

# **REQUEST FOR PROPOSALS FOR DESIGN-BUILD SERVICES**

## **East Branch Chagrin River Restoration Project**

**Chagrin River Watershed Partners**

**Issued March 15, 2022  
Proposals are due April 15, 2022**

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## **SECTION A: SUPPLIES OR SERVICES AND PRICES/COSTS**

Chagrin River Watershed Partners (CRWP) is seeking a Design-Build Contractor Team (Contractor) to complete design and construction of a stream and wetland restoration project at the confluence of the East Branch of the Chagrin River in the City of Willoughby and the Village of Waite Hill (the Project). This design-build project is funded through an H2Ohio grant through the Ohio Department of Natural Resources (ODNR). This contract will include assistance to CRWP and coordination with its major project partners: the City of Willoughby, Western Reserve Land Conservancy, and Andrews Osborne Academy.

The Contractor shall furnish all necessary drawings, plans, labor, equipment, and construction oversight services to complete the Project. The Contractor will be responsible for providing all information and for securing, on behalf of CRWP, all necessary local, state, and federal permits for the Project. This includes all required surveying and data collection to prepare and submit permit applications and payment of all required fees to obtain permit or agency authorizations to proceed. No work shall commence until the permits are secured.

**The total maximum cost/price for performance under this contract is \$1,882,258.97. This maximum amount of \$1,882,258.97 shall not be exceeded under any circumstances. All proposals shall include the total amount necessary for completion of the Project including any contingencies. The proposal shall include an itemization of the cost of materials, labor and any additional cost the Contractor deems necessary.**

Candidates may propose alternate and/or complementary work to complete the Project while meeting the Project deliverables. Please contact CRWP Deputy Director, Kimberly Brewster Shefelton at [kbrewster@crwp.org](mailto:kbrewster@crwp.org) with questions by April 1, 2022 at 4:00 PM local time.

## **SECTION B: DESCRIPTION/SPECIFICATIONS/SCOPE OF SERVICES**

### **I. Background**

The East Branch of the Chagrin River, a state designated Scenic River, joins the mainstem of the Chagrin River at Daniels Park in the City of Willoughby before eventually flowing to Lake Erie. Immediately downstream of this confluence, the Chagrin River at river mile (RM) 4.95 is in full attainment of its warmwater habitat (WWH) aquatic life use (ALU) designation, in addition to all other downstream Ohio EPA monitoring locations. However, full attainment at RM 4.95 is threatened due to causes of impairment including sedimentation and flow regime alterations and sources of impairment including loss of riparian vegetation and streambank destabilization. Both the Chagrin River south of State Route 84 and the East Branch near its confluence with the Chagrin River have been affected by substantial streambank erosion which is contributing sediment to the river and threatening downstream attainment of the Chagrin River's ALU designation. Several factors have contributed to erosion and slumping on the west bank of the Chagrin River between State Route 84 and Interstate 90: lack of adequate riparian vegetation,

accumulation of sediment along the eastern bank, and the collapse of a downstream lowhead dam for a water supply pool at Daniels Park in 2005 which lowered the base level flow of the river. The erosion and migration of the Chagrin River's western bank has resulted in deposition and aggradation of the eastern bank. A point bar on the eastern bank and associated transverse riffle are directing flow towards the western bank. Within the channel of the East Branch, deteriorating former City water intake structures are contributing to unstable stream hydraulics and substantial streambank erosion. Addressing this erosion is crucial to ensure that the East Branch and the Chagrin River at this site and downstream reaches continue to support healthy fish and macroinvertebrate communities and for reducing sediment and nutrient pollution to Lake Erie.

### **Conceptual Plan**

With funding from the Great Lakes Restoration Initiative through Ohio EPA, CRWP hired Biohabitats Inc. in 2017-2018 to create a conceptual plan for restoration of the Chagrin River and East Branch of the Chagrin River at this site. This conceptual plan (Alternative 1) was incorporated into the H2Ohio project nomination and H2Ohio Grant Agreement/Scope of Work (Exhibit B).

### **Site Access**

Access for this work should be coordinated with the City of Willoughby and may be available from a gravel parking area at Daniels Park, located south of State Route 84 and west of the Chagrin River (coordinates: 41.62842688452421, -81.40010397407018) or from City-owned land along State Route 84 (coordinates: 41.63057490931627, -81.39909930655094).

### **Partners**

Chagrin River Watershed Partners (CRWP) is a nonprofit organization that helps communities and watershed groups in the Central Lake Erie Basin solve flooding, erosion, and water quality problems. This project is a partnership of CRWP, the City of Willoughby, the Village of Waite Hill, WRLC, and many other local stakeholders. Stream/wetland restoration and dam remnant removal will occur on portions of five parcels: three City-owned parcels, one parcel owned by WRLC pending transfer to the City, and one parcel owned by the Andrews Osborne Academy (AOA), a private school. The City of Willoughby is the primary landowner for this project. Andrews Osborne Academy owns a portion of the dam remnants and streambed and bank at that location. CRWP has obtained site access permission from all property owners to complete the Project.

