

Add On

AGENDA	
Section	New Business
Item No.	V A

Meeting Date
April 2, 2015



AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval of Amendment to Option and Sales Agreement with TM-Econ Mitigation Bank
DEPT/OFFICE:	Public Works Department

Requested Action:
 Approve and authorize the Chairman to execute the Amendment to Option and Sales Agreement with TM-Econ Mitigation Bank to extend the Option Period to October 23, 2015.

Summary Explanation & Background:

During the normal course of completing projects that have wetland impacts, the projects must obtain permits that authorize those wetland impacts from both State (St. Johns River Water Management District or Florida Department of Environmental Protection) and Federal Agencies (US Army Corp of Engineers). Historically, the cost of providing the required mitigation has been a significant budgetary expense for County projects. Various strategies are used to lower budgetary impacts. However, such strategies typically require long-term land management efforts which can be costly. Of all the options available to the County when a project involves wetland impacts, the most efficient (time and expense) is to purchase credits from a mitigation bank which does not have an associated management effort on the part of the County (those costs are included in the one-time cost of the credits).

The County has projects that have confirmed needs for mitigation credits including, the St. Johns Heritage Parkway. Further, there are potential future transportation projects which will require mitigation and would thus, if the credits have not been used at that point, benefit from the acquisition of these credits, including the Washingtonia Street Extension, the Babcock Street and Hollywood Boulevard Widening.

After the required competitive selection process, the Board of County Commissioners entered into an Option and Sales Agreement on September 16, 2013 with TM-Econ Mitigation Bank for an option to purchase mitigation credits to meet permitting conditions for the St. Johns Heritage Parkway Project. The TM-Econ Option and Sales Agreement secured options for the County to acquire mitigation credits at a cost substantially lower than the normal cost. This opportunity to extend the option period of the Option and Sales Agreement will result in a savings of at least \$27,510 per credit. If acquired, the mitigation credits do not expire or otherwise lose their value as mitigation over time. Thus, they are 'banked' for the benefit of the County at such time as the County needs them.

Approval of this Amendment will extend the option period thru to October 23, 2015 and allow the Department to meet permitting mitigation requirements needed for the St. Johns Heritage Parkway.

Fiscal Impact: No impact.

Clerk to the Board Instructions: Forward Board Action and Two (2) Executed Amendments to Department

Exhibits Attached: Two Amendments to Option and Sales Agreement

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott	Department Director / Extension		
Stockton Whitten	Assistant County Manager, Venetta Valdengo	John P. Denninghoff 1/57202		



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Fax: (321) 264-6972

April 3, 2015

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item V.A., Approval of Amendment to Option and Sales Agreement with TM-Econ Mitigation Bank

The Board of County Commissioners, in regular session on April 2, 2015, executed the Amendment to Option and Sales Agreement with TM-Econ Mitigation Bank to extend the Option Period to October 23, 2015. Enclosed are original and executed copy of the Agreement.

Upon execution by TM-Econ Mitigation Bank, please return the original Agreement to this office for inclusion in the official minutes of the Board.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/kg

Encls. (2)

cc: Contracts Administration
Finance
Budget

AMENDMENT TO OPTION AND SALES AGREEMENT

This Amendment to Option and Sales Agreement (hereinafter "Amendment") is entered into as of November 18, 2014, between **Holland Properties, Inc., a Florida corporation d/b/a TM-ECON MITIGATION BANK**, (hereinafter "Mitigation Bank"), whose address is P.O. Box 770308, Winter Garden, Florida, 34777-7308 and **Brevard County, Florida Board of County Commissioners** hereinafter "Buyer"), whose address is 2725 Judge Fran Jamieson Way, Suite B-203 Viera, FL 32940

WHEREAS, Mitigation Bank and Buyer entered into that certain Option And Sales Agreement dated September 16, 2013 ("Agreement"); and

WHEREAS, Mitigation Bank and Buyer desire to extend the Option Period as defined in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein and Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, it is agreed:

1. **Whereas Clauses/Capitalized Terms.** The recitals set forth in the Whereas Clauses herein are material components to this Amendment and are incorporated hereby by this reference. Further, all capitalized terms shall have the meaning set forth in the Agreement or this Amendment.
2. **Option Period.** The Option Period is hereby extended to October 23, 2015. Further, the last sentence in paragraph 2 of the Agreement is hereby deleted.
3. **No Other Changes.** Except as expressly modified herein, the Agreement shall be and remain unchanged and in full force and effect in accordance with its terms as so amended.
4. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be and be taken to be an original, and all collectively but one instrument. Further, facsimile or electronic signatures of this Amendment shall be deemed originals and binding on all parties.
5. **Effective Date of this Amendment.** The effective date of this Amendment shall be as of November 18, 2014.
6. **Governing Law; Venue.** The laws of the State of Florida shall govern the validity, enforcement, and interpretation of this Amendment. The obligations of the parties are performable, and venue for any legal action arising out of this Amendment, shall lie in Brevard County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date below written.

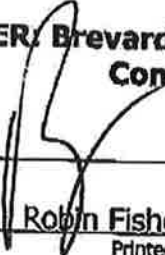
Signed, sealed, and delivered

**SELLER: Holland Properties, Inc
d/b/a TM-ECON MITIGATION BANK**

By: 
R. S. Holland, as President

Executed: April 2, 2015

**BUYER: Brevard County Board of County
Commissioners**

By: 
Robin Fisher, Chairman
Printed Name

Its: _____

As Approved by the BCC on: April 2, 2015

ATTEST


SCOTT ELLIS, CLERK