

## MITIGATION PURCHASE AGREEMENT

**THIS MITIGATION PURCHASE AGREEMENT** (hereinafter, this “**Agreement**”) is made this \_\_\_\_ day of September 2020, by and between Regent Sienna Plantation Partnership, L.P. (“**Seller**”), a Texas limited partnership, whose mailing address is 11990 San Vicente Boulevard, Suite 200, Los Angeles, CA 90049, and City of League City (“**Buyer**”), whose mailing address is 300 W. Walker Street, League City, Texas 77573 (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 0.26 acres of palustrine forested wetland impact as designated in SWG-2020-00254.

**WHEREAS**, Buyer is required to mitigate the impact to wetlands due to the construction of a project in Galveston County, Texas (USGS HUC 12040204) as described in Buyer’s permit No. SWG-2020-00254 (“**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.

**WHEREAS**, Buyer has performed a hydrogeomorphic model on the project tract which resulted in a FCU requirement of 0.3 Physical FCU, 0.3 Biological FCU and 0.3 Chemical FCU for the palustrine forested wetland impact. All FCU values are rounded up to the nearest tenth in accordance with the Mitigation Banking Instrument (MBI). Since the project is located in the Secondary Service Area of the Mitigation Bank, the Seller applied a 1.5 multiplier to the credits deducted from the bank ledger. The FCU values described above and in the Permit already account for the 1.5 multiplier application.

**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 Fifty-Eight Thousand Five Hundred Dollars (\$58,500.00). The Purchase Price shall be paid by Buyer in cash, payable to Seller via check, cashier's check or wire transfer within fifteen (15) business days after the mutual execution of this Agreement.
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 365 days (1 year) of

the effective date hereof; provided, however, if Buyer is experiencing either unforeseen delays in the permitting process with the USACE or delays beyond its reasonable control, the Buyer, or the Buyer's agent, may contact the Seller within 10 business days after the expiration date of this Agreement to request and negotiate an extension of this Agreement, which request will not be unreasonably withheld, delayed or conditioned. If an extension is not requested within the time period described above, this Agreement will terminate as described above.

3. **Credits.** Upon execution of this Agreement, Seller shall send written notice of intent to USACE to provide the Credits. The number of Credits to be purchased by Buyer ("**Purchased Credits**") are 0.3 Physical FCU, 0.3 Biological FCU and 0.3 Chemical FCU palustrine forested credits as agreed upon under Section 2 above ("**Buyer's Approved Permit**").

**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 copy of Buyer's Approved Permit and which shall specify the amount of Purchased Credits. Provided the Purchase Price was paid by Buyer in accordance with Section 1 above, within ten (10) days of Seller's receipt of the Exercise Notice, Seller shall submit to USACE a Letter of Confirmation with a copy of Buyer's Approved Permit, if approved at that time, 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.

#### 4. **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

5. **Confidentiality.** For five (5) years from the date first mentioned above and to the extent allowed by law, 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.

6. **Default and Remedies.**

- a. If the purchase of the Credits contemplated hereby is not consummated because of a default by Buyer under this Agreement through no fault of Seller, then Seller shall have the right to retain 50% of the Purchase Price as Seller's exclusive remedy.
- 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 the entire Purchase Price to Buyer.
- c. If the purchase of the Credits contemplated hereby is not consummated because the USACE does not provide its approval of the Permit under Section 2 above, then Seller shall promptly return the entire Purchase Price to Buyer as Buyer's exclusive remedy.

7. **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.

8. **Assignment.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by either Party without the prior written consent of the other Party and any attempt to do so shall be null and void; *provided, however*, (a) that no such consent shall be required for assignment to a successor in interest of all or substantially all of the assets or business of either Party to which this Agreement relates that assumes, in writing, all of the obligations of such Party under this Agreement and (b) no assignment by either Party of any of its rights, interests or obligations hereunder shall relieve such Party of its obligations under this Agreement unless the other Party expressly agrees otherwise in writing.

9. **Applicable Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without giving effect to the conflict of law principles thereof, and the venue for all disputes with respect to this Agreement shall be Harris County, Texas.

10. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by U.S. certified or registered mail, 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.  
11990 San Vicente Boulevard, Suite  
200 Los Angeles, CA 90049

With a copies to:

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

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

Notices to Buyer shall be sent to:

Scott Tuma  
City of League City  
300 W Walker St  
League City, Texas 77573

With a copy to:

Andy Boswell  
Bio-West, Inc.  
1625 Cottonwood School Road  
Rosenberg, Texas 77471

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 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.

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. **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.
13. **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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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.
19. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
20. **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]*

**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: \_\_\_\_\_

Its: \_\_\_\_\_

Signed on \_\_\_\_\_, 2020

**BUYER: City of League City**

By: \_\_\_\_\_

Name:

Title:

Signed on \_\_\_\_\_, 2020

By: \_\_\_\_\_

Name:

Title:

Signed on \_\_\_\_\_, 2020