

**The Nature Conservancy
Ohio Stream and Wetland In-Lieu Fee Mitigation Program**

PROJECT PARTNER AGREEMENT

**Walborn Reservoir Project
Stark County, Ohio**

This Project Partner Agreement (this "Agreement") is entered into by and between The Nature Conservancy, a District of Columbia nonprofit corporation (the "Conservancy"), and The Stark County Park District, an Ohio political subdivision ("Project Partner").

I. BACKGROUND AND ILF PROGRAM

The Conservancy sponsors an In-Lieu Fee Mitigation Program in the State of Ohio (the "ILF Program") pursuant to that certain "Ohio Stream and Wetland In-Lieu-Fee Mitigation Program Instrument" dated October 2, 2014, executed by TNC, the U.S. Army Corps of Engineers ("USACE") and the Ohio EPA (the "ILF Instrument"). The ILF Program provides compensatory mitigation for unavoidable adverse impacts to waters of the United States and State Waters that result from activities authorized under Section 404 of the Clean Water Act (33 U.S.C. 1344), the Ohio Revised Code (ORC Chapter 611 – Isolated Wetlands) and/or Ohio Administrative Code (OAC 3745-1) and/or Sections 9 or 10 of the Rivers and Harbors Act (33 U.S.C. §§ 401, 403).

II. PROJECT DESCRIPTION

Under the ILF Program, the Conservancy and Project Partner are cooperating in the implementation of the Walborn Reservoir In-Lieu Fee Mitigation Project (the "Project"), which is a wetland restoration project. The project will involve re-establishment of forested floodplain wetlands and expansion of the forested riparian corridor along an unnamed tributary to Deer Creek, which flows into Walborn Reservoir. As part of the Project, the Project Partner intends to commit approximately 76.3 acres of its land located in Stark County, Ohio, as described in the attached "Attachment A" as the "In-Lieu Fee Restoration Area" (the "Property"), to the Project and to provide perpetual protection of the Property.

III. COMPENSATION FOR SITE PROTECTION INSTRUMENT

Subject to the terms and conditions of this Agreement, the Conservancy agrees to compensate Project Partner for the encumbrance of the Property with a Site Protection Instrument (likely to be in the form of Environmental Covenants as described in Section VIII.C below) to provide for the perpetual protection of the Property. The compensation shall be the difference of the market value of the Property before the Site Protection Instrument is placed on the Property and its market value after the Site Protection Instrument is placed on the Property; provided, however, that such compensation shall not exceed \$1,000/acre unless agreed to by the Conservancy, and, if necessary, by the USACE. The before and after market values shall be determined by independent appraiser selected (and paid for) by the Conservancy, and approved by the Project Partner whose approval will not be unreasonably withheld. The compensation will be paid upon the recording of the Site Protection Instrument on the Property as provided in Section VIII.C below. Notwithstanding the foregoing, the payment of any compensation to Project Partner pursuant to this paragraph, including the amount, shall be subject to the prior approval of the Ohio Public Works Commission.

IV. EFFECTIVE DATE

This Agreement shall become effective upon execution by both parties.

V. CONTINGENCIES

This Agreement is contingent upon the following (the "Contingencies"):

- A. The Conservancy's receipt of an "Acknowledgement of Expenditures" from the U.S. Army Corps of Engineers ("USACE").
- B. Title examination confirming that the Property is not subject to any severed mineral rights.
- C. A Site Protection Instrument in substantially final form (the terms of which are mutually agreeable to the Conservancy, USACE and Project Partner) that will permanently protect the Property and that will be recorded on the Property upon approval of the Mitigation Plan.
- D. The Property abuts a public road or the Site Protection Instrument grants to the Conservancy a right of way over and across the adjacent property for the purpose of providing ingress and egress to the Property.
- E. The sale of an amount and type of mitigation credits from the ILF Program sufficient to fund the preliminary restoration budget outlined in the Draft Mitigation Plan for the Project, and the long-term management and protection of the Property.
- F. The Conservancy's completion and satisfaction of the due diligence on the Property as described below.
- G. [The Conservancy's formal corporate approval of the implementation of the Project in accordance with the Conservancy's standard business practices.](#)

VI. PROPERTY DUE DILIGENCE

- A. **Existing Property Documentation.** Within thirty (30) days after the execution of this Agreement, Project Partner agrees to provide the following documents to the Conservancy:
 1. Project Partner's deed of the Property,
 2. Title Policy of Insurance obtained by Project Partner, if any, and
 3. any existing survey of the Property.
- B. **Due Diligence.** The Conservancy will conduct the following due diligence and actions. The Conservancy agrees to pay the costs of its due diligence. The Project Partner hereby grants the Conservancy entry on the Property, and agrees to fully cooperate with the Conservancy in these efforts. Depending on the outcome of the due diligence, the Conservancy may determine not to proceed further with the Project and terminate this Agreement.
 1. [An appraisal of the Property providing the market value of the Property before the Site Protection Instrument is placed on the Property and its market value after the Site Protection Instrument is placed on the Property;](#)
 - 1-2. A "Phase I" environmental site assessment of the Property ("**Environmental Assessment**"), and such additional testings and investigations as the Conservancy may determine are appropriate for assessing the environmental condition of the Property.;
 - 2-3. a survey of the Property, if necessary as determined by the Conservancy;
 - 3-4. a title examination, which may include a title commitment or title opinion; and

4-5 such other inspections of the Property to confirm its suitability for the Project.

- C. **Project Partner Authority.** Project Partner will provide a certificate of Project Partner's authority for the execution, delivery and implementation of this Agreement, including without limitation: (i) recording of and compliance with the Site Protection Instrument, (iii) the implementation of the Mitigation Plan on the Property, including the implementation of the Long-Term Management Plan; and (iv) implementation of long-term stewardship of the Property.
- D. **Project Partner's Representations.** Project Partner makes the following representations with respect to the Property:
1. Project Partner is the sole owner of the Property in fee simple. The Property is not now subject to any lien, written or oral lease, mineral lease or agreement, government cost-share contract or other agreement that restricts either the use of the Property or the modification or removal of improvements, license, permit, option, agreement of sale, government farm program enrollment, claim or legal proceeding except: two oil and gas leases, ~~and~~ three pipeline rights-of-way, and deed restrictions in favor of the Ohio Public Works Commission (OPWC) contained in Instrument 200212230105176 recorded with the Stark County Recorder. No additional third party consents or approvals for the actions contemplated in this Agreement are required other than OPWC's consent or approval under the above referenced deed restrictions.
 2. There are no condemnation proceedings pending with regard to any portion of the Property and Project Partner does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the Property.
 3. Project Partner is not aware of any facts that would adversely affect the intended use of the Property for the Project.
 4. There have not been and there are not now any underground or aboveground storage tanks, septic tanks or wells located on or under the Property.
 5. Project Partner has not received any notices alleging that hazardous substances are on, in or under the Property.
 6. There is not now pending, nor, to Project Partner's knowledge, has there been threatened any legal action, suit, or proceeding which may impact the Property before any federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign.

Commented [SB1]: The property includes deed restrictions from OPWC. We may want to note that here.

VII. INTERIM PROPERTY PROTECTION.

- A. In order to maintain the integrity of the Property for the Project, Project Partner agrees to the following restrictions on the activities and uses on the Property beginning as of the effective date of this Agreement, except to the extent allowed in the Mitigation Plan:
1. No division or subdivision of the Property;
 2. No commercial development, residential development, or industrial activity on the Property;
 3. No placement or construction of any man-made modifications such as buildings, structures, fences, mobile homes, advertising, billboards, camping accommodations, roads, utilities, and parking lots on the Property.
 4. No clearing, cutting, or burning of trees, ground cover or vegetation, or destroying by means

Commented [SB2]: Stark Parks does intend to develop the property immediately to the east in the form of a parking lot, archery range, shelter and possibly playground. This would all be east of the project area.

