

# Request For Board Action

**REFERRED TO BOARD:** October 9, 2017

**AGENDA ITEM NO:** 4

**ORIGINATING DEPARTMENT:** Administration

**SUBJECT:** Consideration of a Resolution Authorizing the Execution of the Squaw Creek Wetland Credit Agreement

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Village is currently under contract with a developer to purchase and approximate 4.5-acre parcel for a retail development. This property was acquired by the Village as part of the Boyland property. A condition to closing is the mitigation of all wetland currently residing on the property. It has been found through a wetland delineation by Huff and Huff Inc. the .58 acres of low quality wetland exists on the parcel. The most expedient and cost effective way to mitigate the wetland impact is through use of a wetland bank whereby the Village will purchase 0.58 acres of wetland credit enabling the real impact to the onsite wetland.

Staff recommends moving ahead with the purchase of wetland credit from the Squaw Creek Bank and approval of the resolution.

**FINANCIAL IMPACT:** \$75,400.00

**DOCUMENTS ATTACHED:**

1. Resolution
2. Squaw Creek Wetland Credit Agreement

**RECOMMENDED MOTION:**

Motion to approve of a Resolution Authorizing the Execution of the Squaw Creek Wetland Credit Agreement.

**RESOLUTION 17 - \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE EXECUTION OF THE SQUAW CREEK WETLAND CREDIT AGREEMENT**

**WHEREAS**, the Village Board purchased the Boylan property consisting of multiple adjoining parcels of approximately 50 acres located on and south of Illinois Highway 173, north of Grimm Road and east of Illinois Highway 83; and

**WHEREAS**, the Village received an offer from R.A. Wilson Enterprises to purchase one of the parcels located on the northeast corner of Route 83 and Grimm Road for the intended use for a retail store; and

**WHEREAS**, The Village Board approved Ordinance No. 17-05-14 authorizing execution of a contract for the sale of land to R.A. Wilson Enterprises, Inc. for the purchase price of \$429,900 on May 1, 2017; and

**WHEREAS**, a wetlands survey of the said parcel was conducted shortly after the Ordinance was passed, and this survey disclosed a small area of wetlands on the east side of the property adjoining the railroad right-of-way, and

**WHEREAS**, in order to convey a fully buildable parcel, the Village Administrator applied for a permit from the Stormwater Management Agency of Lake County and all affiliated jurisdictional governmental bodies to allow the discharge of clean non-toxic fill material into .58 acres of wetland on the site; and

**WHEREAS**, the permit has been approved, but as a condition thereof, the Village is required to compensate for wetland impacts, and the Administrator has determined that it is possible to do this offsite through the purchase of wetland credits in the "Squaw Creek Wetland Mitigation Bank"; and

**WHEREAS**, the permitting agencies have determined that the Village shall be required to purchase a total of .58 acres of certified wetland credit in the amount of \$75,400.00, but that expenditure of funds will allow the buyer of the subject property the ability to build on all parts of the property, including the filling of the small wetland area described herein.

**NOW THEREFORE, BE IT RESOLVED** by the Village of Antioch, Lake County, Illinois, as follows:

**SECTION ONE:** The Village Administrator is directed to execute the Wetland Credit Agreement, attached as Exhibit "A".

**SECTION TWO:** This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
LAWRENCE M. HANSON, MAYOR

\_\_\_\_\_  
LORI K. ROMINE, VILLAGE CLERK

## WETLAND CREDIT AGREEMENT

THIS WETLAND CREDIT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of September, 2017, (the “Effective Date”) by and between WETLANDS MITIGATION OF ILLINOIS, LLC, an Illinois Limited Liability Corporation (“Seller”) and the VILLAGE OF ANTIOCH, an Illinois Municipality (“Purchaser”).

### WITNESSETH:

WHEREAS, Purchaser has applied to the U. S. Army Corps of Engineers (USACE) for a permit under Section 404 of the Clean Water Act, and the Lake County Stormwater Management Commission (LCSMC), as the Permitting Agencies for a permit to allow the discharge of clean non-toxic fill material into 0.58 acres of a wetland for the Grimm Road Commercial Development Project in the Village of Antioch, Illinois (“Project”). Project Number assigned by the USACOE is LRC-2008-254. Project Number assigned by the LCSMC is 07-01-1112.

