

ORDINANCE NO. 23-170

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR WETLANDS MITIGATION CREDITS WITH STREAMS + WETLANDS FOUNDATION FOR THE LANDING PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City Commission declared their support for The Landing Park Project by Resolution No. 005-18R, passed on January 22, 2018; and

WHEREAS, the City Commission authorized and directed the City Manager to enter into an agreement for professional design services with Environmental Design Group, LLC, of Akron, Ohio, to complete pathway alignments, final engineering, landscape architectural design, environmental permitting, and acquisition services for certain sections of the Landing Project by Ordinance No. 18-127, passed on June 25, 2018; and

WHEREAS, Environmental Design Group, LLC is in the process of pursuing various environmental permits, surveys, and approvals on behalf of the City in order to complete the next step of the Landing Project, including wetland delineation; and

WHEREAS, the wetland delineation was originally completed in 2018 and was updated in 2022, and there are a total of 51 acres of wetlands on the Landing site with 1.2 acres being permanently impacted, but there are no mitigation banks within the Sandusky River Watershed that would accommodate the type of coastal wetlands being impacted; and

WHEREAS, Environmental Design Group, LLC is working with the United States Army Corps of Engineers to obtain approval for the City to purchase credits in adjacent watersheds, including from the Grafton Swamp Wetlands Mitigation Bank as part of the Black-Rocky Umbrella Mitigation Bank Instrument; and

WHEREAS, to facilitate the next step of the Landing Project, the City desires to enter into an agreement with Streams + Wetlands Foundation, of Lancaster, Ohio, for wetland mitigation credits; and

WHEREAS, through this mitigation credits purchase, the City will be allowed to purchase 0.1 acres of forested and 0.5 acres of non-forested, Category 3 wetland mitigation credits through the Stream + Wetlands Foundation; and

WHEREAS, the total cost of the mitigation purchase agreement is not to exceed \$39,000 and will be paid from the Capital Projects Fund; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to expend the funds for the down payment required by the agreement and secure the credits prior to September 9, 2023; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City

PAGE 2 - ORDINANCE NO. 23-170

of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into an agreement with Streams + Wetlands Foundation, for the purchase of wetland mitigation credits, attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as not being substantially adverse to the City and consistent with carrying out the terms of this Ordinance, at an amount **not to exceed** Thirty Nine Thousand and 00/100 Dollars (\$39,000.00).

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: August 28, 2023

**WETLAND MITIGATION PURCHASE AGREEMENT
BLACK-ROCKY UMBRELLA MITIGATION BANK INSTRUMENT
GRAFTON SWAMP WETLANDS MITIGATION BANK**

WHEREAS, entities proposing to place dredged or fill material into waters of the United States or waters of the State of Ohio, including wetlands, must comply with standards and conditions imposed by the Army Corps of Engineers (the "Corps") and/or the Ohio Environmental Protection Agency (the "Ohio EPA") pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and/or Ohio Revised Code Chapter 6111 including, in many cases, the mitigation of wetland impacts; and

WHEREAS, the Stream + Wetlands Foundation ("S+W") has participated in the Interagency Review Team ("IRT") review process and received approval from the IRT (which includes the Corps and Ohio EPA) to establish the Grafton Swamp Wetlands Mitigation Bank as part of the Black-Rocky Umbrella Mitigation Bank Instrument and to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands pursuant to the Section 404/401 permit process and Ohio's Isolated Wetland Permit process; and

WHEREAS, the Corps and the Ohio EPA have agreed to consider the purchase of wetland mitigation credits in an appropriate service area approved by the IRT to fulfill an entity's requirement to mitigate wetland impacts.

THEREFORE, The City of Sandusky ("Client") and S+W agree they will comply with the following guidelines and procedures by which Client will purchase wetland mitigation credits from S+W, representing the restoration of wetlands in the State of Ohio which will be permanently maintained and which will serve to mitigate wetland impacts permitted under Sections 404 and 401 of the Clean Water Act and in accordance with ORC Chapter 6111.

I. RESERVATION OF CREDITS AND PAYMENT TERMS FOR THE CLIENT

A. Pursuant to the requirements of Sections 401 and 404 of the Clean Water Act and the regulations promulgated thereunder and/or ORC Chapter 6111, Client is obligated to mitigate for impacts to 1.2 acres of jurisdictional wetlands and 0 acres of isolated wetlands at its The Landing site located at Cleveland Road in the City of Sandusky, Erie County, Ohio. Based on the sale price of \$65,000 per acre of mitigation credit, the Client hereby agrees to pay S+W the amount of \$39,000 in consideration for the purchase of 0.1 forested and 0.5 non-forested wetland mitigation credits at the Grafton Swamp Wetlands Mitigation Bank. S+W will reserve the necessary wetland credits for a period of six (6) months (the "Reservation Period") upon receipt of a signed Purchase Agreement and a deposit payment of \$5,850 (equal to 15% of the total expected sale price). If Client has not received the necessary approvals pursuant to Section 404 and/or 401 of the Clean Water Act or the Ohio Isolated Wetland Permit program during the Reservation Period, S+W will extend the Reservation Period for an additional 6-months upon receipt of an additional 15% deposit received prior to the expiration of the initial 6-month Reservation Period. The remaining balance shall be paid within 12-months of the date of this contract.