Commented [KC3R2]: These restrictions would only cover the 76.3ac project area defined as the "Property" in section II.

of herbicides or pesticides on the Property except pursuant to an invasive species management plan jointly agreed to by the Conservancy and Project Partner.

5. No removal, filling, or excavation of soil, sand, gravel, rock, minerals, or other materials from the Property or doing any act that would alter the topography of the Property.
6. No building of new roads or other rights of way.
7. No off-road operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Property, except in connection with permitted uses of the Property hereunder or management of the Property, or as needed by law enforcement or in an emergency or otherwise approved by the Conservancy.
8. No waste, garbage, and hazardous or toxic materials are permitted and may not be accumulated on the Property.
9. Water courses, streams, wetlands and adjacent riparian areas may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Property.
10. Recreational uses that disturb or compact the soils or destroy or inhibit growth of vegetation are prohibited. However, recreational uses such as hunting and fishing, that do not require or result in any surface alteration or other development or disturbance of the land and that do not adversely affect the conservation values, are permitted to the extent approved by the Conservancy.

It is intended that development of multiuse or hiking trails for the Property will be included in the Mitigation Plan (including the restoration design) with the condition that their construction and use shall produce minimum levels of disturbance to the environment, they do not adversely impact streams and wetlands on the Property, their construction and use shall not be detrimental to the conservation values of the Property, and they are approved by USACE.

- ~~10-11.~~ No construction of utilities on the Property.
- ~~11-12.~~ Activities or construction projects which might adversely impact the Property or its conservation values are prohibited.
- ~~12-13.~~ No selling, leasing or encumbering, directly or indirectly, any interest in the Property without the Conservancy's prior written consent.

- B. The above restrictions will remain in effect until the Site Protection Instrument is executed and recorded on the Property for the perpetual protection of the Property. Project Partner grants the Conservancy and its employees, contractors, volunteers, and other representatives entry onto the Property to monitor the above restrictions. In the event of any failure to comply with these restrictions by Project Partner (whether within or beyond Project Partner's control), the Conservancy may terminate this Agreement. The Conservancy also has the rights and remedies set forth in Section IX of this Agreement.

VIII. MITIGATION PLAN AND LONG-TERM MANAGEMENT

The parties acknowledge and agree that the purpose of this Agreement is to implement the Project on the Property in accordance with a Mitigation Plan and protect the Property in perpetuity. "Mitigation Plan" as used herein shall mean the mitigation plan developed by the Conservancy and approved under the ILF Instrument for the Project, as such plan may be modified and adapted over time. The parties agree to the following terms:

Commented [SB4]: Stark Parks would like to work together on the long-term plan of trail locations so that if there are any opportunities to use any haul roads or wetland berms we can do that.

Commented [KC5R4]: Absolutely – I have added some language about trails to #10.

Commented [SB6]: Would they accept an exception for utilities that service the shelter, archery range and parking lot? Most likely utilities would come from Marlboro Drive and would not cross the project area.

Commented [KC7R6]: That won't be a problem if they don't cross the project area. If they do need to cross the project area, it would be good to know where they would cross as soon as possible so that we can exclude that area from the project.

A. **Access to the Property and Project Implementation.** Except to the extent as may be otherwise set forth in the Mitigation Plan, the Conservancy will be responsible for implementation of the Mitigation Plan on the Property through to the issuance of a Site Closure Letter (as described in the ILF Instrument). Project Partner grants the Conservancy and its employees, contractors, volunteers, and other representatives full access and entry onto the Property to implement the Mitigation Plan, which may begin prior to the satisfaction of the Contingencies or final approval of the Mitigation Plan to the extent necessary or appropriate. After issuance of the Site Closure Letter, the Conservancy and its employees, contractors, volunteers, and other representatives shall continue to have the right to enter the Property for any matters for which TNC may have retained responsibility in the Mitigation Plan or Site Protection Instrument, including without limitation, monitoring the long-term management of the Property and monitoring and enforcing the Site Protection Instrument. To the extent the Property does not abut a public road, Project Partner hereby grants to the Conservancy a right of way over and across the adjacent property owned by Project Partner for the purpose of providing ingress and egress to the Property for all purposes related to this Agreement.

