

**PURCHASE AND SALE AGREEMENT FOR MITIGATION CREDITS
(Straus Medina Mitigation Bank)**

This Purchase and Sale Agreement for Mitigation Credits (“**Agreement**”) is entered into this 12th day of May, 2021 (“**Effective Date**”), by and between **TCP III Straus Medina, LLC**, a Texas limited liability company (“**Seller**”), **Mitigation Solutions USA, LLC**, a Texas limited liability company (“**MSUSA**”) and **City of San Antonio**, a Texas Municipal Corporation (“**Purchaser**”), together collectively referred to herein as the “**Parties**.”

RECITALS

A. Seller owns or controls the Straus Medina Mitigation Bank (“**SMMB**”) in Bexar County, Texas, (the “**Mitigation Property**”) with stream mitigation credits available for transfer and sale under US Army Corps of Engineers Fort Worth District (hereinafter “**USACE**”) Permit No. SWF-2011-00271;

B. Seller has received its initial credit release for SMMB and is anticipating additional future credit releases which will enable it to offer certain categories of Conditional Integrity Units (“**CIUs**”) for sale from SMMB as compensation for unavoidable adverse impacts to, or for the loss of, among other things, jurisdictional waters of the United States, jurisdictional waters of the United States and other natural habitats and ecosystems, located within that certain geographical service area more particularly depicted on attached **Exhibit A** (the “**Service Area**”) or other areas as may be approved by the USACE in accordance with the MBI;

C. Purchaser is seeking to implement a project, known as the Upper Leon Creek-Government Canyon Regional RSWF “**Culebra Creek Channel Improvements (Timber Path Bridge)**” Project (“**Purchaser’s Project**”), in the Service Area, HUC #12100302, Medina (HUC Name) that will unavoidably and adversely impact jurisdictional waters of the United States (“**Purchaser Impacts**”);

D. Purchaser seeks to compensate for the Purchaser Impacts by purchasing 45.2 CIUs in the form of 22.6 Intermittent Riparian Buffer Credits and 22.6 Intermittent In-Channel credits from the SMMB (such 45.2 CIUs, as broken down into Intermittent Riparian Buffer and Intermittent In-Channel Stream Credits, referred to herein as the “**Subject Credits**”, the same being also set forth on **Exhibit B**);

E. Purchaser will seek all required authorization from the USACE under Permit No. SWF-____ - ____ (“**Purchaser’s Permit**”) for its purchase of the Subject Credits as mitigation for the Purchaser Impacts; and

F. Purchaser desires to purchase from Seller, and Seller desires to sell, through its exclusive marketing agent MSUSA, to Purchaser the aforementioned Subject Credits according to the terms and conditions set forth herein:

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS SET FORTH ABOVE AND THE TERMS, COVENANTS AND CONDITIONS SET FORTH HEREIN THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Payment.**

a. **Purchase Price.** From the SMMB and subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Subject Credits for the total

purchase price (the “**Purchase Price**”) of: One Hundred Twenty-Four Thousand, Three Hundred and 00/100 Dollars (\$124,300.00). Purchaser shall make payment to Seller under this Agreement in immediately available US funds within sixty (60) days of the Effective Date and no later than August 15, 2021. Failure by Purchaser to pay the Purchase Price within said time period shall result in the immediate termination of this Agreement.

b. PURCHASER ACKNOWLEDGES AND AGREES THAT (I) THIS AGREEMENT IS AN ARM’S-LENGTH CONTRACT BETWEEN THE PARTIES; (II) SELLER HAS NO CONTROL OVER THE ACTIONS OR INACTIONS OF THE USACE OR ANY OTHER GOVERNMENTAL AGENCY; AND (III) **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL REPRESENTATIONS, DISCLOSURES AND WARRANTIES, EXPRESS OR IMPLIED, ARE FULLY DISCLAIMED.**

c. Credits. This Agreement obligates Seller to convey only the 45.2 CIUs described herein as the Subject Credits. If the number of CIUs required for the Purchaser Impacts increases for any reason, Seller shall not be obligated to convey the same unless and until this Agreement is so amended or another Purchase and Sale Agreement for Mitigation Credits is entered into between Purchaser and Seller.

