

WETLAND CREDIT AGREEMENT

THIS WETLAND CREDIT AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this _____ day of _____, 2010, (the “Effective Date”) by and between TOWPATH JOINT VENTURE, an Illinois general partnership (hereinafter referred to as “Seller”) and the VILLAGE OF ORLAND PARK an Illinois municipality (hereinafter referred to as “Purchaser”);

WITNESSETH:

WHEREAS, Purchaser has applied to the U. S. Army Corps of Engineers (hereinafter referred to as “USACOE”) for a permit under Section 404 of the Clean Water Act so as to allow the discharge of clean non-toxic fill material into 0.85 acres of a wetland within the 156th Street Extension Project in Orland Park, Illinois (hereinafter referred to as “Project”). The Project Number assigned by the USACOE is LRC-2006-00143; and

WHEREAS, as a condition to the issuance of a permit from the USACOE Purchaser is required to compensate for said wetland impacts, and elects to do so through the purchase of wetland credits in the Sellers’ Des Plaines – Towpath Wetland Mitigation Bank (hereinafter referred to as “Wetland Bank”); and

WHEREAS, the USACOE has determined that Purchaser shall be required to purchase a total of 0.85 acres of certified wetland credit due to the proposed impacts to the wetlands resulting from the development of the Project; and

WHEREAS, the Project is located in the Des Plaines River watershed and the Wetland Bank is also located in the same watershed, within the Village of Channahon, in Will County, Illinois.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1) RECITALS: The recitals are hereby incorporated herein by this reference.

2) COMPENSATION: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of EIGHTY-FIVE THOUSAND AND 00/100 DOLLARS (\$85,000.00 hereinafter referred to as the "Purchase Price") for 0.85 acres of certified wetland credits in the Wetland Bank. The Purchase Price is derived from the unit cost of \$100,000 per certified wetland credit/acre. The Purchase Price shall be paid in the following manner:

- a) PURCHASE PRICE: Upon receipt of the USACOE approval notice for the Project (hereinafter referred to as "Permit Approval Notification"), Purchaser shall pay Seller the Purchase Price as stated herein, or \$85,000.00. All payments hereunder shall be made to TOWPATH JOINT VENTURE. If the balance of the Purchase Price is not paid by the end of the fifth business day after receiving the Permit Approval Notification, interest on the balance of the Purchase Price will accrue at the rate of ten percent (10%) per annum. Upon payment of the Purchase Price, Seller shall notify the USACOE that Purchaser has secured 0.85 acres of credit from the Wetland Bank.
- b) REQUIRED AMOUNT OF CREDITS: Should the wetland credits required by the USACOE be increased or decreased from the time of Agreement execution to the time Purchase Price has been paid, the Agreement shall be modified to reflect an adjusted Purchase Price based on the same price per

acre as originally set out in this Agreement, if Seller has such credits available.

c) TERMINATION: If after one hundred and twenty (120) days after the Effective Date Purchaser has not received the Project Permit, then at any time thereafter until Purchaser receives the Project Permit either party may terminate this Agreement by written notice to the other party and the parties shall have no further obligations hereunder.

3) SELLER'S PERFORMANCE INDEMNITY: In consideration of the Purchase Price, Seller affirms that it has sufficient wetland credits released by the USACOE in the Wetland Bank to satisfy the wetland credits required by Purchaser and hereby does sell such credits to Purchaser. Purchaser shall have no obligation to perform any of the responsibilities of the Seller, or satisfy any other obligations of Seller now or hereafter as set forth by the USACOE in the development and maintenance of the Wetland Bank.

4) NOTICES: Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested, or by facsimile to the parties hereto as follows:

If to Seller:

Mr. Steve Weller
TOWPATH JOINT VENTURE
4250 W. Tanglewood Drive
Bloomington, Indiana 47404
Phone: (812) 935-7078
Fax: (812) 935-7079

And a copy to:

Mr. Roger T. Stelle
MELTZER, PURTILL & STELLE
1515 E. Woodfield Road, 2nd Floor
Schaumburg, Illinois 60173
Phone: (847) 330-2401
Fax: (847) 330-1231

If to Purchaser:

Village of Orland Park
15655 Ravinia Ave.
Orland Park, IL 60462
Attn.: Mr. John Ingram
Utility Superintendent
Phone: (708) 403-6350
Fax: (708) 403-8798

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by First Class United States mail, return receipt requested, shall be effective as of the third business day following its posting, and any notice given pursuant hereto by facsimile shall be effective as of receipt of a confirmation by the sending party.

5) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.

6) APPLICABLE LAW: Seller and Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Illinois and subject to the requirements of any applicable federal laws or regulations. Changes in federal, state, or local laws, which might have otherwise impacted this Agreement, shall not be enforced retroactively after execution of this Agreement. Each party shall be held harmless for damages sustained by the other party as a result of changes in federal, state, or local laws or their interpretation or enforcement.

7) SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Purchaser, as the case may be, and

their respective successors and assigns. Neither party hereto shall assign any interest hereunder without the prior written approval of the other first hand.

8) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed within thirty (30) days of the effective date on the first draft of Agreement or date first draft of Agreement is sent to Purchaser. This time limitation may be extended upon written approval by the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

PURCHASER:

VILLAGE OF ORLAND PARK

By: _____

SELLER:

TOWPATH JOINT VENTURE

By: _____

Steven A. Weller
Manager/Partner