WHEREAS, as a condition to the issuance of a permit from the Permitting Agencies Purchaser is required to compensate for said wetland impacts, and elects to do so through the purchase of wetland credits in the Sellers’ Squaw Creek Wetland Mitigation Bank (“Wetland Bank”).

WHEREAS, the Permitting Agencies have determined that Purchaser shall be required to purchase a total of 0.58 acres of certified wetland credit (1:1 ratio) due to the proposed impacts to the wetlands resulting from the development of the Project.

WHEREAS, the Project is located in the Fox River watershed and the Wetland Mitigation Bank is also located in the same watershed, in Lake County, Illinois.

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 SEVENTY-FIVE THOUSAND AND FOUR HUNDRED DOLLARS (\$75,400.00 = "Purchase Price") for 0.58 wetland credits from the Wetland Bank. Purchase Price shall be paid in the following manner:

a.) EARNEST MONEY: Upon signing this Agreement Purchaser shall pay Seller a non-refundable deposit of 20% of the Purchase Price, or \$15,080.00, as Earnest Money.

b.) BALANCE OF PURCHASE PRICE: Upon receipt of the final approval notice for the Project ("Permit Approval Notification"), Purchaser shall pay Seller the remaining 80% of the Purchase Price as stated herein, or \$60,320.00. Payments shall be made to WETLANDS MITIGATION OF ILLINOIS, LLC. If the balance of the Purchase Price is not paid by the end of the fifth business day after receiving the Permit Approval Notification the balance of the Purchase Price will accrue interest at the rate of ten percent (10%) per annum. Upon payment of Purchase Price Seller shall notify Permitting Agencies that 0.58 acres of wetland credit have been purchased from the Wetland Bank.

- c.) REQUIRED AMOUNT OF CREDITS: Should the wetland credits required by the Permitting Agencies be increased or decreased from the time of Agreement execution to the time Purchase Price has been paid, the Agreement shall be modified to reflect an adjusted Purchase Price based on the same price per acre as originally set out in this Agreement, if Seller has such credits available.
- d.) TERMINATION: If after one hundred and twenty (120) days after the Effective Date Purchaser has not received the Project Permit, then at any time thereafter until Purchaser receives the Project Permit either party may terminate this Agreement by written notice to the other party. If the Agreement is terminated by Seller, Seller shall return the Earnest Money to Purchaser.
- 3) SELLERS PERFORMANCE INDEMNITY: In consideration of Payment of the Purchase Price, Seller affirms that it has sufficient wetland credits released by the Permitting Agencies in the Wetland Bank to satisfy the wetland credits required by Purchaser and hereby does sell such credits to Purchaser. Purchaser shall have no obligation to perform any of the responsibilities or assume any liabilities of Seller now or hereafter as set forth by the Permitting Agencies in the development and maintenance of the Wetland 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, or by facsimile to the parties hereto as follows:

If to Seller: Mr. John Ryan  
9575 West Higgins Road, Suite 470  
Rosemont, IL 60018  
Phone: 847-692-7170  
Fax: 847-318-9793  
Email: jryan@lawrinc.com

With a copy to: Mr. Steve Weller  
4250 W. Tanglewood Road  
Bloomington, IN 47404  
Phone: 812-935-7078  
Fax: 812-935-7079  
Email: ecologicpl@bluemarble.net

If to Purchaser: Mr. Jim Keim, Village Administrator  
Village of Antioch  
847 Main Street  
Antioch, IL 60002  
Phone: 847-395-1000  
Fax: 847-395-1920  
Email: jkeim@antioch.il.gov

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 understanding 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: Seller and Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Illinois and subject to the requirements of any applicable federal law or regulation. Changes in federal, state or local laws, which might have otherwise impacted this Agreement shall not be enforced retroactively after execution of this Agreement. Each party shall be held harmless for damages sustained by the other party as a result of changes in federal, state or local laws or their interpretation or enforcement.

7) SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Purchaser, as the case may be, and their respective successors and assigns. Neither party hereto shall assign any interest hereunder without the prior written approval of the other first hand.

8) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed within thirty (30) days of the effective date on first draft of Agreement, or date first draft of Agreement was sent to Purchaser. The time limitation shall be extended only upon written approval by all parties to this Agreement.

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

**VILLAGE OF ANTIOCH**

By: \_\_\_\_\_

**SELLER:**

**WETLANDS MITIGATION OF ILLINOIS, LLC**

By: \_\_\_\_\_  
John H. Ryan, Manager

By: \_\_\_\_\_  
Steven A. Weller, Manager