



Richland County Transportation Ad Hoc Committee

November 18, 2021 - 4:30 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29201

1. **CALL TO ORDER**

The Honorable Overture Walker

2. **APPROVAL OF MINUTES**

The Honorable Overture Walker

a. Regular Session: October 26 2021 [PAGES 2-4]

3. **ADOPTION OF AGENDA**

The Honorable Overture Walker

4. **ITEMS FOR ACTION**

The Honorable Overture Walker

a. Mitigation Credit Sales - [PAGES 5-18]
Quick Trip Store in Lexington County)

b. Mitigation Credit Sales – [PAGES 19-31]
Amick Farms rail upgrade in Saluda County

5. **ADJOURNMENT**



Richland County
Transportation Ad Hoc Committee
October 26, 2021 -4:00 PM
Council Chambers
2020 Hampton Street, Columbia, SC 29201

COMMITTEE MEMBERS PRESENT: Overture Walker, Chair, Bill Malinowski, Yvonne McBride, Paul Livingston, and Jessica Mackey

OTHERS PRESENT: Paul Livingston, Derrek Pugh, Gretchen Baron, Michelle Onley, Tamar Black, Leonardo Brown, Michael Maloney, Allison Steele, Angela Weathersby, Kyle Holsclaw, Justin Landy, Ashiya Myers, Randy Pruitt, Stacey Hamm, Steven Gaither, Shane Kitchen, Lori Thomas, John Thompson, Dwight Hanna, Quinton Epps and Aric Jenson

1. **CALL TO ORDER** – Mr. O. Walker called the meeting to order at approximately 4:00 PM.

2. **APPROVAL OF MINUTES**

- a. **Regular Session: September 28, 2021** – Ms. McBride moved, second by Ms. Mackey, to approve the minutes as distributed.

In Favor: Malinowski, McBride, Livingston, O. Walker, and Mackey

The vote in favor was unanimous.

3. **ADOPTION OF AGENDA** – Mr. Livingston moved, seconded by Ms. McBride, to adopt the agenda as published.

In Favor: Malinowski, McBride, Livingston, O. Walker and Mackey

The vote in favor was unanimous.

4. **ITEMS FOR ACTION**

- a. **Three Rivers Greenway Ph. 2 Funding** – Mr. Maloney stated there are two parts to the request. One was for the project, which was a request from outside the County, with the River Alliance. The second part is where the money comes from within the Penny. The project would essentially be a joint effort with the River Alliance. The River Alliance and the Boyd Family will be providing all the design and permitting for the project, and the construction costs for the bridge across the Broad River. The existing section, Section A, Phase I, would be provided by the Penny. He noted the County staff will be managing the development of the trail. The River Alliance will be managing the actual bridge across the Broad River, as well as the construction costs. In May, the River Alliance requested roughly \$1.8M to \$2M, but in September they requested \$2.2M to complete the part of the project that connects the Broad River Bridge. The funding would come from the 18 bikeway projects that were previously on the “not approved” list by SCDOT. The dollar amount from those projects, and one other project identified as an unlinked cul-de-sac that did not connect anywhere. The total referendum value for those projects is \$3.7M. He noted staff is not making any recommendation because it requires moving a referendum amount; therefore, it is being left to the Committee and Council.

Ms. McBride inquired about how this fits into the referendum and the priorities set for funding.

**Transportation Ad Hoc Committee
October 26, 2021**

Mr. Maloney responded this is one of the referendum projects from I-26 to the Zoo, to connect to Boyd Island, and to connect across the Broad River. There was a Section (b) that is not going forward. The estimated cost in 2014 was \$10,252,747, and the referendum amount was \$7,902,242.

Ms. McBride inquired about the specific amount for this project, since we typically divide projects.

Ms. Steele responded other greenway projects were broken into sections, but this project was not. It was a lump sum project.

Mr. Maloney noted, with what has been completed, there is a balance of \$150,000 remaining, and some of that would be necessary to close out Section A, Phase I, which is near completion. He stated the only option for the project would be to shift funds.

Ms. McBride stated, for clarification, in order to fund this project, we need to take funding from the same pot of money, which could affect other funding areas.

Mr. Maloney responded in the affirmative. He noted this is an outside request coming in.

Ms. McBride inquired if we have addressed all the other priorities in this area.

Mr. Maloney responded in the affirmative.

Mr. Malinowski noted the estimated project cost was \$10.2M. The referendum amount for the overall project was approximately \$7.9M. If the Boyd family is contributing \$3.6M that would total \$11.5M. He inquired why we need to use funds from the "not approved" projects.

Mr. Maloney responded the \$10.2 M amount was a 2014 estimate.

Mr. Malinowski inquired why we do not have a current estimate. He requested the minutes where Council approved the River Alliance's proposed Saluda Riverwalk project. He inquired which county the new bridge is located in.

Mr. Maloney responded the bridge is in Richland County.

Mr. Malinowski inquired if the County is in talks with West Columbia and the City of Columbia to ensure they are in agreement with this taking place.

Mr. Maloney responded they have spoken with the City of Columbia.

Mr. Malinowski inquired if Boyd Island is privately owned.

It was noted it is owned by the City of Columbia.

Mr. Malinowski inquired if there is a memorandum of understanding that will be created for the use of Boyd Island, if the development is approved.

Mr. Maloney responded it will require an agreement.

Mr. Malinowski stated he could not support this project until Council is given additional information.

Mr. Livingston stated the Three Rivers Project started with an original scope that included Section A and B. The funds appropriated for that project was not enough to complete the greenway. He stated we were fortunate enough to have a philanthropist to come forward to commit \$3.6M, if the County could come up with the remaining \$2.2M to assist with getting the County through Phase II of the project. He noted this was an opportunity to get something done with unspent funds from projects that are no longer viable projects. One of the things we discussed was trying to leverage funding from sources.