## **SECTION C: CONTRACTOR SCOPE OF SERVICES AND SCHEDULE**

### **I. Overview**

Through this Request for Proposals ("RFP"), CRWP will select a Contractor to provide recommendations, designs and restoration specifications, permitting and permit compliance including monitoring and reporting, and construction for the Project. The selected Contractor will complete a restoration design, be responsible for preparing, filing, paying all required fees for and obtaining all necessary local, state, and federal permits, certifications, and authorizations, and complete construction of the Project. The selected Contractor will complete construction of the project and provide As-Built plans. The selected

Contractor shall be responsible for conducting all pre-, during, and post-Project monitoring activities and preparation and submittal to CRWP of all reports required for compliance with federal, state, and local permit conditions, including U.S. Army Corps of Engineers permit post-Project monitoring if applicable. A summary of the Contractor scope of services and proposed schedule are as follows:

## II. Contractor Scope of Services

- A. This Request for Proposals, the Consultant proposal, and CRWP's Grant Agreement with ODNR shall be incorporated as part of CRWP's contract with the Contractor.
- B. Provide plans, restoration specifications, and complete construction of the following in accordance with the Scope of Work included within Exhibit B to this RFP:
  - 1. Stabilize 685 linear feet of eroding streambank on the Chagrin River using bioengineering methods and bendway weirs or boulder toe.
  - 2. Create a bankfull bench along the Chagrin River.
  - 3. Remove the point bar on the eastern bank of the Chagrin River and re-align the transverse riffle.
  - 4. Restore 1.5 acres of riparian area along the Chagrin River.
  - 5. Remove the dam remnants and stabilize the 0.5 acre restored area to improve stream hydraulics and aquatic habitat while maintaining/improving the site's existing habitat suitable for steelhead rainbow trout fishing.
  - 6. Realign 700 linear feet of the East Branch of the Chagrin River to a more stable configuration that removes the hydraulic influence of the former water plant intake structures and use toe wood to stabilize the new channel.
  - 7. Restore 1 acre of old East Branch of the Chagrin River channel to oxbow wetland habitat to provide nursery areas for young fish and waterfowl habitat.
  - 8. Invasive species management for at least 1 year for 74.8 acres.
- C. Contractor must lead a Project kick-off meeting, a minimum of two plan review meetings and one on-site plan-in-hand meeting, and weekly or bi-weekly on-site construction meetings.
- D. Contractor must provide 30%, 60%, and final plan submittals. The final plans must be stamped and certified by a professional engineer licensed in the state of Ohio with experience in stream and wetland restoration. Plan revisions must address comments from CRWP, the City of Willoughby, ODNR, WRLC, other stakeholders, and regulatory agencies.
- E. Any stream and wetland mitigation required will be completed on site and included as a part of this design/build project. Bidders shall indicate whether they anticipate any mitigation to be required and their plans for addressing those requirements.
- F. Disturbance to existing native trees shall be minimized in accessing the site.
- G. Any areas disturbed to access the Project Site, including roadways/right of ways and private property must be restored to former condition at the close of this Project at the Contractor's expense. Contractor must obtain photographs and video of the approach roads within Project limits and submit copies to the City of Willoughby and CRWP prior to the commencement of construction. Contractor must also obtain photographs and video of the approach roads within Project limits and submit copies to the City of Willoughby and CRWP at the conclusion of the Project.
- H. The contractor will be responsible for providing all information and for securing, on behalf of CRWP, all necessary local, state and federal permits, certifications, and authorizations

for the project. This includes all required surveying and data collection to prepare and submit permit applications and payment of all required fees to obtain permit or agency authorizations to proceed. No work shall be commenced until the permits are secured. Requirements include but are not limited to permits required by the U.S. Army Corps of Engineers, Ohio Environmental Protection Agency, the Ohio State Historic Preservation Office, the City of Willoughby, and the Village of Waite Hill. Coordination with the Ohio Department of Transportation, in coordination with City of Willoughby/Waite Hill Village Engineer Tim Lannon, may also be required.

- I. Provide and execute a Stormwater Pollution Prevention Plan (SWP3) for the Project. Erosion and sediment discharge must be controlled throughout the construction process in accordance with the Ohio EPA construction general permit and local erosion and sediment control regulations of the City of Willoughby and the Village of Waite Hill.
- J. Project design shall include provisions for protecting water quality and stream integrity as much as possible during construction.
- K. Prior to and throughout project design, the Contractor shall partner with CRWP and the City of Willoughby to hold at least one public informational meeting to engage the public during project design. Public engagement shall include direct outreach to key stakeholders such as local fishing clubs and anglers. The Contractor shall also participate in a public tour of the completed restoration project. The Contractor shall coordinate with CRWP and the Project partners to incorporate at least one volunteer opportunity into the Project, such as a volunteer planting event or other hands-on public engagement event.
- L. The Contractor will prepare a one-page project summary document for the City's website and sign board(s) posted at Daniels Park for communication to the public during construction.
- M. If necessary, a floodplain development permit shall be obtained from the City of Willoughby and the Village of Waite Hill. Floodplain development permit applications shall comply with all federal and state statutes, and local laws, rules and ordinances.
- N. All work shall be performed in a lien-free, good and workmanlike manner and in accordance with the requirements of all applicable government ordinances, codes, regulations and laws.
- O. The Contractor shall make no use of the Project Site other than between the hours of 7:30 AM and 7:30 PM, Cleveland, Ohio time, Monday through Saturday (national holidays excluded); provided, however, that Contractor shall be permitted to leave stored equipment and materials within agreed upon areas at the Project Site at other times. Nothing in this section shall be construed to exempt Contractor or the Project from the City's ordinances related to noise or other nuisances.
- P. Contractor shall install a temporary construction fence surrounding publicly-accessible work areas at the Project Site and maintain such fence in good and sightly condition during construction.
- Q. The Contractor is responsible for maintaining safe traffic flow near the project site during construction and necessary traffic signage during construction.
- R. Contractor must provide a two-year warranty on plant materials installed through this Project, ensuring 75% survival of all live stake plantings and 90% survival for all other plant material. Plant materials shall be replaced by the warranty if more than 25% of the plant is dead, diseased, or dying.
  - 1. "Warranty Period" means a period of two (2) years from the Final Completion Date of the entire Work (or a specific part of the Work) or the longer periods of time as may be required by specific warranties contained in the Construction

