



**WETLAND MITIGATION PURCHASE AGREEMENT
BIG DARBY HELLBRANCH WETLANDS MITIGATION BANK**

WHEREAS, the discharge of dredged or fill material into waters of the United States and waters of the State of Ohio, including wetlands, is regulated pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and/or Ohio Revised Code Chapter 6111; and

WHEREAS, entities planning 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") including, in many cases, the mitigation of wetland impacts; and

WHEREAS, the Ohio Wetlands Foundation ("the Foundation") 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 Big Darby Hellbranch Wetlands Mitigation Bank and to sell wetland mitigation credits to entities required to mitigate for impacts to wetlands and other waters 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 Mason ("Client") and The Foundation agree they will comply with the following guidelines and procedures by which Client will purchase wetland mitigation credits from the Foundation, 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 0.133 acres of jurisdictional wetlands and 0 acres of isolated wetlands at its Bethany Road and Mason-Montgomery Road Intersection Improvement site located at the intersection of Bethany Road and Mason-Montgomery Road in the city of Mason, Warren County, Ohio. Based on the sale price of \$38,000 per acre of mitigation credit, the Client hereby agrees to pay the Foundation the amount of \$11,400 in consideration for the purchase of 0.30 acres of non-forested and 0 acres of forested wetlands mitigation credits at the Big Darby Hellbranch Wetlands Mitigation Bank. The Foundation will reserve the necessary wetland credits (acreage) for a period of six (6) months (the "Reservation Period") upon receipt of a signed Purchase Agreement and a deposit payment of \$1,140 (equal to 10% of the total 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, the Foundation will extend the Reservation Period for an additional 6 months upon receipt of an additional 10% deposit. This method of extending the Reservation Period (six months at a time) shall continue for a maximum period of 24 months. The remaining balance shall be paid within 24 months of the contract initiation date. If the remaining balance is not paid in full within 24 months, a new agreement will be necessary and the current price of mitigation credits will be applied to the new contract. If a new contract is completed, the deposit payments shall be applied towards the cost of credits in the new mitigation purchase agreement so long as all deposit payments have been made in timely manner by the Client.

B. The Client's initial 10% 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 the Foundation 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. If the Reservation Period expires due to lack of timely deposit payments, the wetlands credits will not be reserved for Client but will be available on a first-come basis to all clients of the Foundation. The Foundation will provide written notification of the termination of this Agreement to the Corps and/or Ohio EPA as applicable.

C. **Within thirty (30) days of issuance 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.** Client will also provide the Foundation with a copy of the Section 404 permit and, if applicable, the Section 401 Certification or the Ohio Isolated Wetland Permit or other approval to proceed. If payment is not received by the Foundation by the end of the thirtieth day after the Permit Issuance Date the Client will be considered to be in Default of Payment. 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 most recent permit shall be considered as the Permit Issuance Date. 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 it for the project described in paragraph I(A).

D. If the Client is in Default of Payment for greater than 90 days the Foundation may, at its sole discretion, elect to sell the reserved credits to a different client. In this case, the Client, the Corps and/or Ohio EPA (as applicable) shall be notified by the Foundation that this agreement has been terminated and the credits are no longer held in reserve for the Client. The Client's deposit payment will be forfeited to the Foundation at this time and may be applied to future mitigation purchases of the Client at the discretion of the Foundation.

E. The Client shall have no other obligation other than the payments detailed in this agreement for future maintenance or remedial measures of the Big Darby Hellbranch Wetlands Mitigation Bank.

II. OBLIGATIONS OF OHIO WETLANDS FOUNDATION

A. The Foundation has available for sale mitigation credits at the Big Darby Hellbranch Wetlands Mitigation Bank which have been approved by the IRT to mitigate for certain wetland impacts.

B. In consideration for the payment of \$11,400 (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, the Foundation hereby agrees to provide 0.30 acres of wetlands mitigation credit (as per paragraph I(A) of this agreement) at the Big Darby Hellbranch Wetlands Mitigation Bank for the benefit of Client hereunder. The Foundation shall have all responsibility for assuring the restoration and the monitoring and maintenance of the wetlands as provided herein.

C. The Foundation will provide written confirmation to the Client that full payment has been made for the purchase of wetland mitigation credits specified in paragraphs IA of this agreement.

OHIO WETLANDS FOUNDATION

Signed By: _____
Vincent E. Messerly, President

Date: _____

CLIENT City of Mason, Ohio

Signed By: _____

Printed Name: Eric Hansen

Title: City Manager, City of Mason, Ohio

Date: _____

Address: 600 Mason-Montgomery Road
Mason, Ohio 45040

Telephone: 513-229-8510

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CLIENT'S CONSULTING FIRM

Firm Name: American Structurepoint

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