2. **Sale of Subject Credits**. The Subject Credits will be transferred by Seller to Purchaser upon Seller’s receipt of the Purchase Price, which shall be evidenced with a final invoice marked “PAID IN FULL”. Once the balance of the Purchase Price has been received by Seller for the Subject Credits, the sale contemplated in this Agreement shall be deemed to have occurred, at which time MSUSA will so notify the USACE with a copy to Purchaser and Seller. In the event that Purchaser fails to remit payment in full for the Subject Credits, as provided above, Purchaser will be in default and Seller may terminate this Agreement in accordance with Section 6 b. hereinbelow.

3. **No Property Interest or Special Relationship**. The sale of Subject Credits as described herein is not intended as a sale to Purchaser of a security, license, lease, easement or possessory or non-possessory interest in real property, nor the granting of any interest in the foregoing. The relationships between the Parties are ordinary commercial relationships; the Parties do not intend to create any other kind of relationship, such as principal and agent, a partnership, a joint venture or any other special relationship.

4. **Mitigation Bank Maintenance**. Notwithstanding the sale of the Subject Credits to Purchaser, Seller shall remain responsible for performing all of the obligations of “Bank Sponsor” under the MBI with respect to the SMMB, including any maintenance, monitoring and reporting obligations, and Purchaser shall have no responsibility therefor; however, Purchaser covenants and agrees that it shall not violate, or otherwise commit any acts or omissions in contravention of, the MBI. In addition, Purchaser will be solely responsible for making all required applications and seeking all required permits and authorizations from the USACE or any other governmental entity, as applicable, regarding its use and application of the Subject Credits.

5. **No Other Brokers**. Seller and Purchaser each represent and warrant to the other that they have not had any dealings with any brokers, finders or agents, and no commissions or fees are payable, in connection with this Agreement, other than to MSUSA, whose commission is paid by a third party pursuant to a separate agreement.

6. **Default and Remedies.**

a. **Seller's Default; Purchaser's Remedies.** If the purchase and sale of the Subject Credits contemplated hereby is not consummated because of a default by Seller, then Purchaser may, as Purchaser's sole and exclusive remedy hereunder on account of any default by Seller, terminate this Agreement by written notice to Seller and MSUSA, upon which notice Seller shall return any sums paid to Purchaser, **IT BEING AGREED BETWEEN PURCHASER AND SELLER THAT SUCH SUM SHALL BE PURCHASER'S SOLE AND LIQUIDATED DAMAGES (AND NOT A PENALTY) FOR SUCH DEFAULT OF SELLER HEREUNDER BECAUSE OF THE DIFFICULTY, INCONVENIENCE AND UNCERTAINTY OF ASCERTAINING ACTUAL DAMAGES FOR SUCH DEFAULT,** and the Parties shall have no further rights or obligations hereunder.

b. **Purchaser's Default; Seller's Remedies.** If the purchase and sale of the Subject Credits contemplated hereby is not consummated because of a default by Purchaser, Seller may, as Seller's sole and exclusive remedy hereunder on account of a default by Purchaser, terminate this Agreement by written notice to Purchaser and MSUSA, upon which notice Seller shall be entitled to retain all amounts previously paid by Purchaser, **IT BEING AGREED BETWEEN PURCHASER AND SELLER THAT SUCH SUM SHALL BE SELLER'S SOLE AND LIQUIDATED DAMAGES (AND NOT A PENALTY) FOR SUCH DEFAULT OF PURCHASER HEREUNDER BECAUSE OF THE DIFFICULTY, INCONVENIENCE AND UNCERTAINTY OF ASCERTAINING ACTUAL DAMAGES FOR SUCH DEFAULT,** and the Parties shall have no further rights or obligations hereunder. **NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE SET FORTH IN THIS AGREEMENT, SHOULD THE USACE REJECT THE SUBJECT CREDITS AS COMPENSATORY MITIGATION FOR PURCHASER'S PERMIT, PURCHASER SHALL NOT BE CONSIDERED IN DEFAULT OF THIS AGREEMENT, AND EITHER PARTY MAY, UPON WRITTEN NOTICE TO THE OTHER PARTY, TERMINATE THIS AGREEMENT.**

