

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2023 – 175

By: Mayor Perciak and All Members of Council

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO  
A WETLAND MITIGATION PURCHASE AGREEMENT IN  
CONNECTION WITH THE CITY OF STRONGSVILLE FOLTZ  
PARKWAY EXTENSION PHASE II PROJECT, AND  
DECLARING AN EMERGENCY.**

WHEREAS, by and through adoption of Ordinance No. 2020-001, Council authorized the Mayor to enter into an agreement with MS Consultants, Inc., a firm of professional engineers in order to provide engineering design and consulting services in connection with the Foltz Parkway Extension Phase II Project; and

WHEREAS, in order to obtain the required Army Corps Permit to construct the extension of Foltz Parkway Phase II, wetland credits must be purchased through the approved Wetlands Mitigation Bank; and

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 and/or the Ohio Environmental Protection Agency ("Ohio EPA"); and

WHEREAS, the Stream + Wetlands Foundation has participated in the review process and received approval from an Interagency Review Team, which includes the Army Corps of Engineers and the Ohio EPA, to establish the Grafton Swamp Wetlands Mitigation Bank as part of the Black-Rocky Umbrella Mitigation Bank Instrument, to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands pursuant to the permit process; and

WHEREAS, therefore, attached hereto as Exhibit A is a copy of the Stream + Wetlands Foundation Wetland Mitigation Purchase Agreement, which will enable the City of Strongsville to purchase the required wetland credits.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:


**Section 1.** That the Mayor be and is hereby authorized and directed to enter into the Wetland Mitigation Purchase Agreement, Black-Rocky Umbrella Mitigation Bank Instrument, Grafton Swamp Wetlands Mitigation Bank, attached hereto as Exhibit A, with the **STREAM + WETLANDS FOUNDATION**, in the initial deposit amount of \$59,475.00, which is required to immediately reserve the credits, and thereafter with a balance of \$337,025.00 to be due within thirty (30) days of issuance of the Permit, for a total purchase price of \$396,500.00 for the wetland credits.

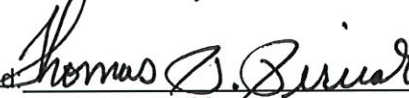
**Section 2.** That the Mayor, City Engineer and Director of Finance are hereby authorized to execute and do all things necessary to fully implement the terms and conditions of such Wetland Mitigation Purchase Agreement in accordance with their respective responsibilities thereunder and in accordance with law.

**Section 3.** That the funds necessary for implementing this Ordinance have been appropriated and shall be paid from the General Capital Improvement Fund.

**Section 4.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

**Section 5.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to enter into such agreement in order to purchase the wetland mitigation credits, and to conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

  
\_\_\_\_\_  
President of Council

Approved:   
\_\_\_\_\_  
Mayor

Date Passed: 12 18 2023

Date Approved: Dec. 18, 2023

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DeMio	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kaminski	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kosek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roff	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Short	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Attest:   
\_\_\_\_\_  
Clerk of Council

Ord. No. 2023-175 Amended: \_\_\_\_\_  
1<sup>st</sup> Rdg. 12-18-23 Ref: \_\_\_\_\_  
2<sup>nd</sup> Rdg. Suspended Ref: \_\_\_\_\_  
3<sup>rd</sup> Rdg. Suspended Ref: \_\_\_\_\_

Public Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
Adopted: 12-18-23 Defeated: \_\_\_\_\_

**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 Strongsville ("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 3.516 acres of jurisdictional wetlands and 0.00 acres of isolated wetlands at its Foltz Parkway Extension/Strongsville Technology Park site located at in the City of Strongsville, Cuyahoga 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 \$396,500 in consideration for the purchase of 4.0 forested and 2.1 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 \$59,475 (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 \$396,500 (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, S+W hereby agrees to provide 6.1 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 Strongsville

Signed By: 

Printed Name: Thomas P. Perciak

Title: Mayor

Date: 12-18-23

Address: 16099 Foltz Parkway

Strongsville, Ohio 44149

E-mail: sue.deluca@strongsville.org

Telephone: 330-580-3150

**CLIENT'S CONSULTING FIRM**

Firm Name: ms consultants, inc.

Contact Name: Karel Cubick

Address: One Cascade Plaza, Suite 1450

Akron, Ohio 44308

E-mail: kcubick@msconsultants.com

Phone Number: 330-258-9920