

## MITIGATION CREDIT AGREEMENT

This MITIGATION CREDIT AGREEMENT (Agreement) is made and entered into as of February 12, 2018, (the “Effective Date”), by and between Swallow Tail LLC (“Seller”) and The Grove at Lee’s Summit, LLC (“Purchaser”).

### WITNESSETH:

WHEREAS Purchaser has applied for a U. S. Army Corps of Engineers (“USACOE”) permit under Section 404 of the Clean Water Act to allow impacts to Jurisdictional Waters (“Project”). Project Number assigned by the USACOE is NWK-2017-00785. The project manager with the Corps of Engineers is Kailey Jones.

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 part of the requirement through the purchase of mitigation credits in the Sellers’ Camp Branch Creek Stream and Wetland Mitigation Bank (“Mitigation Bank”).

WHEREAS, the USACOE has determined that Purchaser is allowed to purchase credits due to permanent impacts resulting from the activities at the subject site.

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 **Four hundred ninety-five thousand nine hundred and thirty DOLLARS (\$495,930)** (“Purchase Price”) for 0.11 wetland credits and 12,247 stream credits at the Mitigation Bank. The Purchase Price is derived from the unit cost of \$55,000 per wetland credit and \$40 per stream credit. 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 \$495,930.

3) SELLERS WARRANTY: In consideration of the Purchase Price, Seller affirms that it has sufficient credits 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) 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 LLC c/o Terra Technologies Inc.  
6240 West 135th Street, Suite 100  
Overland Park, KS 66223  
Attn: Mr. David Flick

If to Purchaser: The Grove at Lee’s Summit LLC  
PO Box 57  
Lee’s Summit MO 64063  
Attn: Daren Fristoe

Any notice given pursuant hereto by overnight courier shall be effective after recipient signs for notice; any notice given pursuant hereto by United States mail, return receipt requested, 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) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed by both parties within 180 days after the Effective Date of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

Purchaser

The Grove at Lee's Summit, LLC

By: \_\_\_\_\_  
Daren Fristoe

Seller

Swallow Tail LLC

By: David L. Flick  
David L. Flick

Swallow Tail LLC

c/o Terra Technologies  
6240 West 135th Street Suite 100  
Overland Park KS 66223

# Invoice

Date	Invoice #
2/12/2018	3618

Bill To
The Grove at Lee's Summit, LLC PO Box 57 Lee's Summit MO 64063

P.O. No.	Terms	Project
		2017-785 Grove at Lees Su...

Quantity	Description	Rate	Amount
12,247	Stream credits assigned to the Camp Branch Creek Stream and Wetland Mitigation Bank in satisfaction of Clean Water Act Section 404 Authorization.	40.00	489,880.00
0.11	Wetland credits assigned to the Camp Branch Creek Stream and Wetland Mitigation Bank in satisfaction of Clean Water Act Section 404 Authorization.	55,000.00	6,050.00
		<b>Total</b>	\$495,930.00

## Request for Taxpayer Identification Number and Certification

**Give form to the  
requester. Do not  
send to the IRS.**

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return) <b>Swallow Tail LLC</b>	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	<input type="checkbox"/> Exempt from backup withholding
Address (number, street, and apt. or suite no.) <b>c/o Terra Technologies 6240 West 135th Street Suite 100</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Overland Park KS 66223</b>	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								
2	0	0	2	3	5	0	4	6

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

**Sign  
Here**

Signature of  
U.S. person ▶

*David L. Flick*

Date ▶ **2-12-2018**

### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, KANSAS CITY DISTRICT  
636 FEDERAL BUILDING  
601 E. 12<sup>TH</sup> STREET  
KANSAS CITY, MISSOURI 64106-2824

February 12, 2018

Regulatory Branch  
(NWK-2017-00785)

Mr. Daren Fristoe  
The Grove at Lee's Summit, LLC  
P.O. Box 57  
Lee's Summit, Missouri 64063

Dear Mr. Fristoe:

As requested by your application, received on May 18, 2017, enclosed is a proposed Department of the Army (DA) permit, in duplicate, with drawings attached. When executed, the permit will authorize your plan to grade and fill two tributaries and two wetlands of Big Creek, for construction of a mixed-use development called The Grove. Additionally, the permit will authorize the temporary impacts to a tributary for installation of a sanitary sewer. The project is located in Sections 8 and 17, Township 47 north, Range 31 west, in Lee's Summit, Jackson County, Missouri.

