



137 1/2 E. Main Street, Suite 210
Oak Hill, WV 25901

Corporate Headquarters
6575 West Loop South, Suite 300
Bellaire, TX 77401
Main: 713.520.5400

August 22, 2019

Department of Administration, Purchasing Division
Attn: Jessica Chambers
2019 Washington Street East
Charleston, West Virginia 25305-0130

RE: CRFQ DEP 1900000035/Mitigation Credits – Best and Final Offer

Dear Ms. Chambers:

On behalf of EBX-EM LLC, Resource Environmental Solutions, LLC (RES) is pleased to provide the West Virginia Department of Environmental Protection (DEP) with this Final Offer for mitigation credits. To meet the requirements outlined in the Best and Final Offer request, RES proposes to deliver mitigation credits from its West Virginia Mitigation Bank – Cline Run Mitigation Bank Site, Foster Run Mitigation Bank Site and forthcoming Sandy Creek Mitigation Bank Site.

RES' SSA1 Final Offer pricing is outlined in the table below and the attached "Attachment A":

		Price Per Credit		Currently Available Credits		Credits Released Within 1 Year*	
ILF Service Area	Bank Site	Stream	Wetland	Stream	Wetland	Stream	Wetland
SSA 1	Cline Run	\$645.00	\$52,000.00	296.32	-	-	-
	Foster Run	\$645.00	\$52,000.00	1,094.11	-	-	-
	Sandy Creek	\$645.00	\$52,000.00	-	-	3,675.50	0.327

* Anticipated credits. Actual credit amounts may vary at time of credit release by the IRT.

As requested, contained within this Best and Final Offer submittal are:

1. Attachment A – Purchase of Stream and/or Wetland Mitigation Credits Pricing Page
2. Bank Site Geographic Service Areas
3. Typical Agreement for Credit Purchase and Sale

RES stands ready to meet in person at the Purchasing Division's and DEP's convenience to discuss this Best and Final Offer and answer any questions that might arise following review. We thank you very much for the opportunity.

Kind regards,

Kevin Roush
Client Solutions Manager
Resource Environmental Solutions
kroush@res.us | 304.719.2511

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WV PURCHASING
DIVISION



ATTACHMENT A
PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS PRICING PAGE

Attachment A

**PURCHASE OF STREAM AND/OR WETLAND MITIGATION CREDITS
PRICING PAGE**

Item	Description	Quantity	Unit Price	Extended Price
1	Stream credits in ILF SSA 1	5440	\$645.00	\$3,508,800.00
	Total			\$3,508,800.00

Mitigation Bank Information

The following is required as part of the bid.

Bank Name: Foster Run Mitigation Bank Site, Cline Run Mitigation Bank Site & Sandy Creek Mitigation Bank Site

Physical Address: 137 1/2 East Main Street, Suite 210, Oak Hill, WV 25901

Bank Owner Name: EBX-EM, LLC

Bank Owner Address: 137 1/2 East Main Street, Suite 210, Oak Hill, WV 25901

Contact Name: Kevin Roush

Contact Email: kroush@res.us

Service Area (HUCs): Middle Ohio North (05030201), Little Kanawha (05030203), Upper Ohio North (05030101), Upper Ohio South (05030106), Middle Ohio South, (05030202), Monongahela (05020003), West Fork (05020002)