During the implementation of the Project, the Conservancy shall have the right to restrict access to the Property by the Project Partner (including its staff, invitees, and the public) to the extent the Conservancy deems necessary or appropriate due to safety concerns or other reasonable purposes. In any event, Project Partner shall not interfere with the implementation of the Project, and shall ensure that any activities on the Property during Project implementation are coordinated and scheduled with the Conservancy to ensure no disturbance of the Project occurs.

B. **Long-Term Management.** ~~Pick correct option;~~

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The Conservancy agrees to be the Long-Term Steward of the Property as defined in the ILF Instrument and with the responsibilities described in the Long-Term Management Plan. The period of long-term management shall commence upon the issuance of the Site Closure Letter by the USACE as described in the ILF Instrument, to be issued after the Mitigation Plan has been implemented and monitored, and the performance standards have been achieved. The Long-Term Management Plan will be mutually agreed upon by the Conservancy, the Project Partner and USACE, and will be a part of the Mitigation Plan. The Conservancy may require that Project Partner and the Conservancy execute a separate agreement with respect to the Long-Term Management Plan. The Conservancy reserves the right to appoint a different party as Long-Term Steward of the Property, in whole or in part, and to transfer the responsibilities described in the Long-Term Management Plan. The Conservancy, any other appointed Long-Term Steward, and their respective employees, contractors, volunteers, and other representatives shall have full and free access and entry onto the Property to implement the Long-Term Management Plan. To the extent the Property does not abut a public road, Project Partner hereby also grants to the Long-Term Steward (and its employees, contractors, volunteers, and other representatives) a right of way over and across the adjacent property owned by Project Partner for the purpose of providing ingress and egress to the Property for all purposes related to this Agreement. The Conservancy and the Project Partner may agree to have the Project Partner be the Long-Term Steward. In such event, the parties will amend this Agreement to reflect this change.

Commented [SB8]: At this early stage of the project, Stark Parks would like to select this option, for the Conservancy to hold the long-term stewardship.

OR

~~After the project is implemented and the USACE has issued the Site Closure Letter to the Conservancy (meaning that the project has met all of its performance standards after up to ten years of maintenance and monitoring), the Project Partner agrees to be the Long-Term Steward of the Property to provide long-term management of the Property with the responsibilities described in the Long-Term Management Plan. The Long-Term Management Plan will be mutually agreed upon by the Conservancy, the Project Partner and USACE, and will be a part of the Mitigation Plan. Funding for the long-term management will be provided to the Project Partner through a non-wasting endowment managed by the Conservancy. The Conservancy will~~

~~make annual payments to the Project Partner to carry out the long-term management activities after submission of an annual management report that accounts for the previous year's long-term management activities and plans for the upcoming year's activities. Funds will be limited to the endowment's annual interest earnings. The Conservancy reserves the right to appoint a different party as Long-Term Steward of the Property, in whole or in part, and to transfer the responsibilities described in the Long-Term Management Plan. The Conservancy, any other appointed Long-Term Steward, and their respective employees, contractors, volunteers, and other representatives shall have full and free access and entry onto the Property to implement the Long-Term Management Plan.~~

- C. **Site Protection Instrument.** Within thirty (30) days after the approval of the Mitigation Plan, Project Partner (as landowner) and the Conservancy (as holder) shall execute and record the Site Protection Instrument to ensure the perpetual protection of the Property. This is likely to be in the form of Environmental Covenants pursuant to Ohio Revised Code Sections 5301.80 to 5301.92. Project Partner shall comply with the terms of said instrument, which the Conservancy (or such other organization) may have the right to enforce, and which the USACE and OH EPA may also have the right to enforce.

