

Attachment C

State of Minnesota
Board of Water and Soil Resources
WETLAND BANK CREDIT PURCHASE AGREEMENT

This Wetland Bank Credit Purchase Agreement (“Agreement”) is made and entered into by and between XXXXXXXXXX (collectively, “Grantor”) and the State of Minnesota, by and through the Board of Water and Soil Resources (“BWSR”).

WHEREAS, BWSR is directed pursuant to Minn. Stat. § 103G.222, subd. 1(m) to replace wetlands drained or filled by local government public transportation authorities for work on existing roads throughout the State of Minnesota; and

WHEREAS, BWSR has, through a Request for Proposals (“RFP”) solicitation, identified wetland bank credits owned by Grantor meeting the wetland replacement requirements of the Wetland Conservation Act of 1991 (Laws 1991, chapter 354, as amended) (the “WCA”) and Section 404 of the Clean Water Act (the “CWA”) (as administered by the Saint Paul District U.S. Army Corps of Engineers) (the “Corps”); and

WHEREAS, BWSR and Grantor desire to enter into this Agreement for wetland bank credits to be acquired by BWSR to use as replacement.

NOW, THEREFORE, in accordance with WCA, and in consideration of the mutual promises and obligations contained in this Agreement, Grantor and BWSR agree as follows:

A. SALE OF CREDITS.

Grantor agrees to sell to BWSR, and BWSR agrees to purchase from Grantor, (*amount*) of (*type*) wetland bank credits (“Credits”).

B. EFFECTIVE DATE; TERM.

1. This effective date of this Agreement shall be the date it is fully executed by Grantor and BWSR.
2. This Agreement shall automatically terminate upon the earlier to occur of: (i) Grantor receiving payment from BWSR pursuant to Section C below, (ii) upon notice of cancellation of the Agreement in accordance with Section F below, or (iii) one hundred eighty days from the effective date of this Agreement.

C. TERMS OF PAYMENT.

Under this Agreement, BWSR will purchase from the Grantor the Credits at a price per Credit of \$XXXXX which includes the withdrawal and stewardship fees as established in the BWSR 2017 Wetland Banking Fee Policy, as amended. The total purchase amount under this agreement shall be \$XXXXX. BWSR will make payment in full to Grantor once the BWSR form Minnesota Wetland Bank Form of Transfer (“Transaction Form to Transfer Credits”) has been signed by the Grantor and BWSR and a check for the withdrawal and stewardship fees payable to BWSR has been provided.

D. GRANTOR OBLIGATIONS AND REPRESENTATIONS.

1. Grantor represents and warrants that Grantor owns the Credits subject to this Agreement free and clear of all encumbrances, has the right and authority to sell the Credits to BWSR, has not entered into any other agreements for the sale of the Credits, and has no knowledge of any existing or threatened litigation relating to Grantor's Credits.
2. Grantor shall verify that all Credits to be transferred under this Agreement are approved and available for transfer and subsequent use under WCA and the Section 404 CWA Regulatory Program administered by the Corps, and that all such Credits are not obligated to any other individuals or entities per a previously executed purchase agreement.
3. Grantor shall complete and submit to BWSR a correct, signed Transaction Form to Transfer Credits within 15 days of the effective date of this Agreement.
4. Grantor shall pay all withdrawal and stewardship fees associated with the Credit sale per the BWSR fee schedule in place on the effective date of this Agreement.

E. BWSR OBLIGATIONS.

1. BWSR will transfer the approved Credits to a BWSR wetland bank account when the Transaction Form to Transfer Credits has been signed by both parties.
2. BWSR will disburse payments directly to Grantor as calculated pursuant to Section C of this Agreement.

F. CANCELLATION.

BWSR may, at any time prior to the transfer of the Credits into a BWSR account, cancel this Agreement without liability if BWSR determines the Grantor has not fully complied with the terms and conditions of this Agreement. If BWSR elects to cancel this Agreement, it shall give written notice to Grantor. Grantor shall have fifteen days from the date of postmark of the mailing of BWSR's cancellation notice to cure its defaults, which shall be determined at the sole discretion of the BWSR. If Grantor does not timely cure its defaults, then cancellation of this Agreement shall be final and BWSR shall have no further obligations to Grantor under this Agreement. If BWSR cancels the Agreement after payment has been made to Grantor, Grantor shall promptly refund the full payment to BWSR.

G. ADDITIONAL PROVISIONS:

1. Each party will be responsible for their own acts and the results thereof to the extent authorized by law, and shall not be responsible for the acts of the others and the results thereof.
2. This Agreement shall be binding upon the parties and their respective successors and assigns provided, however, that the Grantor may not assign any of its rights or obligations under this Agreement without the prior written consent of BWSR. No change or modification of the terms or provisions of this Agreement shall be binding on any party unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

3. Neither the failure by any party, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure by any party to exercise any right, privilege, or remedy conferred herein, or afforded by law, shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of any party in exercising any right or remedy herein shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof, or the exercise of any other right or remedy.
4. This Agreement embodies the entire agreement between the parties, and there are no other agreements, either oral or written, between the parties on the subject matter hereof.
5. If any term or provision of this Agreement is finally judged by any court of competent jurisdiction to be invalid, the remaining terms and provisions shall remain in full force and effect, and they shall be interpreted, performed, and enforced as if said invalid provision did not exist.
6. Under Minn. Stat. § 16C.05, subd. 5, the Grantor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.
7. Government data practices. The Grantor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Grantor or the State.

If the Grantor receives a request to release the data referred to in this clause, the Grantor must immediately notify and consult with the State's Authorized Representative as to how the Grantor should respond to the request. The Grantor's response to the request shall comply with applicable law.

8. Data disclosure:
Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Grantor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Grantor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
9. In addition to any notice required under applicable law to be given in another manner, any notices required herein, must be in writing and shall be sent by U.S. Mail to the appropriate

address as specified herein below, or such different address as may hereafter be specified, by written notice to the others.

To Grantor:
XXXXXXXXXXXXXXXXXX
XXXXXXXXXX
XXX, MN 5XXXX

To BWSR:
Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, MN 55155
Attn: Tim Smith

10. This Agreement shall be governed by the laws of the State of Minnesota without giving effect to the conflicts-of-laws principles thereof, and any action brought under this Agreement shall be brought exclusively in the Minnesota District Court for the County of Ramsey, State of Minnesota.

(THE REMAINING PORTION OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Grantor and BWSR have caused this Agreement to be duly executed.

GRANTOR(S) SIGNATURE(S)

Print name: _____

Dated: _____

Print name: _____

STATE OF _____)
me this)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before
_____ day of _____, 20____,

by _____
(Notary Stamp or Seal)

Notary Signature

BWSR SIGNATURE

STATE OF MINNESOTA, BOARD OF WATER
AND SOIL RESOURCES

By: _____
Its: _____

Dated: _____

STATE OF MINNESOTA)
me this)
COUNTY OF RAMSEY) ss.

The foregoing instrument was acknowledged before
_____ day of _____, 20____,

by _____, known to me to be the _____ of the Board of Water
and Soil Resources.
(Notary Stamp or Seal)

Notary Signature _____

Approved as to form and execution:

By: _____
Department of Administration

Date: _____