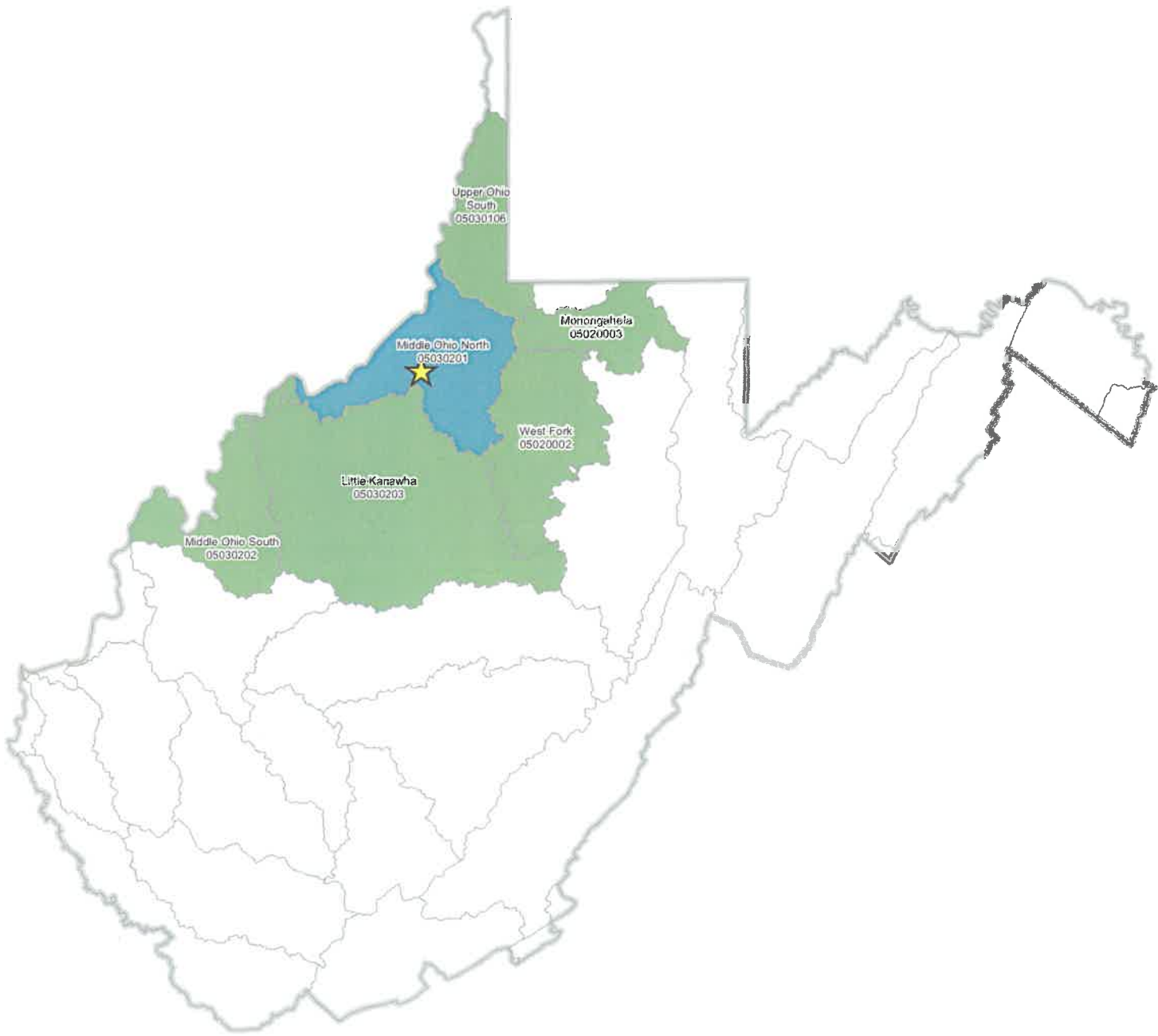
Required Items: Return the following with your bid.

Bank geographic service area map or equivalent

Bank's Agreement for Credit Purchase and Sale



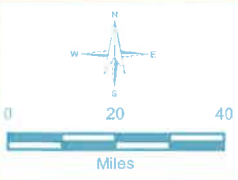
BANK SITE GEOGRAPHIC SERVICE AREAS



Legend

-  Foster Run Mitigation Bank Site
-  8 Digit HUC Watershed
-  Primary Service Area
-  Secondary Service Area

Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.



