

NUTRIENT CREDIT PURCHASE & SALE AGREEMENT

This nutrient credit purchase and sale agreement (“Agreement”) is made and entered as of this _____ day of _____, 2018, by and between THOMAS KH1, LLC, a Virginia limited liability company (“Seller”), and the CITY OF HARRISONBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (“Buyer”; collectively, the “Parties”). For their Agreement, the Parties state:

RECITALS

WHEREAS, the Seller intends to undertake a project, known as the Blacks Run Stream Restoration Project (the “Project”), which will produce nutrient credits through methods in conformance with the TMDL Action Plan Guidance Memo No. 15-2005 by restoring the Blacks Run Stream Area (the “Project Area”); and

WHEREAS, the Purchaser owns a municipal separate storm sewer system (MS-4), and wishes to purchase nutrient credits from the Seller in order to offset certain sediment and nutrient loads produced by its MS-4:

WITNESSETH

NOW THEREFORE, for and in consideration of the premises hereof, the mutual premises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

1. *Payment.* Payment for the nutrient credits shall be made on the schedule of values and milestones enclosed as **Exhibit A**. Seller acknowledges that Buyer previously made a \$241,400.00 down payment which shall be allocated towards Buyer’s payment for the 2018-2019 purchase set forth in Section 2 below.

2. *Delivery.* Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell to the Buyer, and the Buyer agrees to purchase, certain nutrient credits. Delivery of the credits shall be as follows:

Year	\$/lb./P	Lbs. to be delivered	Date of Closing
2018–19	\$20,500	Nitrogen: 151.999 Phosphorous: 70.0 Sediment: 24,133.183	7/15/19
2020:	\$20,500	Nitrogen: 34.702 Phosphorous: 15.981 Sediment: 5,509.606	7/15/20
2021:	\$20,500	Nitrogen: 34.702 Phosphorous: 15.981 Sediment: 5,509.606	7/15/21
2022:	\$20,500	Nitrogen: 34.701 Phosphorous: 15.981 Sediment: 5,509.605	7/15/22

On the closing date, the Seller shall convey the nutrient credits being purchased by the Buyer by a good and valid bill of sale. Responsibility for documenting the transfer with DEQ shall lie with the Buyer.

3. *Stabilization.* The Seller, at no cost to Buyer, shall record an easement on the stabilized area, to be an easement in gross or conservation easement or other legal structure which will not result in merger of estates, and have responsibility to maintain the Project Area in a manner so as to ensure the validity of the Credits for not less than 10 years or until it is certified as stabilized by a consulting engineer as set forth below, whichever shall first occur. Until transfer of the property to the Buyer, the Seller, at its own cost, shall retain a consulting engineer experienced in the field of stormwater management and nutrient credits and certified as a professional engineer in the Commonwealth of Virginia to inspect and certify that the Project has been maintained in years 1, 2, 3, 5, 7, and 10. The engineer shall inspect and certify that the Project continues to be in conformance with the design documents. The engineer shall prepare a Long-Term Monitoring Plan which shall be submitted to and approved by the Virginia Department of Environmental Quality (DEQ). The Seller shall, at its own cost, take such reasonable steps as may be recommended by the consulting engineer to remedy any deficiencies that have developed in the Project. The Seller shall provide copies of the engineer's report and approved Long Term Monitoring Plan promptly to the Buyer.

Following Year 10, or upon two consecutive years where the engineering/monitoring report concludes that the project has been stabilized, whichever shall first occur, the Seller may retain a consulting engineer at its discretion to inspect the Project and the Project Area. If the Project Area is found to be "stabilized," Seller may convey, and the Buyer shall accept, the Project Area, in fee simple. For the purposes of this Section, the term "Stabilized" means that (i) the Project has been found to be in conformity with the plans without substantial change or erosion or other change to the Project requiring remedy by the Seller in accordance with this Section, and Seller's consulting engineer certifies such to Buyer, and (ii) Seller's consulting engineer provides Buyer a copy of the DEQ approved Long Term Monitoring Plan and certifies to Buyer that such plan remains in effect and good standing with DEQ. The Project Area conveyed shall be a minimum of seventy (70) feet in width, with a minimum of thirty-five (35) on each side of the center line of Blacks Run. Additionally, and at the same time as the conveyance of the Project Area, the Seller shall convey to the Buyer, in fee simple, the Northend Greenway Shared Use Path (including all areas contained in the easement granted therefor) as described in the Contract Documents. For each conveyance, the Seller shall provide the Buyer a good and lawful deed conveying fee simple title with General Warranty and English Covenants of Title to the Buyer, subject only to such limitations as may be of record, and shall include access easements to the Project Area (including both sides of Blacks Run) and the Shared Use Path reasonably necessary for Buyer's maintenance of those areas. Both conveyances shall be without additional costs to Buyer.

4. *Proration.* Any taxes and fees payable on a periodic basis shall be prorated as of the date of closing.

5. *Part of Comprehensive Agreement.* This Agreement is made part of, and is of the essence of, that Comprehensive Agreement entered between the Parties on _____, 2018. It is subject to all terms and conditions stated therein.

6. *Further Assurances; Regulatory Change.* In the event of a change in law or regulation that substantially frustrates the objectives of this Agreement, the Parties covenant and agree to negotiate in good faith to enter a new agreement covering substantially the same subject matter in a manner as near as practicable to this Agreement.

7. *Additional Pollutant Credits.* The Parties anticipate that the Project will generate additional nutrient credits beyond those credits set forth in Section 2 above. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, and Buyer agrees to purchase, all additional nutrient credits generated by the Project which are documented through approved monitoring protocols in conformance with TMDL Action Plan Guidance Memo No. 15-2005. The purchase price of aforementioned additional credits shall be \$20,500 per pound of Phosphorus (together with corresponding Nitrogen and Sediment). Buyer shall purchase a minimum of 15.98 pounds of Phosphorus credits, together with 34.70 pounds of Nitrogen and 5,509.61 pounds of Sediment credits annually beginning in 2023 and continuing through 2028. Buyer shall have the right to purchase more than such minimum nutrient credits each year, if available. The Seller may request that the Buyer purchase additional available nutrient credits beyond the minimum required annual purchase set forth in this Section, but such additional purchase shall be at Buyer's discretion. The Buyer shall purchase all additional nutrient credits generated by the Project by July 15, 2028. Closing for each annual purchase shall occur on or July 15th of the applicable year.

IN WITNESS WHEREOF, see the following signs and seals:

THOMAS KH1, LLC:

CITY OF HARRISONBURG, VIRGINIA:

Sign

Sign

Name

Name

Position

Position

Approved as to legal form
City Attorney