Agreement, provided by manufacturers or suppliers, or as otherwise stated in any Certificate of Final Completion, during which the Contractor, at its sole cost and expense, shall remove or correct all Work performed by Contractor under the Contract Documents, which CRWP deems to be defective in material or workmanship or not in conformance with the Contract Documents.

2. Contractor warrants to the CRWP that all materials and equipment furnished shall be new and unused, unless otherwise specified in the Contract Documents, and that the Work will be free from faults and defects and in conformance with the Design Documents, Contract Documents, and all applicable laws or regulations. Contractor agrees, at its sole cost and expense, to remove or correct all Work performed by it under the Contract Documents, which CRWP deems to be defective or not in conformance with the Design Documents, Contract Documents, or applicable laws or regulations during the Warranty Period. Contractor also agrees during the Warranty Period to remove or correct any portions of the Work that may be damaged or destroyed by such defective Work or by the removal or correction of such defective Work. CRWP shall approve the Work performed during the Warranty Period and, if the Work is unacceptable, the Warranty Period shall be extended until the Work is acceptable to CRWP. Upon request by CRWP, the contractor and CRWP shall jointly inspect the Work during the eighteenth to twenty-fourth month following the Date of Final Completion to identify and investigate any defective or non-conforming Work covered during the Warranty Period. Contractor's warranty excludes remedy for normal wear and tear and normal usage.
3. If Contractor does not fully perform its obligations under the Warranty provisions within a reasonable time following written notice by CRWP to Contractor then, in addition to, and not in lieu of any other right or remedy available to CRWP under the Construction Agreement or at law, CRWP may perform or cause such obligations to be performed at the sole cost and expense of Contractor.
4. Nothing contained in the Warranty provision will be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Construction Agreement or related Contract Documents. The Warranty Period relates only to the obligation of the Contractor to correct the Work following Final Completion of the Project.
- S. Contractor shall be responsible for conducting all pre-, during, and post-Project monitoring activities and preparation and submittal to CRWP of all reports required for compliance with federal, state, and local permit conditions, including U.S. Army Corps of Engineers permit post-Project monitoring if applicable.
- T. All materials, reports, surveys, delineations, plans, etc. will be available to CRWP and CRWP to use for educational materials, signage, grant documentation and reporting, and permitting.
- U. The Contractor shall be solely responsible for obtaining all data and information sources utilized in design and construction of this Project.
- V. Each part or detail of work shall be subject to inspection by CRWP and its partners.
- W. As-built construction plans shall be provided to CRWP upon completion of the Project. Red-line as-built construction plans are acceptable to meet this requirement.
- X. Contractor shall be responsible for adhering to all in-water construction work restrictions and tree cutting restrictions as applicable.

- Y. Planting is encouraged in spring or fall to promote plant survival. If summer planting is necessary, the contractor will be responsible for any watering needs at no additional cost to CRWP.
- Z. There is an abandoned natural gas well located on the right/east bank of the Chagrin River just downstream of the dam remnants. This gas well is on a list maintained by the ODNR Division of Oil & Gas Orphan Well Program; ODNR intends to plug this well.
- AA. The selected Contractor will be asked to consider whether the dam remnant wingwalls should remain in place for potential future placement of a pedestrian bridge.
- BB. Daniels Park infrastructure includes a concrete walkway, pier, and steps for access to the Chagrin River. The selected Contractor should indicate if impacts to these structures can be avoided while achieving Project goals.
- CC. The City of Willoughby will maintain stormwater infrastructure located within the right-of-way along State Route 84 as maintenance of this infrastructure is not included in the Project scope; however, the Project site should be designed to accept stormwater flows in a manner which will minimize erosion within the Project site.

### III. Schedule

- March 15, 2022:** Request for Proposals released.
- March 29, 2022:** Mandatory pre-proposal meeting at project site at 9:00 AM. Inclement weather backup date will be March 31<sup>st</sup> at 9:00 AM. Please RSVP for the mandatory pre-bid meeting by March 28, 2022; contact Kimberly Brewster Shefelton at [kbrewster@crwp.org](mailto:kbrewster@crwp.org).  
*Please note: CRWP may elect to remove or modify this requirement as necessary depending on local, state, and/or federal guidelines adopted in response to COVID-19.*
- April 1, 2022:** Questions pertaining to this Request for Proposals must be submitted by 4:00 PM and directed to Kimberly Brewster Shefelton ([kbrewster@crwp.org](mailto:kbrewster@crwp.org)) via email only.
- April 6, 2022:** A Question and Answer document will be shared with all recipients of the Request for Proposals.
- April 15, 2022:** Proposals must be submitted electronically to Kimberly Brewster Shefelton ([kbrewster@crwp.org](mailto:kbrewster@crwp.org)) by 4:00 pm (local time).