EBX-EM, LLC

**Foster Run Mitigation Bank Site
Service Area Map**

West Virginia

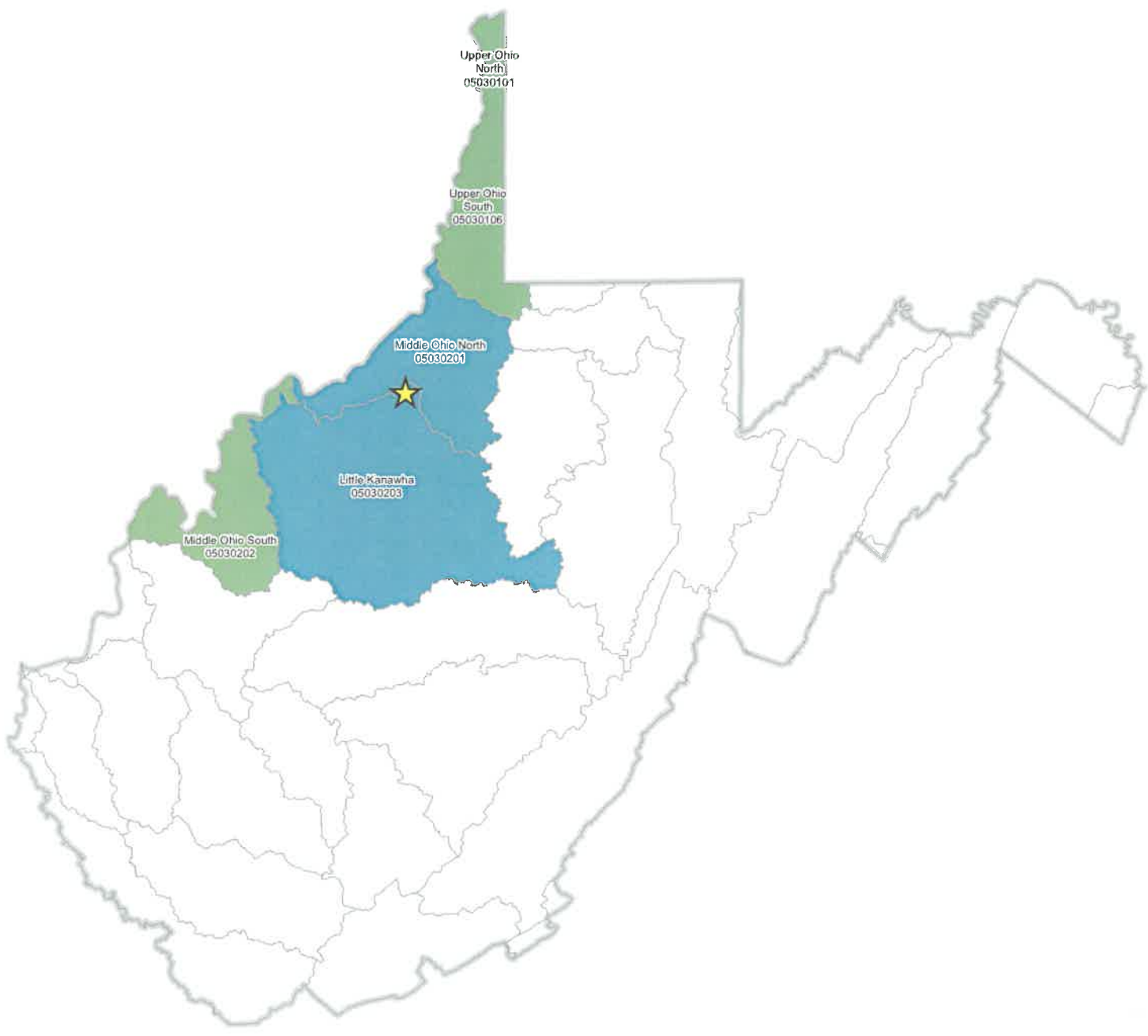
Date: 2/6/2017

Drawn by: KPR

Checked by: JAS



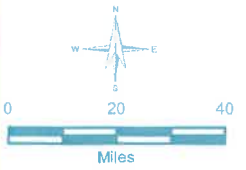
Document Date: 02/06/2017; Attachment: Draft Map of Foster Run; Scale: As Shown



Legend

-  Cline Run Mitigation Bank Site
-  8 Digit HUC Watershed
-  Secondary Service Area
-  Primary Service Area

Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.