Mr. Livingston moved, seconded by Ms. Mackey, to approve the request.

Mr. Malinowski noted he does not see, in the documentation, where staff has informed us we need \$5.8M to complete Phase II.

Mr. Maloney responded the difference is the addition of \$3.6M provided by the Boyd Family and the \$2.2M requested of the Transportation Penny.

Mr. Malinowski inquired if the Transportation Department has confirmed the numbers.

Mr. Maloney responded that is the difference between the May and September numbers.

Mr. Malinowski made a substitute, seconded by McBride, to defer this item until the committee can get additional information.

In Favor: Malinowski and McBride

Opposed: Livingston, O. Walker and Mackey

The motion failed.

In Favor: Livingston, O. Walker and Mackey

Opposed: Malinowski and McBride

The vote was in favor.

5. **ADJOURNMENT** – The meeting adjourned at approximately 4:24 PM.



Agenda Briefing

Prepared by:	Michael Maloney	Title:	Interim Director
Department:	Transportation	Division:	
Date Prepared:	November 04, 2021	Meeting Date:	November 18, 2021
Legal Review	Elizabeth McLean via email	Date:	November 15, 2021
Budget/Finance Review	Stacey Hamm via email	Date:	November 04, 2021
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCCEM	
Committee	Transportation Ad Hoc		
Subject:	Mitigation Credit Sales – Quick Trip Store in Lexington County		

STAFF’S RECOMMENDED ACTION:

Staff respectfully requests the Committee concur with these credit sales and forward to full Council for consideration. This approval is time sensitive as the buyer has requested notice of approval as soon as possible due to Army Corps of Engineers permitting constraints.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If no, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

This mitigation credit sale will generate \$131,972.09 which will be credited to the Transportation Penny Program.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

Staff requests approval for the sale of mitigation bank credits from the Mill Creek Mitigation Bank to Quick Trip Corporation for an Army Corps of Engineers (ACE) 404 Permit to facilitate the construction of a new Quick Trip store in Lexington County. The applicant is requesting 2.21 wetland and 900.00 stream mitigation credits to fulfill the permitting requirements.

The mitigation bank was established with Transportation Program funding in order to provide mitigation credits necessary to acquire construction permits for transportation and other projects. Construction for projects with water resource impacts need mitigation credits to obtain permits. It is more cost effective when mitigation credits are available. As surplus mitigation credits are sold, the price for credits utilized for County projects is reduced. The requested mitigation credit sales provide for the acquisition of construction permits required for transportation and other projects as well as to replenish funds spent on the creation of the mitigation credits.

The mitigation bankers were notified by email of the County's desire to participate in this sale subject to final approval by County Council at the 100% level on October 6, 2021. When the sales are completed, if approved by County Council, the funds will be added to the Transportation Program account.

If the County Council does not approve the requested sales of its surplus mitigation credits, the County portion of the mitigation credit sales will drop from \$131,972.09 to \$31,082.09 for a difference of \$100,890.00 to the Transportation Program. The County Council has approved surplus mitigation credit sales on many occasions. The last two (2) mitigation credit sales approvals were completed by County Council at the Regular Session County Council Meeting on October 5, 2021 (minutes not available at this time) and the Regular Session County Council meeting on April 6, 2020. All related County Council actions since 2014 are not included in the attachments for brevity.

ADDITIONAL COMMENTS FOR CONSIDERATION:

None

ATTACHMENTS:

1. MCMB Credit Sale Checklist
2. MCMB Quick Trip Sales Agreement
3. County Council Regular Session, April 6, 2021 – Minutes

MITIGATION SURPLUS CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	QuikTrip Project Store 1182
<u>Location:</u>	Lexington County, SC
<u>8-Digit HUC Watershed Code</u>	03050109 (Saluda River)
<u>Buyer:</u>	QuikTrip Corporation
<u>Buyer's USACE 404 Permit #:</u>	SAC 2020-01380
<u>Price Per Wetland Credit:</u>	\$12,500
<u>Price Per Stream Credit:</u>	\$125
<u>Wetland Credits:</u>	2.21 credits (1.11 restoration/enhancement & 1.10 preservation)
<u>Stream Credits:</u>	900.00 credits (450.00 restoration/enhancement & 450 preservation)
<u>Credit Proceeds:</u>	\$140,125.00
<u>Richland County Credit Share:</u>	\$128,915.00 (92% of \$140,125.00)
<u>MCMH Credit Share:</u>	\$11,210.00 (8% of \$140,125.00)
<u>Fee for Out of Primary Service Area Sale:</u>	\$15,285.47
<u>Richland County Fee Share:</u>	\$3,057.09 (20% of \$15,285.47)
<u>MCMH Fee Share:</u>	\$12,228.38 (80% of \$15,285.47)
<u>Gross Proceeds (Inclusive of Fee for Out of Primary Service Area Sale:</u>	\$155,410.47
<u>Richland County Proceeds Share:</u>	\$131,972.09
<u>MCMH Proceeds Share:</u>	\$23,438.38

AGREEMENT FOR PURCHASE AND SALE OF STREAM
AND/OR WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM AND/OR WETLAND CREDITS (this "Agreement") is dated this 27th day of September, 2021, by and between MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the owner and operator of a stream and wetland mitigation bank commonly known as the Mill Creek Mitigation Bank ("Seller"), and QUIKTRIP CORPORATION, an Oklahoma corporation ("Purchaser").

