

MITIGATION PURCHASE AGREEMENT

THIS MITIGATION PURCHASE AGREEMENT (hereinafter, this “**Agreement**”) is made this ___ day of _____ 2024, by and between Regent Sienna Plantation Partnership, L.P. (“**Seller**”), a Texas limited partnership, whose mailing address is 12100 Wilshire Blvd., Suite 1750, Los Angeles, CA 90025, and Fort Bend County, Texas (“**Buyer**”), a political subdivision of the State of Texas, whose mailing address is 301 Jackson Street, Richmond, Texas 77469 (collectively, the “**Parties**”).

WITNESSETH:

WHEREAS, Seller is the owner and sponsor of the Lower Brazos River Mitigation Bank located in Fort Bend County, Texas (the “**Mitigation Bank**”).

WHEREAS, Buyer desires to purchase sufficient functional credit units (“**FCUs**” or “**Credits**”) for the compensation of 0.36 acres of palustrine scrub-shrub wetlands impact as determined by the Buyer.

WHEREAS, Buyer is required to mitigate the impact to wetlands due to the construction of a proposed 14,136 linear foot roadway extension of Lake Olympia Parkway as described in Buyer’s approved U.S. Army Corps of Engineers (“**USACE**”) permit, SWG-2018-00137 (“**Approved Permit**”), and Buyer wishes to provide this mitigation through the purchase of Credits from the Seller, as the project lies within the Secondary Service Area of the Mitigation Bank. A copy of Buyer’s Approved Permit is attached hereto as Exhibit A and referenced herein for all purposes.

WHEREAS, Buyer has performed a hydrogeomorphic model on the project tract which resulted in a FCU requirement of 0.2 Physical FCU, 0.2 Biological FCU and 0.2 Chemical FCU for the palustrine scrub-shrub wetlands as stated in the Approved Permit. All FCU values are rounded up to the nearest tenth in accordance with the Mitigation Banking Instrument (MBI).

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby agree as follows:

1. **Purchase Price.** Subject to the terms of this Agreement, the purchase price (hereinafter, the “**Purchase Price**”) for the Credits to be purchased by Buyer is Eighty-One Thousand dollars (\$81,000). 100% of the Purchase Price shall be paid by Buyer in cash, payable to Seller via check, cashier's check or wire transfer within thirty (30) days after the mutual execution of this Agreement (“**Payment**”). Contemporaneously with the execution of this Agreement, Seller shall provide an invoice to Buyer for the Purchase Price, receipt of which invoice is hereby acknowledged by Buyer.
2. **Approval of Buyer’s Permit.** The transactions contemplated in this Agreement are subject to approval in all material respects by the USACE. The obligations of the Parties hereunder (except as provided in Section 7 below) shall terminate in the event Buyer’s Permit is not approved or conditionally approved and issued by the USACE within ninety (90) days of the effective

date hereof;

3. **Credits.** The number of Credits to be purchased by Buyer (“**Purchased Credits**”) are 0.2 Physical FCU, 0.2 Biological FCU and 0.2 Chemical FCU palustrine emergent credits as required in Buyer’s Approved Permit.
4. **Finalizing Transaction.** Upon execution of this Agreement and Seller’s receipt of Payment, Seller shall submit to USACE a Letter of Confirmation with a copy of Buyer's Approved Permit and a written request to transfer the Purchased Credits to the Buyer, along with such other documentation as may be necessary to effect the transfer of the Purchased Credits.
5. **Representations.**
 - a. The Buyer represents to Seller the following:
 - i. the Buyer has duly taken all action necessary to authorize the execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
 - ii. this Agreement, and all other agreements executed in connection with this Agreement are the legal, valid and binding obligations of the Buyer, enforceable in accordance with their terms.
 - b. The Seller represents to the Buyer the following:
 - i. the Seller is a Texas limited partnership, duly formed and validly existing;
 - ii. the Seller has duly taken all action necessary to authorize the execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
 - iii. this Agreement, and all other agreements executed in connection with this Agreement are the legal, valid and binding obligations of the Seller, enforceable in accordance with their terms
6. **Confidentiality.** For a period of two (2) years following the effective date, the Buyer shall keep confidential the existence of this Agreement, its terms, and all information regarding the Seller, and the terms and conditions of the Mitigation Bank that the Buyer learned, was provided or was otherwise disclosed to Buyer in connection with the negotiation, execution and consummation of this Agreement, except for the disclosure of those terms to its consultants, agents, and representatives who have a need to know the information for the purposes of this Agreement, that are already in the public domain, where disclosure is otherwise required by law, or the disclosure is approved by Seller in writing. Seller further acknowledges and agrees that Buyer is a public entity and, as such, is subject to the provisions of Chapter 552 of the Texas Government Code. In no event shall Buyer be liable to Seller for release of information related to this Agreement pursuant to Chapter 552 of the Texas Government Code or any other provision of law.
7. **Default and Remedies.**
 - a. If Buyer is in breach or default of any provision hereof, then Seller, as a condition precedent to exercise any of its remedies (including, without limitation, Seller receiving or retaining any sums deposited by Buyer hereunder), must give Buyer

written notice of the default (the “Notice of Default”). Buyer shall then have 10 days from receipt of the Notice of Default to cure the default. If the default is timely cured, this Agreement shall continue in full force and effect as if such default had not occurred. If Buyer is in default beyond any applicable cure period, then Seller may terminate this Agreement by delivering three (3) days written notice of termination to Buyer. In such event of termination, Seller shall, within 10 days, refund any amounts previously paid by Buyer to Seller that have not been applied towards Credits and/or remain unutilized as of the date of termination.

