


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth O. Williams   
Director of Procurement

DATE: October 27, 2016

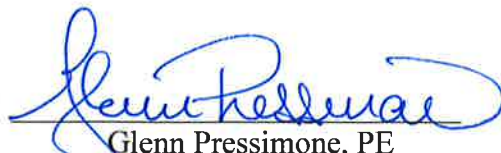
SUBJECT: S.R. 528 Econlockhatchee River Bridge Replacement  
Option and Sales Agreement  
Project 528-131, Contract No. 001224

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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 S.R. 528 Econlockhatchee River Bridge Replacement, Project 528-131.

This Agreement contemplates the purchase of Three and Seventy Four/Hundredths (3.74) State UMAM Freshwater Wetland Credits (which also satisfies the 3.65 Federal WRAP Palustrine credits required by the USACE) by CFX for a total cost payable to Holland Properties, Inc., in the amount of Five Hundred Four Thousand Nine Hundred dollars and no cents (\$504,900.00).

Reviewed by:

  
Glenn Pressimone, PE  
Director of Engineering

## **OPTION AND SALES AGREEMENT**

This Option and Sales Agreement (hereinafter "Agreement") is entered into this 7th day of September, 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 SR 528 Econlockhatchee River Bridge Replacement, **SJRWMD Permit # 114678-2 and ACOE Permit # SAJ-2016-02704** 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 last 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 March 7, 2017 ("Option Period"). This Agreement shall be void unless Buyer fully executes and delivers the Agreement to Owner's Agent by October 7, 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 **Three and Seventy Four/Hundreds (3.74) State UMAM Freshwater Wetland Credits (including .62 RHPZ credits) and the required quantity of Federal WRAP Palustrine Credits for this Project as determined by the ACOE** 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 **Five Hundred Four Thousand Nine Hundred and No/100ths Dollars (\$504,900.00)** ("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.**  
Attn: Ryan Fowler  
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.

20. **Option to Purchase More or Less Credits.** The Mitigation Bank and Buyer agree that the amount of State UMAM Wetland Mitigation Credits to be supplied under the Agreements may be increased by up to **One (1.0)** additional Credits or decreased during the term of the Agreement at Buyer's option, the ("Quantity Option"). Buyer shall notify the Owner's Agent in writing of Buyer's intention to exercise its Quantity Option and by stating the number of Credits Buyer intends to add or decrease to its purchase. Upon delivery of a notice to exercise the Quantity Option Mitigation Bank shall issue a revised Reservation Letter indicating Mitigation Bank's agreement to provide the revised total of Credits. In the event Buyer exercises this Quantity Option the Purchase Price shall be adjusted accordingly by multiplying the actual number of State Credits purchased by the sum of \$ 135,000 per Credit prorated for fractional credits.

**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: September 7, 2016

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

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

Its: Chief of Infrastructure

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

**Holland Properties, Inc. d/b/a TM-Econ Mitigation Bank**  
**Post Office Box 770308**  
**Winter Garden, FL 34777-0308**  
**(407) 656-1553**

September 7, 2016

J. Reid Hilliard, Technical Program Manager  
St. Johns River Water Management District  
601 S. Lake Destiny Rd., Suite 200  
Orlando, FL 32751

Re: Request for a **RESERVATION** of Mitigation Credits from TM/Econ Mitigation Bank, Permit No. 4-095-84310-7

Dear Mr. Hilliard:

This is a request for a **Reservation** of UMAM credits from the above referenced Mitigation Bank Number. In support of this request, the following information is provided:

**Impact Project: CFX SR 528 Econlockhatchee River Bridge Replacement**  
**SJRWMD Permit #: 114678-2**


**Number of Credits Reserved: 3.74 (Three and Seventy Four / Hundreds)**

Type of credits Reserved: Freshwater Wetland UMAM Credits **including .62 RHPZ Credits.**

Credits are to be Reserved from the above referenced Mitigation Bank.  
The basin that the Credits are to be Reserved from is the Econlockhatchee Nested Basin.

Upon payment by Applicant and issuance of the permit for the Impact Project noted herein TM/Econ Mitigation Bank shall provide you with a request for a minor modification of its permit and ledger for the Withdrawal of the above referenced credits. If you have any questions regarding this request, please contact me at 407/876-2755.

Sincerely,



James L. Clark, Agent for  
TM/ Econ Mitigation Bank

CC:

Holland Properties, Inc.  
Ryan Fowler, Atkins Global

**Holland Properties, Inc. d/b/a TM-Econ Mitigation Bank**  
**Post Office Box 770308**  
**Winter Garden, FL 34777-0308**  
**(407) 656-1553**

October 26, 2016

Vivian Gerena, Mitigation Mgr.  
US Army Corps of Engineers  
701 San Marcos Blvd. Rm. 372  
Jacksonville, FL 32207-8175

Re: **RESERVATION** of WRAP Mitigation Credits from TM/Econ Mitigation Bank,  
Permit No. 2001-07089 (IP-TB)

Dear Ms. Gerena:

Please be advised that we have **Reserved** credits from the above referenced Mitigation Bank Number pursuant to the following information:

Impact Project: CFX SR 528 Econlockhatchee River Bridge Replacement  
ACOE Permit #: SAJ-2016-02704  
Number of Credits Reserved: Three and Sixty-Five / Hundreds (3.650)  
Type of credits Reserved: Palustrine WRAP

Credits are being Reserved from the above referenced Mitigation Bank.

Upon issuance of the permit for the Impact Project noted herein TM/Econ Mitigation Bank shall provide you with a request for a minor modification of its permit and ledger for the Withdrawal of the above referenced credits. If you have any questions regarding this request, please contact me at 407/876-2755.

Sincerely,



James L. Clark, Agent for  
TM/ Econ Mitigation Bank

CC:  
Holland Properties, Inc.  
Ryan Fowler, Atkins Global, Inc.