

## **ORDINANCE NO. 36-23**

**AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A WETLAND MITIGATION PURCHASE AGREEMENT IN THE AMOUNT OF \$137,500.00 WITH THE STREAM + WETLANDS FOUNDATION FOR THE PURPOSE OF RESERVING AND PURCHASING MITIGATION CREDITS FROM PINE BROOK WETLANDS MITIGATION BANK, AND DECLARING AN EMERGENCY.**

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 Pine Brook Wetlands Mitigation Bank 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 the purchase of wetland mitigation credits to fulfill the City's requirement to mitigate wetland impacts in relation to the Conneaut Creek Dredge Facility.

WHEREAS, the City of Conneaut, by the City Manager, upon the approval of Council, shall purchase wetland mitigation credits from the Stream + Wetlands Foundation.


**NOW, THEREFORE, BE IT ORDAINED, by the City of Conneaut, County of Ashtabula and State of Ohio:**

SECTION 1. That the City Manager, on behalf of the City of Conneaut, is hereby authorized and directed to enter into a Wetland Mitigation Purchase Agreement in the amount of \$137,500.00 with the Stream + Wetlands Foundation for the purpose of reserving and purchasing mitigation credits from Pine Brook Wetlands Mitigation Bank, attached hereto as Exhibit A.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council or any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is declared to be an emergency measure in the interests of public peace, health and safety and to facilitate the continuance of construction on the Conneaut Dredge Reclamation Facility and, shall take effect immediately upon passage and signing by the President of Council.

Passed this 27<sup>TH</sup> day of MARCH, 2023.

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

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

**WETLAND MITIGATION PURCHASE AGREEMENT  
PINE BROOK 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 Pine Brook Wetlands Mitigation Bank 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**, City of Conneaut ("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 5.13 acres of jurisdictional wetlands and 0.0 acres of isolated wetlands at its Conneaut Dredge Reclamation Facility site located at 950 Ford Avenue in the City of Conneaut, Ashtabula County, Ohio. Based on the sale price of \$55,000 per acre of mitigation credit, the Client hereby agrees to pay S+W the amount of \$137,500 in consideration for the purchase of 0 enhancement and 2.5 preservation wetland mitigation credits at the Pine Brook 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 \$20,625 (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 Pine Brook 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 Pine Brook Wetlands Mitigation Bank.

## II. OBLIGATIONS OF STREAM + WETLANDS FOUNDATION

A. S+W has available for sale mitigation credits at the Pine Brook Wetlands Mitigation Bank which have been approved by the IRT to mitigate for certain wetland impacts.

B. In consideration for the payment of \$137,500 (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, S+W hereby agrees to provide 0 enhancement and 2.5 preservation wetland mitigation credits (as per paragraph I(A) of this agreement) at the Pine Brook 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.

**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 Conneaut**

Signed By:

Printed Name: James Hockaday

Title: City Manager

Date:

Address: 294 Main Street

Conneaut, OH 44030

E-mail: manager@conneautoh.org

Telephone: 440-593-7401

**CLIENT'S CONSULTING FIRM**

Firm Name: CT Consultants Inc.

Contact Name: Carrie Ricker

Address: 8150 Sterling Court

Mentor, Ohio44060

Phone Number: 330-322-3691

Facsimile: \_\_\_\_\_