

## **MITIGATION PURCHASE AGREEMENT**

This MITIGATION PURCHASE AGREEMENT (Agreement) is made and entered into by and between Terra Foundation Incorporated (“Seller”) and Oklahoma City Water Utilities Trust (“Purchaser”).

### **WITNESSETH:**

WHEREAS Purchaser has received a U.S. Army Corps of Engineers (“USACOE”) Section 404 Clean Water Act authorization to allow impacts to Jurisdictional Waters (“Project”). Project Number assigned by the USACOE is SWT-2018-00541. The regulatory project manager with the USACOE is Mr. Rob Hoffmann.

WHEREAS, as a condition to the issuance of a permit from the USACOE, the Purchaser is required to compensate for said impacts, and elects to satisfy the requirement through the purchase of mitigation from the Sellers’ In-Lieu Fee program (“ILF”).

WHEREAS, the USACOE has determined that Purchaser is allowed to purchase mitigation resulting from proposed permanent impacts to jurisdictional waters at the Purchaser’s South Canadian Wastewater Treatment Plant.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

- 1) **RECITALS:** The recitals are hereby incorporated by this reference.

2) COMPENSATION: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of **seventeen thousand, nine hundred twenty dollars (\$17,920)** (“Purchase Price”) for 0.28 wetland credits in the Lower Canadian B Service Area of the ILF program. The Purchase Price is derived from the unit cost of \$64,000 per wetland credit. Purchase price is to be paid in the following manner:

- a.) PURCHASE PRICE: Upon signing this Agreement, Purchaser will pay the total balance due of \$17,920.
- b.) Upon payment by Purchaser to Seller, Seller will provide a Mitigation Assignment Memorandum to the Purchaser and USACOE, certifying the mitigation purchase.

3) SELLERS WARRANTY: In consideration of the Purchase Price, Seller affirms that it has sufficient mitigation in the ILF program to satisfy the quantity required by Purchaser and agrees to sell such mitigation to Purchaser. It is understood and agreed that Purchaser shall have no obligation to perform any responsibility or incur any liability associated with the creation, development, maintenance and/or management of the ILF program.

4) NOTICES: Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested to the parties hereto as follows:

If to Seller: Terra Foundation, Inc.  
928 SE Crimson Ct.  
Blue Springs, MO 64014  
Attn: Craig Gump

If to Purchaser: Oklahoma City Water Utilities Trust  
420 West Main Street, 5th Floor  
Oklahoma City, OK 73102  
Attn: Chris Browning, General Manager

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by United States mail, return receipt requested, shall be effective as of the third business day following its posting and any notice given pursuant hereto by facsimile shall be effective as of receipt of confirmation by the sending party.

5) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.


6) APPLICABLE LAW: Purchaser and Seller shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Oklahoma and subject to the requirements of any applicable federal law or regulation. Changes in federal, state or local laws, however, which might have otherwise impacted this Agreement shall not be enforced retroactively after execution of this Agreement.

7) DISPUTE RESOLUTION: In the event of any dispute relating to this Agreement the parties shall consult with each other in good faith, and recognize their mutual interests, effectuate a just and equitable solution satisfactory to both sides.

8) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed by both parties within 30 days after the Effective Date of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

Seller  
Terra Foundation Incorporated

By:   
Craig Gump  
President

Date: 4/28/2023

**APPROVED** by the Trustees and signed by the Chairman of the Oklahoma City Water Utilities Trust this 6TH day of JUNE, 2023.

**OKLAHOMA CITY WATER  
UTILITIES TRUST**

Amy K. Simpson  
SECRETARY



Jim D. Couch  
CHAIRMAN

**CONCURRED** by the Council and signed by the Mayor of The City of Oklahoma City this 20TH day of JUNE, 2023.

Amy K. Simpson  
CITY CLERK



**THE CITY OF OKLAHOMA CITY**

David Holt  
MAYOR

**REVIEWED** for form and legality.

Patrick Mann  
ASSISTANT MUNICIPAL COUNSELOR