

RESOLUTION 21-62

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA APPROVING A MITIGATION PURCHASE AGREEMENT WITH THE ST. JOE COMPANY FOR BAY PARKWAY PHASE 2 PROJECT, IN THE AMOUNT OF \$143,685 TO BE PAID WITH TRANSPORTATION CONCURRENCY CREDITS.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Mitigation Purchase Agreement between the City and the St. Joe Company, relating to the impacted wetlands for Bay Parkway Phase 2 project, in the amount of One Hundred Forty Three Thousand, Six Hundred Eighty Five Dollars (\$143,685.00), to be paid as transportation concurrency credits, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 14th day of January, 2021.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

MITIGATION PURCHASE AGREEMENT

THIS MITIGATION PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the 25th day of January, 2021 (the "Effective Date"), by and between **THE ST. JOE COMPANY**, a Florida corporation, on behalf of itself and its subsidiary **ST. JOE TIMBERLAND COMPANY OF DELAWARE, L.L.C.**, a Delaware limited liability company, whose mailing address is 130 Richard Jackson Blvd, Suite 200, Panama City Beach, Florida 32407 ("Seller"), and the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation, whose mailing address is 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413 ("Buyer").

WITNESSETH:

WHEREAS, as part of Buyer's environmental permitting process for the proposed development of its project known as Bay Parkway Phase 2 ("Project") involving USACOE Permit No. SAJ-2005-09182 and FDEP Permit No.0375609-002-EA/03 (collectively, "Buyer's Permits"), Buyer's permits from such governmental agencies are conditioned upon conservation easements and purchase of mitigation credits as compensatory mitigation; and

WHEREAS, Seller owns and maintains an ecological restoration project named Breakfast Point Mitigation Bank located in Bay County, Florida ("Mitigation Property") with federal freshwater WRAP and state UMAM mitigation credits ("Credits") available for transfer and sale under FDEP Permit No. 0227475-001 and USACOE Permit No.SAJ-2004-1865-NW-GAH (collectively, "Seller's Permits") and desires to sell Credits to Buyer for the benefit of Buyer's Project; and

WHEREAS, Seller owns and maintains specific lands eligible for conservation use related to the Buyer's Permits and desires to encumber those lands for the benefit of the Buyer's Project; and

WHEREAS, a conservation easement shall be recorded by Seller pursuant to Seller's RGP/EMA to offset wetland impacts made within the same sub basin as the Property; and

WHEREAS, Seller's RGP / EMA requires removal of an existing silviculture road within the permitted sub-basin to restore a wetland connection upon permitting of new wetland crossings; and

WHEREAS, Seller desires to sell and Buyer desires to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the Project.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Purchase Terms.** For purposes of satisfying conditions to Buyer's Permits, Seller agrees to sell mitigation credits, encumber Seller's property with easements and remove road crossings as follows:

a. **Mitigation Credits.** Seller hereby agrees to sell 3.59 palustrine forested mitigation credits to compensate for 3.81 acres of high quality wetland impacts and 0.15 acres of low quality wetland impacts ("Subject Credits") to Buyer. Buyer agrees to pay for and purchase the Subject Credits from Seller for 50% of current market pricing of \$75,000.00 for the aggregate amount of One Hundred Thirty Four Thousand, Six Hundred Twenty Five and 0/100 Dollars (\$134,625) ("Mitigation Credits Purchase Price").

b. **Off-site Conservation Easement.** Seller hereby agrees to encumber with a conservation easement 0.60 acres within the Southwest West Bay Sub-basin in order for Buyer to meet condition No. 10 of Buyer's USACOE Permit No. SAJ-2005-09182 ("Subject Off-site Conservation Easement"). The Subject Off-site Conservation Easement shall be located in the area generally depicted in Exhibit "A" attached hereto and made a part hereof. Buyer agrees to pay for the Subject Off-site Conservation Easement at current market pricing of \$3,000.00 per acre for the aggregate amount of One Thousand and Eight Hundred and 00/100 Dollars (\$1,800.00) ("Subject Off-site Conservation Easement Purchase Price").

