



201001190288
Skagit County Auditor

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After Recording Return To:

Wildlands, Inc.
Attn: Julie Maddox
3855 Atherton Road
Rocklin, CA 95765

Document Title: Agreement for Purchase and Sale of Mitigation Credits

Reference Number: N/A


Grantor(s): Nookachamps, LLC

Grantee(s): Washington State Department of Transportation

Abbreviated Legal Description: N/A

Assessor Parcel / Tax ID Number: N/A

I, Julie Maddox, am hereby requesting an emergency non-standard recording for an additional fee provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document. Recording fee is \$62.00 for the first page, \$1.00 per page thereafter per document. In addition to the standard fee, an emergency recording fee of \$50.00 is assessed. This statement is to become part of the recorded document.

Signed  Dated 1-14-10

**AGREEMENT FOR PURCHASE AND SALE OF
MITIGATION CREDITS
(Nookachamps Wetland Mitigation Bank)**

This Agreement for Purchase and Sale of Mitigation Credits ("**Agreement**"), dated for reference purposes as December 22, 2009 (the "**Effective Date**"), is entered into by and between **NOOKACHAMPS, LLC**, a Delaware limited liability company ("**Nookachamps**"), and Washington State Department of Transportation ("**Buyer**").

Recitals

A. **Buyer's Project**. Buyer is undertaking the development of a project in the County of Skagit, State of Washington, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Project**")

B. **Applicable Agencies**. As a part of the approval process for the Project, Buyer must obtain permits and approvals from, among other agencies, the United States Army Corps of Engineers ("**Corps**"), the Washington State Department of Ecology ("**WSDE**"), the Environmental Protection Agency ("**EPA**") and perhaps other agencies which permits and approvals require buyer to compensate for unavoidable impacts to wetlands to compensate for such impacts by preserving, creating, enhancing and/or restoring wetlands, protected species and/or habitat or by purchasing sufficient suitable mitigation values and/or credits to offset these identified impacts. The Corps, WSDE, the EPA and the aforementioned other applicable agencies are collectively referred to herein as the "**Applicable Agencies**."

C. **Nookachamps Wetland Mitigation Bank**. The Corps, WSDE, the County of Skagit and the City of Mt. Vernon (collectively, the "**MBRT**") have approved that certain Mitigation Banking Instrument, which establishes the Nookachamps Wetland Mitigation Bank as an approved wetland mitigation bank with wetland mitigation credits available for sale.

D. **Purpose**. The purpose of this Agreement is to provide for the purchase and sale of mitigation credits from the Nookachamps Wetland Mitigation Bank to the Buyer.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the parties agree as follows:

Agreement

1. **Purchase and Sale of Mitigation Credits**. Pursuant to the terms and conditions of this Agreement, Nookachamps agrees to sell to Buyer and set aside for the exclusive use of Buyer, and Buyer agrees to purchase from Nookachamps, the following-described mitigation credits ("**Mitigation Credits**") from the Nookachamps Wetland Mitigation Bank:



<u>Project Number</u>	<u>Project Name</u>	<u>Resource Impact</u>	<u>Credit-Debit Ratios</u>		<u>Number of Credits</u>	<u>Cost per Unit</u>	<u>Cost</u>
			<u>Credit Ratio:</u>	<u>Impact Acreage</u>			
A01100F	SR 11/I-5 I/C Josh Wilson Rd Rebuild	Wetland, Cat IV	0.85 : 1	1.16 ac	0.9860	\$175,000	\$172,550
A02054A	SR 20 Red Cabin CR CED	Wetland, Cat III	1: 1	0.01 ac	0.01	\$175,000	\$1,750

2. Purchase Price; Payment of Purchase Price. The purchase price ("**Purchase Price**") for the Mitigation Credits shall be One Hundred Seventy-Four Thousand Three Hundred and No/100ths Dollars (\$174,300.00), which was determined by multiplying the amount of the Mitigation Credits by the cost per Mitigation Credit in accordance with Section 1 above. The Purchase Price shall be paid by Buyer to Nookachamps on or before the Closing (as hereinafter defined), in immediately available funds.

3. Closing. For purposes of this Agreement, "**Closing**" shall be defined as the date on which Nookachamps delivers to Buyer an executed "Bill of Sale" in the form attached hereto and incorporated herein as Exhibit B. The Bill of Sale shall be delivered by Nookachamps to Buyer concurrently with Buyer's payment of the Purchase Price to Nookachamps. The Closing shall occur within ten (10) calendar days after the Effective Date of this Agreement.

