

**WETLAND MITIGATION CREDIT PURCHASE AGREEMENT  
SUGAR RIVER WETLAND MITIGATION BANK (SRWMB)**

**Permittee Name:** City of Madison, WI

**Project Name:** Lower Badger Mill Creek Pond Construction, Flood Control Project

**Project Location:** Lower Badger Mill Creek Pond Construction, Dane County, WI.

Permittee's Address:     **Applicant:**

Matt Allie  
City of Madison—Engineering Division, [Mallie@cityofmadison.com](mailto:Mallie@cityofmadison.com) (608-266-4058)  
210 Martin Luther King Jr. Blvd., Rm 115  
Madison, WI 53151

**Description:** According to WDNR (Allen Ramminger wetland specialist—January 10,2023) email to City, the project will permanently impact 0.49 acres of marsh, and 0.58 acres of permanent wet meadow associated with the named project above. The mitigation required is 0.58 and 0.70 acres of credit respectively for these permanent impacts for a total of 1.28 acres of wetland meadow or sedge meadow credits.

**Permit (or Verification) Number(s):** WDNR permit #IP-SC-2022-13-03672; USACE permit #MVP-2010-02969-CCK

1. Amounts of Mitigation Credits to be Purchased from SRWMB: 1.28 acres of wet meadow or sedge meadow credits.

This Wetland Mitigation Credit Purchase Agreement (“Agreement”) is made by and between **Southern Wisconsin Land Conservancy** (“Bank Sponsor”), a Non-profit land trust established under WI and Federal Non-profit corporation regulations and **City of Madison, WI** (“Buyer”, who shall be the USACE Permittee named above) (collectively “Parties”). This Agreement will become effective when all the Parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date stated opposite that Party’s signature) will be deemed the date of this Agreement.

**1. RECITALS**

- 1.1. With approval and authorization from the U.S. Army Corps of Engineers (“Corps” or “Permitting Authority”) and applicable Interagency Review Team (“IRT”), pursuant to Permit No. MVP-2018-02434-RAN and the Mitigation Banking Instrument (“MBI”) referenced therein, Bank Sponsor has established a wetland known as the “Sugar River Wetland Mitigation Bank” (“SRWMB”).
- 1.2. Bank Sponsor is authorized by the Permitting Authority to provide off-site mitigation for unavoidable impacts to wetlands within one or more Service Areas of the SRWMB set forth in the MBI, as amended from time to time. A map of the SRWMB Service Areas is available on the WDNR and Army Corps of Engineers web sites.
- 1.3. To that end, Bank Sponsor is authorized to obtain, hold, sell, and transfer wetland mitigation credits, or fractions thereof, by way of the SRWMB, said credits being units

of trade representing the increase in and/or permanent protection of ecological value of a site, as measured by acreage, functions, and/or other values (“Mitigation Credits”). As used in this Agreement, Mitigation Credits means wetland mitigation credits that have been approved, authorized, and released by the Corps into the SRWMB ledger for sale as wetland mitigation bank credits, available for immediate use in connection with wetland mitigation for projects permitted by the Corps.

- 1.4. Buyer contemplates undertaking an activity (“Project”) within a Service Area of the SRWMB that will require permits and/or approvals (“Permit(s)”) from the Corps and other regulatory agencies, and where provision of satisfactory mitigation under the Clean Water Act (“CWA”) may be a condition of such Permit(s). Buyer is solely responsible for ascertaining whether satisfaction of such conditions by purchase of Mitigation Credits from SRWMB is acceptable to the Corps and any other applicable regulatory agencies.
- 1.5. Buyer wishes to purchase from Bank Sponsor and Bank Sponsor wishes to sell to Buyer such Mitigation Credits from the SRWMB for the Project as described and on the terms and conditions contained in this Agreement.

## **2. AGREEMENT**

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Bank Sponsor and Buyer agree as follows:

### **2.1. Purchase/Sale of Mitigation Credits**

**2.1.1. Purchase/Sale.** Upon execution of this Agreement, Bank Sponsor hereby agrees to sell to Buyer and Buyer agrees to buy from Bank Sponsor a total of **1.28 acres of Mitigation Credits**, of the wetland types described on Page 1, above (the “Project Mitigation Credits”), and such Project Mitigation Credits shall be transferred and available to Buyer, subject to Corps approval process and the terms, covenants, and conditions set forth in this Agreement. All transfers of purchased Mitigation Credits shall be reflected as a debit from the SRWMB Ledger and accompanied with written acknowledgment acceptable to the Corps that documents said transfer. The Bank Sponsor shall request said transfer be reflected on any applicable records of the Corps, including the Corps’ mitigation credit ledger applicable to the SRWMB.

**2.1.2. Purchase Price.** The total purchase price for the Project Mitigation Credits shall be **\$139,520.00 dollars** (U.S.) (“Purchase Price for a total purchase of **1.28** acre of credit as described above).

