

MITIGATION OPTION AGREEMENT

THIS MITIGATION OPTION AGREEMENT (hereinafter, this "**Agreement**") is made this ____ day of _____ 2013, by and between Regent Sienna Plantation Partnership, L.P. ("**Seller**"), a Texas limited partnership, whose mailing address 11990 San Vicente Boulevard, Suite 200, Los Angeles, CA 90049, and **Fort Bend County** ("**Buyer**"), (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 requests or reserve sufficient Credits (Functional Credit Units, FCU's) for the compensation of wetland impacts. The estimated amount of impacted wetland is 0.42 acres with FCU's in the form of .20 chemical credits, 0.10 biological credits and .80 physical credits.

WHEREAS, the Buyer, is required to mitigate the impact to wetlands due to the development of a project known as Trammel-Fresno Road improvements as described in Buyer's proposed permit No. SWG-2012-00170. The Buyer wishes to provide this mitigation through the purchase of Credits from the Seller, as the project lies within the Service Area of the Mitigation Bank. The Buyer has performed a hydrogeomorphic model (HGM), but lacks U. S. Army Corps of Engineers ("USACE") verification of such study for purposes of obtaining the USACE permit.

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 warrant and 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 estimated to be One Hundred Thousand and 00/100 Dollars (\$100,000.00). The Purchase Price shall be paid by Buyer as described herein in cash, payable to Seller via check, cashier's check or wire transfer. The exact amount of the purchase price will be determined upon verification of the wetland delineation and HGM by the USACE during the permit process for the project area as depicted on Exhibit A.
2. **Reservation/Deposit.** Simultaneously with the execution and delivery of this Agreement, Buyer shall make a payment to Seller in an amount equal to \$50,000.00 (the "**Deposit**")

which is approximately fifty percent (50%) of the Purchase Price. The ultimate number of Credits to be transferred as well as the Final Purchase Price will be agreed upon within 10 days after Buyer's Exercise Notice (Section 5). Final Purchase Price will be based upon the number of credits necessary for the project and the fair market value of mitigation credits in effect at the time of final purchase. If the parties cannot agree on the Credits or Purchase Price within the 10 day period, this Agreement will terminate and the Seller will refund to Buyer \$25,000.00 of the Deposit.

3. **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 2 above) shall terminate in the event Buyer's Permit is not approved or conditionally approved and issued by the USACE within 365 days of the effective date hereof. In the event the Buyer is experiencing unforeseen delays in the permitting process with the USACE, the Buyer, or the Buyer's agent, will contact the Seller within 10 days of the expiration date of the agreement to request and negotiate an extension of this agreement. If an extension is not requested as described, this agreement will terminate as previously described above.
4. **Credits.** Upon signature of this Agreement and Seller's receipt of the Deposit, Seller agrees to provide Credits for purchase by Buyer. Seller shall send written notice of intent to USACE to provide Credits. The actual number of Credits to be purchased by Buyer ("**Purchased Credits**") shall be the amount required for mitigation under Buyer's Permit, as approved or conditionally approved and issued by the USACE, and as agreed upon under Section 2 above ("**Buyer's Approved Permit**").
5. **Finalizing Transaction.** Within thirty (30) days after Buyer's receipt of Buyer's Approved Permit, Buyer shall deliver written notice thereof (the "**Exercise Notice**") to Seller, which notice must be accompanied by:
 - a. A copy of Buyer's Approved Permit and the amount of Purchased Credits.
 - b. Payment to Seller for the balance remaining of the final determined Purchase Price.

Within ten (10) days of Seller's receipt of the Exercise Notice and payment of the Purchase Price, 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.

6. **Representations.**

a. The Buyer represents to Seller the following:

- i. the Buyer is a body corporate and politic under the laws of the State of Texas;
- ii. 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
- iii. 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

7. **Confidentiality.** To the extent allowed by law, the Buyer shall keep absolutely confidential the existence of this Agreement, its terms, and all information regarding the Seller, and the terms and conditions of the 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 that are already in the public domain, where disclosure is otherwise required by law, or the disclosure is approved by Seller in writing.

8. **Default and Remedies**

- a. If the purchase of the Credits contemplated hereby is not consummated because of a default by Buyer under this Agreement, then Seller shall have the right to retain \$50,000.00 of the initial Deposit.
- b. If the purchase of the Credits contemplated hereby is not consummated because of a default by Seller, then, Seller shall promptly return the entire Deposit to Buyer as Buyer's exclusive remedy.

9. **Attorney's Fees.** If there is a dispute between the Buyer and Seller under this Agreement, the prevailing party shall be entitled to recovery of all costs incurred.
10. **Assignment.** Buyer shall not assign, pledge or hypothecate this Agreement without the prior written consent of Seller.
11. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Texas.
12. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail, hand delivered 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.
11990 San Vicente Boulevard, Suite 200
Los Angeles, CA 90049

with a copy to: Berg Oliver Associates
Attn: Susan Alford
14701 St. Mary's Ln., Ste. 400
Houston, TX 77079
FAX: (281) 589-0007

with a copy to: John G. Cannon
Coats|Rose
3 Greenway Plaza #2000
Houston, Texas 77046
FAX: (713) 651-0220

Notices to Buyer shall be sent to: Richard W. Stolleis, PE

Fort Bend County Engineer

Richard.Stolleis@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 10th 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. All Parties agree that any notice may be faxed to any of the above Parties, and such faxed notice shall be effective upon receipt of confirmation of delivery by the sending party provided that a copy of such notice given via facsimile is simultaneously sent to the noticed party via overnight delivery. Buyer and Seller may from time 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.

13. **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.
14. **Choice of Law, Venue.** This Agreement shall be governed by the laws of the State of Texas, and the venue for all disputes with respect to this Agreement shall be Harris County, Texas.
15. **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.
16. **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.
17. **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.
18. **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.

19. **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.
20. **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 30 days have transpired between the first and last signature, this Agreement is null and void.
21. **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 at attached to another copy in order to form one or more counterparts.
22. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
23. **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.

[Signatures commence on following page]

SIGNATURE PAGES FOR MITIGATION OPTION AGREEMENT

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: Stephanie A Cohen

Its: Corporate Secretary

Signed on December 16, 2013

BUYER:

Fort Bend County

By: _____

Name: Robert E. Hebert

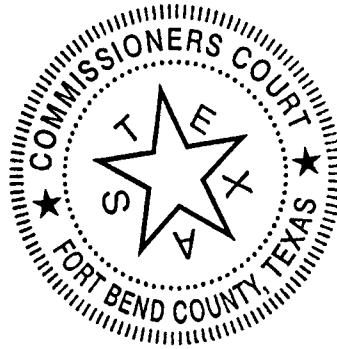
Title: County Judge

Signed on January 7th, 2014

ATTEST:

Dianne Wilson

Dianne Wilson, County Clerk



4840-9283-0740, v. 2/1818.1