CRWP may choose to conduct team interviews of highest-ranking teams. These interviews may be conducted virtually.

**All anticipated timeframes below are subject to change:**

- April 2022:** Anticipated date for CRWP to award contract (date TBD).
- May 2022 – October 2022:** Complete Project design and permitting.



**October 2022 –  
May 2023:** Complete stream and floodplain restoration and planting.

**May 31, 2023:** Any additional planting/seeding to be completed. All work under this contract, including invoices, must be completed and delivered to CRWP.

## **SECTION D: APPLICABLE STATE, FEDERAL, AND OTHER REQUIREMENTS**

### **I. Overview**

For the purpose of Section D, the selected Contractor shall be referred to as “Subgrantee.” The subgrantee must comply with the following conditions and all conditions within the H2Ohio Grant Agreement with CRWP (“Grant Agreement”) (Exhibit B).

### **II. Bonding Requirements**

All bidders must submit a bid guarantee equivalent to 5% of the bid price. The successful bidder shall be required to furnish a bond for the faithful performance of the Contract in a sum of not less than one hundred percent (100%) of the total price bid for the Project; said bond shall be that of an approved surety company authorized to transact business in the State of Ohio and shall be underwritten by a surety that is listed on the most current Department of Treasury Circular 570 "Surety Companies Acceptable on Federal Bonds". Bonding requirements are detailed in 40 CFR 30.48 (<https://www.gpo.gov/fdsys/pkg/CFR-2002-title40-vol1/pdf/CFR-2002-title40-vol1-sec30-48.pdf>). A labor and material bond shall also be required.

In addition to the required performance bond and labor and material bond, the successful bidder shall provide at its own expense, a two-year maintenance bond, in the amount of twenty-five percent (25%) of the Construction Agreement. The term of the bond shall begin on the date of final acceptance of the Project and shall guarantee the Work on the Project will remain in good condition for and during the entire two-year period of guarantee which shall include, among other things, all permanent in-stream, wetland, or erosion control structures and plant materials installed at the Project. If at any time before or during said period of guarantee any defects or omissions become apparent in the Work or if it becomes apparent that any of the Work is not in accordance with the requirements, or if any Work constructed under this contract requires repairs due to defects in materials or workmanship, or for any other cause which may be attributed to the Work which is being done or has been done by the Contractor, as determined by CRWP, the Contractor shall rectify such defects or omissions within five (5) days of notification and shall complete such corrections within a reasonable length of time at his own expense. If the Contractor fails to rectify such defects or omissions or fails to start such repairs within five (5) days, CRWP reserves the right to make such corrections at the expense of the Contractor or bonding company.

### **III. Compliance with State and Federal Grant Agreement Requirements**

In the performance of the duties and obligations under the Grant Agreement, Subgrantee shall comply with all applicable:

- A. Ohio Governor Executive Orders;

- B. Federal, state and local laws, regulations (rules), assurances, orders, and Ohio Department of Commerce Prevailing Wage Guidelines, regarding prevailing wages, deductions, worker compensation, taxes, social security and unemployment, compensation, and any contributions thereto; and
- C. Federal state, and local laws and regulations (rules, ordinances), assurances, and orders, whether or not specifically referenced herein.

The Subgrantee and sub Subgrantees shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- F. Requiring that sub Subgrantees, if subcontracts are to be let, take the affirmative steps listed in this Paragraph;
- G. Pursuant to Executive Order No. 2008-12S, Subgrantee and sub Subgrantees, if any, shall make a good faith effort to purchase from Ohio companies any goods and services acquired under this Grant Agreement; and
- H. Pursuant to Executive Order No. 2008-13S, Subgrantee and sub Subgrantees, if any, shall make a good faith effort to purchase goods and services from certified Minority Business Enterprise ("MBE") and Encouraging Diversity, Growth and Equity ("EDGE") program vendors. EDGE program guidance may be viewed online at <http://das.ohio.gov/Divisions/EqualOpportunity.aspx>. The list of State-certified MBE and EDGE businesses may be found by accessing the following websites: <https://eodreporting.oit.ohio.gov/searchMBE.aspx> <https://eodreporting.oit.ohio.gov/searchEDGE.aspx>

#### IV. Nondiscrimination

The Subgrantee will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, handicap, or disability. The Subgrantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, ancestry, age, sex, handicap, or disability. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee agrees to post in conspicuous places, available to employees and applicants for employment, notices as may be provided by the State of Ohio setting forth the provisions of this non-discrimination clause.

The Subgrantee agrees that the hiring of employees for the performance of work under this Grant Agreement shall be done in accordance with Sections 125.111, 153.59, and 153.591 of the Ohio Revised Code.

#### V. Equal Employment Opportunity

The Subgrantee agrees that it will fully cooperate with the State Equal Employment Opportunity Coordinator, with any other official or agency of the State or Federal Government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices, and said Subgrantee shall comply promptly with all requests and directions from the state of Ohio or any of its officials and agencies in this regard, both before and during performance. All bidding and contract documents shall contain necessary requirements to implement these provisions.

#### VI. Non-Compliance

In the event of the Subgrantee's non-compliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended in whole or in part.

#### VII. Prevailing Wage Requirement

As required by Chapter 4115 of the Ohio Revised Code, where applicable, the Subgrantee shall require that all subcontractors pay the prevailing wage rate of the locality, as determined by the Ohio Department of Commerce, on all work performed on this Project. The subcontractor shall comply with all other applicable provisions of Chapter 4115 of the Ohio Revised Code including making the required reports to the Prevailing Wage Coordinator.