7. **Notice.** Any notice or demand permitted or required by this Agreement shall be made in writing and shall be delivered by hand delivery, which shall include delivery by reputable national overnight courier service, such as Federal Express, or by electronic transmission (including electronic mail or facsimile, as may be set forth below) with confirmation of transmission followed by hand delivery of a copy of such notice or demand. Any such notice or demand shall be effective and deemed received on the date delivered to the address of the addressee, as indicated on the receipt confirmation if delivered by hand, or if delivered by electronic transmission, on the date of such transmission, as indicated on the receipt confirmation. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed receipt of the notice, demand or request sent. For the purposes of this Section, notices shall be directed as follows:

If to Seller: TCP III Straus Medina, LLC
1230 Peachtree Street NE, Suite 3600
Atlanta, GA 30309
Attn: Environmental Portfolio Manager
Email: AOWens@domaincapitalgroup.com

With a copy to: Mettauer Law Firm
403 Nacogdoches Street, Suite 1
Center, TX 75935
Attn: Matthew D. Mettauer
Phone: (936) 598-9400
Email: matthew@mettauerlaw.com

If to Purchaser: City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Razi Hosseini, P.E., R.P.L.S.
Phone: 210-207-8076
Email: Razi.Hosseini@sanantonio.gov

If to MSUSA: Mitigation Solutions USA, LLC
2557 State Highway 7 East
Center, Texas 75935
Attn: Terry McKenzie, President
Phone: (713) 812-9000
Email: terry@msusa.com

8. **Restrictions on Assignment.** No party will be entitled to assign this Agreement to any person without the prior written consent of all of the Parties hereto. Purchaser covenants not to re-sell or transfer all or any part of the Subject Credits without the prior written consent of Seller, in each instance, which consent may be withheld in Seller's sole discretion; provided, however, that Purchaser may transfer the Subject Credits without Seller's further consent to (i) an entity controlled by, or under common control with, Purchaser, (ii) or a third party which has acquired both Purchaser's Project and Purchaser's Permit, as long as Purchaser promptly notifies Seller of each such transfer. The obligations of the Purchaser under this provision will survive termination of this Agreement and the purchase of the Subject Credits. Any attempted assignment of this Agreement or transfer of any of the Credits which does not comply with the conditions of this section shall be null and void ab initio.

9. **Confidentiality.**

Purchaser and Seller each agree that, except with the prior written permission of the other Parties, it shall at all times keep confidential and not divulge, furnish or make accessible to anyone any confidential information, knowledge or other information concerning or relating to (a) the business or financial affairs of the other Parties to which it has been or shall become privy by reason of this Agreement, and/or (b) the content of any discussions or negotiations relating to this Agreement (collectively, the "***Confidential Information***"); provided, however, that such Party may disclose the terms and conditions of this Agreement as required by a court or as otherwise required by law or in confidence and as reasonably necessary (i) to any of its officers, directors, employees, affiliates, agents, representatives and advisors, (ii) to its legal counsel, accountants, banks and financing sources, and their advisors, (iii) to its actual or potential investors or owners, and (iv) as may be required by the Texas Public Information Act; provided, however, that in connection with any request for disclosure of the Confidential Information under the Texas Public Information Act, the Purchaser agrees to utilize available statutory disclosure exemptions reasonably applicable to such request, as determined in Purchaser's sole discretion.

a. If any Party is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information other than as permitted above, such Party shall promptly so notify the other Parties to allow such other Parties sufficient time to seek an appropriate protective order or waive compliance with the provisions of this Section.