c. **Conservation Unit Conservation Easement.** Seller hereby agrees to encumber with a conservation easement 1.92 acres within the Southwest West Bay Conservation Unit in order for Buyer to meet condition No. 11 of Buyer's USACOE Permit No. SAJ-2005-09182 ("Subject Conservation Unit Conservation Easement"). The Subject Conservation Unit Conservation Easement shall be located in the area generally depicted in Exhibit "B" attached hereto and made a part hereof. Buyer agrees to pay for the Subject Conservation Unit Conservation Easement at a current market pricing of \$3,000.00 per acre for the aggregate amount of Five Thousand and Seven Hundred and Sixty and 00/100 Dollars (\$5,760.00) ("Subject Conservation Unit Conservation Easement Purchase Price").

d. **Road Removal.** Seller hereby agrees to remove one (1) existing silvaculture road crossing and replace with one (1) low water crossing located within the Southwest West Bay Sub-basin at locations acceptable to Seller in order for Buyer to meet condition No. 12 of Buyer's USACOE Permit No. SAJ-2005-09182 ("Subject Road Removal"). The Subject Road Removal shall occur in the area generally depicted in Exhibit "C" attached hereto and made a part hereof. Buyer agrees to pay for the cost of materials to construct the low water crossings at a current market price of \$1,500.00 per crossing for the aggregate amount of One Thousand and Five Hundred and 00/100 Dollars (\$1,500.00) ("Subject Road Removal Purchase Price").

In accordance with Section 13 of the Transportation Concurrency Proportionate Share Agreement between the parties dated March 28, 2019, the Mitigation Credits Purchase Price shall be payable to Seller by Buyer by contribution of Concurrency Credits to the Seller's Concurrency Credit Ledger on file at the City Planning Department. The parties agree that the Subject Off-site Conservation Easement Purchase Price, the Subject Annual Conservation Unit

Conservation Easement Purchase Price and the Subject Road Removal Purchase Price shall also be payable to Seller by Buyer by contribution of Concurrency Credits. The Mitigation Credits Purchase Price, Subject Off-site Conservation Easement Purchase Price, the Subject Annual Conservation Unit Conservation Easement Purchase Price and the Subject Road Removal Purchase Price shall herein be collectively referred to as the "Purchase Price." Buyer's contribution of Concurrency Credits to Seller's Concurrency Credit Ledger in the amount of the Purchase Price shall occur on or before December 31, 2020 ("Payment Date").

2. **Survey and Title.** Buyer shall obtain, at its sole cost and expense, all surveys, sketches, legal descriptions and title searches needed for the Subject Off-site Conservation Easement, Subject Annual Conservation Unit Conservation Easement and Subject Road Removal. Buyer shall obtain and deliver to Seller the survey and title searches within ninety (90) days of the Effective Date.
3. **Reservation of Subject Credits.** Following Buyer's and Seller's execution of this Agreement, and upon Buyer's request, Seller will address applicable reservation letters to the FDEP and USACOE detailing the specific Subject Credits reserved by Seller.
3. **Timing of Transfer of Subject Credits.** Upon Seller's receipt of evidence of the contribution of Concurrency Credits in the amount of the Purchase Price, the Subject Credits shall be deemed transferred and the Purchase Price shall be deemed fully earned. Seller shall provide to Buyer the applicable documentation required by the FDEP and USACOE to debit the Subject Credits from each of the Seller's FDEP and USACOE ledgers.
4. **Timing of Recording of Conservation Easements.** Within ten (10) business days of Seller's receipt of final surveys, legal descriptions and confirmation of clear property title from the Buyer, Seller shall prepare and record the Subject Off-site Conservation Easement and the Subject Annual Conservation Unit Conservation Easement.
5. **Costs.** Each party shall bear its own costs associated with the terms of this Agreement.
6. **Covenants.**
 - a. **Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's Permits. Responsibility for compliance with the Seller's Permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. Seller shall not be bound by any statement of any broker, employee, agent or other representative or affiliate of Seller.
 - b. **Buyer.** Buyer covenants and agrees that (i) the Subject Credits shall only be used in conjunction with the Project and (ii) the Subject Credits shall only be used as authorized by Buyer's Permits for the Project.
7. **Remedies.** In the event either Buyer or Seller breaches or fails to perform any covenant,

agreement or obligation hereof, then the other party shall have all rights and remedies available at law or in equity including the right of injunctive relief, damages and the right to action for specific performance.