#### VIII. Independent Capacity of Subgrantee

The parties hereto agree that the Subgrantee, and any agents and employees of the Subgrantee, in the performance of this Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of CRWP. Nothing in this Grant Agreement shall be construed to create a partnership, joint venture, or other relationship between the parties.

#### IX. Conflicts of Interest and Ethics Compliance

The Contractor shall not, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

The Contractor represents, warrants, and certifies that it is knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. The Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.

## X. Liability

The Contractor agrees to indemnify and to hold CRWP harmless and immune from any and all claims for injury or damages arising from this Grant Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Subgrantee, or joint venturers while acting under this Grant Agreement. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

## XI. Certification Against Unresolved Findings for Recovery

Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under ORC 9.24. If this warranty is deemed to be false, this Grant Agreement shall be void *ab initio* and Subgrantee shall immediately repay to the State any funds paid under this Grant Agreement.

## XII. Subgrantee's Liability

The following attachments must be included by the Contractor at the time of the execution of this Contract; each being subject to the approval of the Solicitor:

The Contractor and its subcontractors engaged in the design and construction of the Project must provide a Certification of Insurance verifying its limits for bodily injury, including death resulting therefrom, public liability, employer's liability, property damage, personal injury, automobile insurance and advertising injury in an amount not less than \$1,000,000 per occurrence.

- A. CRWP, the City of Willoughby, and Western Reserve Land Conservancy shall be endorsed as "additional insureds" on all policies covering work under this RFP.
- B. All insurance shall be endorsed so that it cannot be canceled with less than thirty (30) days written notice to CRWP.
- C. Worker's Compensation coverage as required by statute, covering all employees, lease workers, temporary workers and volunteer labor of CRWP and its Contractor or subcontractors. A copy of the Contractor's Workers' Compensation Certificate shall be submitted to CRWP.
- D. Employer's Liability coverage with limits of \$1,000,000.00 each employee, each accident; provided that in monopolistic states Stop Gap Coverage be maintained by endorsement to the Commercial General Liability Insurance, in lieu of Employer's Liability coverage.

## XIII. Ohio Elections Law

The Subgrantee shall, as applicable to this Project, ensure that all subcontractors comply with the provisions of the Ohio Elections Law, Section 3517.13 of the Ohio Revised Code.

## XIV. Drug Free Workplace

The Subgrantee agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or



permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

## **XV. Domestic Steel**

If steel is used for this project, it shall be domestic steel pursuant to ORC 153.011

## **XVI. Transfer of Records**

Data shall be collected and formatted in a manner consistent with common good engineering practices. All records (original tracings, maps, field sketches, lab reports, flow data, graphics originals, design calculations, electronic files including model input and output files, etc.) generated by the Project shall be the property of CRWP and shall be turned over to CRWP upon completion or as directed.

## **XVII. Laws of Professional Design**

Contractor will comply with all laws that may require approval of the Project by a registered professional engineer, surveyor, architect or landscape architect.

## **XVIII. Restricted Communications**

It is the policy of CRWP to avoid situations which (1) place it in a position where its judgment may be biased; (2) create an appearance of conflict of interest with respect to rendering an impartial, fair, technically sound, and objective decision prior to selection; or (3) give an unfair competitive advantage to competing Contractors. Therefore, to ensure an ethical RFP process, bidders will not be able to submit questions or otherwise communicate with CRWP after the date listed in Section E.2 below. Contractor understands and agrees that it has a duty to inquire about and clarify any RFP questions that the Contractor does not fully understand or believes may be interpreted in more than one way. Contractor may only submit questions regarding this RFP to CRWP via email listed as in Section E.2. No phone calls, please.

# **SECTION E. INSTRUCTIONS TO OFFERERS**

## **I. Proposal Format**

In responding to this RFP, please submit a proposal addressing the following items:

- A. Description of Contractor's Understanding of the Project.
- B. Proposed Project Manager, Project Team, and Organizational Chart.
- C. Project Approach.
- D. Description of Services to be Performed.
- E. Assumptions and Expectations.
- F. Task Pricing Schedule as set forth in Exhibit A. Contractor may adjust format of Task Pricing Schedule as needed to provide as much detail as possible regarding quantity of materials and breakdown of other costs to complete the Project.
- G. Proposed Project schedule identifying milestones, deliverables, and key coordination meetings. Include current workload and schedule of proposed Project in consideration of that workload.



- H. One page description for each of the top 3 most relevant projects the Contractor has completed in the past.
- I. Resumes of Project Team Members
- J. 3 References

Bidders are encouraged to limit the length (in pages) of proposals as much as possible while meeting the above requirements.

## II. Selection and Award Process

The selection process will involve screening of submitted proposals and may also involve interviews. CRWP will select a Contractor on the basis of Contractor qualifications, price, understanding of the scope of services, and level of services to be provided. Any contract awarded under this invitation will be financed through ODNR's H2Ohio grant program.

A mandatory pre-bid meeting will be held on **March 29, 2022** at 9:00 AM at the project site (38401 Johnnycake Ridge Rd, Willoughby, OH 44094) to discuss the Project and tour the Project Site. The inclement weather backup date will be March 31, 2022 at 9:00 AM. Please RSVP for the mandatory pre-bid meeting by March 28, 2022; contact Kimberly Brewster Shefelton at [kbrewster@crwp.org](mailto:kbrewster@crwp.org). All visits and inspections of the site are at each Contractor's sole risk and, by their visit to the site, each such Contractor releases CRWP and the City of Willoughby from any injuries, illness, liability, or expenses incurred as a result of, or arising out of the site visit.