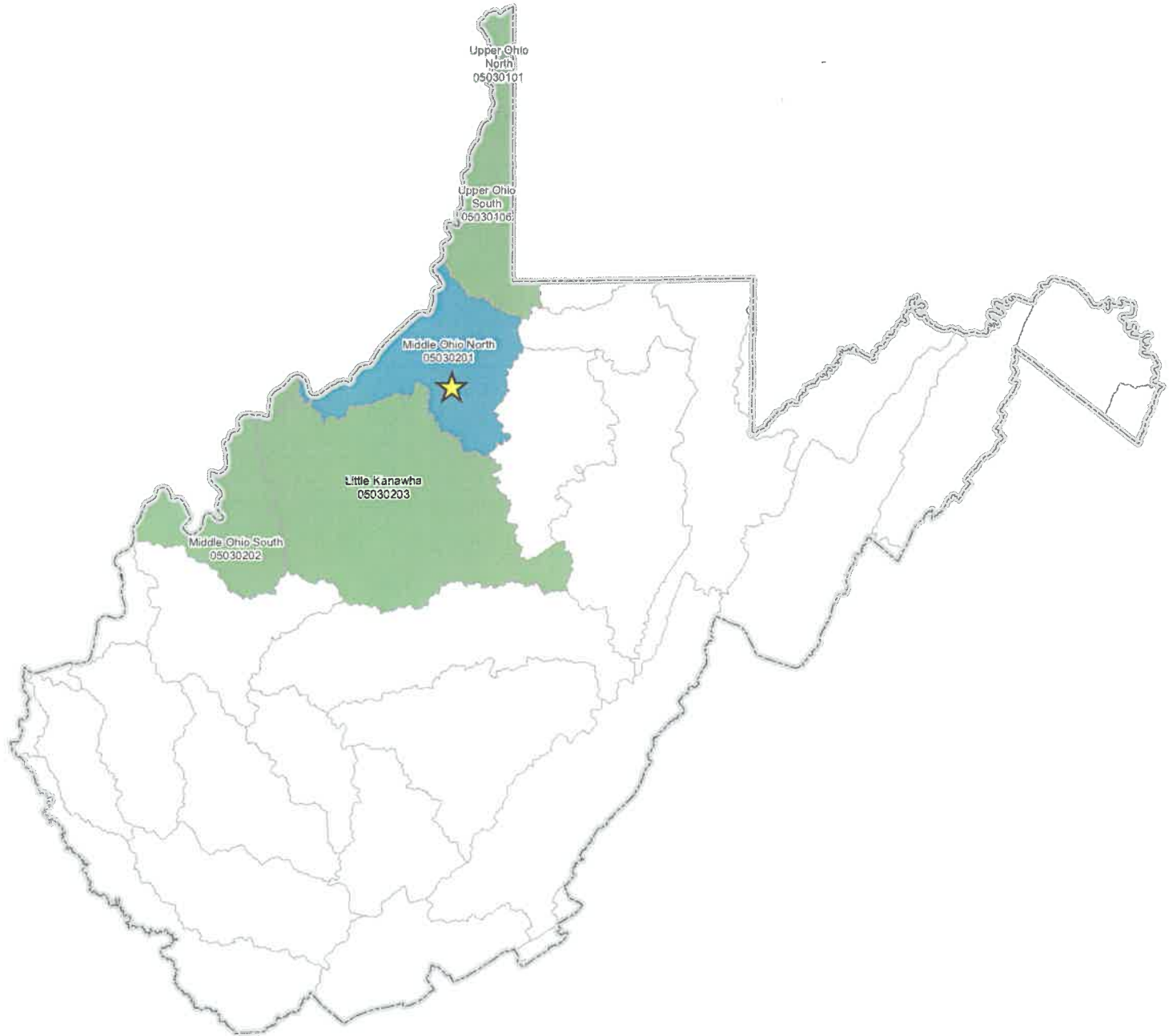


EBX-EM, LLC
Cline Run Mitigation Bank Site
Service Area Map
West Virginia

Date: 1/31/2017
Drawn by: KPR
Checked by: JAS



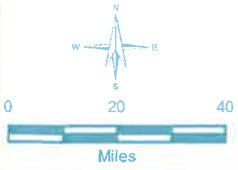
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Horizontal Datum is NAD83 StatePlane WV N.
Project limits are approximate.

