

RESOLUTION 19-36

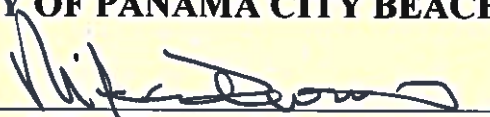
A RESOLUTION APPROVING A MITIGATION CREDIT PURCHASE AGREEMENT WITH THE ST. JOE COMPANY, FOR WETLAND IMPACTS ARISING FROM THE NORTH GLADES AND HOMBRE DRAINAGE IMPROVEMENTS PROJECT, IN THE AMOUNT OF \$22,875.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and The St. Joe Company, relating to the purchase of mitigation credits to offset wetland impacts from North Glades and Hombre Drainage Improvements, in the amount of Twenty-Two Thousand, Eight Hundred and Seventy-Five Dollars (\$22,875), in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

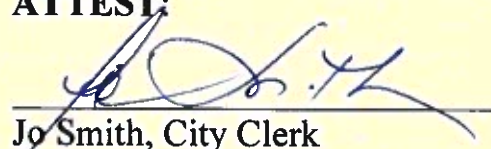
THIS RESOLUTION shall be effective immediately upon passage.

PASSED in special session this 20th day of December, 2018.

CITY OF PANAMA CITY BEACH

By: 
Mike Thomas, Mayor

ATTEST:


Jo Smith, City Clerk

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 20____ (the “Effective Date”), by and between **THE ST. JOE COMPANY**, a Florida corporation, on behalf of itself and its subsidiary **ST. JOE TIMBERLAND COMPANY OF DELAWARE, L.L.C.**, a Delaware limited liability company, whose mailing address is 133 S. WaterSound Parkway, WaterSound, Florida 32413 (“Seller”), and **THE CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation, whose mailing address is 110 South Arnold Road, Panama City Beach, Florida 32413 (“Buyer”).

WITNESSETH:

WHEREAS, Seller maintains an ecological restoration project named Breakfast Point Mitigation Bank located in Bay County, Florida (the “Mitigation Property”); and

WHEREAS, Seller owns a mitigation bank (BREAKFAST POINT MITIGATION BANK) with federal freshwater WRAP and state UMAM mitigation credits (“Credits”) available for transfer and sale under Florida Department of Environmental Protection (“FDEP”) Permit No. 0227475-001 and U.S. Army Corps of Engineers (“USACOE”) Permit No. SAJ-2004-1865-NW-GAH (collectively, “Seller’s Permits”); and

WHEREAS, as part of Buyer’s environmental permitting process for the proposed development of its project known as North Glades and Hombre Drainage Improvements (the “Project”) involving the USACOE (SAJ-2014-03115 (SP-TLW)), it is anticipated that Buyer’s permits from such governmental agencies will be conditioned upon purchase of Credits as compensatory mitigation; and

WHEREAS, Seller desires to sell and Buyer desires to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the Project.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Terms of Purchase and Deposit.**

Purchase Price. Under the terms of this Agreement, Seller hereby agrees to sell 0.61 palustrine forested mitigation credits to compensate for 0.501 acres of high quality wetland impacts and 0.238 acres of low quality wetland impacts (the “Subject Credits”) to Buyer and Buyer agrees to pay for and purchase the Subject Credits from Seller for 50% of current market pricing of \$75,000.00 for the aggregate amount of Twenty Two Thousand EightHundred and Seventy Five Dollars(\$22,875.00 (the “Purchase Price”). The Purchase Price shall be payable to Seller by Buyer by check, wired federal funds or cashier’s check on or before January 31, 2018 (the “Payment Date”).

- (a) **Deposit.** Upon Buyer's execution of this Agreement, Buyer shall deliver to Seller the sum of Two Thousand, Two Hundred Eighty Seven Dollars and Fifty Cents (\$2,287.50) to be held as a deposit payment (the "Deposit"). Unless otherwise described herein or otherwise agreed, on the Payment Date the Deposit shall be credited against the Purchase Price paid by Buyer for the Subject Credits. The Deposit shall be non-refundable to Buyer except in the case of breach by Seller as set forth in Paragraph 5(a) below.
2. **Reservation of Credits.** Following Buyer's and Seller's execution of this Agreement, payment of the Deposit by Buyer, and upon Buyer's request, Seller will address applicable reservation letters to the FDEP and USACOE detailing the specific Subject Credits reserved by Seller.
3. **Timing of Transfer of Subject Credits.** Upon Seller's receipt of payment in full of the Purchase Price, the Subject Credits shall be deemed transferred and the Purchase Price shall be deemed fully earned. Seller shall provide to Buyer the applicable documentation required by the FDEP and USACOE to debit the Subject Credits from each of the Seller's FDEP and USACOE ledgers.
4. **Costs.** Each party shall bear its own costs associated with the terms of this Agreement.
5. **Covenants.**
- (a) **Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's Permits. Responsibility for compliance with the Seller's Permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. Seller shall not be bound by any statement of any broker, employee, agent or other representative or affiliate of Seller.
- (b) **Buyer.** Buyer covenants and agrees that:
- i. the Subject Credits shall only be used in conjunction with the Project.
 - ii. the Subject Credits shall only be used as authorized by the applicable permits for the Project.
6. **Remedies.** In the event either Buyer or Seller breaches or fails to perform any covenant, agreement or obligation hereof, then the other party shall have all rights and remedies available at law or in equity including the right of injunctive relief, damages and the right to action for specific performance.
7. **Assignment.** Buyer may not assign, sell, transfer, convey or grant (whether voluntarily or otherwise) all or any portion of Buyer's interest in the Subject Credits and/or this Agreement without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole discretion. Notwithstanding the foregoing, Buyer may, without Seller's consent, assign all or any portion of Buyer's interest in the Subject Credits and/or this Agreement in connection with a sale of all or a portion of the Project.

8. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.
9. **Notices.** Any notice, demand, consent, authorization, request, approval or other communication that any party is required, or may desire, to give to or make upon the other party pursuant to this Agreement shall be effective and valid only if in writing, signed by the party giving notice, or its attorney, and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service, by facsimile transmission or by certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other party as follows (or to such other place as any party may by notice to the others specify):

To Seller: The St. Joe Company
Attn: Jorge Gonzalez, President and CEO
133 South WaterSound Parkway
WaterSound, Florida 32461

With a Copy To: The St. Joe Company
Attn: Elizabeth J. Walters, General Counsel
133 South WaterSound Parkway
WaterSound, Florida 32461

TO PCB: Mario Gisbert, City Manager
Kelly Jenkins, City Engineer
City of Panama City Beach
110 South Arnold Road
Panama City Beach, Florida 32407
(850) 233-5100
Email: mgisbert@pcb.gov
Email: kjenkins@pcb.gov

COPY TO: Amy E. Myers
Harrison Sale McCloy
304 Magnolia Avenue
Post Office Box 1579
Panama City, Florida 32402
Email: amyers@HSMcLaw.com

Notice shall be deemed given when received. Buyer, 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.

10. **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 herein contained.

11. **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 hereto. No failure by Buyer 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 written notice to the other parties, 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.
12. **No Joint Venture or Partnership or Agency Relationship.** Nothing contained in this Agreement shall be deemed or construed to create 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.
13. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
14. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.
15. **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.
16. **Time is of the Essence.** Time is of the essence under the terms of this Agreement. If any date referenced herein falls on a Saturday, Sunday or legal holiday, then such date shall automatically extend to the next business day. Failure to perform at the times stated in this Agreement shall constitute a default.
17. **Attorneys' Fees.** Non-prevailing party shall be liable for the prevailing party's reasonable attorneys' fees and court costs incurred in connection with any litigation relating to this Agreement, including but not limited to, attorneys' fees incurred in trial, post judgment, and appellate proceedings.

18. **No Warranty.** Buyer understands and agrees that Seller has made no representation or warranty as to the appropriateness, applicability, adequacy or suitability of the Subject Credits for Buyer's intended uses or purposes, and that Buyer accepts the Subject Credits in an "as is" condition without requiring any action, expense or other thing or matter on the part of Seller to be paid or performed and upon the issuance of the Minor Permit Modification to Seller's Environmental Resources Permit for the Subject Credits.
19. **Agreement Not Recordable.** Neither this Agreement nor a memorandum thereof shall be recorded in the public records of any county.
20. **Confidentiality.** Except as required in the normal conduct of the business of the parties hereto by law or as part of Buyer's permitting process, Buyer shall not, without the prior written approval of Seller, at any time during the term of this Agreement or thereafter, divulge to any third party, other than its attorneys, accountants, employees and professional advisors who are bound by confidentiality, any information concerning the contents of this Agreement. Buyer shall not make any press releases or other media dissemination of information relating to the transaction contemplated by this Agreement without the prior written approval of Seller, which may be granted or withheld in Seller's sole discretion. Nothing herein shall prevent the Buyer from complying with the requirements of Florida's public records law, Chapter 119, Florida statutes, compliance with which will not be considered a violation of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below their respective names.

SELLER:

THE ST. JOE COMPANY,
on its behalf and on behalf of

ST. JOE TIMBERLAND COMPANY
OF DELAWARE, L.L.C.

Authorized Signature

Printed Name

Title

Date

BUYER:

THE CITY OF PANAMA CITY BEACH

Authorized Signature

Printed Name

Title

Date

ATTEST:

City Clerk