


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Robert Johnson   
Manager of Procurement

DATE: April 26, 2016

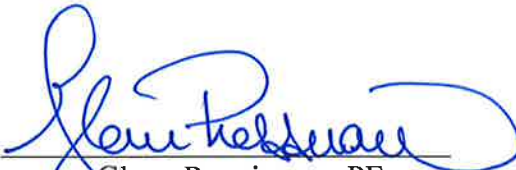
SUBJECT: Southbound SR 417 to Westbound SR 528 Ramp Realignment  
Option and Sales Agreement  
Project 599-126, Contract No. 001206


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Board authorization is requested for CFX to enter into an Option and Sale Agreement with Holland Properties, Inc., a Florida corporation d/b/a TM-ECON MITIGATION BANK to offset wetland impacts (as determined by the St. Johns River Water Management District and the U.S Army Corps of Engineers) associated with the Southbound SR 417 to Westbound SR 528 Ramp Realignment, Project 599-126.

This Agreement contemplates the purchase of 1.54 State UMAM Freshwater Wetland Credits and 1.962 Federal WRAP Palustrine Credits by CFX for a total cost payable to Holland Properties, Inc., in the amount of Two Hundred Seven Thousand Nine Hundred dollars and no cents (\$207,900.00).

Reviewed by:

  
Glenn Pressimone, PE  
Director of Engineering





## **OPTION AND SALES AGREEMENT**

This Option and Sales Agreement (hereinafter "Agreement") is entered into this 9th day of February, 2016, by and among **Holland Properties, Inc., a Florida corporation d/b/a TM-ECON MITIGATION BANK**, (hereinafter "Mitigation Bank"), whose address is P.O. Box 770308, Winter Garden, Florida, 34777-7308 and **Central Florida Expressway Authority** (hereinafter "Buyer"), whose address is 4974 ORL Tower Rd., Orlando, FL 32807.

**WHEREAS**, Buyer is in the process of permitting a project known as Southbound SR 417 to Westbound SR 528 ramp Realignment, **SJRWMD Permit # IND-095-20358-29 and ACOE Permit # (Pending)** and

**WHEREAS**, as part of the environmental permitting process (hereinafter "Permit") involving the St Johns River Water Management District (hereinafter "District"), the U. S. Army Corps of Engineers (hereinafter "ACOE") it is anticipated that the referenced governmental agencies will impose a requirement as a condition to granting the Permits that certain mitigation efforts be undertaken with respect to impacted wetlands and certain mitigation credits be purchased to satisfy the Permits; and

**WHEREAS**, Mitigation Bank is a mitigation bank with freshwater UMAM mitigation credits (hereinafter individually referred to as "Credit" or collectively referred to as "Credits") under SJRWMD Permit No. 4-095-84310-7 and ACOE Instrument No. 200107089 (IP-TB); and

**WHEREAS**, Mitigation Bank desires to sell Credits to Buyer for the purpose of meeting their needs, and

**WHEREAS**, the feasibility of using the Mitigation Bank and the number of Credits needed by Buyer has tentatively been determined by Buyer, and

**WHEREAS**, Mitigation Bank is entitled to convey Credits to Buyer under St. Johns River Water Management District Permit No. 4-095-84310-7 (hereinafter "ERP") and U.S. Army Corps of Engineers (hereinafter "ACOE") Instrument No. 2001-07089 (IP-TB); and

**WHEREAS**, to exercise the Option, as defined herein, Mitigation Bank requires the Buyer to deposit the full purchase price with owner's agent, James L. Clark (hereinafter "Owner's Agent"), whose address is P. O. Box 885, Windermere, FL 34786, within 15 days from the date of the issuance of the Permits.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein and Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, it is agreed:

1. **Whereas Clauses.** The recitals set forth in the Whereas Clauses herein are material components to this Agreement and are incorporated hereby by this reference.

2. **Option Period.** This option to purchase ("Option") shall commence upon the signing of this Agreement and expire on August 9, 2016 ("Option Period"). This Agreement shall be void unless Buyer fully executes and delivers the Agreement to Owner's Agent together with the Deposit as required herein by March 1, 2016.

3. **Option Payment.** No Option Payment is required for this Agreement.

4. **Agreement to Sell** Mitigation Bank does hereby agree to sell to Buyer upon issuance of the Permits **One and Fifty Four/Hundreds (1.54) State UMAM Freshwater Wetland Credits** and **One and Nine Hundred Sixty Two/Hundreds (1.962) Federal WRAP Palustrine Credits** under the terms and conditions set forth herein.