(a) Failure to Close. If Buyer defaults in its obligation to timely pay the Purchase Price, then Nookachamps shall automatically be released from its obligation to sell the Mitigation Credits to Buyer.

4. Limitation of Obligations, Rights of Buyer.

(a) Limitation of Obligations. Buyer's obligations under this Agreement shall be limited to the payment of the Purchase Price. Buyer shall have no obligation whatsoever by reason of the use of the Mitigation Credits to support, pay for, monitor, report on, sustain, continue in perpetuity or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Nookachamps Wetland Mitigation Bank.

(b) Limitation of Rights to Mitigation Bank. Nothing in this Agreement shall result in Buyer having any right, title or interest in the Nookachamps Wetland Mitigation Bank greater than that specifically granted by this Agreement. Buyer's sole right shall be to have the Mitigation Credits serve as mitigation for the Project.

(c) Project Approvals. Buyer shall be solely responsible to the Applicable Agencies to mitigate the impacts of the Project with the Mitigation Credits. In that regard, Nookachamps has made and makes no representation, warranty or guaranty that the Applicable Agencies will approve the Nookachamps Wetland Mitigation Bank as suitable mitigation for the Project or that the Mitigation Credits will be sufficient to fully mitigate the impacts of the Project. Notwithstanding the foregoing provision, Nookachamps shall reasonably cooperate with Buyer's efforts to obtain the Applicable Agencies' approval of the use of the Mitigation Credits for Buyer's Project by providing information required by the Applicable Agencies and executing documents required by the Applicable Agencies.



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(d) Limitations on Assignment; Transfer. Buyer acknowledges that Nookachamps is not willing to sell Mitigation Credits that could be resold in competition with the remaining Mitigation Credits available for sale from the Nookachamps Wetland Mitigation Bank. Accordingly, Buyer shall be prohibited from transferring any Mitigation Credits to a third party without the prior written consent and approval of Nookachamps, which Nookachamps may withhold in its sole and absolute discretion. The Mitigation Credits sold and transferred to Buyer under this Agreement shall be used only for Buyer's projects or transferred back to Nookachamps. Buyer shall not assign this Agreement without the prior written consent of Nookachamps, which Nookachamps may withhold in its sole and absolute discretion.

5. Nookachamps' Submittals. Upon Buyer's purchase of the Mitigation Credits and upon request by Buyer, Nookachamps shall submit an updated inventory ledger to the MBRT and any other regulatory agencies requested by Buyer. The inventory ledger should include all sales data from Bank opening/establishment to the present.

6. Miscellaneous Provisions.

(a) Ownership of Documents. All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by Nookachamps in connection with its performance of services hereunder shall be, and shall remain after termination of this Agreement, the property of Nookachamps, and may be used by Nookachamps for any purpose whatsoever. Nookachamps agrees to return to Buyer upon termination of this Agreement all documents, drawings, photographs and other written or graphic material, however produced, received from Buyer and used by Nookachamps in the performance of its services hereunder.

(b) Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery if delivered personally (FedEx and similar services shall be considered to be personal delivery) or by telephone facsimile (provided that the sender of a telephone facsimile has received a return receipt signed by the party so notified, or has other written evidence of receipt), and upon the second business day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:



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To Nookachamps: Nookachamps, LLC
c/o Wildlands, Inc.
3855 Atherton Road
Rocklin, California 95765
Attention: Mark Heintz, COO and General Counsel
Telephone: (916) 435-3555
Facsimile: (916) 435-3556

To Buyer: Washington State Department of Transportation
Northwest Region Purchasing MS 129
15700 Dayton Ave North
Seattle, WA 98133-9710
Att: Glenn Nakamichi
Telephone: (206) 255-6310
Facsimile: (206) 442-2147

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

(c) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

(d) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

(e) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(f) Attorneys' Fees. In the event any of the parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or Arbitrator.

(g) Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party



to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

(h) Time of Essence. Nookachamps and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision under this Agreement and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non curable (but waivable) default under this Agreement by the party so failing to perform.

(i) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between Buyer and Nookachamps, except as provided in this Agreement.

(j) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

(k) Recitals/Exhibits. The Recitals set forth in this Agreement and the exhibits referenced herein are incorporated herein by this reference.

(l) Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of King, Washington.

(m) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.