If interested, please submit an electronic-only version of your submittal via email to Kimberly Brewster Shefelton ([kbrewster@crwp.org](mailto:kbrewster@crwp.org)) by **4:00 pm** local time on **April 15, 2022**. Any proposals received after this time and date will not be accepted. Large file size proposals may be submitted via email using a file sharing service, if needed.

CRWP expects to award the contract by **May 2022**. Work will commence after successful execution of a contract for services between the Contractor and CRWP and contract approval by ODNR. All work under this contract, including invoices, must be completed and delivered to CRWP by **May 31, 2023**. CRWP reserves the right to waive any informalities or minor irregularities, and reject any and all statements that are incomplete, conditional or obscure. CRWP reserves the right to obtain financial data or other supplemental information concerning the bidders, if relevant. CRWP will accept the proposal deemed most advantageous and in the best interest of CRWP. CRWP reserves the right to not award a contract under this proposal.

**Questions should be directed to** Kimberly Brewster Shefelton via email only at [kbrewster@crwp.org](mailto:kbrewster@crwp.org) by **April 1, 2022** at 4:00 PM local time.

## Exhibits

## Exhibit A: Task Pricing Schedule

Chagrin River Watershed Partners East Branch Chagrin River Restoration Project TASK PRICING SCHEDULE							
Item No.	Description	QTY	Unit	Unit Price		Total Unit Cost	Total Cost
				Labor	Material		
1	SITE ASSESSMENT	1	LS				
2	DESIGN	1	LS				
3	PERMIT PREPARATION AND SUBMITTAL, PERMIT MONITORING, AND REPORTING	1	LS				
4	SITE PREPARATION	1	LS				
5	STREAMBANK STABILIZATION AND STREAM CHANNEL RESTORATION (EAST BRANCH AND CHAGRIN RIVER)	1,385	LF				
6	RIPARIAN PLANTINGS	1.5	AC				
7	INVASIVE PLANT TREATMENT	75	AC				
8	WETLAND RESTORATION AND PLANTINGS	1	AC				
9	DAM REMNANT REMOVAL AND STREAM CHANNEL STABILIZATION	0.5	AC				
10	DEBRIS REMOVAL	1	LS				
11	UTILITY ALLOWANCE	1	LS				
<b>TOTAL CONTRACT BID PRICE ITEMS 1 THROUGH 11</b>							
<p>AMOUNTS SHALL BE SHOWN IN FIGURES. THE TOTAL CONTRACT BID PRICE AS LISTED ABOVE IS FOR INFORMATION ONLY AT THE TIME OF OPENING BIDS. IF THERE IS A DISCREPANCY, BETWEEN THE TOTAL UNIT COST AND THE TOTAL COST BID ON ANY ITEM, MATHEMATICAL MISTAKES WILL BE RESOLVED BY MULTIPLYING THE SUM OF THE INDIVIDUAL UNIT PRICES GIVEN FOR LABOR AND MATERIAL TIMES THE ESTIMATED QUANTITY FOR EACH BID ITEM. THE TOTAL SUM OF THE INDIVIDUAL ITEMS SHALL GOVERN.</p> <p><b>THE BIDDER AGREES TO THE FOLLOWING CONTRACT TERMS:</b></p> <ul style="list-style-type: none"> <li>• <b>COMPLETION DATE: THIS PROJECT MUST BE COMPLETE NO LATER MAY 31, 2023.</b></li> <li>• <b>LIQUIDATED DAMAGES: \$500.00 FOR EACH DAY BEYOND MAY 31, 2023.</b></li> <li>• <b>FUNDING AND CLOSEOUT PAPERWORK: MAY 31, 2023.</b></li> </ul>							
NAME OF BIDDER:				DATE:			
SIGNATURE OF BIDDER:							



**Exhibit B: H2Ohio Grant Agreement between Ohio Department of Natural  
Resources and Chagrin River Watershed Partners**

**H2Ohio Grant Agreement Between  
Chagrin River Watershed Partners, Inc.  
And the  
Ohio Department of Natural Resources**

This Grant Agreement (the “Agreement”) is made and entered into by and between the State of Ohio, Department of Natural Resources, (the “ODNR”), acting by and through its Director, pursuant to Section 1501.01 of the Ohio Revised Code and Amended Substitute House Bill No. 110, passed by the 134<sup>th</sup> General Assembly of the State of Ohio and signed by the Governor of Ohio on 1 July, 2021 (effective date June 30, 2021) and the Chagrin River Watershed Partners, Inc., (the “Grantee”).

Pursuant to Am. Sub. H.B. No. 110, the 134<sup>th</sup> General Assembly of the State of Ohio has appropriated funds of which Two Million and Two Hundred Thousand Dollars (\$2,200,000.00) has been redirected and awarded to the Grantee for costs associated with the East Branch Chagrin River Restoration Project (hereinafter referred to as the “Project”).

The General Assembly has identified the H2Ohio Fund (Fund 6H20 725681), as the fund from which these monies will be disbursed.

The scope of work is set forth in Exhibit A, which is attached hereto and by reference fully incorporated into this Agreement, with the total amount funded for the Project limited to the amount stated above.