RECITALS

A. The Mill Creek Mitigation Bank (the "Bank") was approved and is being operated pursuant to that certain Final Mitigation Banking Instrument: Mill Creek Mitigation Bank, dated December 22, 2015, United States Army Corps of Engineers - Charleston District (the "Corps") permit number SAC-2014-00222 (the "MBI");

B. Pursuant to the MBI, the Bank may offer wetland and stream credits for sale as compensation for unavoidable adverse impacts to, or for the loss of, among other things, jurisdictional waters of the United States, including wetlands and streams, and other natural habitats and ecosystems, located inside, and under certain circumstances, outside that certain geographical service area more particularly depicted on the attached Exhibit A (the "Service Area");

C. Pursuant to applicable Corps policies, to the extent that Bank credits are sold as compensation for unavoidable adverse impacts to jurisdictional waters located outside the Service Area and outside the 8-digit Hydrological Unit Code watershed in which the Bank is located (the "Bank's Watershed"), Seller is required by the Corps to commit incremental acres of wetlands per wetland mitigation credit, and incremental linear feet of stream per stream mitigation credit, in excess of that required if such wetland mitigation credits and stream mitigation credits, as applicable, were sold inside the Service Area and inside the Bank's Watershed;

D. Purchaser may purchase wetland and stream mitigation credits from the Bank as compensation for unavoidable adverse impacts to jurisdictional waters of the United States for Purchaser's projects located outside the Bank's Watershed upon Purchaser receiving Corps approval;

E. Purchaser desires to procure compensatory mitigation in connection with the project known as "Project Store 1182" pursuant to USACE Charleston District permit SAC-2020-

01380 (the "Permitted Project"), which is located outside the Service Area and outside the Bank's Watershed; and,

F. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, wetland and/or stream mitigation credits pursuant to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. Recitals. The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

2. Sale of Credits. Seller hereby sells to Purchaser, and Purchaser hereby purchases from Seller (a) FOUR HUNDRED FIFTY and 00/100 (0.00) stream enhancement mitigation credits and FOUR HUNDRED FIFTY and 00/100 stream preservation mitigation credits (the "Stream Credits") and (b) ONE and 11/100 (1.11) freshwater wetland enhancement/restoration mitigation credit and ONE and 10/100 (1.10) freshwater wetland preservation mitigation credits (the "Wetland Credits", and together with the Stream Credits, the "Credits") from the Bank based on the terms and conditions contained herein.

Upon execution of this Agreement, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 4 below) and Purchaser shall remit payment within 14 days of receipt of such invoice. Upon receipt of such payment, Seller will file the documentation with the Corps necessary to transfer the Credits to Purchaser in accordance with Corps policies and procedures and the terms of this Agreement.

3. Fee for Out of Primary Service Area Credit Sales. Purchaser agrees to pay a fee (the "Adjacent 8-digit HUC") to compensate Seller for the incremental wetland acreage and stream linear footage that must be deducted from the Bank's ledger to compensate for use of the Bank's credits to compensate for the Permitted Project's unavoidable adverse impacts occurring outside the Service Area and outside the Bank's Watershed. The Adjacent 8-digit HUC Fee shall be calculated as the sum of (a) 0.2224370 Wetland Credit, which represents the functional acre of wetlands deducted from the Bank's ledger due to the Permitted Project's location outside the Bank's Watershed, multiplied by the per-wetland-credit price defined in Section 4 below, and (b) 51.1836735 Stream Credit, which represents the functional linear feet of stream deducted from

the Bank's ledger due to the Permitted Project's location outside the Bank's Watershed, multiplied by the per-stream-credit price defined in Section 4 below. For avoidance of doubt, Purchaser's use of the Credits from the Bank to offset Purchaser's unavoidable impacts occurring outside of the Bank's Watershed is expressly conditioned upon approval by the Corps of the use of such Credits, and Seller makes no representation, warranty, or covenant that the use of such Credits will be acceptable to the Corps absent such Corps approval.

4. Purchase Price. The purchase price for the (a) Stream Credits shall be ONE HUNDRED TWENTY-FIVE and 00/100 Dollars (\$125.00) for each Stream Credit, for a total purchase price for the Stream Credits of ONE HUNDRED TWELVE THOUSAND FIVE HUNDRED and 00/100 (\$112,500.00); (b) Wetland Credits shall be TWELVE THOUSAND FIVE HUNDRED and 00/100 Dollars (\$12,500.00) for each Wetland Credit, for a total purchase price for the Wetland Credits of TWENTY-SEVEN THOUSAND SIX HUNDRED TWENTY-FIVE and 00/100 (\$27,625.00); and, (c) Adjacent 8-digit HUC Fee of FIFTEEN THOUSAND TWO HUNDRED EIGHTY-FIVE AND 47/100 (\$15,285.47), for a grand total purchase price for the Stream Credits and the Wetland Credits of ONE HUNDRED FIFTY-FIVE THOUSAND FOUR HUNDRED TEN and 47/100 (\$155,410.47) (the "Purchase Price"). Upon payment of the Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment to Seller of any other consideration or fee in connection with the sale of the Credits.

5. Delivery of Credits. Upon receipt of the Purchase Price, Seller shall:

- (a) notify the Corps of the completion of the sale using such documentation as required by the Corps, with a copy delivered to Purchaser; and
- (b) deliver to Purchaser a bill of sale for the Credits in substantially the same form as Exhibit B attached hereto.

6. Representations, Warranties and Covenants. Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

- (a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A and B.
- (b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.
- (c) Seller has full power and authority to convey the Credits to Purchaser and to consummate the transactions contemplated herein.

(d) Seller shall deliver the Credits to Purchaser free and clear of any liens, security interests or other encumbrances.

(e) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(f) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(g) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank.

(h) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(i) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

7. Miscellaneous

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Mill Creek Mitigation Holdings LLC
3414 Peachtree Road NE, STE 990
Atlanta, Georgia 30326

With a copy to:

The Lyme Timber Company LP
General Counsel
23 South Main Street, 3rd Floor
Hanover, NH 03755

Purchaser: QuikTrip Corporation
Attention: Justin Coons
4705 South 129th East Avenue
Tulsa, OK 74134

With a copy to:

The parties may change the address for notices by delivery of a change of address to the other party in accordance with the requirements set forth above.

(b) **Brokerage Commission.** Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement.

(c) **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and neither Party shall be bound by representations except as set forth in this Agreement. There are no other agreements or understandings, written or oral, between the parties with regard to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a written document executed by both parties.

(d) **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, with the proper venue being Richland County, except to the extent that any applicable federal law or regulation shall supersede South Carolina law in relation to the matters set forth in this Agreement.

(e) **Compliance with Applicable Laws.** Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(f) **Severability.** The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(g) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(h) Attorney's Fees. If legal action is commenced by either party to enforce its rights under this Agreement, the substantially prevailing party in such action shall be entitled to recover reasonable costs incurred by it, including, but not limited to, reasonable attorneys' fees and costs, in addition to any other relief granted.

(i) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(j) Assignability. Neither party hereto may assign its rights and obligations hereunder to any third-party entity without the prior written consent of the other, which may be withheld in the other party's sole discretion.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature or electronic signature shall have the same legal effect as an original.

(l) Confidentiality. Purchaser and Seller agree to maintain, in strictest confidence, the terms of this Agreement and any and all communications between the parties. This Section shall not apply to any information which: (i) was known to receiving party prior to it being disclosed to such party hereunder and can be so demonstrated by written documentation; (ii) was in the public domain by publication when received by receiving party or later came into the public domain by publication through no fault of receiving party; (iii) was disclosed to receiving party, free of confidentiality obligations, by a third party who (to the knowledge of receiving party) is not under obligations of secrecy concerning the information and/or materials; or (iv) was independently developed by receiving party without reference to the information. In the event legal process requires or requests disclosure by receiving party, its agents, representatives and/or employees of any of the information, if legally permissible to do so, receiving party shall give prompt notice of such process immediately to the other party so that the other party may either seek an appropriate protective order and/or waive compliance by receiving party with the provisions of this Section.

WITNESS the following authorized signatures:

SELLER: MILL CREEK MITIGATION HOLDINGS LLC

By: 
Printed: Charles B. Thompson
Its: Authorized Representative

PURCHASER: QUIKTRIP CORPORATION

By: 
Printed: Justin H. Coors
Its: Authorized Representative

EXHIBIT A

[Attach map of Service Area]

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the ____ day of _____, 2021, by MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and QUIKTRIP CORPORATION, an Oklahoma corporation ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated _____, 2021 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of Stream Credits and Wetland Credits (each as defined in the Agreement) held in Seller's Mill Creek Mitigation Bank, Richland County, South Carolina.

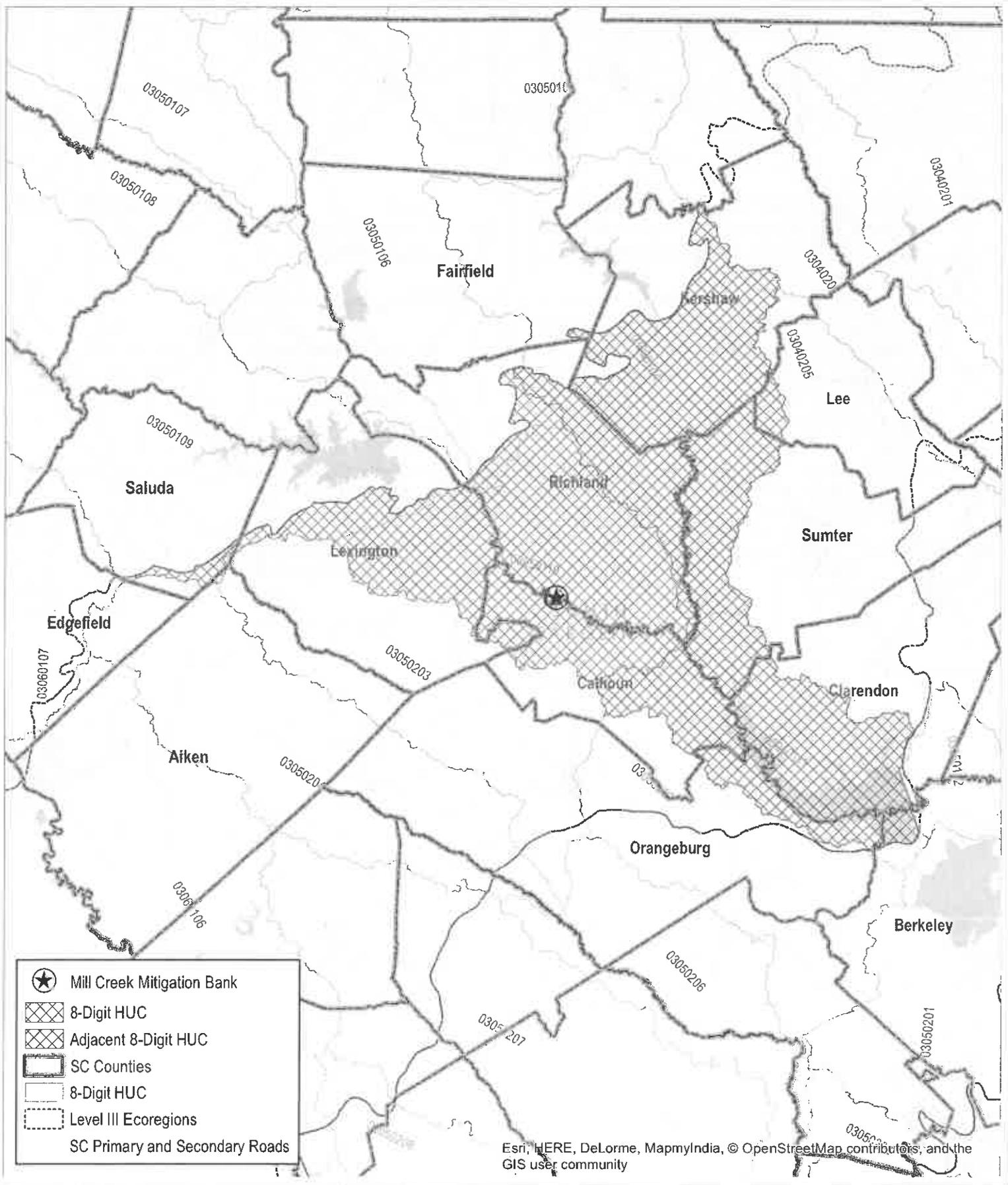
In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns, NINE HUNDRED and 00/100 Stream Credits and TWO and 21/1000 Wetland Credits, to have and hold all such Stream Credits and Wetland Credits, forever. Witness the following authorized signature:

Mill Creek Mitigation Holdings LLC

By: _____

Printed:

Its:



- Mill Creek Mitigation Bank
- 8-Digit HUC
- Adjacent 8-Digit HUC
- SC Counties
- 8-Digit HUC
- Level III Ecoregions
- SC Primary and Secondary Roads

Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

TIDEWATER
 A **JMT** Division
 952 Houston Northcutt Blvd., Suite 100
 Mount Pleasant, SC 29464
 Ph: (843) 556-2624 Ex: (843) 556-4329
 www.JMT.com

Figure 16: Service Area Map
 Mill Creek Mitigation Bank
 Richland County, South Carolina
 Source: ESRI, USGS, EPA
 Date: July 2016
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1 inch = 15 miles

0 7.5 15 30 Miles

licenses without the license being considered expired.

Mr. Malinowski inquired if their business license was in order with Richland County.

Ms. Wladischkin responded in the affirmative.

In Favor: Pugh, McBride, Livingston, Terracio, Barron, O. Walker, Mackey, and English.

Opposed: Malinowski and J. Walker

No Present: Newton

The vote was in favor.

- b. Mitigation Bank Credit Sale – Mr. O. Walker stated the committee recommended to approve the credit sale.

Ms. English inquired where the funds received will go.

Mr. Niermeier responded the funds will go back into the Penny Tax account. The money is for the whole of the program, and is also used to pay back the initial expenses of buying the land and the cost of the partnership with Mill Creek Mitigation Bank.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, O. Walker, Mackey, and English.

Opposed: J. Walker

Not Present: Newton

The vote was in favor.

Mr. O. Walker moved, seconded by Ms. McBride, to reconsider items 18 (a) and (b).

In Favor: Malinowski and J. Walker

Opposed: Pugh, McBride, Livingston, Terracio, Barron, O. Walker, Mackey, and English.

Not Present: Newton

The motion for reconsideration failed.

20. **REPORT OF THE DETENTION CENTER AD HOC COMMITTEE**

- a. Detainee Phone System – Ms. Terracio stated the committee agreed the rate should be \$0.10/minute. Any money, after the cost of providing the service, should be kept within the Detention Center budget in order to create training and enrichment programs for detainees.

Mr. Myers stated the Jail Management System was also a part of the recommendation. The phone company gives a Technology Grant, which basically comes out of the commission. They are going to pay for the detention center to have a new Jail Management System.



Agenda Briefing

Prepared by:	Michael Maloney	Title:	Interim Director
Department:	Transportation	Division:	
Date Prepared:	November 04, 2021	Meeting Date:	November 18, 2021
Legal Review	Elizabeth McLean via email	Date:	November 04, 2021
Budget/Finance Review	Stacey Hamm via email	Date:	November 04, 2021
Approved for consideration:	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCCEM	
Committee	Transportation Ad Hoc		
Subject:	Mitigation Credit Sales – Amick Farms rail upgrade in Saluda County		

STAFF’S RECOMMENDED ACTION:

Staff respectfully requests the Committee concur with these credit sales and forward to full Council for consideration. This approval is time sensitive as the buyer has requested notice of approval as soon as possible due to Army Corps of Engineers permitting constraints.

Request for Council Reconsideration: Yes

FIDUCIARY:

Are funds allocated in the department’s current fiscal year budget?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If no, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:

This mitigation credit sale will generate \$51,750.00 which will be credited to the Transportation Penny Program.

COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:

None.

REGULATORY COMPLIANCE:

None applicable.

MOTION OF ORIGIN:

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

STRATEGIC & GENERATIVE DISCUSSION:

Staff requests approval for the sale of mitigation bank credits from the Mill Creek Mitigation Bank to Amick Farms, LLC for an Army Corps of Engineers (ACE) 404 Permit to facilitate the construction of a rail road upgrade for Amick Farms in Saluda County. The applicant is requesting 4.5 wetland and 0.00 stream mitigation credits to fulfill the permitting requirements.

The mitigation bank was established with Transportation Program funding in order to provide mitigation credits necessary to acquire construction permits for transportation and other projects. Construction for projects with water resource impacts need mitigation credits to obtain permits. It is more cost effective when mitigation credits are available. As surplus mitigation credits are sold, the price for credits utilized for County projects is reduced. The requested mitigation credit sales provide for the acquisition of construction permits required for transportation and other projects as well as to replenish funds spent on the creation of the mitigation credits.

The mitigation bankers were notified by email of the County's desire to participate in this sale subject to final approval by County Council at the 100% level on October 6, 2021. When the sales are completed, if approved by County Council, the funds will be added to the Transportation Program account.