8. **Assignment.** Buyer may not assign, sell, transfer, convey or grant (whether voluntarily or otherwise) all or any portion of Buyer's interest in the Subject Credits and/or this Agreement without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole discretion.

9. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

10. **Notices.** Any notice, demand, consent, authorization, request, approval or other communication that any party is required, or may desire, to give to or make upon the other party pursuant to this Agreement shall be effective and valid only if in writing, signed by the party giving notice, or its attorney, and delivered personally to the other parties or sent by express 24-hour guaranteed courier or delivery service, by electronic mail or by certified mail of the United States Postal Service, postage prepaid and return receipt requested, addressed to the other party as follows (or to such other place as any party may by notice to the others specify):

To Seller:	The St. Joe Company Attn: Jorge Gonzalez, President and CEO 130 Richard Jackson Blvd, Suite 200 Panama City Beach, Florida 32407 Email: jorge.gonzalez@joe.com
With a Copy To:	The St. Joe Company Attn: Elizabeth J. Walters, General Counsel 130 Richard Jackson Blvd., Suite 200 Panama City Beach, Florida 32407 Email: lisa.walters@joe.com
TO PCB:	Anthony O'Rourke, City Manager Kelly Jenkins, City Engineer City of Panama City Beach 17007 Panama City Beach Parkway Panama City Beach, Florida 32407 (850) 233-5100 Email: torourke@pcb.gov Email: kjenkins@pcb.gov
COPY TO:	Amy E. Myers Hand Arendall Harrison Sale, LLC 16901 PCB Parkway, Suite 300 Panama City Beach, Florida 32413

Email: amyers@handfirm.com

Notice shall be deemed given when received. Buyer, and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this Paragraph.

11. **Entire Agreement.** This Agreement contains the entire understanding between the parties and the parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not herein contained.
12. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by written notice to the other parties, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
13. **No Joint Venture or Partnership or Agency Relationship.** Nothing contained in this Agreement shall be deemed or construed to create a joint venture or partnership and neither party shall be the agent of the other for any purpose. Neither party shall hold itself out as an agent, partner or joint venturer with the other and each party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this Paragraph.
14. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
15. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.
16. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.
17. **Time is of the Essence.** Time is of the essence under the terms of this Agreement. If any date referenced herein falls on a Saturday, Sunday or legal holiday, then such date shall

automatically extend to the next business day. Failure to perform at the times stated in this Agreement shall constitute a default.

18. **Attorneys' Fees.** Non-prevailing party shall be liable for the prevailing party's reasonable attorneys' fees and court costs incurred in connection with any litigation relating to this Agreement, including but not limited to, attorneys' fees incurred in trial, post judgment, and appellate proceedings.

19. **No Warranty.** Buyer understands and agrees that Seller has made no representation or warranty as to the appropriateness, applicability, adequacy or suitability of the Subject Credits for Buyer's intended uses or purposes, and that Buyer accepts the Subject Credits in an "as is" condition without requiring any action, expense or other thing or matter on the part of Seller to be paid or performed and upon the issuance of the Minor Permit Modification to Seller's Environmental Resources Permit for the Subject Credits.

20. **Agreement Not Recordable.** Neither this Agreement nor a memorandum thereof shall be recorded in the public records of any county.

21. **Confidentiality.** Except as required in the normal conduct of the business of the parties hereto by law or as part of Buyer's permitting process, Buyer shall not, without the prior written approval of Seller, at any time during the term of this Agreement or thereafter, divulge to any third party, other than its attorneys, accountants, employees and professional advisors who are bound by confidentiality, any information concerning the contents of this Agreement. Buyer shall not make any press releases or other media dissemination of information relating to the transaction contemplated by this Agreement without the prior written approval of Seller, which may be granted or withheld in Seller's sole discretion. Nothing herein shall prevent the Buyer from complying with the requirements of Florida's public records law, Chapter 119, Florida statutes, compliance with which will not be considered a violation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below their respective names.

SELLER:

THE ST. JOE COMPANY,
on its behalf and on behalf of
ST. JOE TIMBERLAND COMPANY
OF DELAWARE, L.L.C.

Authorized Signature

Printed Name

Title

Date

BUYER:

CITY OF PANAMA CITY BEACH

Authorized Signature

Printed Name

Title

Date

ATTEST:

City Clerk