

MITIGATION AGREEMENT

This MITIGATION AGREEMENT (Agreement) is made and entered into this 22nd day of July, 2013, by and between Swallow Tail Design Build, Inc. ("Seller"), and Jackson County, Missouri ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser was proffered a U. S. Army Corps of Engineers ("USACOE") permit under Section 404 of the Clean Water Act to allow impacts to Jurisdictional Waters on a roadway project in Jackson County, Missouri ("Project"). The Project Number assigned by the USACOE is 2010-1168.

WHEREAS, as a condition to the issuance of a permit from the USACOE, the Purchaser is required to compensate for said impacts, and elects to satisfy the requirement through the purchase of mitigation area at the Seller's Stream and Wetland Mitigation Site located in Grain Valley Missouri adjacent to Blue Branch of the Sni-a-Bar Creek ("Mitigation Site") and through the purchase of mitigation credits at the Seller's Sni-a-Bar Stream and Wetland Mitigation Bank and Clear Fork Stream and Wetland Mitigation Bank located in the Project's mitigation service area ("Mitigation Bank").

WHEREAS, the USACOE has determined that Purchaser is allowed to initiate permittee-provided mitigation activities and purchase credits due to permanent impacts resulting from the activities at the roadway Project site.

FILED
JUL 22 2013
MARY JO SPINO
COUNTY CLERK

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 above recitals are hereby incorporated by reference.

2) COMPENSATION: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of \$316,111.00 ("Purchase Price") for 7,561 permittee-provided stream credits at the Blue Branch Mitigation Site and for 1.24 wetland credits at the USACOE approved Mitigation Bank. The Purchase Price is valid until December 31, 2013. Purchase Price is to be paid in the manner following: Upon signing this Agreement, Purchaser will pay the sum of \$189,055.00. Thereafter and within 30 days after Purchaser's receipt of written notice from Seller that all of its performance obligations hereunder have been satisfied, which satisfaction has been verified by the USACOE, Purchaser will pay the remaining balance of \$127,056.00.

3) SELLER'S WARRANTY: In consideration of the Purchase Price, Seller affirms that it will create the necessary compensatory mitigation per the USACOE Engineers approved Mitigation Plan to satisfy the stream credits required by Purchaser and also affirms that Seller has sufficient wetland credits at the Mitigation Bank to satisfy the credits required by Purchaser and further agrees to sell such wetland 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 Site and/or Mitigation 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 to the parties hereto as follows:

If to Seller: Swallow Tail Design Build, Inc.
1920 West 143rd Street, Suite 140
Leawood, KS 66224
Attn: Mr. David Flick, Member

If to Purchaser: Earl Newill
Jackson County Public Works
303 W. Walnut
Independence, MO 64050

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.

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: Purchaser and Seller shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Missouri and subject to the requirements of any applicable federal law or regulation.

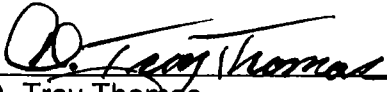
Changes in federal, state or local laws, however, which might have otherwise impacted this Agreement, shall not be enforced retroactively after execution of this Agreement.

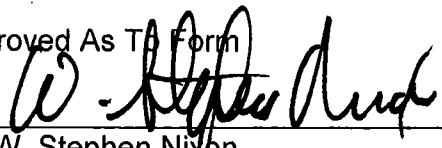
7) INCORPORATION: This Agreement, together with Purchaser's Request for Proposals (RFP) 25-13 and Seller's proposal submitted in response to RFP 25-13, dated April 16, 2013, constitute the entire agreement and understanding of the parties. In the event of a conflict among the provisions of any of these documents, the provision of the document listed first in the following order of priority shall prevail:


- a) This Agreement;
- b) Seller's Proposal; and
- c) RFP 25-13.

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

Purchaser

By: 
Q. Troy Thomas
Director of Finance and Purchasing

Approved As To Form
By: 
W. Stephen Nixon
County Counselor

Attest
By: 
Mary Jo Spino
Clerk of the County Legislature


Seller

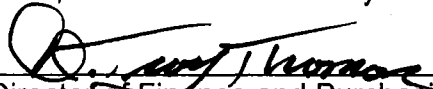
Swallow Tail Design Build Incorporated

By: 
David L. Flick
President

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$316,111.00 which is hereby authorized.

Date 
July 19, 2013


Director of Finance and Purchasing
Acct. # 015-1540-8070
1540 2013 003