A copy of the water quality certification issued for your work, by the Missouri Department of Natural Resources has been attached to the enclosed DA permit. As stated in general condition "5" of the enclosed permit document, the conditions presented in the state's water quality certification are incorporated into the special conditions of the permit by reference.

This letter contains an initial proffered permit for your proposed project. If you object to the permit because of certain terms and conditions therein, you may request that the permit be modified accordingly. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal (NAO-RFA) form. If you request reconsideration of this decision you must submit a completed NAO-RFA form to the Kansas City District at the following address:

District Commander  
ATTN: Mark D. Frazier  
Chief, Regulatory Branch  
U.S. Army Engineer District, Kansas City  
601 East 12<sup>th</sup> Street, Suite 402  
Kansas City, MO 64106-2824  
Voice: 816-389-3990 FAX: 816-389-2032

In order for an NAO-RFA to be accepted by the U.S. Army Corps of Engineers (Corps), the Corps must determine that it is complete, that it meets the criteria for reconsideration under 33 CFR Part 331.6.b., and that it has been received by the District Office within 60 days of the date of the NAO-RFA. Should you decide to submit an NAO-RFA form, it must be received at the above address by April 13, 2018. It is not necessary to submit an NAO-RFA form to the District Office if you do not object to the provisions of your initial proffered permit.

If you wish to accept the permit in its present form, please sign the original and duplicate copy of the enclosed permit document. Each copy of the permit document should be signed on page 3 above the word "Permittee," dated, and returned within 30 days from the date of this letter. Also, the application fee of \$100 should be paid by check made payable to USAED-KC and remitted with the permit document. A

preaddressed envelope is enclosed for your convenience. Upon receipt of the properly signed documents and the application fee, the permit will be executed and returned to you for your files. Your signature on the standard permit means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

Special condition "a" of the permit document requires you to complete and return a "Compliance Certification" upon completion of the authorized work and any required mitigation. The "Compliance Certification" form will be provided to you when your DA permit is executed.

In addition to the general and special conditions of this IP, special conditions have been added in order to replace the lost aquatic resources and to protect Threatened and Endangered Species that result from the authorized project.

1. The permittee must purchase 12,247 stream credits and 0.11 acres of wetland credit from an approved mitigation bank in the service area of the project. The current approved mitigation bank within the service area of the project is the Camp Branch Wetland and Stream Mitigation Bank. The compensatory mitigation credit purchase must be completed prior to the commencement of work within our regulatory jurisdiction. You must submit a receipt of payment from the mitigation provider that includes the amount of credits purchased and the date of credit purchase. Receipts submitted by authorized agents will not be accepted.

2. Please be aware that the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*), may be present within your project area. To "not adversely affect" the listed species, the permittee must avoid cutting and clearing trees within the project area during the bats' active season March 31 – November 1. If you anticipate timber clearing within these dates, please contact the Corps of Engineers, Regulatory Branch, for further consultation with the United States Fish and Wildlife Service.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at: [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). You may also call and request a paper copy of the survey which you may complete and return to us by mail or fax.

If you have any questions concerning this matter, please feel free to write me or to contact Ms. Kailey Jones at (816) 389-2123 or by email at [kailey.j.jones@usace.army.mil](mailto:kailey.j.jones@usace.army.mil).

Sincerely,



David R. Hibbs  
Regulatory Program Manager  
Regulatory Branch

Enclosures