B. If the remaining balance is not paid in full within 12-months, the Client, at their sole discretion, may extend the Reservation Period an additional 12 months under the following terms:

- 1) Client notifies S+W in writing of its intent to extend the agreement beyond the second Reservation Period not less than 30 days after the expiration of the second Reservation Period.
- 2) At the end of the second Reservation Period, the unit price of the credits will change to match the current unit price for credits from the Grafton Swamp Bank Wetlands Mitigation Bank.

- 3) Client completes a third deposit payment not less than 30 days after the expiration of the second Reservation Period. The third deposit payment shall be equal to forty-five percent of the total purchase price, based on the current unit cost, less previous deposit payments.
 - 4) All deposit payments made by Client shall be applied towards the remaining balance due based current unit cost of the credits.
- C. The Client's initial 15% deposit is refundable if within the initial 6-month Reservation Period the Corps or the Ohio EPA denies Client's request for a permit for the wetland impact or if Client elects to withdraw their permit application, provided the Client notifies S+W in writing of the denial of its permit or its intention to withdraw its permit application prior to the expiration of the initial 6-month Reservation Period. After the initial 6-month Reservation Period all deposit payments are non-refundable and shall be retained by S+W. If the Reservation Period expires due to lack of timely completion of additional deposit payments after the initial 6-month Reservation Period, the wetlands credits will no longer be reserved for Client but will be available on a first-come basis to all clients of S+W. S+W will provide written notification of the termination of this Agreement to the Corps and/or Ohio EPA as applicable.
- D. **Within thirty (30) days of issuance of the latter of the Clean Water Act Section 404 permit and, if necessary, the Section 401 Certification or Ohio Isolated Wetland Permit, Client will tender the outstanding balance of the cost of the mitigation credits.** Upon permit issuance, Client will provide S+W with a copy of the Section 404 permit and, if applicable, the Section 401 Certification or the Ohio Isolated Wetland Permit. The Permit Issuance Date is the date of the wetland fill permit (Isolated Wetlands Permit, Clean Water Act Section 401/404 permits) issued for the project. If more than one wetland fill permit is required for the project identified in this agreement then the date of the last permit to be issued permit shall be considered as the Permit Issuance Date. If payment is not received by S+W by the end of the thirtieth day after the Permit Issuance Date the Client will be considered to be in **Default of Payment**. Should the Client be in Default of Payment, a **late payment penalty** of \$500 or 2.0% interest per month, whichever is greater, shall be applied to the outstanding balance from the Permit Issuance Date for each month or portion thereof until payment is received in full. It is the sole responsibility of the Client to ensure that they adhere to the terms of this agreement, including timely payment, and to the terms of the permit(s) issued to the Client for the project described in paragraph I(A).
- E. If the Client is in Default of Payment for greater than sixty days (i.e. more than 90 days from Permit Issuance Date), this agreement shall be terminated and the credits will not be reserved for the Client and all payments shall be forfeited to S+W as its sole remedy for liquated damages. In this case, the Client, the Corps and/or Ohio EPA (as applicable) shall be notified by S+W that this agreement has been terminated and the credits are no longer reserved for the Client.
- F. The Client shall have no other obligation other than the payments detailed in this agreement for future maintenance or remedial measures of the Grafton Swamp Wetlands Mitigation Bank.

II. OBLIGATIONS OF STREAM + WETLANDS FOUNDATION

- A. S+W has available for sale mitigation credits at the Grafton Swamp Wetlands Mitigation Bank which have been approved by the IRT to mitigate for certain wetland impacts.
- B. In consideration for the payment of \$39,000 (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, S+W hereby agrees to provide 0.6 acre of Category 3 wetland mitigation credits (as per paragraph I(A) of this agreement) at the Grafton Swamp Wetlands Mitigation Bank for the benefit of Client hereunder. S+W shall have all responsibility for assuring the restoration and the monitoring and maintenance of the wetlands as provided herein.
- C. S+W will provide written confirmation to the Client that full payment has been received for the purchase of wetland mitigation credits specified in this agreement.

III. GENERAL PROVISIONS

- A. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. Venue for the resolution of any dispute shall be in the Court of Common Pleas of Franklin County, Ohio or in the federal court in the Southern District of Ohio in Columbus, Ohio.
- B. The signatories hereto represent and covenant that they are authorized to execute this Agreement and to bind the respective parties to this Agreement.
- C. This Agreement is the entire agreement between S+W and Client and supersedes any prior agreements of communications relating thereto. No modification hereof or subsequent agreement related to the sale of ILFP credits described herein shall be binding on either party unless reduced to writing and signed by both parties hereof.

STREAM + WETLANDS FOUNDATION

Signed By: _____
Vincent E. Messerly, President
Date: _____
123 South Broad Street, Suite 238
P.O. Box 369
Lancaster, OH 43130

CLIENT City of Sandusky

Signed By: _____
Printed Name: John Orzech
Title: City Manager
Date: _____
Address: 240 Columbus Ave
Sandusky, OH 44870
E-mail: jorzech@cityofsandusky.com
Telephone: _____

CLIENT'S CONSULTING FIRM

Firm Name: Environmental Design Group
Contact Name: Brian Loushin
Address: 7965 N High St
Columbus, OH 43235
E-mail: bloushin@envdesigngroup.com
Phone Number: 614-352-2752