5. **Purchase Price.** The purchase price to be paid by Buyer to Mitigation Bank for the Credits shall be **Two Hundred Seven Thousand Nine Hundred** and No/100ths Dollars **(\$207,900.00)** ("Purchase Price").

6. **Exercise of Option.** Within fifteen (15) days from the date of receipt of the Permits Buyer shall deposit the Purchase Price with Owner's Agent together with a copy of the ACOE Permit Letter. If paying with a check the check shall be made in favor of "Holland Properties, Inc.". The Mitigation Bank shall then immediately advise the District and ACOE that the terms and conditions of this Agreement have been completed by the Buyer.

7. **Notices:** Any notice required hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, hand delivered or deposited into a recognized overnight courier service to the parties hereto at the following addresses:

**MITIGATION BANK:**      **TM-ECON MITIGATION BANK**  
ATTN: R. S. Holland  
Post Office Box 770308  
Winter Garden, Florida 34777-7308

With a copy to:      **Swann, Hadley, Stump, Dietrich & Spears P.A.**  
ATTN: Ralph V. Hadley, III, Esquire

1031 West Morse Boulevard, Suite 350  
Winter Park, Florida 32789  
407-647-2777 (telephone)  
407-647-2159 (fax)

FOR MAIL USE THE FOLLOWING ADDRESS:  
P. O. Box 1961  
Winter Park, Florida 32790-1961

**OWNER'S AGENT:**

**James L. Clark, SCV**  
P.O. Box 885  
Windermere, FL 34786  
407-876-2755 (telephone)  
407-876-5284 (fax)

**BUYER:**

**Central Florida Expressway Authority**  
Joseph A. Berenis, P.E., Chief of Infrastructure  
4974 ORL Tower Rd.  
Orlando, FL 32807

\_\_\_\_\_(telephone)  
\_\_\_\_\_(fax)

**With a copy to:**

**Atkins Global, Inc.**  
Michael S. Ray  
482 S. Keller Rd.  
Orlando, FL, 32810

407/806-4344 (telephone)  
407/806-4500 (fax)

Notices will be deemed received when delivered if hand delivered or sent via a recognized overnight courier service or 3 days after depositing same in the U.S. Mail if sent via registered or certified mail.

**8. Attorneys' Fees/Venue.** If any suit or action shall be instituted to enforce or to interpret this Agreement, the prevailing party shall be entitled to recover from the losing party all costs and reasonable attorneys' fees expended as part of such suit,

action, or appeal and venue of any such action shall be in the Ninth Judicial Circuit Court, Orange County, Florida.

9. **Severability.** If any provisions of this Agreement are held to be illegal or invalid, the other provisions shall remain in full force and effect.

10. **Binding Effect.** The obligations and covenants of this Agreement shall bind and benefit the successors, personal representatives, heirs and assigns of the parties hereto.

11 **Typewritten or Handwritten Provisions.** Handwritten or typewritten provisions inserted into this Agreement initialed by all parties shall control over the typewritten provisions in conflict therewith.

12. **Captions.** The captions for each paragraph of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, or the intent of any provision hereof.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be and be taken to be an original, and all collectively but one instrument.

14. **Facsimile Signatures.** Facsimile signatures of this Agreement shall be deemed binding on all parties.

15. **Effective Date of this Agreement.** The effective date of this Agreement shall be the date this Agreement is last executed by either Buyer or Mitigation Bank ("Effective Date").

16. **Governing Law; Venue.** The laws of the State of Florida shall govern the validity, enforcement, and interpretation of this Agreement. The obligations of the parties are performable, and venue for any legal action arising out of this Agreement, shall lie in Orange County, Florida.

17. **Amendments.** This Agreement may not be amended except by written agreement signed by all of the parties.

18. **Assignment.** Buyer shall not have the right to assign this Agreement.

19. **Waiver.** No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date below written.

**MITIGATION BANK :**

**TM-ECON MITIGATION BANK**



By: \_\_\_\_\_  
**James L Clark, Authorized Agent  
for, TM-Econ Mitigation Bank and  
Holland Properties, Inc.**

Executed: February 9, 2016

**BUYER:**  
**Central Florida Expressway Authority**

By: \_\_\_\_\_  
Joseph A. Berenis, P. E.

Its: Chief of Infrastructure

Executed: \_\_\_\_\_, 2016