

Mitigation Agreement

This Mitigation Agreement is entered into at LaGrange, Ohio, the ____ day of _____, 2020, between the North Coast Regional Council of Park Districts (“NCRCPD”) and _____ (“Client”).

RECITALS

- A. The NCRCPD was organized to plan, develop and promote the restoration and rehabilitation of wetlands and has developed a regional mitigation bank known as the North Coast Regional Mitigation Bank (the “Regional Mitigation Bank”) containing mitigation sites in Wood, Sandusky, Erie, Lorain and Medina counties.
- B. Mitigation for unavoidable impacts to wetlands can be located at mitigation banks, such as the Regional Mitigation Bank, subject to regulatory approval on a project specific basis under the Clean Water Act (33 U.S.C. §§ 1251-1387) by the United States Army Corps of Engineers (the "COE") and/or the Ohio Environmental Protection Agency ("OEPA") under Chapter 6111 of the Ohio Revised Code.
- C. The Client desires to provide for the restoration and/or rehabilitation of wetlands at the Regional Mitigation Bank to be considered by the COE and OEPA as fulfilling the Client’s mitigation requirement pursuant to Sections 401 and 404 of the Clean Water Act or Chapter 6111 of the Ohio Revised Code.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Client and the NCRCPD agree to be bound by the following terms and conditions.

PROVISIONS

1. General Provisions

- A. The Client will complete Attachment 1 locating the project, and describing the wetland impacts and expected mitigation requirements for which the Client requests that mitigation be provided by the NCRCPD at its Regional Mitigation Bank. An executed copy of this Mitigation Agreement, Attachment 1 and the initial deposit should be returned to NCRCPD at the address set forth at the end of this Mitigation Agreement. The Client agrees that the NCRCPD has the right to substitute a revised Attachment 1 based on the actual acres mitigated.
- B. The initial mitigation deposit made by the Client shall be held by the NCRCPD in a separate fund until such time as the Client receives the necessary Clean Water Act permit or isolated wetland permit from the COE and/or the OEPA.
- C. If the COE denies the Client's request for a Section 404 individual or nationwide permit for the wetland impacts within six (6) months from the receipt of Client’s initial deposit, the Client may terminate this Mitigation Agreement and be refunded its deposit. If the OEPA denies the Client's request for a Section 401 water quality certification or isolated wetland permit within six (6) months from the receipt of Client’s initial deposit, the Client may terminate this Mitigation Agreement and be refunded its deposit.

D. If the Client fails to receive the necessary Clean Water Act permit(s) or isolated wetland permit from the COE and/or OEPA within six (6) months from the receipt of the Client's initial deposit, the NCRCPD has the right to terminate this Mitigation Agreement and refund the Client's deposit.

E. If the Client requires additional time to pursue and receive its Clean Water Act permit and/or isolated wetland permit, it shall request such additional time in writing, specifying the amount of additional time required. The NCRCPD shall have the right, but not the obligation, to grant such additional time. If the NCRCPD grants such additional time, then an additional mitigation deposit will be required to be deposited by the Client with the NCRCPD not later than five (5) days after the NCRCPD notifies the Client that such additional time has been granted.

F. Any request for a refund of Client's deposit after the initial six-month reservation period must be made within 12 months of the date the Client's Mitigation Agreement was ratified by the NCRCPD's Board of Representatives. If the Client has received its permit at the time of the refund request, any refund is contingent on the COE's reinstating the credits to the NCRCPD's mitigation bank ledger and upon the funds being available in that specific site's account. Thirty percent (30%) of the Client's deposit is nonrefundable.

2. Obligations of the Client

A. Pursuant to the requirements of Sections 401 and 404 of the Clean Water Act or the requirements of Chapter 6111 of the Ohio Revised Code, and the regulations promulgated by the COE and the OEPA, the Client is obligated to mitigate for wetland impacts at its project as more specifically described in Attachment 1. In order to mitigate for these impacts and meet the permit requirements of the Clean Water Act permit program and/or Chapter 6111 of the Ohio Revised Code, the Client hereby provides for the restoration and/or rehabilitation, monitoring and maintenance of wetlands as set forth herein.

B. The NCRCPD will apply the Client's payment to fund the restoration or rehabilitation of wetlands at the Regional Mitigation Bank. The Client hereby agrees to pay to NCRCPD in consideration for its restoration or rehabilitation of wetlands at the Regional Mitigation Bank the sum set forth in Attachment 1. The Client's initial deposit of ten percent (10%) of the mitigation cost will be based on the anticipated mitigation requirements at the time of execution of this Mitigation Agreement.