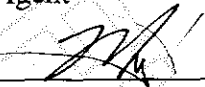
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NOOKACHAMPS:

NOOKACHAMPS, LLC, a Delaware limited liability company

By: Wildlands, Inc., a Delaware corporation
Its: Authorized Agent

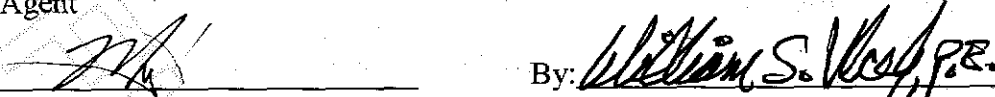
By: 

Its: COD - General Counsel

Date: 12/7/09

BUYER:

By: WSDOT

By: 

Its: DEPUTY REGIONAL ADMINISTRATOR

Date: 12/10/09



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ACKNOWLEDGMENT

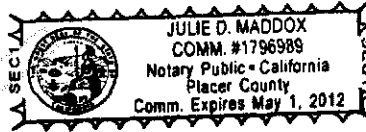
State of California
County of Placer

On December 8, 2009 before me, Julie D. Maddox, Notary Public
(insert name and title of the officer)

personally appeared Mark Heintz
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature *J. Maddox* (Seal)



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(State of Washington

(County of King

On this, the 10th day of November, 2009, before me, Kaye Claudia Thomas, Notary Public, the undersigned, personally appeared William S. Vlcek, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that, William S. Vlcek, Deputy Regional Administrator, executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals

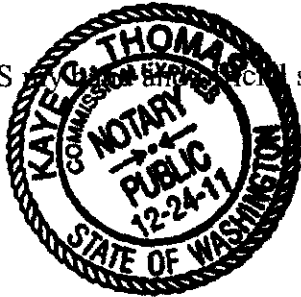
Dated: 12-10-09

Kaye Claudia Thomas
Signature

Administrative Assistant
Title

My appointment expires 12-24-2011

WITNESS _____ seal



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EXHIBIT A

Description of Project

SR 11/I-5 I/C Josh Wilson Rd Rebuild (A01100F)

This project will construct two roundabouts; one at the northbound I-5/SR11 ramp terminal which will require new on and offramp construction; and one at the southbound I-5/SR11 ramp terminal which will also connect to Josh Wilson Rd. This roundabout will tie into the existing on and off ramps. Work will also be constructed per agreement with the city of Burlington including a raised median on Burlington Blvd and sidewalk north of the project. Project scope will also include 2nd and 3rd year plant establishment for SR 20/Fredonia Stage 2.

SR 20/Red Cabin Creek CED (A02054A)

This project will re-align Red Cabin Creek and construct a bridge over the new stream alignment. This project is a Chronic Environmental Deficiency project that will replace an existing culvert that is a fish passage barrier and that is contributing to the mortality of migratory fish species.



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EXHIBIT B

Bill of Sale

Contract # NMB-10 - 02

In consideration of \$174,300.00, receipt of which is hereby acknowledged, **NOOKACHAMPS, LLC**, a Delaware limited liability company ("**Nookachamps**"), does hereby bargain, sell and transfer to **Washington State Department of Transportation** ("**Buyer**"), the following mitigation credits ("**Mitigation Credits**") from the Nookachamps Wetland Mitigation Bank:

<u>Project Number</u>	<u>Project Name</u>	<u>Resource Impact</u>	<u>Credit-Debit Ratios</u>		<u>Number of Credits</u>	<u>Cost per Unit</u>	<u>Cost</u>
			<u>Credit Ratio:</u>	<u>Impact Acreage</u>			
A01100F	SR 11/1-5 I/C Josh Wilson Rd Rebuild	Wetland, Cat IV	0.85 : 1	1.16 ac	0.9860	\$175,000	\$172,550
A02054A	SR 20 Red Cabin CR CED	Wetland, Cat III	1: 1	0.01 ac	0.01	\$175,000	\$1,750

Nookachamps represents and warrants that it has good title to the Mitigation Credits and the property thereon, has good right to sell the same, and they are free and clear of all claims, liens, or encumbrances.

Nookachamps covenants and agrees with Buyer to warrant and defend the sale of the Mitigation Credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

NOOKACHAMPS, LLC,
a Delaware limited liability company

By: 

Its: Authorized Agent

Date: Jan. 4, 2010

M:\Sales Agreements-Docs\saleNMB_WSDOT
Revised: 12/07/09