If the County Council does not approve the requested sales of its surplus mitigation credits, the County portion of the mitigation credit sales will drop from \$51,750.00 to \$11,250.00 for a difference of \$40,500.00 to the Transportation Program. The County Council has approved surplus mitigation credit sales on many occasions. The last two (2) mitigation credit sales approvals were completed by County Council at the Regular Session County Council Meeting on October 5, 2021 (minutes not available at this time) and the Regular Session County Council meeting on April 6, 2020. All related County Council actions since 2014 are not included in the attachments for brevity

ADDITIONAL COMMENTS FOR CONSIDERATION:

None.

ATTACHMENTS:

1. MCMB Credit Sale Checklist
2. MCMB Sales Agreement
3. County Council Regular Session, April 6, 2021 – Minutes

MITIGATION SURPLUS CREDIT SALES AGREEMENT SUMMARY

<u>Project:</u>	Amick Farms Rail
<u>Location:</u>	Saluda County, SC
<u>8-Digit HUC Watershed Code</u>	03050109 (Saluda River)
<u>Buyer:</u>	Amick Farms, LLC
<u>Buyer's USACE 404 Permit #:</u>	SAC-2021-00445
<u>Price Per Wetland Credit:</u>	\$12,500
<u>Price Per Stream Credit:</u>	N/A
<u>Wetland Credits:</u>	4.5 credits (2.25 restoration/enhancement & 2.25 preservation)
<u>Stream Credits:</u>	0.00 credits
<u>Credit Proceeds:</u>	\$56,250.00
<u>Richland County Credit Share:</u>	\$51,750.00 (92% of \$56,250.00)
<u>MCMH Credit Share:</u>	\$4,500.00 (8% of \$56,250.00)
<u>Fee for Out of Primary Service Area Sale:</u>	\$0.00
<u>Richland County Fee Share:</u>	\$0.00
<u>MCMH Fee Share:</u>	\$0.00
<u>Gross Proceeds (Inclusive of Fee for Out of Primary Service Area Sale):</u>	\$56,250.00
<u>Richland County Proceeds Share:</u>	\$51,750.00
<u>MCMH Proceeds Share:</u>	\$4,500.00

AGREEMENT FOR PURCHASE AND SALE OF STREAM
AND/OR WETLAND MITIGATION CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF STREAM AND/OR WETLAND CREDITS (this "Agreement") is dated this 5th day of October, 2021 by and between MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company, and the owner and operator of a stream and wetland mitigation bank commonly known as the Mill Creek Mitigation Bank ("Seller"), and Amick Farms, LLC, a ~~South Carolina~~ limited liability corporation ("Purchaser").

company

Delaware

RECITALS

A. The Mill Creek Mitigation Bank (the "Bank") was approved and is being operated pursuant to that certain Final Mitigation Banking Instrument: Mill Creek Mitigation Bank, dated December 22, 2015, United States Army Corps of Engineers - Charleston District (the "Corps") permit number SAC-2014-00222 (the "MBI");

B. Pursuant to the MBI, the Bank may offer wetland and stream credits for sale as compensation for unavoidable adverse impacts to, or for the loss of, among other things, jurisdictional waters of the United States, including wetlands and streams, and other natural habitats and ecosystems, located within that certain geographical service area more particularly depicted on the attached Exhibit A (the "Service Area");

C. Purchaser desires to procure compensatory mitigation in connection with the project known as "Amick Farm Rail Project" pursuant to USACE Charleston District permit SAC-2021-00445;

D. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, wetland and/or stream mitigation credits pursuant to the terms and conditions set forth herein.

AGREEMENT

In consideration of the foregoing and the mutual promises, covenants, agreements and obligations of the parties contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Purchaser agree as follows:

1. **Recitals.** The recitals to this Agreement are herein incorporated by reference and made an integral part hereof.

2. Sale of Credits. Seller hereby sells to Purchaser, and Purchaser hereby purchases from Seller (a) ZERO and 00/100 (0.00) stream mitigation credits (the "Stream Credits") and (b) TWO and 25/100 (2.25) freshwater wetland enhancement/restoration mitigation credits and TWO and 25/100 (2.25) freshwater wetland preservation mitigation credits (the "Wetland Credits", and together with the Stream Credits, the "Credits") from the Bank based on the terms and conditions contained herein.

Upon execution of this Agreement, Seller shall provide Purchaser with an invoice for the Purchase Price (as defined in Section 3 below) and Purchaser shall remit payment within 10 days of receipt of such invoice. Upon receipt of such payment, Seller will file the documentation with the Corps necessary to transfer the Credits to Purchaser in accordance with Corps policies and procedures and the terms of this Agreement.

3. Purchase Price. The purchase price for the (a) Stream Credits shall be TWO HUNDRED and 00/100 Dollars (\$200.00) for each Stream Credit, for a total purchase price for the Stream Credits of ZERO and 00/100 Dollars (\$0.00); and (b) Wetland Credits shall be TWELVE THOUSAND FIVE HUNDRED and 00/100 Dollars (\$12,500.00) for each Wetland Credit, for a total purchase price for the Wetland Credits of FIFTY-SIX THOUSAND TWO HUNDRED FIFTY and 00/100 (\$56,250.00), for a grand total purchase price for the Stream Credits and the Wetland Credits of FIFTY-SIX THOUSAND TWO HUNDRED FIFTY and 00/100 (\$56,250.00) (the "Purchase Price"). Upon payment of the Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment to Seller of any other consideration or fee in connection with the sale of the Credits.

4. Delivery of Credits. Upon receipt of the Purchase Price, Seller shall:

- (a) notify the Corps of the completion of the sale using such documentation as required by the Corps, with a copy delivered to Purchaser; and
- (b) deliver to Purchaser a bill of sale for the Credits in substantially the same form as Exhibit B attached hereto.

5. Representations, Warranties and Covenants. Seller hereby warrants and represents to, and covenants with, Purchaser as follows:

- (a) Seller expressly represents, warrants, and covenants the matters set forth as Recitals A and B.
- (b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller has full power and authority to convey the Credits to Purchaser and to consummate the transactions contemplated herein.