10. **Miscellaneous.**

a. The section headings in this Agreement are for convenience of reference only and are not intended, to any extent and for any purposes, to limit or define text of any section of subsection

thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will nonetheless remain in full force and effect.

b. This Agreement and all rights, duties and responsibilities hereunder shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue shall be in Shelby County, Texas, except as otherwise provided by applicable law.

C. NO INDIVIDUAL MEMBER, PARTNER, MANAGER, OFFICER, DIRECTOR, SHAREHOLDER, EMPLOYEE, CONTRACTOR OR AGENT OF ANY PARTY SHALL BE PERSONALLY LIABLE HEREUNDER.

d. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but such counterparts together shall constitute one and the same instrument. The signature pages may be detached from one counterpart and reattached to another counterpart in order to form a fully-executed original instrument. Signatures to this Agreement transmitted by facsimile or electronic mail will be valid and effective to bind the party so signing. Each party agrees to promptly deliver any execution original to this Agreement with its actual signature to the other Parties, but a failure to do so will not affect the enforceability of this Agreement.

e. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors, successors-in-title and assigns, subject to the limitation of Section 8 above. There are no third-party beneficiaries of this Agreement.

f. Each party shall be responsible for its own attorneys' fees in connection with the subject matter of this Agreement. The rule of construction that ambiguities in a document will be construed against the drafting party will not be applied in interpreting this Agreement. If either party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable and actual attorney's fees and court and other costs.

g. Each party agrees that it will, at any time and from time to time after the execution of this Agreement, upon request of the other party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, assignments, conveyances and assurances as may reasonably be required to carry out the intended purposes of this Agreement.

h. This Agreement, together with its exhibits, constitutes the entire agreement of the Parties concerning the sale of the Subject Credits to Purchaser. There are no oral representations, warranties, agreements or promises pertaining to such sale not incorporated in writing in this Agreement.

i. This Agreement may be amended only by an instrument in writing signed by the Parties. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

j. The obligations of this Agreement that cannot be performed before termination of this Agreement or before closing of the sale of the Subject Credits will survive termination of this Agreement or such closing, and the legal doctrine of merger will not apply to these matters.

k. Time is of the essence of this Agreement and each provision hereof. If the last day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term "holiday" shall mean all and only mandatory federal holidays including which deliveries by the United States Postal Services are suspended.

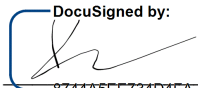
[Signatures commence following page]

IN WITNESS, WHEREOF, the parties have executed this Agreement the day and year first above written.

SELLER:

TCP III Straus Medina, LLC
a Texas limited liability company

By: TCP III Holdings, LLC

Signature:  _____
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Printed Name: Joe Sanderson

Title: Managing Director

Date: 5/12/2021

[Signatures continue following page]

*Purchaser Signature Page to
Purchase and Sale Agreement for Mitigation Credits*

PURCHASER

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

Razi Hosseini, P.E., R.P.L.S.
Director
Public Works Department

Date: _____

[Signatures continue following page]

*Agent Signature Page to
Purchase and Sale Agreement for Mitigation Credits*

AGENT:

MITIGATION SOLUTIONS USA, LLC

Signature: Terry McKenzie

Printed Name: Terry McKenzie

Title: President

Date: May 11, 2021

[End of Signatures]

