

AGREEMENT OF PURCHASE AND SALE OF STREAM MITIGATION CREDITS

This Agreement of Purchase and Sale of Stream Mitigation Credits ("Agreement") is entered into as of June __, 2023 (the "Effective Date") by and between Blount County Purchasing Department ("Buyer"), and Mitigate Tennessee, LLC, a Nevada limited liability company ("Seller").

RECITALS

A. WHEREAS, Seller has developed a stream mitigation bank known as Cave Spring Mitigation Bank (the "Bank") on certain property located within the Watts Bar Lake watershed in Roane County, Tennessee (the "Property").

B. WHEREAS, Seller has entered into a Mitigation Bank Instrument with the United States Army Corps of Engineers (the "USACE") on July 18, 2022. Following the approval of the As-Built credits, Seller expects to receive a stream credit release (the "As-built Release") of approximately 424.02 stream mitigation credits (the "Stream Credits").

D. WHEREAS, Buyer desires to purchase, and Seller desires to reserve and sell to Buyer, 152.5 Stream Credits.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

ARTICLE 1. RESERVATION, PURCHASE AND SALE OF STREAM CREDITS

1.1. Reservation of Credits. As of the Effective Date, Seller agrees to reserve, at no cost to Buyer, 152.5 Stream Credits until Seller receives the As-built Release of the Stream Credits

1.2 Purchase and Sale. In exchange for the Stream Credits being purchased hereunder, Buyer shall, subject to the terms and conditions of this Agreement, pay to Seller a unit price per Stream Credit of One Thousand Eight Hundred Dollars (\$1,800.00) (the "Credit Price") for an aggregate amount of Two Hundred Seventy-Four Thousand Five Hundred Dollars (\$274,500) (the "Purchase Price"). Electronic payment shall be made according to the banking instructions provided by Seller to Buyer. The sale of the Stream Credits contemplated herein is not intended as a sale or transfer to Buyer of a security, license, lease, easement or possessory or nonpossessory interest in the assets of Seller or the Bank, nor the granting of any interest in the foregoing. Further, each party shall pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.

1.3. Payment for Stream Credits. Within three (3) business days of the Seller notifying the buyer of the As-built release (the “As-built Release Notification”), the Buyer shall provide the Seller of their intention to pay the Stream Credit Purchase Price or to provide a thirty (30) percent non-refundable deposit to the Seller in the amount of Eighty-Two Thousand Three Hundred Fifty Dollars (\$82,350.00) (the “Deposit”). The Seller shall provide the Buyer with an invoice for the Purchase Price or Deposit amount (the “Invoice”). The Deposit shall reserve the Stream Credits until the earlier of sixty (60) days from the As-Built Release Notification (the “Reservation End Date”). Upon payment of the Deposit, the Buyer shall pay the “Balance of the Purchase Price” on or before ten (10) days of the Reservation End Date. For purposes of this Agreement, the “Balance of the Purchase Price” shall mean the Purchase Price deducted by the paid Deposit. To the extent that Seller does not receive the payment of the full Purchase Price by the Reservation End Date, Seller shall have no obligation to sell any such Stream Credits to Buyer and Seller shall retain the Deposit. If the number of credits needed to satisfy the permitting requirements is less than 152.5, the contract will be modified to reflect the reduced number of credits needed by Buyer.

In the event the number of Stream Credits available in the As-Built Release under the Mitigation Banking Instrument is less than 152.5 Stream Credits and Buyer agrees to purchase such lesser number, Seller shall pay to Buyer the product of such lesser number of credits and the Credit Price in lieu of the Purchase Price set forth in Section 1.2 of this Agreement.

Within ten (10) days following the receipt of the Deposit and the Balance of the Purchase Price and authorization from the USACE that the Stream Credits are acceptable compensatory mitigation with respect to the project described on Exhibit C hereto (the “project), Seller shall deliver to Buyer an executed Bill of Sale in the form set forth in Exhibit B hereto.

ARTICLE 2. MISCELLANEOUS

2.1. Covenants. Seller represents and warrants to Buyer that it will use commercially reasonable efforts to receive all requisite approvals from all applicable regulatory agencies to offer for sale the Stream Credits and to obtain authorization from USACE to sell the Stream Credits in accordance with the Mitigation Banking Instrument. Seller shall be responsible for the development and maintenance of the Stream Credits and the Bank in accordance with the requirements approved and defined in the Mitigation Banking Instrument and other applicable laws. Seller shall have good and sufficient title to the Stream Credits at the time the credits are released to Buyer. Buyer shall have no rights or obligations to perform any of the responsibilities of Seller now or hereafter set forth by USACE regarding the development and maintenance of the Stream Credits or the Bank nor shall Buyer have any rights or obligations to enforce

any of the responsibilities of Seller under the Mitigation Banking Instrument. Buyer shall use commercially reasonable efforts to maintain USACE Approval.

2.2. Termination. Seller shall have the option to terminate this Agreement at its sole discretion by providing written notice to Buyer, if Buyer fails to pay the Purchase Price to the Seller in accordance with the timeframes set forth in Section 1.3. To the extent the USACE does not authorize the Initial Release of Stream Credits, Buyer shall have the option to terminate this Agreement by providing written notice to Seller. Upon termination of this Agreement, Seller shall have no obligation to sell to Buyer, and Buyer shall have no obligation to purchase from Seller, Stream Credits from the Initial Release or any future release of Stream Credits. If the credits are not available by June 30, 2023, buyer has the option but not the obligation to either extend the contract or withdraw from the contract.