(d) Seller shall deliver the Credits to Purchaser free and clear of any liens, security interests or other encumbrances.

(e) There is no pending or threatened action or proceeding affecting Seller before any court, governmental agency, or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(f) Seller hereby covenants and agrees with Purchaser that Seller shall not sell any number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(g) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations, and other requirements applicable to the operation, management, and maintenance of the Bank.

(h) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement of Seller and is enforceable in accordance with its terms.

(i) All of Seller's representations, warranties, and covenants herein shall survive the termination of this Agreement and the delivery of the bill or bills of sale pursuant to this Agreement.

6. Miscellaneous

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Mill Creek Mitigation Holdings LLC
3414 Peachtree Road NE, STE 990
Atlanta, Georgia 30326

With a copy to:

The Lyme Timber Company LP
General Counsel
23 South Main Street, 3rd Floor
Hanover, NH 03755

Purchaser: Amick Farms, LLC
Attention: Marcus Miller
2079 Batesburg Highway
Batesburg, SC 29070
803-532-1400

With a copy to:

The parties may change the address for notices by delivery of a change of address to the other party in accordance with the requirements set forth above.

(b) **Brokerage Commission.** Seller and Purchaser each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction. In the event any claims arise for commissions, fees, or other compensation in connection with this transaction, the party causing such claims or through whom such claims are made shall indemnify, defend, and hold harmless the other party for any loss or damage incurred by such party because of such claim. The foregoing indemnification shall survive the cancellation, termination or consummation of this Agreement.

(c) **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and neither Party shall be bound by representations except as set forth in this Agreement. There are no other agreements or understandings, written or oral, between the parties with regard to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a written document executed by both parties.

(d) **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, with the proper venue being Richland County, except to the extent that any applicable federal law or regulation shall supersede South Carolina law in relation to the matters set forth in this Agreement.

(e) **Compliance with Applicable Laws.** Both parties shall comply with all applicable federal, state, and local laws, rules, regulations, and orders in the conduct of their obligations hereunder.

(f) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal, or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(g) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(h) Attorney's Fees. If legal action is commenced by either party to enforce its rights under this Agreement, the substantially prevailing party in such action shall be entitled to recover reasonable costs incurred by it, including, but not limited to, reasonable attorneys' fees and costs, in addition to any other relief granted.

(i) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest, or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty, or liability arising from or incident to ownership of an interest in real property.

(j) Assignability. Neither party hereto may assign its rights and obligations hereunder to any third party entity without the prior written consent of the other, which may be withheld in the other party's sole discretion.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement. Signed signature pages may be transmitted by facsimile or email and any such signature or electronic signature shall have the same legal effect as an original.

(l) Confidentiality. Purchaser and Seller agree to maintain, in strictest confidence, the terms of this Agreement and any and all communications between the parties. This Section shall not apply to any information which: (i) was known to receiving party prior to it being disclosed to such party hereunder and can be so demonstrated by written documentation; (ii) was in the public domain by publication when received by receiving party or later came into the public domain by publication through no fault of receiving party; (iii) was disclosed to receiving party, free of confidentiality obligations, by a third party who (to the knowledge of receiving party) is not under obligations of secrecy concerning the information and/or materials; or (iv) was independently developed by receiving party without reference to the information. In the event legal process requires or requests disclosure by receiving party, its agents, representatives and/or employees of any of the information, if legally permissible to do so, receiving party shall give

prompt notice of such process immediately to the other party so that the other party may either seek an appropriate protective order and/or waive compliance by receiving party with the provisions of this Section.

WITNESS the following authorized signatures:

SELLER: MILL CREEK MITIGATION HOLDINGS LLC

By:

Printed:

Its:



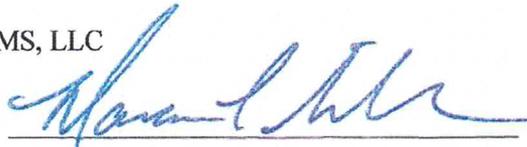
Charles B. Thompson
Authorized Representative

PURCHASER: AMICK FARMS, LLC

By:

Printed:

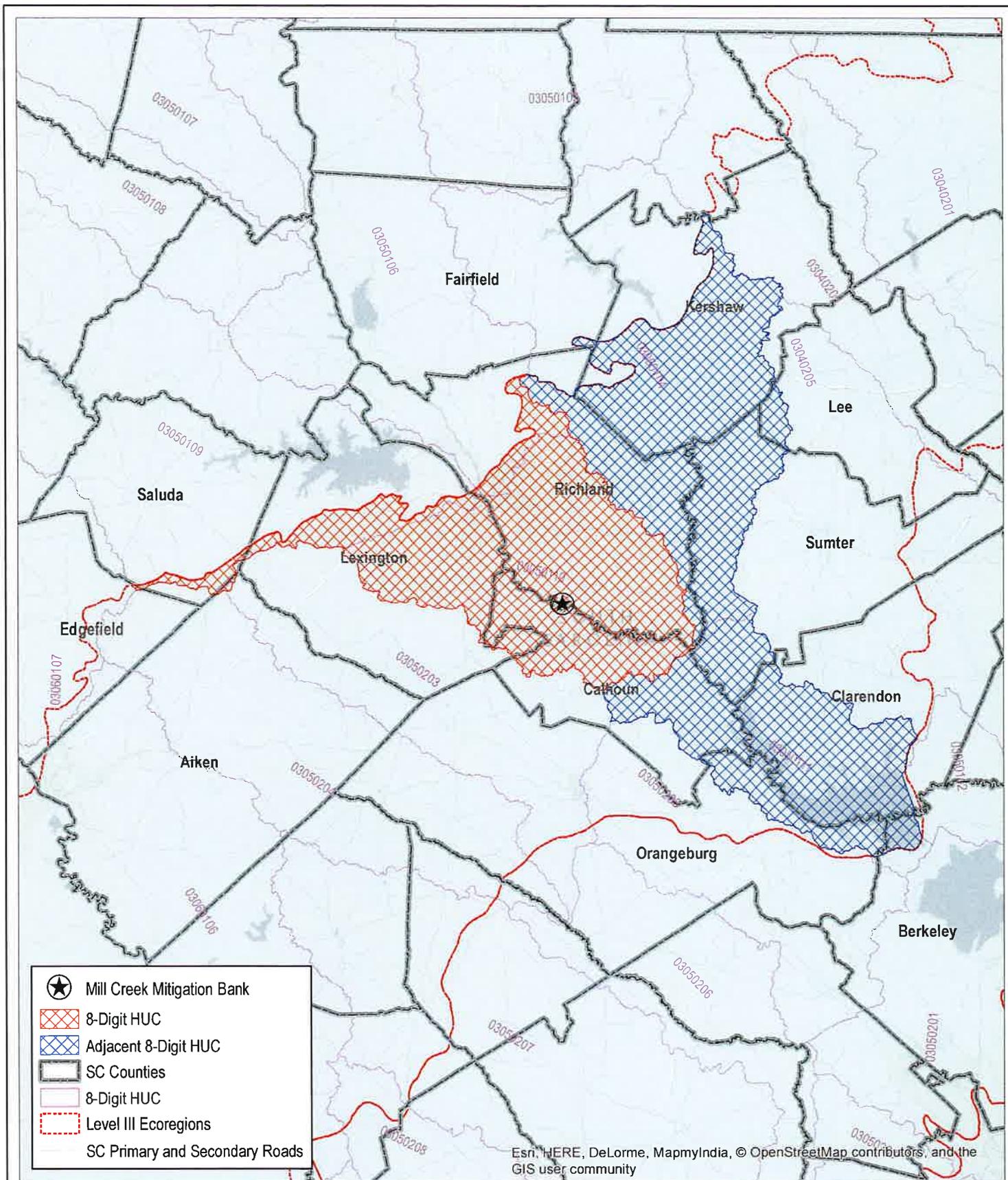
Its:



MARCUS L MILLER
VP & CFO

EXHIBIT A

[Attach map of Service Area]



-  Mill Creek Mitigation Bank
-  8-Digit HUC
-  Adjacent 8-Digit HUC
-  SC Counties
-  8-Digit HUC
-  Level III Ecoregions
-  SC Primary and Secondary Roads

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TIDEWATER
 A **JMT** Division
 952 Houston Northcutt Blvd., Suite 100
 Mount Pleasant, SC 29464
 Ph: (843) 556-2624 Fax: (843) 556-4329
 www.JMT.com

Figure 16: Service Area Map
 Mill Creek Mitigation Bank
 Richland County, South Carolina
 Source: ESRI, USGS, EPA
 Date: July 2016

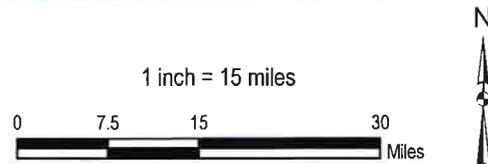


EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the ____ day of _____, 2021, by MILL CREEK MITIGATION HOLDINGS LLC, a Delaware limited liability company ("Seller"), and Amick Farms, LLC, a South Carolina limited liability corporation ("Purchaser").

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Stream and Wetland Mitigation Credits dated _____, 2021 (the "Agreement"), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of Stream Credits and Wetland Credits (each as defined in the Agreement) held in Seller's Mill Creek Mitigation Bank, Richland County, South Carolina.

In consideration of the Purchase Price (as defined in the Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors, or assigns, ZERO and 00/100 Stream Credits and FOUR and 50/100 Wetland Credits, to have and hold all such Stream Credits and Wetland Credits, forever. Witness the following authorized signature:

Mill Creek Mitigation Holdings LLC

By: _____

Printed:

Its:

licenses without the license being considered expired.

Mr. Malinowski inquired if their business license was in order with Richland County.

Ms. Wladischkin responded in the affirmative.

In Favor: Pugh, McBride, Livingston, Terracio, Barron, O. Walker, Mackey, and English.

Opposed: Malinowski and J. Walker

No Present: Newton

The vote was in favor.

- b. Mitigation Bank Credit Sale – Mr. O. Walker stated the committee recommended to approve the credit sale.

Ms. English inquired where the funds received will go.

Mr. Niermeier responded the funds will go back into the Penny Tax account. The money is for the whole of the program, and is also used to pay back the initial expenses of buying the land and the cost of the partnership with Mill Creek Mitigation Bank.

In Favor: Malinowski, Pugh, McBride, Livingston, Terracio, O. Walker, Mackey, and English.

Opposed: J. Walker

Not Present: Newton

The vote was in favor.

Mr. O. Walker moved, seconded by Ms. McBride, to reconsider items 18 (a) and (b).

In Favor: Malinowski and J. Walker

Opposed: Pugh, McBride, Livingston, Terracio, Barron, O. Walker, Mackey, and English.

Not Present: Newton

The motion for reconsideration failed.

20. REPORT OF THE DETENTION CENTER AD HOC COMMITTEE

- a. Detainee Phone System – Ms. Terracio stated the committee agreed the rate should be \$0.10/minute. Any money, after the cost of providing the service, should be kept within the Detention Center budget in order to create training and enrichment programs for detainees.

Mr. Myers stated the Jail Management System was also a part of the recommendation. The phone company gives a Technology Grant, which basically comes out of the commission. They are going to pay for the detention center to have a new Jail Management System.