EXHIBIT A

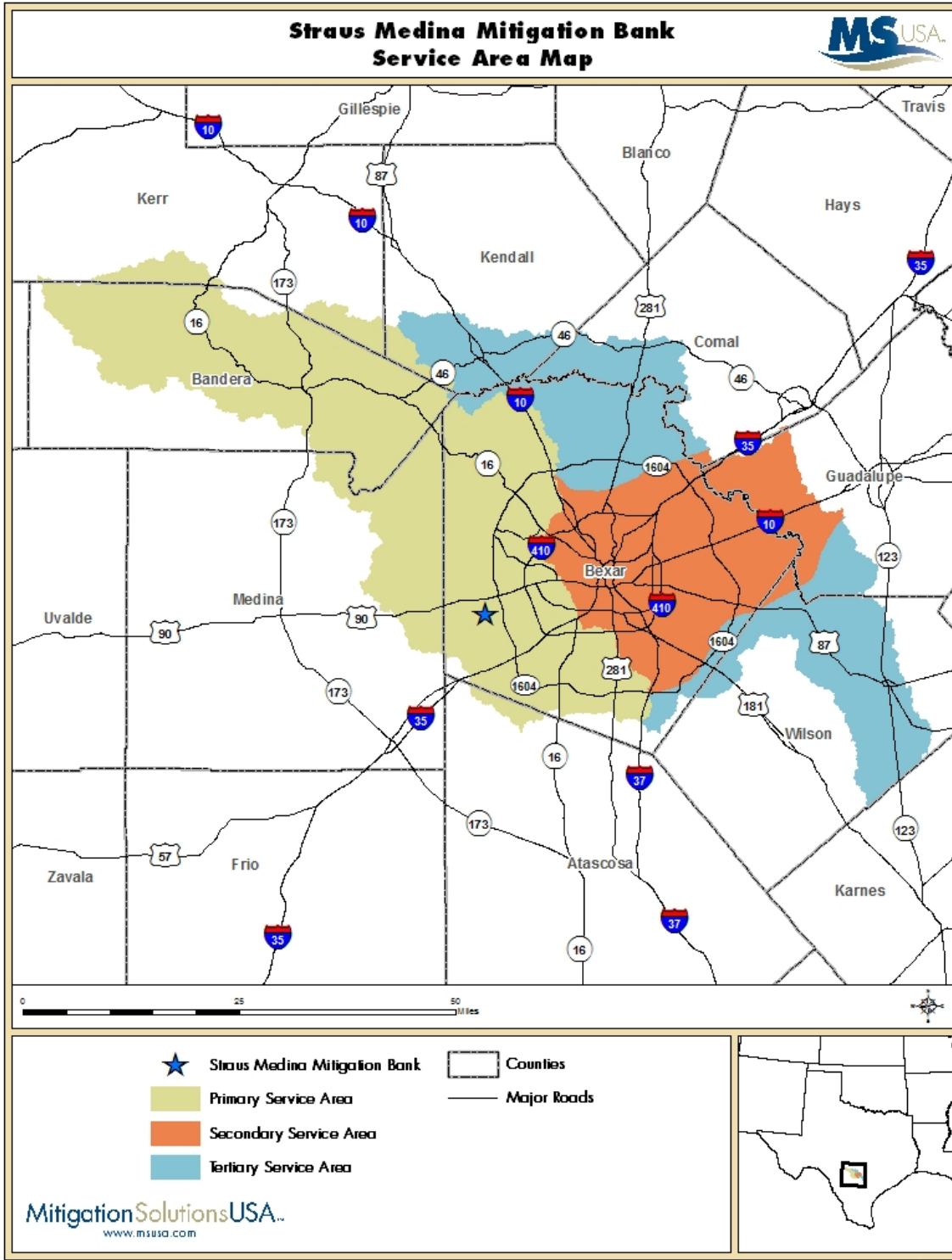


EXHIBIT B

Purchase of Stream Credits

Purchaser will purchase 45.2 Conditional Integrity Units from Straus Medina Mitigation Bank.
These credits will be sold as follows:

Riparian, Intermittent	22.6 credits
In-Channel, Intermittent	22.6 credits

Total Purchase Price: \$124,300