

**RESOLUTION NO. 59-23**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER Duke Lunsford ON THE  
26<sup>th</sup> DAY OF June, 2023.

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO A MITIGATION CREDIT RESERVATION  
AND PURCHASE AGREEMENT FOR THE PURCHASE  
AND TRANSFER OF STREAM MITIGATION BANK  
CREDITS WITH WATER AND LAND SOLUTIONS, LLC.**

**WHEREAS**, Water and Land Solutions, LLC (“LLC”), is the sponsor and owner of a certain mitigation bank identified as Dieckbrader Mitigation Bank, U.S. Army Corps of Engineers (“USACE”) Action No.: LRH-2022-00163- LMR, located in the Little Miami watershed (HUC 050090202) (the “Mitigation Bank”). The establishment, use, operation, and maintenance of the Mitigation Bank, including the sale and transfer of stream mitigation bank credits (“Mitigation Credits”), are subject to the requirements of that certain Dieckbrader Mitigation Bank Banking Instrument (“MBI”) approved by the Interagency Review Team (“IRT,” as defined in the MBI) on December 8, 2022; and

**WHEREAS**, The City of Centerville (“City”) is undertaking the development and/or construction of the project commonly known as the SOCIAL ROW ROAD DEVELOPMENT (PROJECT No. 23438) (“Project”) located in Montgomery County, Ohio (the “Development Impacts”) and in connection therewith has applied for certain permits from an USACE Permit Application; and


**WHEREAS**, the LLC desires to sell, and the City desires to buy 154 Stream bank credits and 0.73 Forested wetland credits (“Purchased Credits”) generated from the Mitigation Bank for the City to mitigate for the Development Impacts for the purchase amount of \$99,160.00.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF  
THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS  
FOLLOWS:**


Section 1. The City hereby agrees to enter into a Mitigation Credit Reservation and Purchase Agreement with Water and Land Solutions, LLC, for the Project; and the City Manager is hereby authorized to execute the Agreement attached hereto as Exhibit “A”, and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 26<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
Mayor of the City of Centerville, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 59-23, passed by the Council of the City of Centerville, Ohio on the 26<sup>th</sup> day of June, 2023.

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

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions  
Department of Law  
Scott A. Liberman  
Municipal Attorney

**MITIGATION CREDIT RESERVATION AND PURCHASE AGREEMENT**

THIS MITIGATION CREDIT PURCHASE AGREEMENT (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date"), by and between WATER AND LAND SOLUTIONS, LLC, as seller ("Seller"), and the CITY OF CENTERVILLE as purchaser ("Purchaser").

**RECITALS**

A. Whereas Seller is the sponsor and owner of that certain mitigation bank identified as Dieckbrader Mitigation Bank, U.S. Army Corps of Engineers ("USACE") Action No.: LRH-2022-00163-LMR, located in the Little Miami watershed (HUC 050090202) (the "Mitigation Bank"). The establishment, use, operation, and maintenance of the Mitigation Bank, including the sale and transfer of stream mitigation bank credits ("Mitigation Credits"), are subject to the requirements of that certain Dieckbrader Mitigation Bank Banking Instrument ("MBI") approved by the Interagency Review Team ("IRT," as defined in the MBI) on December 8, 2022.

B. Whereas Purchaser is undertaking the development and/or construction of the project commonly known as **SOCIAL ROW ROAD DEVELOPMENT (PROJECT No. 23438)** located in Montgomery County, Ohio (the "Development Impacts") and in connection therewith has applied for certain permits from USACE Permit Application TBD NWP.

C. Whereas Seller desires to sell, and Purchaser desires to buy **154 Stream** bank credits and **0.73 Forested wetland credits** ("Purchased Credits") generated from the Mitigation Bank for Purchaser to mitigate for the Development Impacts, as more particularly set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and the mutually dependent covenants contained herein and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, and intending to be legally bound, Seller and Purchaser agree to the following terms and conditions:

1. **Reservation and Sale of Credits.**

(a) Reservation of Credits. So long as Purchaser delivers to Seller this Agreement signed by Purchaser together with a cash deposit in the amount of **Nineteen Thousand Eight Hundred Thirty-Two Dollars and no Cents (\$19,832.00)** (the "Deposit"), Seller agrees to reserve the Reserved Credits for Purchaser and its project until the Closing Date (as such term is defined in Section 5 below); (the "Reservation Period"). The Deposit shall, except in the case of default by Seller hereunder, be non-refundable to Purchaser.

2. **Sale of Credits.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign, convey and transfer to Purchaser, and Purchaser agrees to purchase from Seller, the Purchased Credits, solely to mitigate for the Development Impacts. The parties acknowledge that the Section 404 permit process, and, if necessary, the Section 401 certification process under the Clean Water Act must be completed prior to Closing (defined below) and Purchaser may use this Agreement to satisfy its mitigation requirements for the Development Impacts as Purchaser is required to do under TBD NWP permit issued by the U.S. Army Corps of Engineers Huntington District.

