

MITIGATION CREDIT AGREEMENT

This MITIGATION CREDIT AGREEMENT (Agreement) is made and entered into this 1 day of September, 2017, by and between Swallow Tail LLC (“Seller”) and City of Ottawa Kansas (“Purchaser”).

WITNESSETH:

WHEREAS Purchaser has received a permit from the U. S. Army Corps of Engineers (“USACOE”) under Section 404 of the Clean Water Act to allow impacts to streams in Franklin County, Kansas (“Project”). Project Number assigned by the USACOE is NWK-2016-00743. The Corps project manager is Scott Dodson.

WHEREAS, as a condition to the permit from the USACOE, Purchaser is required to compensate for said impacts, and elects to do so through the purchase of mitigation from Swallow Tail LLC for assignment to the Upper Osage Umbrella Mitigation Site 1 (“Mitigation Bank”).

WHEREAS, the USACOE has determined that Purchaser shall be required to purchase credits due to the proposed impacts resulting from the development of the Project.

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 by this reference.

2) COMPENSATION: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of Two hundred three thousand four hundred and fifty DOLLARS (\$203,450) ("Purchase Price") for 2.84 wetland credits and 1,050 stream credits at the Mitigation Bank. The Purchase Price is derived from the unit cost of Fifty-five thousand (\$55,000) per wetland credit and \$45 per stream credit. The Purchase Price is valid until December 2018 and subject to availability of said credits. Purchase Price is to be paid in the manner following:

a.) PURCHASE PRICE: Upon signing this Agreement, Purchaser will pay the total balance due, or \$203,450.

3) SELLERS WARRANTY: In consideration of the Purchase Price, Seller affirms that it has sufficient credits today in the Mitigation Bank to satisfy the credits required by Purchaser and agrees to sell such credits to Purchaser. It is understood and agreed that Purchaser shall have no obligation to perform any responsibility or incur any liability associated with the creation, development, maintenance and/or management of the Mitigation Bank.

- 4) REFUNDABILITY – Not applicable.
- 5) 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:

Swallow Tail LLC
C/o Terra Technologies
6240 West 135th Street Suite 100
Overland Park KS 66223
Attn: David L. Flick

If to Purchaser:

City of Ottawa
City Hall 101 South Hickory Street
Ottawa KS 66067
Attn: Richard Nienstedt

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by 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 confirmation by the sending party.

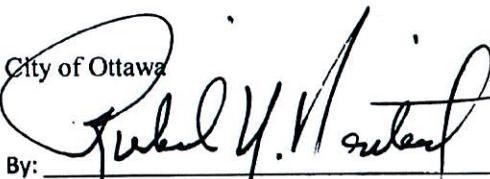
- 6) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.

7) APPLICABLE LAW: Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Kansas and subject to the requirements of any applicable federal law or regulation. Changes in federal, state or local laws, however, which might have otherwise impacted this Agreement shall not be enforced retroactively after execution of this Agreement.

8) ATTORNEY'S FEES: In the event any action, suit, or other proceeding at law or in equity is brought to enforce the covenant and agreements contained in this Agreement or to obtain monetary damages for breach thereof, and such action results in an award of judgment for monetary damages, or the granting of any equitable relief in favor of any party hereto, all expenses, including reasonable attorney's fees, of the successful party in such action, suit, or other proceeding shall, upon demand of such party, be paid by the other party.

9) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed by December 31, 2018, as stated herein.

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

City of Ottawa
By: 
Richard Nienstedt

Swallow Tail LLC

By:  
David Flick, Managing Member

*Please return original
copy to:*

CITY OF OTTAWA
Amy Finch, City Clerk
101 S Hickory St
PO Box 60
Ottawa, KS 66067-0060

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08 X08 09
18 Yokohama 2 107
MIL CIVIL, Japan YMA
AWATO 30 YTI

CITY CLERK

APR 26 2018

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