2.3. Limitation on Liability. Notwithstanding any other provision of this Agreement, in no event will Seller or Buyer be liable to the other party for any indirect, special, consequential or incidental damages, or loss of profits or loss of goodwill, regardless of whether the Seller or Buyer has been informed of the possibility of such damages or is negligent, and whether or not such damages were reasonably foreseeable. Section 2.2 sets forth the exclusive remedy available to Buyer in connection with this Agreement.

2.4. Captions. All section captions used in this Agreement are for reference only and shall not be considered in interpreting the provisions of this Agreement.

2.5. Integration. This Agreement contains the entire agreement of Buyer and Seller, superseding any and all prior written or oral agreements between them concerning the subject matter contained herein, and Buyer and Seller hereby release each other from any and all rights, obligations and claims under such prior agreements.

2.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of Buyer and Seller.

2.7. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

2.8. Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. A facsimile of a duly executed copy of this Agreement shall be deemed for all purposes as

receipt of an originally signed document, and any such copy bearing a facsimile signature shall be binding upon, and enforceable against, the party to be charged thereby.

2.9. 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 of the parties hereto. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future right to enforce such provision or any other provision hereof.

2.10. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of Tennessee.

2.11. Construction. Buyer and Seller hereby acknowledge and agree that (a) each party to this Agreement is of equal bargaining strength, (b) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (c) each such party has consulted or has had the opportunity to consult with such party's own independent counsel, and such other professionals as such party deems appropriate relative to any and all matters contemplated under this Agreement, (d) each such party and such party's counsel and advisors have reviewed the Agreement and following such review each party agrees to enter into this Agreement, and (e) any rule of construction to the effect that ambiguities are to be resolved against the drafting party(ies) shall not apply in the interpretation of this Agreement, or any portions hereof or any amendments hereto.

2.12. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by Buyer or Seller to create a relationship of principal and agent, partnership, joint venture or any other association between Buyer and Seller.

2.13. Transferability. The Stream Credits sold and transferred to Buyer shall be non-transferable and non-assignable by Buyer or its agents. Notwithstanding the foregoing, upon notice from Buyer that it or a subsidiary or affiliate of the Blount County Purchasing Department desires to apply all or a portion the Stream Credits to a project other than the Project owned or controlled by the Blount County Purchasing Department or a subsidiary or affiliate thereof, Buyer may transfer such purchased Stream Credits or portions thereof for application to such alternate project upon written notice to Seller, and Seller, Buyer and such applicable affiliate or subsidiary or the Blount County Purchasing Department, if different from Buyer, shall execute all such instruments or documents necessary or appropriate to effect transfer and application of such credits thereto. The credits governed by this Agreement, upon acceptance as compensatory mitigation for a USACE permit, shall inure to the benefit of any successor to such USACE permit.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the date first set forth above.

SELLER:

MITIGATE TENNESSEE, LLC

By: _____
Name: Eric S. Anderson
Title: President

Blount County Purchasing Department

By: _____
Name:
Title:

EXHIBIT A TO AGREEMENT OF PURCHASE AND SALE OF STREAM CREDITS

LETTER OF COMMITMENT



May 26, 2023

Blount County Purchasing Department
100 E. 10th Street, Suite 600
Chattanooga, TN 37402

Dear Mr. Kinsey,

In accordance with the Agreement of Purchase and Sale of Stream Credits, entered into as of May __, 2023, we are providing this letter of commitment to document the reservation of stream credits from Cave Spring Mitigation Bank for your project:

Date of Sale	
Dept. of the Army Permit Number	TBD
Permittee	Blount County Purchasing Department
County/ Parish	Blount
Watershed (8-digit HUC)	06010201 (Watts Bar Lake)
Type(s) of impact(s)	Stream Fill
Type of Credits	Stream
Number of Credits Sold	152.5
Project within the Service area of the	YES

Sincerely,

MITIGATE TENNESSEE, LLC

Eric Anderson
President

EXHIBIT B TO AGREEMENT OF PURCHASE AND SALE OF STREAM MITIGATION CREDITS

BILL OF SALE

For valuable consideration, the receipt of which is hereby acknowledged, Mitigate Tennessee, LLC, a Nevada limited liability company ("Seller"), does hereby bargain, sell and transfer to _____ ("Buyer") _____ Stream Credits from the Bank which Seller has preserved in accordance with that certain Agreement of Purchase and Sale of Stream Credits entered into by and between Seller and Buyer dated as of _____, 2023 ("Mitigation Purchase Agreement"). All capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in that certain Mitigation Purchase Agreement.

SUBJECT TO THE FOREGOING, SELLER NEITHER MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND BUYER HEREBY EXPRESSLY WAIVES, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE STREAM CREDITS. BUYER AGREES THAT IT HAS SELECTED THE STREAM CREDITS ON THE BASIS OF ITS OWN JUDGMENT AND THAT IT BUYS THE STREAM CREDITS "AS IS".

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IN WITNESS WHEREOF, the Seller has executed this Bill of Sale this ____ day of _____ 20__.

SELLER

MITIGATE TENNESSEE, LLC

a Nevada limited liability company

BY: _____

Name:

Title:

ACKNOWLEDGED BY BUYER:

a Tennessee limited liability company

BY: _____

Name:

Title:

EXHIBIT C TO AGREEMENT OF PURCHASE AND SALE OF STREAM CREDITS

DESCRIPTION OF PROJECT TO BE MITIGATED

Permittee: Blount County Purchasing Department

Project: Renovations are planned for the Eagleton Ballpark in Maryville, Blount County, TN, which will require impacts to the tributaries to the Springfield Branch and 152.5 credits will be required.

USACE File No.: TBD