3. **Purchase Price.** The aggregate purchase price for the Purchased Credits shall be **Ninety-Nine Thousand One Hundred Sixty Dollars and no cents (\$99,160.00)** (the “Purchase Price”), determined as follows:

a) Purchaser shall pay **Sixty-Two Thousand Dollars and no cents (\$62,000.00)** per wetland credit for 0.73 Wetland Mitigation Credits for a total of **Forty-Five Thousand Two Hundred Sixty Dollars and no cents (\$45,260.00)**.

b) Purchaser shall pay **Three Hundred Fifty Dollars and no cents (\$ 350.00)** per stream credit for 154 Wetland Mitigation Credits for a total of **Fifty-Three Thousand Nine Hundred Dollars and no cents (\$53,900.00)**.

4. **Payment of Purchase Price.** The Purchase Price shall be paid by Purchaser to Seller in the following manner:

(a) Deposit. Simultaneous with Purchaser’s execution and delivery to Seller of this Agreement, Purchaser shall deliver to Seller a cash deposit by wire transfer or check in the amount of **Nineteen Thousand Eight Hundred Thirty-Two Dollars and no Cents (\$19,832.00)** (the “Deposit”). The Deposit shall, except in the case of default by Seller hereunder, be non-refundable to Purchaser and shall be applied toward the Purchase Price at Closing.

(b) Balance of Purchase Price. The Purchase Price, *less* the Deposit(s) paid pursuant to Section 1(a) above, shall be paid wire transfer to Seller of immediately available funds at Closing in full satisfaction of the Purchase Price.

5. **Closing.** Closing on the purchase and sale of the Purchased Credits (“Closing”) shall occur electronically not later than 12/15/2023. Notwithstanding any provision of this Agreement to the contrary, if the Closing has not occurred within one hundred eighty (180) days after the Effective Date, Seller, in its sole discretion, may terminate this Agreement at any time without any rights, obligations or liability to Purchaser whatsoever, and, effective upon such termination, Purchaser shall forfeit the Deposit and Seller shall be entitled to retain the Deposit.

6. **Buyer’s Deliveries.** At Closing, Buyer shall deliver to Seller the balance of the Purchase Price as provided in Section 3 above.

7. **Seller’s Deliveries.**

(a) a BILL OF SALE in the form attached hereto at Exhibit A in proper form and duly executed by Seller, (and/or any other documents as are reasonably necessary) evidencing the sale of the Purchased Credits to Purchaser; and

(b) Not more than ten (10) calendar days following Closing, Seller shall deliver, or cause to be delivered, to Purchaser a copy of Seller’s ledger entry, or other documentation in a form satisfactory to the parties, recording the sale of the Purchased Credits to Purchaser as provided herein and debiting the Purchased Credits sold to Purchaser against the outstanding Wetland bank credits generated from the Mitigation Bank.

8. **Closing Costs.** Seller shall pay the cost of preparing the bill of sale, any taxes and costs customarily paid by sellers of Credits, and Seller's attorney's fees. Purchaser shall pay the cost of any inspections and investigations, any taxes and costs customarily paid by purchasers of Credits, Purchaser's attorney's fees and other costs of Closing, if any.

9. **Limitations on Purchaser's Rights.** Seller's sale and conveyance of the Purchased Credits to Purchaser shall not constitute the conveyance or transfer of any right, interest or ownership in real property, nor shall such sale and conveyance impose upon Purchaser any right, obligation, duty or liability arising from or incident to any right, interest or ownership in real property.

10. **Default.**

(a) **By Purchaser.** If Purchaser fails to make any payment required of it hereunder in a timely manner, or fails to otherwise perform any of its other material obligations under this Agreement, or if any representation or warranty provided by Purchaser in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, Purchaser shall be deemed to be in default and, at Seller's election, in its sole and absolute discretion, Seller may terminate this Agreement and all of Seller's obligations hereunder. Upon any such termination, (A) if prior to Closing, (i) the Deposit shall be forfeited to Seller, (ii) Purchaser shall lose all of its right and privilege to purchase the Purchased Credits from Seller, (iii) Seller may notify, if required by law, USACE or other required state or authority of Purchaser's failure to fulfill its obligations under this Agreement; and (B) if after Closing (or is discovered by Seller after Closing), Seller shall have the right to pursue all remedies as may be available to Seller at law or in equity. All rights and remedies of Seller hereunder shall be cumulative and not mutually exclusive of one another.

(b) **By Seller.** If Seller defaults in performing any of Seller's material obligations under this Agreement, and such default continues for a period of thirty (30) days after Purchaser has provided written notice to Seller of such default, or if any representation or warranty provided by Seller in this Agreement proves to have been misleading or false in any material respect when made or as of Closing, then Seller shall be deemed to be in default and (i) if prior to Closing, Purchaser's sole remedies shall be to terminate this Agreement by providing written notice thereof to Seller, and to receive a refund of the Deposit, in which event neither party shall have any further rights or obligations hereunder, except as expressly provided herein; or (ii) if after Closing (or such default is discovered by Purchaser after Closing), Purchaser shall have the right to pursue such remedies as may be available to it at law or in equity.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTINUED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL ANY OTHER LIABILITY BE INCURRED BY EITHER PARTY FOR ANY OBLIGATIONS WHICH ARISE UNDER THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES IN TORT, CONTRACT OR OTHERWISE. EXCEPT AS OTHERWISE PROVIDED UNDER THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING THE MERCHANTABILITY OF THE PURCHASED CREDITS OR, WITH RESPECT TO THE PURCHASED CREDITS, ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY GOVERNMENTAL AUTHORITY. REDRESS FOR ANY CLAIM AGAINST SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO AND ENFORCEABLE ONLY AGAINST AND TO THE EXTENT OF SELLER'S INTEREST IN THE MITIGATION BANK. THE OBLIGATIONS OF SELLER AND PURCHASER UNDER THIS AGREEMENT ARE NOT INTENDED TO BE AND SHALL NOT BE PERSONALLY BINDING ON, NOR SHALL ANY RESORT BE HAD

TO THE PRIVATE PROPERTIES OF, ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, BENEFICIARIES, MEMBERS, STOCKHOLDERS, EMPLOYEES, OR AGENTS.

(d) This Section 10 shall survive Closing or earlier termination of this Agreement.

11. **Term and Termination.** This Agreement shall be effective upon the date that all signatures and approvals are obtained. This Agreement shall commence on the Effective Date and shall terminate upon Closing, unless earlier terminated pursuant to any other provision in this Agreement.

12. **Representations and Warranties.** Each of Seller and Purchaser represents and warrants to the other now and as of Closing that: (i) it is organized and validly existing under the laws of the jurisdiction of its organization or incorporation; and (ii) it has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other relevant documentation and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance.

13. **Miscellaneous.**

(a) **No Joint Venture.** This Agreement is made solely for the purposes set forth herein and no joint venture, partnership or other relationship between Purchaser and Seller is created hereby.

(b) **No Third-Party Beneficiary.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and authorized assigns. The Agreement does not create or convey any rights, benefits or interests on behalf of any other person.

(c) **Assignment.** This Agreement may not be assigned by Purchaser without Seller's prior written consent in Seller's sole and absolute discretion, and any assignee shall assume the rights and obligations of its assignor.

(d) **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreement, written or oral. This Agreement may be modified only by a written instrument duly executed by Seller and Purchaser.

(e) **Choice of Laws.** This agreement shall be construed, performed and enforced under the laws of the State of Ohio.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts by the parties. All counterparts shall collectively constitute a single agreement.

(g) **Notices.** All notices shall be in writing and sent by hand, facsimile transmission, overnight delivery service or certified mail, return-receipt requested, to the following addresses (or such other addresses as either party may designate to the other from time to time by written notice) and any such notice of other communication shall be deemed to have been given on the day so delivered or refused by the party to whom such notice was sent (it being acknowledged that a facsimile or an e-mail transmission shall not be deemed to be a "writing"):

If to Seller:           Water & Land Solutions, LLC  
                                  Attn: Tommy Cousins  
                                  7721 Six Forks Road, Suite 130  
                                  Raleigh, NC 27615

With a copy to: Michael Best & Friedrich LLP  
Attn: Michael S. Green, Esq.  
1 South Pinckney Street, Suite 700  
P.O. Box 1806  
Madison, WI 53701-1806

If to Purchaser: City of Centerville  
Attn: Mr. Wayne Davis  
3100 West Spring Valley Road  
Centerville, OH 45458

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed on their behalf by their duly authorized representatives as of the date first written above.

**SELLER:**

WATER & LAND SOLUTIONS, L.L.C.

By: \_\_\_\_\_

Name: Tommy Cousins

Title: President

**PURCHASER:**

CITY OF CENTERVILLE

By: \_\_\_\_\_

Name:

Title:



EXHIBIT A

**BILL OF SALE**

This Bill of Sale is made by Water & Land Solutions, LLC ("Seller") to **City of Centerville** ("Purchaser").

WHEREAS, Seller and Purchaser have entered into that certain Mitigation Credit Reservation and Purchase Master Agreement dated as of \_\_\_\_\_ ("Purchase Agreement"), with respect to the sale and purchase of stream bank credits generated within the Dieckbrader Mitigation Bank in Greene County, Ohio, LRH-2022-00163-LMR ("Mitigation Site").

NOW THEREFORE, for and in consideration of the payment of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, assigns, conveys and transfers to Purchaser **154 stream bank credits and 0.73 forested wetland bank credits** from the Mitigation Site, for the purpose of Purchaser's mitigation of impacts to that certain property commonly known as **Social Road Row Development (Project No. 23438) project**.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Water & Land Solutions, LLC

\_\_\_\_\_  
By: Kae Hovater, Authorized Agent