NOW, THEREFORE, for the purposes of providing the funds to the Grantee pursuant to Am. Sub. H.B. No. 110 of the 134<sup>th</sup> General Assembly, the parties hereto agree as follows:

1. ODNR agrees to provide the Grantee up to Two Million and Two Hundred Thousand Dollars (\$2,200,000.00) via qualifying advance or reimbursement to be used toward the total cost of the Project.

a. Property Acquisition Costs:

- i. Consistent with Exhibit A, approximately Seventy Thousand Dollars (\$70,000.00) of the Grant Funds will be utilized by Grantee and Grantee’s subcontractors to acquire title in fee simple and place a conservation easement over a 14.8 acre parcel of real property in Lake County and approximately One Hundred and Fifty-Five Thousand Dollars (\$155,000.00) of the Grant Funds will be utilized by Grantee to acquire title

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

in fee simple and place a conservation easement over permanent protection on 58.7 acres of real property in Lake County (collectively the "Project Property"). Approximately Nine Thousand and Fifty Dollars (\$9,050.00) of the Grant Funds may be used for title work and closing costs associated with these acquisitions;

- ii. Upon execution of this Agreement, Grantee shall forward to ODNR a property acquisition disbursement schedule for approval by ODNR;
- iii. ODNR will review the property acquisition disbursement schedule and determine and approve the amount of the Grant Funds to be used to acquire the Property based on its review of (i) appraisals of the Project Property, (ii) evidence of title and title insurance, and (iii) agreements as to the terms and conditions of a purchase and sale contract that are negotiated at arms' length with the current owner(s) of the Project Property;
- iv. Once approved, any adjustments to the property acquisition disbursement schedule must be approved by ODNR;
- v. Once ODNR approves the property acquisition disbursement schedule and the amount of the Grant Funds to be used to acquire the Project Property, Grantee may, no less than fourteen (14) business days in advance of the anticipated acquisition expenditures being incurred by Grantee, submit to ODNR for approval and payment an invoice for an advancement of Grant Funds for the acquisition ("Acquisition Invoice").
- vi. The Acquisition Invoice shall be accompanied by a detailed statement listing the estimated item expenditures to be incurred during the invoice period;
- vii. Beginning with the second Acquisition Invoice, each such invoice shall (i) also be accompanied by a detailed accounting of property acquisition expenditures of all previously-advanced funds and (ii) deduct from the amount requested any unencumbered, previously-advanced funds;
- viii. Upon payment of the final Acquisition Invoice, Grantee will refund to ODNR any and all unexpended funds which were advanced for acquisition; and,

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

- ix. It is mutually agreed that acquisition of the Project Property shall be completed on or before September 30, 2022.

b. Property Restoration Costs:

- i. Consistent with Exhibit A, approximately One Million, Nine Hundred and Sixty-Five Thousand and Nine Hundred and Fifty Dollars (\$1,965,950.00) of the Grant Funds will be used for permanent protection and restoration work consistent with Exhibit A;
- ii. For all expenditures related to protection and restoration work, not less than fourteen (14) business days in advance of the date Grantee anticipates making expenditures for the Project, Grantee may submit to ODNR an invoice for an advancement of funds ("Restoration Invoice"), accompanied by a detailed statement listing the estimated item expenditures to be incurred during the invoice period; and,
- iii. Beginning with the second Restoration Invoice, each such invoice shall (i) also be accompanied by a detailed accounting of the Project expenditures of all previously-advanced funds and (ii) deduct from the amount requested any unencumbered, previously-advanced funds.

c. Timing.

- i. ODNR shall review such invoices promptly and, to the extent practicable, shall pay the invoice within ten (10) business days of receipt thereof, unless it requires and requests additional information from Grantee as a condition of payment; and,
- ii. ODNR agrees to accept invoices for an advancement of funds submitted less than fourteen (14) business days in advance of the date Grantee anticipates making expenditures for the Project, but payment shall still proceed in accordance with paragraphs (1)(c)(i) above.

- d. Environmental Deed Restriction. The Project Property acquired and restored pursuant to this Agreement shall be maintained, in perpetuity, in a condition consistent with Exhibit A hereto. Grantee shall secure conservation easements on all Project Properties, in a form substantially similar to the form attached hereto as Exhibit B, to be recorded with the County Recorder. Such conservation easements must, in perpetuity, prohibit any activity or construction on the Project Properties

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

inconsistent with the Project set forth in Exhibit A. Grantee shall deliver a copy of all conservation easements to ODNR upon completion of the Project and shall give ODNR twenty (20) days notice before any transfer of interest in any conservation easement secured as part of this Project.