**2.1.3. Payment; Closing.** Unless otherwise provided in this Agreement, Buyer agrees to pay the Purchase Price to Bank Sponsor as follows:

- 2.1.3.1. **Payment in Full** of the Total Purchase Price upon the execution of this Agreement by Buyer, paid and delivered to Bank Sponsor by certified bank check;

2.1.3.2. Upon receipt of said payment in full, the bank sponsor shall issue an affidavit providing the buyer with proof of purchase of the required wetland mitigation bank credit. Said affidavit is the document the buyer must provide to the state and federal permit issuing agencies to demonstrate the successful obligation of the mitigation requirements.

## ***2.2. Buyer's Obligations/Limitation on Transfer of Mitigation Credits/Project Information.***

**2.2.1. Mitigation Credits for Project.** Buyer shall be solely responsible for determining whether the Mitigation Credits may be used for the Project and the Permit(s). Bank Sponsor provides no representation or warranty as to the utility or applicability of the Mitigation Credits to the Project or Permit(s). Buyer acknowledges and agrees that Bank Sponsor shall sell the Project Mitigation Credits specifically for the Permit(s) identified on Page 1, above, and that, as of Closing, said credits shall not be transferable to another Project, Permit, permittee, or otherwise without the written consent of both the Bank Sponsor and each applicable Permitting Authority.

**2.2.2. Disclosure.** Buyer acknowledges and agrees that Bank Sponsor may, as part of the process for transferring the Project Mitigation Credits, disclose the information provided on Page 1, above, to the listed permitting agency(ies).

## ***2.3. Title/Risk of Loss***

**2.3.1. Conveyance.** At Closing, Bank Sponsor shall convey to Buyer the Project Mitigation Credits, free of liens, encumbrances, restrictions, rights, and conditions, except as expressly provided for herein. Conveyance shall be in the form of a letter from the Bank Sponsor to the Buyer and applicable Permitting Authorities notifying them that the Project Mitigation Credits have been permanently withdrawn by the SRWMB and applied for the benefit of the Buyer as compensation for the Permits and Projects detailed on Page 1.

**2.3.2. Risk of Loss.** Bank Sponsor shall bear the risk of loss of the Project Mitigation Credits prior to Closing.

**2.3.3. No Interest in Real Estate.** The Parties acknowledge and agree that the Mitigation Credits that are the subject of this Agreement are not a real property interest and that conveyance of Mitigation Credits to the Buyer does not create an interest in the real estate, or improvements thereon, comprising the SRWMB, all of which remain the sole property of the Bank Sponsor.

## ***2.4. Representations and Warranties***

Bank Sponsor represents and warrants to Buyer that:

**2.4.1.** Bank Sponsor is authorized by the Permitting Authorities to operate the SRWMB and to obtain, hold, sell, and transfer Mitigation Credits; and

2.4.2. Bank Sponsor owns the Project Mitigation Credits and has the right to sell said credits to Buyer.

## 2.5. Notice

2.5.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested; or (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed delivered immediately, if delivered in person, or within two days if sent by any other means set forth in this Section 2.6.

2.5.2. If to Bank Sponsor:

Steven I. Apfelbaum, President  
**Southern Wisconsin Land Conservancy**  
N673 Mill Rd.  
Juda, WI 53550, [steve@aeinstitute.org](mailto:steve@aeinstitute.org), 608-201-9375

2.5.3. If to Buyer: As provided on Page 1, above.

## 2.6. Miscellaneous

2.6.1. **Assignment.** Buyer's rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of Bank Sponsor. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

2.6.2. **Independent Advice.** Buyer acknowledges and agrees that Applied Ecological Services, Inc is assisting the Bank Sponsor in satisfaction of its obligations under this Agreement. In the event Buyer has engaged Applied Ecological Services, Inc for professional services, a conflict of interest may arise and Buyer is hereby advised and agrees to seek its own independent legal, financial, tax, and any other professional advice prior to executing this Agreement.

2.6.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the Project Mitigation Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.

2.6.4. **Time.** Time is of the essence of this Agreement.

2.6.5. **Governing Law.** This Agreement shall be construed and

interpreted in accordance with the laws of the State of Wisconsin.

- 2.6.6. Amendment.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 2.6.7. Captions.** The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.
- 2.6.8. Severability.** The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.
- 2.6.9. Computation of Time.** If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date shall be automatically extended to the next succeeding weekday that is not a holiday.
- 2.6.10. Attorneys' Fees.** In the event either party to this Agreement finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, each party shall bear its own attorneys' fees.
- 2.6.11. Acts Beyond Party's Control.** Neither party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid.
- 2.6.12. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Buyer and Bank Sponsor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 2.6.13. Counterparts/Faxes.** This Agreement may be executed in one or more counterparts with like effect as if all signatures appeared on one copy. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original.

The Parties have executed this Agreement as of the dates set forth below.

By **Steven I. Apfelbaum**, President 1-12-2023  
Southern Wisconsin Land Conservancy, Bank Sponsor Date

City of Madison, WI,  
NAME OR ORGANIZATION/BUYER

By \_\_\_\_\_ Date