Legend

-  Sandy Creek Mitigation Bank Site
-  Primary Service Area
-  Secondary Service Area



EBX-EM, LLC

**Sandy Creek Mitigation Bank Site
Service Area Map**

West Virginia

Date: 4/8/2019

Drawn by: KPR

Checked by: KLR



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TYPICAL AGREEMENT FOR CREDIT PURCHASE AND SALE

MITIGATION CREDIT SUPPLY AGREEMENT

THIS MITIGATION CREDIT SUPPLY AGREEMENT (this "Agreement") by and between EBX-EM LLC, a Delaware corporation ("Bank Sponsor"), and [BUYER] ("Buyer") is effective as of [DATE] (the "Effective Date").

RECITALS:

WHEREAS, Bank Sponsor has established a mitigation bank known as the [BANK NAME] (the "Bank") authorized by the United States Army Corps of Engineers (the "Permitting Agency") pursuant to a West Virginia Umbrella Mitigation Banking Instrument (as amended or modified from time to time, the "Bank Instrument");

WHEREAS, Bank Sponsor is authorized to operate the Bank and to sell and transfer mitigation credits and/or acres, as described in the Bank Instrument ("Mitigation Credits"), in accordance with and the Bank Instrument; and

WHEREAS, Buyer desires to purchase Mitigation Credits.

THEREFORE, for and in consideration of the premises and the payment set forth herein, Bank Sponsor and Buyer agree to the following terms and conditions:

AGREEMENTS:

1. Purchase of Mitigation Credits.

a. Purchase. Bank Sponsor hereby agrees to sell to Buyer, and Buyer hereby agrees to buy from Bank Sponsor, [NUMBER] Mitigation Credits on the terms, and subject to the conditions, set forth herein (the "Purchased Credits").

b. Purchase Price. The purchase price for the Purchased Credits is \$[] (the "Purchase Price"). Buyer agrees to pay Bank Sponsor the Purchase Price by wire transfer in accordance with Exhibit A or as directed by Buyer no later than sixty (60) business days after the Effective Date. All amounts paid under this Agreement shall, when paid, be deemed to be fully earned by Bank Sponsor and non-refundable.

c. Default. If Buyer fails to pay the Purchase Price when due then: (i) Bank Sponsor shall not be required to perform hereunder and shall not be responsible for any breach, liability or damages resulting from such non-performance; and (ii) Bank Sponsor may pursue such remedies as may be available at law and in equity and terminate this Agreement. If Bank Sponsor terminates this Agreement, Bank Sponsor shall thereafter be relieved of its responsibilities hereunder and shall have no further obligations to Buyer, ownership of the Purchased Credits shall automatically revert to Bank Sponsor, and Bank Sponsor shall be free to sell the Purchased Credits to one or more third parties.

2. Ownership and Application of Purchased Credits.

a. Ownership. As of the Effective Date, Buyer shall own the Purchased Credits. At any point after the Effective Date, Buyer may request that Bank Sponsor apply the Purchased Credits to a permit by delivering a notice containing the information on Exhibit B to this Agreement (the "Application Notice"). If Exhibit B has been completed on the Effective Date, Buyer shall be deemed to have provided the Application Notice on the Effective Date.

b. Application of Purchased Credits. Upon receipt of the Application Notice, Bank Sponsor shall promptly provide the Permitting Agency with the documentation required by the Bank Instrument to apply the Purchased Credits to the permit specified by Buyer. Buyer is solely responsible for the accuracy of the information provided to Bank Sponsor in the Application Notice. Bank Sponsor shall have neither the duty to confirm the accuracy of the information provided by Buyer nor any liability for inaccurate information.

c. Bank Sponsor Responsibilities. In no event will Bank Sponsor be responsible (i) if the Permitting Agency does not allow the Purchased Credits to be applied to a permit, (ii) for determining the nature or amount of mitigation required by Buyer for any project or permit or by applicable law, or (iii) for compliance with the terms and conditions of any permit ultimately issued to Buyer in connection with any project or otherwise.