C. The balance of the Client's mitigation cost is due within ten (10) days following the issuance of the Clean Water Act permits or isolated wetland permit by the COE and/or the OEPA, copies of which will be provided by the Client to the NCRCPD. Should the Client's final mitigation requirements vary from its expected mitigation requirements, the Client will be notified by the NCRCPD of the balance of the mitigation cost due.

D. The purchase of mitigation bank credits does not diminish the Client's responsibility to comply with applicable federal, state or local laws.

E. Client shall have no other obligation for future payments for maintenance of the restored and/or enhanced wetlands.

3. Obligations of the North Coast Regional Council of Park Districts

A. The NCRCPD will restore and/or enhance wetlands at the Regional Mitigation Bank in accordance with the MBRT (Mitigation Bank Review Team) Agreement effective December 27, 2001, and will monitor and maintain the restored or enhanced habitats in accordance with the MBRT Agreement. All restored habitats will be integrated into the NCRCPD member district's county park system.

B. In consideration of the payment by the Client of the mitigation cost set forth in Attachment 1, the NCRCPD hereby agrees to restore and/or enhance wetlands at its Regional Mitigation Bank. The NCRCPD shall have sole responsibility to provide for the restoration and/or rehabilitation and the monitoring and maintenance of the wetlands as provided herein and in the MBRT Agreement.

C. The NCRCPD will provide an annual accounting to the COE and/or the OEPA of the restoration and/or rehabilitation of the wetlands in the Regional Mitigation Bank. The accounting will identify the Client, the mitigation site, and the acres of wetlands restored and/or enhanced pursuant to this Mitigation Agreement. In addition, the COE and OEPA will be supplied with annual monitoring reports for five (5) years documenting the development of the restored and/or enhanced wetland habitats.

D. The Client may submit the executed copy of this Mitigation Agreement to the COE and/or the OEPA to document its commitment to mitigate for permitted impacts to wetlands. Unless the COE and/or OEPA expressly condition the Client's Clean Water Act permit(s) or isolated wetland permit on a specific location, the NCRCPD reserves the right to locate the Client's mitigation at what the NCRCPD deems to be the most appropriate and/or proximate site within the Regional Mitigation Bank.

IN WITNESS WHEREOF, the parties hereto have executed this Mitigation Agreement on the date and year first written above.

CLIENT: _____
(Please print Client Name)

By: _____

Please print name: _____

Title: _____

Address: _____

Telephone: _____

Telecopy: _____

Email: _____

Date: _____

NORTH COAST REGIONAL COUNCIL OF PARK DISTRICTS

By: _____

Title: _____

Date: _____

Make Check Payable To: NCRCPD

Mail To: Neil Munger, Secretary, NCRCPD
C/o Wood County Park District
18729 Mercer Road
Bowling Green, Ohio 43402
Telephone: (419) 353-1897
Telecopy: (419) 353-7765
Email: nmunger@wcparks.org

**ATTACHMENT 1
TO BE COMPLETED BY CLIENT**

| | | | | | |
|---|-------------|--|------------|------------|-------|
| <u>Description</u> Name of Client's Project | | | | | |
| Location of Client's Project | | Street address; Township and County; coordinates of impact | | | |
| Impacts to Wetlands (in acres) | | HUC Code: | | | |
| | | Category 1 | Category 2 | Category 3 | Total |
| 404 Wetlands | Forested | | | | |
| | Nonforested | | | | |
| Isolated Wetlands | Forested | | | | |
| | Nonforested | | | | |
| Wetland Totals | | | | | |
| <u>Mitigation Requirements</u> Wetland Mitigation (in acres to nearest 1/10 acre). | | From permit application; amount and type specified by COE and/or OEPA. Provide copy of permit when issued. | | | |
| | | | | | |
| <u>Mitigation Costs</u> Wetland Mitigation @ \$____ per acre times acres required. | | | | | |
| <u>Mitigation Site*</u> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | | | | | |
| <u>Payment Terms</u> Initial: 10% on execution. | | | | | |
| Balance: due within 10 days of receipt of COE and/or OEPA permits or NCRCPD notification. | | | | | |
| <u>Total:</u> | | | | | |
| <u>Client's Name, Address, Telephone, Telecopy and Email:</u> | | | | | |
| <u>Consultant's Name, Address, Telephone, Telecopy and Email:</u> | | | | | |

*Service area descriptions can be reviewed at www.wetlandsandwatershed.com