD Environmental Resource Permit No.49-01937-M, Seller may sell mitigation credits from the Shingle Creek Mitigation Bank to third parties to offset certain wetland impacts; and

WHEREAS, County wishes to purchase 0.05 State Uniform Mitigation Assessment Method (UMAM) Forested Freshwater mitigation credits (the “**Credits**”) from the Shingle Creek Mitigation Bank to offset wetland impacts associated with the Project on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Seller covenant and agree as follows:

1. **SALE AND PURCHASE OF CREDITS.** Subject to the terms and conditions hereof, Seller agrees to sell, transfer and convey the Credits to County, and County agrees to purchase the Credits from Seller.

2. **PURCHASE PRICE AND PAYMENT.**

A. The estimated purchase price (“**Estimated Purchase Price**”) for the Credits is \$6,250.00. The Estimated Purchase Price is based on the unit price of \$125,000.00 per State UMAM credit. The total purchase price will be adjusted up or down from the Estimated Purchase Price by multiplying the actual number of UMAM credits required by SFWMD for the Project by the unit price of \$125,000.00 (the “**Total Purchase Price**”). The Total Purchase Price shall not exceed \$6,250.00 (the “**Not-to-Exceed Price**”).

B. Seller agrees to reserve and sell to the County, and County agrees to purchase from Seller, the Credits required and approved by the SFWMD for the Permit for the Project. *SFWMD Impact Permit No. 48-102101-P (190422-1363) was issued October 1, 2019. County shall pay the Total Purchase Price to Seller within sixty (60) days after the Permit is issued.* The Total Purchase Price shall be paid by County to Seller by check or cashier’s check delivered to Mitigation Marketing, LLC at the address set forth for Mitigation Marketing, LLC in Paragraph 6 below.

C. The County shall only be required to purchase the actual number of UMAM Credits required and approved by SFWMD for the Project and nothing herein shall require the County to purchase more UMAM credits than required by the Permit. If the Total Purchase Price exceeds the Not-to-Exceed Price, then this Agreement must be amended to authorize payment of the Total Purchase Price. If the Parties cannot agree to amend the Agreement within ninety days after the Permit is issued, then this Agreement shall automatically terminate, and neither Party shall have any liability to the other Party for the termination of the Agreement, and neither Party shall have any further obligation to the other Party under the terms of this Agreement.

3. **REPRESENTATIONS AND WARRANTIES OF COUNTY AND SELLER.**

A. Seller represents, warrants, and guarantees that the Credits are available for purchase by County in accordance with the terms of this Agreement.

B. Seller represents and warrants that the Credits are free and clear of all mortgages, liens, or any other security interest.

C. As of the date hereof and as of the Closing, Seller represents and warrants that it has full power to enter into, and perform the terms of this Agreement and that execution, delivery and performance of this Agreement by Seller has been duly authorized by all requisite action, and that the provisions of this Agreement applicable to Seller constitute legal and binding obligations enforceable in accordance with their terms.

D. Upon the approval of this Agreement by the Orange County Board of County Commissioners and execution of this Agreement by the Orange County Mayor on behalf

of the Orange County Board of County Commissioners, County represents and warrants that execution, delivery and performance of this Agreement by County has been duly authorized by all requisite action, and that the provisions of this Agreement applicable to County constitute legal and binding obligations enforceable in accordance with their terms.

E. All the representations and warranties made by Seller and County shall be true and correct on and as of the Closing as though made on and as of that date. Seller and County shall have performed all obligations and complied with all covenants required to be performed or to be complied with by each party under this Agreement prior to or as of the Closing.

4. DEBIT OF CREDITS AND TRANSFER. Upon notification to Seller of the debit/transfer of the Credits by the SFWMD, the Credits shall be transferred to County together with document(s) evidencing such transfer of Credits. The Parties hereby agree that evidence of the Credits being transferred shall be the receipt by Seller from the SFWMD of the Minor Permit Modification to SFWMD Environmental Resource Permit No.49-01937-M and ledger evidencing the debit of Credits. Once transfer of all Credits has been completed, it is acknowledged that Seller's payment is fully earned.

5. FAILURE TO CLOSE. If, for any reason, the Credits have not been conveyed to the County due to breach by Seller, the County shall provide written notice of the breach to Seller. Seller shall have twenty (20) days after receipt of the notice to cure the breach, and if not cured, the County shall have the option of terminating the Agreement in accordance with Paragraph 6.

6. MISCELLANEOUS.

A. Termination. This Agreement may be terminated by the County at any time before the Permit is issued (deemed final) by providing fifteen (15) days prior written notice to Seller without any liability to Seller. If after issuance of the Permit the County terminates the Agreement due to breach by Seller, a determination by SFWMD that mitigation is not required, or that the purchase of Credits from Seller would not satisfy the mitigation requirements associated with the Permit, the Total Purchase Price shall be refunded to the County within ten (10) days of receipt of the notice of termination. If County otherwise terminates the Agreement after issuance of the Permit, Seller shall retain ten percent of the Total Purchase Price and shall refund the remaining ninety percent of the Total Purchase Price within ten (10) days of receipt of the notice of termination. This Agreement may be terminated by Seller in the event County has failed to submit payment of funds in accordance with the terms herein by providing fifteen (15) days prior written notice to County.