VIII. SUBSEQUENT TRANSFER

Project Partner agrees not to transfer the Property or any interest therein prior to the recording of the Site Protection Instrument without the Conservancy's prior written approval. Any approved transfer shall be subject to the Site Protection Instrument (which, if not yet recorded, shall be finalized and recorded as a condition of the transfer).

IX. TERMINATION AND REMEDIES

This Agreement may be terminated for the following reasons:

- a. if in the judgment of the Conservancy, the Project Partner defaults in the performance of Project Partner duties under this Agreement, whether for circumstances within or beyond the control of the Project Partner, and the default is not cured within sixty (60) days after Project Partner's receipt of notice of default;
- ~~a-b. the Conservancy does not receive final approval of the Mitigation Project from USACE;~~
- ~~b-c. the Mitigation Project or ILF Instrument is terminated by USACE or Ohio EPA; or~~
- ~~c-d. by the mutual agreement of the parties.~~

~~**Insert if Partner is receiving Long-Term Stewardship Funds:** Upon termination, the Project Partner shall take all necessary action to cancel outstanding commitments under this Agreement and shall return any remaining funds for Long-Term Stewardship provided to it under VII.B above which have not been spent; provided, however, that in the event of termination not due to default of Project Partner, the Conservancy agrees to pay any unpaid obligations allowed under this Agreement which have been incurred by the Project Partner that could not reasonably be canceled.~~

~~**In the event of termination prior to the recording of the Site Protection Instrument, the Conservancy shall be relieved of any obligation to pay the compensation described in Section III above to the Project Partner.** Should termination occur as a result of Project Partner's default, the Conservancy may, without limiting any other remedies available to it under applicable law, recover damages from Project Partner resulting from Project Partner's default and may **require a refund of the compensation paid for the Site Protection Instrument.**~~

XI. LIABILITY

Project Partner shall be solely responsible for any and all claims and liability for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of Project Partner, its employees or agents in connection with the performance of this Agreement.

The Conservancy shall be responsible for any and all claims and liability for loss, personal injury, death, damage, or otherwise, arising out of any act or omission of the Conservancy, its employees, [contractors](#), or agents in connection with the performance of this Agreement. [The Conservancy will use commercial reasonable efforts to require its general contractor\(s\) constructing the Project on the Property to carry insurance, have Project Partner named as an additional insured on the contractor's insurance, and indemnify Project Partner for third-party claims arising from the contractor's presence on the Property.](#)

Without limitation of the foregoing, Project Partner shall be liable for any activities initiated by Project Partner on the Property which hinder the success of the Mitigation Project on the Property or result in the delay in the achievement of the performance standards.

XII. MISCELLANEOUS PROVISIONS

- A. **Additional Obligations.** This Agreement and the parties' obligations are subject to the ILF Instrument, as the same may be amended. Accordingly, the Project Partner agrees to comply with requirements imposed by the USACE, Ohio EPA or the ILF Instrument in connection with the Property or Mitigation Project.
- B. **Acknowledgements.** Each party agrees to acknowledge the other in all media announcements, programs and publications about the Project. Any other use of a party's name shall be subject to the prior written approval of the other party.
- C. **Assignment.** This Agreement is not assignable by either party.
- D. **No Agency.** No legal partnership or agency is established by this Agreement. Neither party is authorized or empowered to act as an agent, employee or representative of the other, nor transact business or incur obligations in the name of the other party or for the account of the other party. Neither party shall be bound by any acts, representations, or conduct of the other.
- E. **Use of Conservancy Name/Logo.** The Project Partner may not use the Conservancy's name and/or logo in any way without prior written consent from the Conservancy, except as set forth in subparagraph B above or to the extent the activities performed contemplates their inclusion in required reports.
- F. **Compliance with Laws.** The Project Partner represents, warrants, and agrees that, in connection with the transactions contemplated by this Agreement, the Project Partner shall comply with all statutes, laws, ordinances, rules, regulations, court orders, and other governmental requirements of the United States, the State of Ohio, and any other jurisdiction(s) in which the Project Partner is organized or authorized to do business, including but not limited to any applicable anti-bribery statutes, which are applicable to the work to be done by the Project Partner under this Agreement (in each case, an "Applicable Law"). The Project Partner shall not take any actions that might cause the Conservancy to be in violation of any of such Applicable Laws.
- G. **Choice of Law/Forum.** This Agreement shall be interpreted, construed and governed by the laws of Ohio and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this Agreement, the Conservancy and the Project Partner agree that litigation shall be conducted in the State of Ohio.

