

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2022-**66**

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO
PURCHASE WETLAND MITIGATION CREDITS FOR THE ABRAM CREEK
DETENTION BASIN PROJECT**

WHEREAS, flooding of public and private property has been a concern throughout the City of Middleburg Heights for many years; and

WHEREAS, the City purchased certain real estate in the City of Middleburg Heights to be used for the construction of Abram Creek Detention Basins; and

WHEREAS, the City must comply with standards and conditions imposed by the Army Corps of Engineers and/or the Ohio Environmental Protection Agency including the mitigation of wetland impacts; and

WHEREAS, mitigation banking aids in protecting nature and its diversity by offsetting the ecological loss of a development project by compensating for the preservation and restoration of a different area; and

WHEREAS, the Grafton Swamp Wetlands Mitigation Bank has been established to mitigate for impacts to wetlands and other waters; and

WHEREAS, mitigation credits at the Grafton Swamp Wetlands Mitigation Bank have become available to mitigate for certain wetland impacts; and

WHEREAS, the City is desirous of purchasing mitigation credits for the Abram Creek Detention Basin project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into an agreement to purchase wetland mitigation credits from Stream + Wetlands Foundation to mitigate impacts of the Abram Creek Detention Basin project, a copy of which is attached hereto and marked "Exhibit A".

Section 2: That there is hereby appropriated \$700,000.00 from the Streets/Infrastructure Capital Improvements Fund to implement this Ordinance.

Section 3: 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 and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: 6/28/22

Dad Bortolotto
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 6-29-22

Presented to Mayor: 6/29/22

Matthew Costello
Mayor

	Yea	Nay
Bortolotto	<input checked="" type="checkbox"/>	_____
Ali	<input checked="" type="checkbox"/>	_____
Sage	<input checked="" type="checkbox"/>	_____
Meany	<input checked="" type="checkbox"/>	_____
McGregor	<input checked="" type="checkbox"/>	_____
Ference	<input checked="" type="checkbox"/>	_____
Grech	<u>ASSENT</u>	

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-66 adopted by the Council of the City of Middleburg Hts., on 6/28/22 was posted for a period of fifteen days, beginning 6/30/22 and remained so posted for fifteen days at the two posting places as designated by Charter.
Mary Ann Meola
Clerk

CERTIFICATE

I, Mary Ann Meola, Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2022-66 passed on the 28th day of June, 2022 by said Council.

Mary Ann Meola
Clerk of Council

**WETLAND MITIGATION PURCHASE AGREEMENT
GRAFTON SWAMP 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 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 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, _____ ("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 _____ acres of jurisdictional wetlands and _____ acres of isolated wetlands at its _____ site located at _____ in the _____ of _____, _____ County, Ohio. The proposed impacts are located in the _____ Level III Ecoregion. Based on the sale price of \$60,000 per acre of mitigation credit and in tenth-acre increments (0.1), the Client hereby agrees to pay S+W the amount of \$_____ in consideration for the purchase of _____ acres of non-forested and _____ acres of forested wetlands mitigation credits at the Grafton Swamp Mitigation Bank. S+W 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 \$_____ (equal to 15% 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, S+W will extend the Reservation Period for an additional 6 months upon receipt of an additional 15% 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 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. 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 S+W. S+W 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 S+W 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 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. 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 for the project described in paragraph I(A).

D. If the Client is in Default of Payment for greater than 60 days S+W 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 S+W 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 S+W at this time and may be applied to future mitigation purchases of the Client at the discretion of S+W.

E. 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 Mitigation Bank.

II. OBLIGATIONS OF STREAM + WETLANDS FOUNDATION

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

B. In consideration for the payment of \$_____ (plus penalties, if applicable, as per paragraph I(C) of this Agreement) by Client, S+W hereby agrees to provide _____ acres of wetlands mitigation credit (as per paragraph I(A) of this agreement) at the Grafton Swamp 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 made for the purchase of wetland mitigation credits specified in paragraphs IA of 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 Middleburg Hts

Signed By: Matthew Castelli
Printed Name: Matthew Castelli

Title: Mayor

Date: 6-29-22

Address: 15700 Bagley Rd
Middleburg Hts
OH 44130

Telephone: 440-234-8811

Facsimile: _____

CLIENT'S CONSULTING FIRM

Firm Name: _____

Contact Name: _____

Address: _____

Phone Number: _____

Facsimile: _____