3. Miscellaneous.

a. Confidentiality. Neither this Agreement nor the terms hereof may be furnished to any third party without the written consent of all parties, except as may otherwise be required by law or a court of competent jurisdiction; provided, that the

foregoing shall not prohibit the parties from providing this Agreement or the terms hereof to their attorneys, consultants, professional advisors, and current and prospective investors and primary lenders. Buyer acknowledges and agrees that Bank Sponsor may, as part of the process for transferring the Purchased Credits, disclose the information provided by Buyer in the Application Notice to the regulatory authorities. This paragraph shall survive any termination of this Agreement.

b. Governing Law and WAIVER OF JURY TRIAL. This Agreement and all matters arising out of or relating to this Agreement are governed by the laws of Texas, without giving effect to any conflict of laws provisions thereof. Either party may only institute any legal suit, action, or proceeding arising out of or relating to this Agreement in the federal or state courts located in Houston, Texas. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY: (A) CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE AFOREMENTIONED COURTS; (B) WAIVES ANY OBJECTION TO THAT CHOICE OF FORUM BASED ON VENUE OR TO THE EFFECT THAT THE FORUM IS NOT CONVENIENT; AND (C) WAIVES ANY RIGHT TO TRIAL BY JURY.

c. Counterparts and Authorization. This Agreement may be signed by facsimile or electronic PDF signature, which signature shall be deemed to constitute an original signature and be binding as such. This Agreement may be executed in identical counterparts, each of which when so executed and delivered will constitute an original, but all of which taken together will constitute one and the same instrument. The parties each separately represent that the person signing this Agreement is duly authorized to sign this Agreement.

d. Force Majeure. No party shall be liable or responsible to the other party, or deemed to have breached this Agreement, for any failure or delay in satisfying its obligations hereunder if such failure or delay is attributable to any of the following: strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, orders, laws, regulations, or restrictions, adverse determinations from the Permitting Agency or any other governmental authority, or any other causes which are beyond the reasonable control of the responsible party.

e. Consequential Damages. Notwithstanding any provision of this Agreement to the contrary, no party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof. Each party expressly agrees that the affiliates, members, partners and shareholders of any defaulting or breaching party hereunder are not jointly, solidarily or severally liable for any costs, expenses, losses or damages arising from such party's breach or default under this Agreement.

f. Notice. All notices to be sent by one party to the other pursuant to this Agreement shall be in email followed up with a notice writing 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 on the signature page. Either party may change its address by notifying the other party in writing of the change of address.

g. Other. Buyer's entering into this Agreement does not give the Buyer rights to monies generated by the Bank, and further, Buyer does not obtain any rights of ownership or use of the real property associated with the Bank or any other property interests of Bank Sponsor or its affiliates. Bank Sponsor may, in its discretion and in lieu of supplying the Purchased Credits, obtain mitigation credits from other mitigation banks and provide those credits to Buyer as long as doing so would not adversely impact Buyer. Paragraphs 3.a and 3.e shall survive the termination of this Agreement.

h. General. 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. This Agreement constitutes the entire agreement and understanding between the parties with respect to the purchase and sale of the Purchased Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to such matters. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of either party. This Agreement may not be changed, amended or modified except by an instrument in writing signed by both parties. The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal. This Agreement is not intended to create, and it shall not create, any partnership, joint venture, or similar arrangement between Buyer and Bank Sponsor. No party's failure or delay in exercising any of its rights hereunder will constitute a waiver of such rights unless expressly waived in writing.

[Signature Page Follows]

The parties have executed this Agreement effective as of the Effective Date.

BANK SPONSOR:

EBX-EM LLC,
a Delaware limited liability company

By: Environmental Banc & Exchange, LLC,
a Maryland limited liability company,
its manager

By: Resource Environmental Solutions, LLC,
a Louisiana limited liability company,
its manager

By: _____

Name: _____

Title: _____

Date: _____

[BUYER]

By: _____

Name: _____

Date: _____

Address: _____

Exhibit A

Bank: Iberia Bank
11 Greenway Plaza
Suite 2900
Houston, TX 77046

Routing No.: 265-270-413

Account No.: 20000-575453

Account Name: Resource Environmental Solutions, LLC Checking Account

For questions, please call Thomas Judice with Bank Sponsor at (225) 372-6113; or Yvonne Robinson with Iberia Bank at (713) 624-7715.

Exhibit B

Buyer Information:	[Name, address and phone number]
Permitting Agency:	[Name, address and phone number]
Permit Application Number and Date:	[Fill in]
Project Name & Location:	[Fill in]
Brief Description of Impacts to be Mitigated by the Credits:	[For example, impact on [x] wetlands, etc.]