- H. **Binding Effect/Amendments.** This Agreement shall become binding when signed by the parties. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Agreement between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties.
- I. **Severability.** If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.
- J. **Recording.** Upon the development of a final legal description for the Property, the parties intend to record this Agreement (as it may be amended to incorporate such legal description), or a notice of this Agreement, with the Stark County Recorder.

[Signatures on following page.]

DRAFT

THE NATURE CONSERVANCY

By: _____

Name: Bill Stanley _____

Title: Ohio State Director _____

Date: _____

STARK COUNTY PARK DISTRICT

By: _____

Name: _____

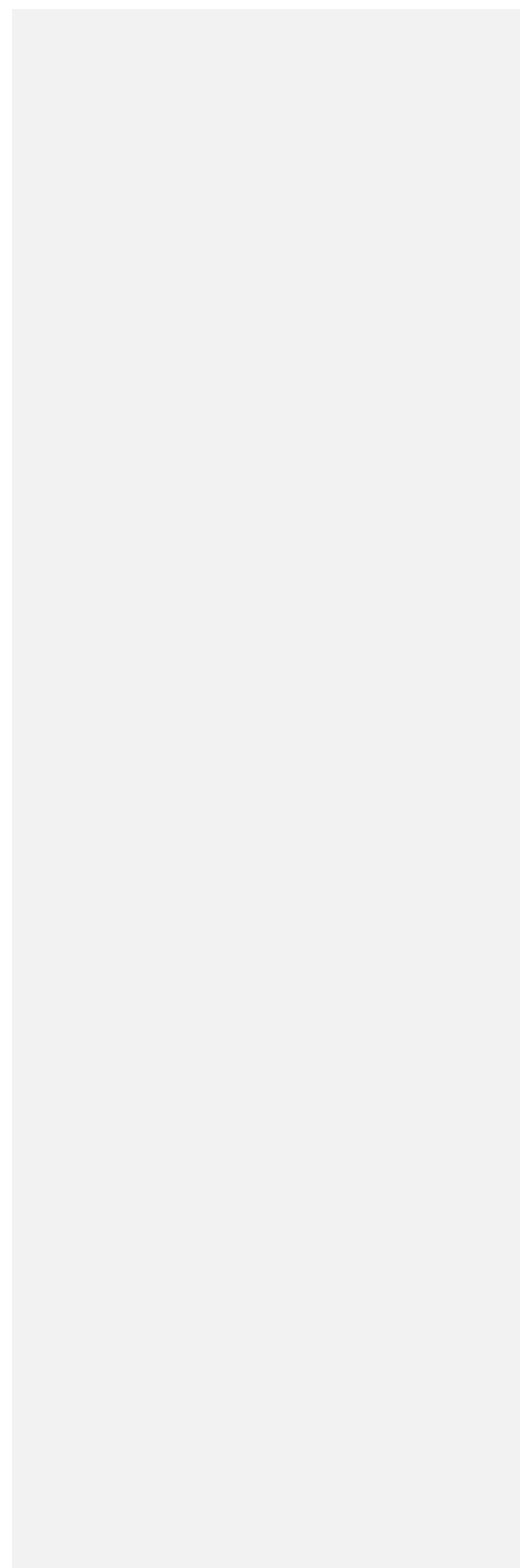
Title: _____

Date: _____

Attachments:

Attachment A – Map of Property

DRAFT



ATTACHMENT A