B. Entire Agreement. This Agreement, including Exhibits and other writings referenced herein, or delivered pursuant hereto which form a part hereof, contains the entire understanding of the parties hereto in respect of the subject matter hereof.

C. Amendments and Waivers. 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. No failure by the County or Seller 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.

D. Calculation of Time. Time periods of 5 days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.

E. Further Actions. Each Party shall each take all such additional actions and execute and deliver such additional documents and instruments as may be required in order to fully effectuate all actions contemplated in this Agreement.

F. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. The Parties hereto hereby irrevocably (i) agrees that any suit, action or other legal proceeding against any of them arising with respect to this Agreement shall be brought in the state courts of Orange County, Florida, in the 9th Judicial Circuit; and (ii) waives any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in this Section hereof or to service of any writ, summons or other legal process in accordance with applicable law.

G. Time. Time is of the essence of this Agreement.

H. Enforceability. If any provision of this Agreement shall be declared to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

I. Persons Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

J. Counterparts. 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.

K. “As Is” – “Where Is”. Except as otherwise specifically stated in this Agreement, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written, past, present or future, of, as to, or concerning the Credits.

L. Notices. All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon

receipt.

As to Seller: UMAM LLC
Attn: Shaun Emery c/o Stein Investment Group
5607 Glenridge Dr. NE Suite 200,
Atlanta, GA 30342
Email:Shaun@steininvest.com

With a Copy to: Mitigation Marketing, LLC
Attn: Alex Preisser
PO Box 540285
Orlando, FL 32854
Email: Alex@mitigationmarketing.com

As to County: Attn: Mr. Matt Suedmeyer
Orange County Parks & Recreation
4801 West Colonial Drive
Orlando, FL 32808
Email: Jennifer.Cummings@ocfl.net

With a Copy to: Orange County, Florida
P.O. Box 1393
Orlando, Florida 32802-1393
Attn: Orange County Administrator
E-mail: countyadmin@ocfl.net

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. The County and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

M. No Joint Venture or Partnership or Agency Relationship. Seller does not have any ownership interest in the County's business relationships or operations and the County does not have any interest in Seller's business relationships or operations. The relationship between Seller and the County is not in any manner whatsoever a joint venture or partnership and neither Party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither Party shall hold itself out as an agent, partner, or joint venture partner with the other.

N. Credit Reservation Letter. Seller will issue to County a Reservation Letter for the Credits within 5 days after the Effective Date.

O. Cumulative Impact Analysis. In the event SFWMD requires County to submit a Cumulative Impact Analysis, Seller agrees to provide County with a cumulative impact analysis according to the standards required by SFWMD.

P. Effective Date. This Agreement is effective on the date on which the last of the Parties signs this Agreement (“**Effective Date**”).

Q. Entire Agreement. 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.

R. Limitation of Remedies. The Parties expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement. Upon any failure by any party hereto to perform its obligations under this Agreement, each party shall be limited strictly to only the following remedies:

1. Action for specific performance or injunction;
2. Action for declaratory judgment regarding the rights and obligations of the County and/or the Seller;
3. Any combination of the foregoing.

The Parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by any party hereto. The Parties will bear the cost of their own attorney’s fees for any action arising out of or in connection with this Agreement.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives on the dates set forth below.

SELLER:

UMAM LLC
A Georgia Limited Liability Company

Shawn Emery
WITNESS SIGNATURE

BY: [Signature]
JEFFREY L. STEIN
MANAGER

Shawn Emery
WITNESS NAME

11/11/19
DATE

STATE OF GEORGIA
COUNTY OF COBB

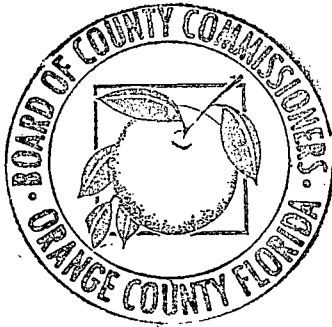
The following instrument was acknowledged before me this 11 day of November, 2019, by Jeffrey L. Stein, as Manager of UMAM LLC, who is personally known to me or who as produced _____, as identification.

[Signature]
Notary Public, State of Georgia

T. Pastore
Notary Printed Name or Stamp

My Commission Expires: 4-10-20

T. Pastore
NOTARY PUBLIC
Cobb County, GEORGIA
My Comm.: Expires
04/10/2020



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Bryan W. Brooks*
for Jerry L. Demings
Orange County Mayor

Date: 1/14/2024

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Printed Name: Katie Smith

Project Name: Shingle Creek Regional Trail – Phase I Segment 3