- b. If the purchase of the Credits contemplated hereby is not consummated because of a default by Seller under this Agreement, through no fault of Buyer, then Seller shall promptly return to Buyer any funds received from Buyer as of the date of default, as Buyer’s exclusive remedy.
- c. If the purchase of the Credits contemplated hereby is not consummated because the USACE does not provide its approval of Buyer’s Permit under Section 2 above, then Seller shall promptly return the entire Deposit to Buyer as Buyer’s exclusive remedy.

8. **Attorney’s Fees.** If either Party brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing Party in any such action shall be entitled to its legal costs and reasonable attorneys’ fees to be paid by losing Party as fixed by the court.

9. **Assignment.** Neither party shall assign, pledge or hypothecate this Agreement without the prior written consent of either party, which consent shall not be unreasonably withheld, delayed or conditioned.

10. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by U.S. certified or registered mail, electronic mail (with confirmed receipt), overnight delivery service or by hand delivery to the addresses set out below, or sent by fax to the numbers below.

Notices to Seller shall be sent to: Regent Sienna Plantation Partnership, L.P.
12100 Wilshire Blvd., Suite 1750
Los Angeles, CA 90025

With copies to: Berg Oliver Associates
Attn: Keith Morgan
14701 St. Mary's Ln., Ste. 400
Houston, Texas 77079
Kmorgan@bergoliver.com

Notices to Buyer shall be sent to: Fort Bend County, Texas
Attn: County Engineer
301 Jackson St., 4th Floor
Richmond, Texas 77469
Stacy.Slawinski@fortbendcountytexas.gov

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made no later than the 3rd business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid, the next business day after being deposited, charges prepaid, with a nationwide overnight delivery service. All Parties agree that any notice may be faxed or emailed to any of the above Parties, and such faxed or emailed notice shall be effective upon receipt of confirmation of delivery by the sending Party. Buyer and Seller may fromtime to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

11. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained.
12. **Choice of Law, Venue, and Jury Waiver.** This Agreement shall be governed by the laws of the State of Texas. Venue for any claim or suit by Seller against Buyer, with respect to this Agreement, shall be in Fort Bend County, Texas. Venue for any claim or suit by Buyer against Seller, with respect to this Agreement, shall be in Harris County, Texas. The parties agree to cooperate in good faith in all activities and actions relating to this Agreement. If a dispute should arise in connection with this Agreement, the Parties agree to first attempt to resolve such disputes by negotiating in good faith. If after 30 days from the time that either party first notified the other party of a dispute in writing, the Parties are unable to resolve a dispute after engaging in good faith negotiations, then such dispute shall be litigated and resolved in a court of appropriate jurisdiction in Fort Bend County, Texas.
13. **Amendments and Waivers.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the Parties hereto.
14. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither Party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither Party shall hold itself out as an agent, partner or joint venturer with the other and each Party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this paragraph.
15. **Captions: Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
16. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.

17. **Further Assurances.** The Parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.
18. **Effective Date.** The Effective Date of this Agreement is the date on which the last of the Parties signs this Agreement and delivers a fully executed copy to the other Party. If more than 45 days have transpired between the first and last signature, this Agreement is null and void.
19. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the Parties and shall be deemed one original instrument. This Agreement may be executed by each Party upon a separate copy attached to another copy in order to form one or more counterparts. A signature of a Party transmitted to the other Party by facsimile, PDF or other electronic means shall constitute the original signature of such Party for all purposes.
20. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
21. **Agreement Not Recordable.** This Agreement shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said Party in default hereof.
22. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
23. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by Buyer regardless of content. For purposes of Sections 2252.152 of the Texas Government Code, as amended, Seller hereby verifies that Seller and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
24. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, SELLER ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective in accordance with the terms of this Agreement.

SELLER:

REGENT SIENNA PLANTATION, L.P.,
a Texas limited partnership

By: SR Sienna GenPar, LLC,
a Delaware Limited Liability
Company, its General Partner

By: Regent SP Investors, L.P.,
a Texas limited
partnership, its Member

By: KFO, Inc.,
a California
corporation, its General
Partner

By: _____
DocuSigned by:
David Kohel
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Its: President _____

Signed on _____ June 28, _____, 2024

BUYER: FORT BEND COUNTY, TEXAS

By: _____
KP George, County Judge

Signed on _____, 2024.

ATTEST:

Laura Richard, County Clerk

APPROVED:

J. Stacy Slawinski, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor