

ODOT AGREEMENT NO. 18218

**AGREEMENT FOR STREAM MITIGATION
(PROJECT PID 19415)**

**BETWEEN
STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
AND
WETLANDS RESOURCE CENTER**

This Agreement for Stream Mitigation (this "Agreement") is made by and between the State of Ohio, Department of Transportation (the "ODOT"), 1980 West Broad Street, Columbus, Ohio, 43223, and Wetlands Resource Center ("WRC"), a full service wetland and stream impacts mitigation company, with a local address of 3970 Bowen Road, Canal Winchester, Ohio 43110.

ARTICLE I: PURPOSE

- 1.1 ODOT has identified as a transportation objective, which is in the public interest and for the public safety, the construction of a federal aid highway project on State Route 823 in the Villages of Lucasville, Minford, Wheelers Mill, the City of Portsmouth and Jefferson & Harrison Townships, Scioto County, hereinafter known as the "Project." ODOT has programmed this Project as Project PID 19415.
- 1.2 ODOT is required by Federal and State law to mitigate the environmental impacts, including any impacts to streams or wetlands that may occur as a result of the Project. In order to receive a Section 401 Water Quality Certification from the Ohio Environmental Protection Agency ("Ohio EPA"), and a Section 404 permit from the US Army Corps of Engineers ("USACE") (Ohio EPA and USACE, hereinafter collectively referred to as the "Permitting Agencies") to proceed with the construction of the Project, ODOT must submit to the Permitting Agencies an acceptable stream mitigation plan, and provide stream mitigation that can be approved by the agencies.
- 1.3 Section 5501.31 of the Ohio Revised Code provides that the Director of Transportation may purchase and/or appropriate land to replace streams and wetlands, incident to any highway improvement that the Director is or may be authorized to locate or construct.
- 1.4 In lieu of a direct purchase or appropriation of land by ODOT, the Director has determined that it is in the public interest to coordinate its mitigation efforts with WRC. WRC is a full service mitigation company, which provides mitigation to meet all regulatory requirements, including: site acquisition, design, construction, monitoring, maintenance, long term protection and long term stewardship of mitigation projects that are acceptable to the Permitting Agencies.
- 1.5 The purpose of this Agreement is to set forth the responsibilities of the parties in the preparation of a Conceptual Stream Mitigation Plan, preparation of a Final Stream Mitigation Plan (hereinafter referred to collectively as the "Plans"), full implementation of the plans, and long term management, monitoring, and protection of the delivered mitigation.

ARTICLE II: STATEMENT OF WORK

- 2.1 Phases 2 and 3 of the Project will impact streams regulated by the Permitting Agencies. ODOT will compensate the WRC to prepare and implement the Plans and to provide mitigation equivalent to 65,296 Linear Feet (LF) of stream. The Plans will identify stream mitigation to be established in areas identified by WRC, hereinafter to be known as the "Stream Mitigation Properties" (SMP). The SMPs shall be identified in the Final Stream Mitigation Plan along with the proposed preservation and restoration efforts to be implemented to mitigate the stream impacts associated with the Project. The preferred location of the SMPs is within the Lower Scioto Hydrologic Unit Code 05060002 and the Little Scioto-Tygarts Hydrologic Unit Code 05090103 (map attached as Exhibit 1); provided, however, that SMPs may be located within other 8 digit Hydrologic Unit Code areas within the State of Ohio subject to the approval of the Permitting Agencies.
- 2.2 WRC agrees to provide all professional services necessary to develop and implement the Plans in accordance with the U.S. Army Corps of Engineers (USACE) 2008 Mitigation Rule (attached as Exhibit 2) as applied to permittee-responsible mitigation and the USACE Mitigation Guidelines Checklist for the State of Ohio (attached as Exhibit 3) (collectively, the "USACE Mitigation Requirements").
- 2.3 The stream mitigation types could include: preservation of high quality streams (class 2 intermittent, warm water habitat or higher quality, riparian habitat and buffers; restoration of degraded or impaired streams, riparian habitat and buffers; and/or implementation of watershed ecosystem restoration projects. Preservation shall be long-term protection of the stream and associated riparian buffers. Buffers shall not be less than 75 feet from the centerline of the stream on both sides for streams with drainage areas of 1 square mile or less. For streams with drainage areas greater than 1 square mile, buffers shall not be less than 100 feet from the centerline on both sides of the stream. Exceptions to these dimensions will be considered by ODOT if a mitigation opportunity exhibits high quality or unique characteristics. Restoration of impaired or degraded areas shall constitute at least 30% of the provided stream mitigation requirement, and must produce a measureable ecological lift for the restored resource.
- 2.4 WRC agrees to conduct or cause to occur all monitoring, management, and preservation of all SMPs.
- 2.5 WRC agrees to maintain all the SMPs as outlined in the performance standards of the 404 and 401 permits issued for the Project in order to achieve release of all mitigation obligations from the Permitting Agencies at the end of the monitoring period for each SMP. If all obligations are not met, then WRC will remedy the deficiency or provide replacement mitigation that is acceptable to the Permitting Agencies and ODOT at no additional cost to ODOT.
- 2.6 After the required monitoring period and release by the Permitting Agencies, WRC, or the long term steward of the SMP(s), shall provide ODOT with a report every 10 years documenting that all SMPs are meeting the restrictions of the protective instruments.
- 2.7 Work will occur in twelve (12) items, as per the schedule of payments provided in Section 6.2 of Article VI of this Agreement. Items one (1) through four (4) are

development, submittal and approval of the conceptual and final mitigation plan, and items five (5) through twelve (12) are restoration, preservation, monitoring and maintenance, Agency approval and release for all SMPs, and long term reporting.

- 2.8 Final design of the Project has yet to been completed; therefore, additional changes may occur before the applicable permits are issued by the Permitting Agencies. If additional stream mitigation is required for the Project beyond 65,296 LF, ODOT will compensate WRC at the rate of \$190 per LF for restoration and/or preservation that is not secured at that time. Potential mitigation opportunities located within the SMPs as outlined in Article II, Section 2.1, that are beyond ODOT's mitigation needs for the Project belong to ODOT.

ARTICLE III: OBLIGATIONS OF WRC

- 3.1 In accordance with the schedule outlined in Section 6.2 of Article VI of this Agreement, WRC agrees to develop a Conceptual Stream Mitigation Plan and a Final Stream Mitigation Plan, and to perform, or cause to be performed, all work necessary for such development of the Plans.
- a. The Conceptual Stream Mitigation Plan shall provide sufficient information to generally identify each proposed mitigation project, the proposed restoration, preservation or other mitigation work and the expected long-term protection mechanism. This information includes text, maps designating the location of the mitigation project, and any necessary supporting information for each proposed project site. At this preliminary stage, little to no engineering and design will be required in the Conceptual Plan.
 - b. WRC shall provide the Conceptual Stream Mitigation Plan to ODOT in electronic format. ODOT and the Permitting Agencies shall review the Conceptual Stream Mitigation Plan and provide written comments to WRC. Electronic copies shall be PDFs of the complete Conceptual Stream Mitigation Plan document.
 - c. The Final Stream Mitigation Plan shall include information reasonably necessary to address the comments on the Conceptual Stream Mitigation Plan provided by ODOT and the Permitting Agencies in 3.1(b). The Final Stream Mitigation Plan shall be submitted to ODOT on or before August 1, 2014. ODOT and the Permitting Agencies shall provide written comments on the Final Stream Mitigation Plan to WRC on or before August 15, 2014. WRC shall incorporate any agreed to revisions to the Final Stream Mitigation Plan and submit the revised document in electronic format and five (5) printed and bound copies to ODOT on or before August 25, 2014. Electronic copies of the complete Final Stream Mitigation Plan document shall be in PDF and .docx formats.
- 3.2 ODOT shall be the primary point of contact in discussions with the Permitting Agencies regarding the development of the Conceptual and Final Stream Mitigation Plans, including selection of mitigation sites, evaluation of mitigation alternatives, mitigation site design, and the monitoring and long-term protection of SMPs. ODOT may grant permission to WRC to communicate directly with the Permitting Agencies at any time.

- 3.3 WRC's obligations under Items 1 through 4 of Section 6.2 of Article VI of this Agreement shall be deemed completed upon the first to occur of: (i) confirmation by the Permitting Agencies in a form acceptable to WRC and ODOT that the Final Stream Mitigation Plan is acceptable, (ii) issuance of both the 404 permit and 401 Certification, (iii) ODOT's withdrawal of the permit/certification application(s) for any reason, or (iv) denial or delay of the issuance of the 404 permit or 401 Certification on a basis other than the suitability of the Final Mitigation Plan.
- 3.4 WRC's obligations under Items 5 through 12 of Section 6.2 of Article VI of this agreement shall be deemed complete when the Permitting Agencies approve and release the SMPs.
- 3.5 WRC shall submit all long-term protection legal instruments to ODOT for review and approval prior to recording of the instrument(s). Should any coordination with the permitting agencies be required for instrument pre-approval, said coordination will be conducted by ODOT. All protection instruments shall be signed by ODOT and WRC or qualified third party easement holder. ODOT will not retain ownership interests of the SMPs, nor will ODOT have any long-term stewardship obligations. Protection instruments will require the third party steward to provide 10 year SMP compliance and condition reports to ODOT.
- 3.6 WRC and ODOT agree to hold regularly scheduled meetings at least monthly (but may be more often if agreed to by the parties) at mutually agreeable times during the development of the Plans. WRC shall have one or more representatives in attendance at regularly scheduled progress meetings with ODOT and, upon request, shall provide ODOT with written progress reports during the development of the Plans (but no more often than monthly).
- 3.7 WRC shall furnish all professional services required to fulfill the objectives of this Agreement and agrees to perform, or cause such services to be performed, in accordance with standards necessary for the satisfactory performance of the work hereunder. These services may also include any additional regulatory requirements and permits to complete the restoration work as proposed in the Final Mitigation Plan.
- 3.8 WRC shall consult with the personnel of ODOT and the Permitting Agencies as necessary to assure understanding of the work and satisfactory completion thereof.
- 3.9 The person named in Section 11.1 below shall be WRC's primary point of contact for all matters regarding this Agreement. Unless otherwise changed by written notice to ODOT, this person is responsible for all inter-agency communication regarding the development of the Plans.

ARTICLE IV: OBLIGATIONS OF THE ODOT

- 4.1 ODOT will provide the fiscal resources outlined in Article 5 of this Agreement to WRC to develop and implement the Plans.
- 4.2 ODOT shall be solely responsible for providing the information required by the Permitting Agencies mitigation requirements pertaining to the streams that will be impacted by the

Project, including without limitation, functions lost at the impact site, maps identifying the impact site, the aquatic resource type proposed to be impacted, whether impacts are temporary or permanent, and any other baseline and other information reasonably necessary to evaluate proposed stream impacts and to support WRC's development of the Plans. ODOT agrees to provide this information and such other information that would assist WRC in fulfilling the terms of this Agreement within 5 days after execution of this Agreement. ODOT further agrees to promptly inform WRC of any additional information pertaining to the proposed impact site(s), as well as any communications with the Permitting Agencies or others that are pertinent to the mitigation and would assist WRC in fulfilling this Agreement. WRC shall not be liable for any delays which may result if ODOT fails to promptly and accurately deliver the above information to WRC, which shall be delivered, in any event, no later than the regularly scheduled meeting between the parties.

- 4.3 ODOT agrees to comply with the schedule set forth in Section 6.2 of Article VI of this Agreement for providing comments on the Conceptual Stream Mitigation Plan and the draft Final Stream Mitigation Plan.
- 4.4 ODOT may, from time to time as it deems appropriate, communicate requests to WRC concerning the performance of the work described in this Agreement. It is expressly understood by the parties that these are requests only, and shall not be used to amend or alter this Agreement or any part thereof.
- 4.5 ODOT shall have one or more representatives in attendance at regularly scheduled progress meetings with WRC. ODOT shall work in good faith to provide WRC with information and comment necessary to support the development and implementation of the Plans.
- 4.6 The person named in Section 11.1 below shall be ODOT's primary point of contact for all matters regarding this Agreement. Unless otherwise changed by written notice to WRC, this person is responsible for all inter-agency communication regarding the development and implementation of the Plans.

ARTICLE V: FISCAL OBLIGATIONS

- 5.1 The rights, duties and obligations described in this Agreement will not be binding on any party until all applicable provisions of the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from the appropriate state agencies, and, when required, such expenditure of funds is approved by the General Assembly and by the Controlling Board of the State of Ohio. If at any time sufficient funds are not appropriated to continue funding the Agreement, this Agreement will terminate on the date the available appropriation expires without any further obligation by any party.
- 5.2 In consideration for the promises and future performance of WRC as set forth herein, ODOT agrees to pay WRC up to a maximum total sum of \$12,406,240.00 (the "Compensation") in exchange for implementing this Agreement developing and implementing the Plans, and certifying completion of all deliverables under this Agreement

- 5.3 Payment of the Compensation shall be made to WRC based on the credits provided and approved by ODOT and/or the Permitting Agencies. Comments or approval of invoices by ODOT shall occur within 15 days or sooner.

For purposes of this agreement a "stream credit" is defined as one linear foot of stream preserved, or restored and protected, including implementation of and completion of all monitoring and maintenance activity required to comply with the terms of the Section 401/404 permits issued for the Project. All streams proposed for mitigation must be intermittent Class 2 or higher quality and will be compensated at \$190 per linear foot of credit.

- 5.4 WRC shall submit invoices to the ODOT for review and approval in accordance with Section 5.3 above and as per the schedule of payments provided in Section 6.2 of Article VI of this Agreement. Payments for Items 5 through 12 of the schedule outlined in Section 6.2 shall be paid on a pro-rata basis for each mitigation site and the portion stream mitigation provided for the Project at each mitigation site. In accordance with Section 126.30 of the Revised Code, and any applicable rules thereto, ODOT shall make prompt payment and unless otherwise stated, payment shall be made within thirty (30) calendar days of approval of WRC's invoice.
- 5.5 No payment hereunder shall constitute acceptance of unsatisfactorily performed or documented work.
- 5.6 None of the funds paid to WRC under this Agreement will be from federal sources.

ARTICLE VI: EFFECTIVE DATE; SCHEDULE; TERMINATION

- 6.1 This Agreement shall commence on the date of the last signature thereto and shall end on 12/1/2022.
- 6.2 WRC and ODOT shall comply with the following schedule of work and payment:

Item No.	Task/Completion Date	Percent Pay	Cummulative %	Maximum Amount (\$)
1	Project mobilization 3/3/2014	5%	5%	\$620,312.00
2	Draft conceptual mitigation plan submittal - 5/23/2014	6%	11%	\$744,374.40
3	Draft final mitigation plan submittal - 8/1/2014	7%	18%	\$868,436.80
4	Final mitigation plan submittal - 8/25/2014	7%	25%	\$868,436.80
5	Acquisition of sites, identification of long-	25%	50%	\$3,101,560.00

	term protection instruments and 3 rd parties – on or before 6/30/2016			
6	Restoration implementation – on or before 12/31/2016	25%	75%	\$3,101,560.00
7	Monitoring & maintenance – year 1	4%	79%	\$496,249.60
8	Monitoring & maintenance – year 2	4%	83%	\$496,249.60
9	Monitoring & maintenance – year 3	4%	87%	\$496,249.60
10	Monitoring & maintenance – year 4	4%	91%	\$496,249.60
11	Monitoring & maintenance – year 5	4%	95%	\$496,249.60
12	Approval & release of SMPs from Agencies	5%	100%	\$620,312.00
Totals		100%		\$12,406,240.00

- Conceptual Stream Mitigation Plan submitted to ODOT: May 23, 2014
(Concurrent submittal to ODOT/USACE/Ohio EPA) ODOT provides comments to WRC by June 13, 2014
- Final Stream Mitigation Plan- draft submitted to ODOT: August 1, 2014
(Concurrent submittal to ODOT/USACE/Ohio EPA) ODOT provides comments to WRC by August 15, 2014
- Final Stream Mitigation Plan- Final submitted to ODOT: August 25, 2014

ODOT and WRC acknowledge that the Permitting Agencies might not provide comments within the schedule established herein, and ODOT expressly agrees that concurrence or approval from the Permitting Agencies is not a requirement of the above deadlines. However, in the event comments from the Permitting Agencies are received after the deadlines above which require modifications to the Plans, WRC's deadlines shall be extended as provided in Section 7.3 below in order to allow WRC to respond to those comments.

ODOT acknowledges to WRC that the official approvals from the Permitting Agencies (and any public comment period) to the Final Stream Mitigation Plan are not included in the above scheduled dates, but will be sought by ODOT after WRC's submittal of the Final Stream Mitigation Plan. ODOT and WRC shall work together to address the comments of the Permitting Agencies to the Final Stream Mitigation Plan. Any response which may be required to address public comments shall be ODOT's responsibility, but ODOT will consult with WRC and incorporate WRC's comments prior to submitting the response.

- 6.3 Upon providing two weeks written notice to WRC, ODOT may suspend or terminate this Agreement, in whole or in part, if WRC is in violation of any material provision of this Agreement and WRC has not cured such violation within thirty (30) days after receipt of notice from ODOT.
- 6.4 In the event of suspension or termination under this Article, ODOT shall be responsible for payments to WRC according to the schedule set forth in Section 5.3 above through the date of termination (pro-rated for the month of termination and/or portion of each mitigation site progress towards completion), plus any non-cancellable obligations which have not already been invoiced.

ARTICLE VII: LIQUIDATED DAMAGES

- 7.1 Failure of WRC to comply with submission of the Final Stream Mitigation Plan by August 25, 2014 unless such date is extended due to delays pursuant to Sections 6.4, 7.2 or 7.3 of this Agreement, shall constitute cause for ODOT to deduct a per diem sum from money due to WRC, not as a penalty, but as a liquidated damage. This sum will be \$7,500.00 per day for any delay beyond August 25, 2014, not to exceed \$500,000.
- 7.2 The liquidated damages stated above are reasonable estimates freely agreed to by WRC. Liquidated damages will not be assessed to WRC for delays due to ODOT or governmental agency reviews, or for any delays caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of WRC, including without limitation acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage, terrorism, vandalism, accident, restraint of government, governmental acts or inaction, injunctions, labor strikes, and other like events that are beyond the reasonable anticipation and control of WRC, despite WRC's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to WRC's failure to perform its obligations under this Agreement.
- 7.3 Any scheduled dates under this Agreement shall be extended for every day of delay described above in Section 7.2, and in no event shall WRC be held liable for any damages caused by such delays. ODOT shall be liable to WRC for any damages resulting to WRC for any delays caused by ODOT.

ARTICLE VIII: DISPUTE RESOLUTION

- 8.1 The procedures of this Article shall apply to any dispute arising under this Agreement or any activity, action, function, decision, or responsibility referenced in this Agreement.
- 8.2 Following the occurrence of circumstances giving rise to a dispute, the parties shall make reasonable efforts to informally resolve the dispute. If resolution cannot be achieved informally within fifteen (15) days, either party may elevate the dispute for formal resolution pursuant to paragraph 8.3 of this Article.

- 8.3 Within fifteen (15) days following the occurrence of circumstances giving rise to a dispute, either party may initiate formal dispute resolution under this Article. To initiate formal dispute resolution, a party's Point of Contact shall submit to the other party's Point of Contact a written notification of the dispute. The written notification of the dispute shall specify:
- a) the nature of the dispute;
 - b) the activity action, function, decision or responsibility affected by the dispute;
 - c) the disputing party's position with respect to the dispute; and
 - d) the information the disputing party is relying on to support its position.
- 8.4 Within fifteen (15) days of written notification of a dispute, the Points of Contact and designated representatives of the parties shall meet and attempt to resolve the dispute.
- 8.5 If the Points of Contact and designated representative of the parties are unable to resolve the dispute within fifteen (15) days of receipt of the written notification of dispute, either party may submit a written statement of the dispute to the Director of Transportation and WRC's Project Manager. Within fifteen (15) days of the submittal of the written statement of dispute, or as soon thereafter as is practicable, the Director of Transportation (or appropriate designee) shall meet with WRC's Project Manager (or appropriate designee) in order to resolve the dispute, which may include mediation.
- 8.6 The parties may agree to suspend the activity, action, function, decision or responsibility affected by the circumstances that gave rise to the dispute until the dispute is resolved. Continuing liability shall not accrue to either party under this Agreement while the dispute is proceeding through this dispute resolution process. This dispute resolution process may be used to resolve site specific disputes, provided this dispute resolution process does not conflict with a dispute resolution process specified in an administrative order, judicial consent decree or other legally binding document governing activities at a particular facility or site. WRC and ODOT each agree that it will not initiate any administrative or judicial action against the other involving any item or issue that is the subject of an ongoing informal or formal dispute resolution pursuant to this Agreement until the dispute resolution process has been completed, or 120 days after the first notice of dispute is submitted, whichever is sooner.
- 8.7 The final resolution of any dispute elevated for formal resolution pursuant to Section 8.3 of this Article shall be memorialized in writing and acknowledged by the signatures of the parties. The parties shall incorporate and implement such resolution as part of the activity, action, function, decision or responsibility affected by the circumstances that gave rise to the dispute.

ARTICLE IX: Intentionally Deleted

ARTICLE X: NO ENDORSEMENT

- 10.1 ODOT acknowledges that WRC plays no role in the Permitting Agencies' decisions to approve or deny a permit or whether mitigation is a necessary condition of any such permit or whether the permitted activity complies with laws, rules or regulations. In no event shall this Agreement be construed as an endorsement or support for the permitted

activity or the Project.

ARTICLE XI: POINTS OF CONTACT/NOTICES

- 11.1 The persons named below shall be the primary points of contact for all matters regarding this Agreement and the development of the Plans:

ODOT Point of Contact:

Tim Hill
ODOT Central Office
Office of Environmental Services
1980 West Broad Street, Mail Stop 4170
Columbus, OH 43223
Telephone: 614-644-0377

Email: tim.hill@dot.state.oh.us

WRC Point of Contact:

Calvin Miller
Wetlands Resource Center
3970 Bowen Road
Canal Winchester, Ohio 43110

Telephone: (614) 834-5244

Email: wetlandsresource@aol.com

Either party may change its point of contact by written notice to the other.

- 11.2 The points of contact for the Permitting Agencies for all matters regarding this Agreement and the development of the Plans are:

USACE Point of Contact:

Peter Clingan
U.S. Army Corps of Engineers
DSCC, Building 10, Section 10
3990 E. Broad Street
Columbus, Ohio 43218

Ohio EPA Point of Contact:

Ric Queen
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43316

- 11.3 All notices required or permitted to be given under this Agreement will be sufficient if furnished in writing to the party's point of contact and address specified in this Article.

ARTICLE XII: DELIVERABLES; RIGHTS IN DATA, PATENTS AND COPYRIGHTS

- 12.1 "Deliverables" means all documents, data, materials, information, processes, studies, reports, surveys, proposals, plans, codes, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, software, software source code, documentation, and other materials and property created under this Agreement to the extent delivered to ODOT under the terms of this Agreement.
- 12.2 All Deliverables provided by WRC to ODOT shall become the intellectual property of both ODOT and WRC. ODOT and WRC shall each have an independent and unrestricted right to reproduce, distribute, modify, maintain, and use the Deliverables. However, WRC shall reserve its rights in all methods, pre-existing work, and pre-existing software applications and data, used to prepare such Deliverables.

- 12.3 WRC shall not include in any Deliverable any materials for which the copyright is held by a third party, unless the copyright owner gives prior written approval to use such copyrighted matter in the manner provided herein. ODOT expressly acknowledges that WRC might not be able to acquire the copyright of engineering plans or other design services.
- 12.4 WRC agrees that all Deliverables may be made freely available to the general public, to the extent allowed by law; provided, however, that no information about private landowners and/or their properties shall be made available to the public until such time as the Final Stream Mitigation Plan is accepted by the Permitting Agencies or landowner's consent is obtained.

ARTICLE XIII: RECORD KEEPING REQUIREMENTS

- 13.1 WRC shall keep all financial records in a manner consistent with generally accepted accounting principles for a fixed price contract.
- 13.2 During the period covered by this Agreement and until the expiration of three years after final payment under this Agreement, WRC agrees to provide ODOT, its duly authorized representatives or any state or federal agency providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers, and records of WRC involving transactions related to this Agreement. WRC shall, for each subcontract in excess of twenty-five hundred dollars (\$2,500.00), require its subcontractors to agree to the same provisions of this Article.
- 13.3 WRC agrees to retain all records in accordance to any litigation holds that are provided to it by ODOT, and actively participate in the discovery process if required to do so. Litigation holds may require WRC to keep the records longer than its standard records retention schedule. WRC will be notified by ODOT when the litigation hold ends. If WRC fails to retain the pertinent records after receiving a litigation hold from ODOT, WRC agrees to pay all costs associated with any cause, action or litigation arising from such destruction.

ARTICLE XIV: GENERAL PROVISIONS

- 14.1 This Agreement shall be to the benefit of and be binding upon the respective parties herein, their successors, and assigns.
- 14.2 WRC shall, during the term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, or a joint venture relationship.
- 14.3 This Agreement supersedes all prior agreements, written or oral, between WRC and ODOT and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except in writing signed by ODOT and the WRC.

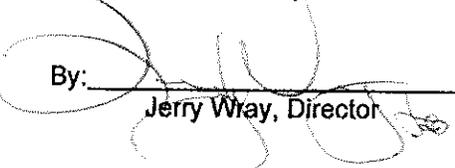
- 14.4 This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Ohio. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 14.5 Nothing in this Agreement shall be construed as an indemnification by one party or the other for liabilities of the other party or third parties for property loss or damage or personal injury or death arising out of and/or during the use described in this Agreement. Any liability for claim for property loss or damage or personal injury or death by a party, its employees, agents, invitees, or contractors, or by third persons, arising out of and during the activities associated with the Agreement shall be determined in accordance with Chapter 2743 of the Ohio Revised Code.
- 14.6 The WRC shall provide its own workers' compensation coverage throughout the duration of the Agreement and any extensions thereof. ODOT is hereby released from any and all liability for injury received by WRC, its employees, agents, or subcontractors, while on the SMPs or performing tasks, duties, work, or responsibilities as set forth in this Agreement not caused by ODOT.
- 14.7 The ODOT shall not be liable for any taxes under this Agreement.
- 14.8 WRC further agrees that it is in compliance with the requirements of the Ohio Revised Code Section 125.111.
- 14.9 All parties acknowledge that any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 14.10 The WRC agrees to be bound by the Ohio Department of Transportation's Specifications for Consultant Services 2010 Edition, Sections 2.01 through 2.18, 2.20, 2.21 and 2.25. To the extent that those Specifications conflict with this Agreement, this Agreement shall control. Any references to billing requirements in those Specification shall not apply to this agreement.

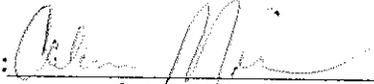
[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year last written below.

STATE OF OHIO
Department of Transportation

WETLANDS RESOURE CENTER

By: 
Jerry Wray, Director

By: 
Calvin Miller
Managing Member

For Use by ODOT Office of Chief Legal Counsel Only:
Date Reviewed: 2/25/14 

EXHIBIT 1

Maps of Lower Scioto Hydrologic Unit Code 05060002 and
the Little Scioto-Tygarts Hydrologic Unit Code 05090103