2. In no event shall ODNR's payment to Grantee exceed Two Million and Two Hundred Thousand Dollars (\$2,200,000.00). Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code. Any funds provided under this Agreement that are not timely spent in connection with the Project shall be returned to State of Ohio in accordance with Paragraph 7, below.
3. Grantee agrees that the Project will be completed, in accordance with Exhibit A, on or before June 30, 2023 ("Completion Date") at which time Grantee will provide a final report to ODNR. This Agreement shall terminate five (5) years after ODNR's receipt of the final report, however, all provisions that logically ought to survive termination of this Agreement shall survive. Upon written request, and subject to appropriation and renewal of funds by the State of Ohio, this Agreement may be renewed and extended by the Parties.
4. The Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the property to restore and/or develop wetlands and wetland function
5. The Grantee shall be responsible for the administration of the Project. The Grantee shall have the full authority to contract with appropriate persons for the design and construction of the Project. The Grantee shall make diligent efforts to secure all necessary permits for the Project. If the issuance of one or more such permits is delayed, ODNR agrees to extend the Completion Date to allow Grantee to complete the Project once such permits are issued. The Grantee warrants and certifies that it will cause the Project to be constructed on or before the Completion Date and reasonably adhere to the submitted development timeline set forth in Exhibit A.
6. The Grantee shall be solely responsible for the operation, maintenance, and upkeep of the Project.
7. If for any reason funds and/or interest on such funds acquired through this Agreement are required to be paid, repaid, or remitted to the State of Ohio, such shall be remitted in full within forty-five (45) days of demand to:

Payable to: Treasurer of the State of Ohio  
30 East Broad Street, 9th Floor

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

Columbus, Ohio 43215

Mailed to: Department of Natural Resources  
Office of Budget and Finance  
2045 Morse Road, Bldg D-2  
Columbus, OH 43229

Any such remittance shall include a copy of this agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to the Auditor of State (88 E. Broad Street, 10<sup>th</sup> Floor, Columbus, Ohio 43215) and ODNR.

8. ODNR's only liability under this Agreement shall be for the advancement of the grant funds described herein. It is specifically understood and agreed that ODNR does not indemnify Grantee. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.
9. Grantee represents that it maintains adequate insurance coverage for all employees or agents of Grantee who are or will be responsible for maintaining or disbursing funds acquired through this Agreement against loss of such funds. All funds acquired by Grantee through this Agreement shall be deposited in one or more federally-insured financial institutions until such funds are spent on the Project.
10. The Grantee will keep and make all Project-related records available to ODNR, the state Auditor or the Auditor's designee for a period of not less than five (5) years after the date of the Project completion. The Grantee acknowledges that the Auditor of State or ODNR may audit the Project at any time, including before, during and after completion.
11. The Grantee assures compliance with the following Federal, State, and local laws and regulations, for the Project:
  - a. Prevailing wage pursuant to ORC Chapter 4115
  - b. Worker's Compensation
  - c. Equal Opportunity Laws

The Grantee agrees that it will fully comply with all state and federal non-discrimination laws and promptly comply with all requests and directions from the State of Ohio in this regard.

H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

d. Domestic Steel pursuant to ORC 153.011

e. Environmental and Historical Preservation Laws and Regulations

The Grantee assures compliance with all applicable Federal, State, and local environmental and historic preservation laws and regulations pertaining to the Project.

f. Drug-free Workplace

The Grantee agrees to comply with all applicable State and Federal laws regarding a drug-free workplace. The Grantee will make a good faith effort to ensure that all contract employees, while working on Grantee's property, will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way.

g. Laws of Professional Design

The Grantee will comply with all laws that may require approval of the Project by a registered professional engineer, surveyor, architect, or landscape architect.

**12.** The Grantee agrees it will comply with any other Federal, State, and local laws and regulations applicable to the Project, whether now known or later identified.

**13.** The Grantee affirmatively represents and warrants to the State that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section.

**14.** ODNR reserves the right to terminate this Agreement if the Grantee is unable to proceed with the Project described in this Agreement, or if Grantee violates any of the terms of this Agreement (a "Default"). If ODNR believes a Default has occurred, ODNR shall provide written notice of its intent to terminate this Agreement reasonably identifying the Default. Grantee shall have thirty (30) days from receipt of such notice to cure such Default or dispute that a Default has occurred. During this thirty (30) day period, Grantee shall not incur any additional expenses on the Project unless and until the Default is cured.

**15.** The Grantee will assure that monies expended under this Agreement are spent in conformity with their intended purpose as provided by Am. Sub. H.B. No. 166, 133rd General Assembly, Section 126.60 of the Ohio Revised Code. ODNR agrees that the expenditure of monies by Grantee to complete the Project in a manner consistent with Exhibit A will conform with the intended purposes of Section 126.60 of the Ohio Revised Code.

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

- 16.** The Grantee certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- 17.** No personnel of either Party who exercises any functions or responsibilities in connection with the review or approval of this Agreement shall, prior to the completion of the Project, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to this Agreement. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest shall immediately disclose his or her interest to the other Party in writing. Thereafter, he or she shall not participate in any action affecting the Project, unless the other Party determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- 18.** The Grantee hereby certifies that neither it nor, to the best of its knowledge any of its officers or directors, or the spouse of any such person, has made contributions to the ODNR or the Governor in excess of the limitations specified in R.C. 3517.13.
- 19.** If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.
- 20.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio.
- 21.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- 22.** Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by the Grantee, without the prior written consent of ODNR.



## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR

- 23.** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 24.** This Agreement is not binding upon ODNR unless executed in full. This Agreement is effective as of the last date of signature by ODNR.
- 25.** All notices, consents and communications required hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof and shall be sent to the addresses set forth above. Notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. All Notices required or permitted to be given pursuant to the terms of this Agreement shall be respectively addressed as follows:

For ODNR:

Jeffrey Hayes  
Assistant Regional Scenic River Manager -North East Ohio  
Ohio Department of Natural Resources, Division of Natural Areas and Preserves  
11027 Hopkins Road  
Garrettsville, Ohio 44231  
Jeffrey.hayes@dnr.ohio.gov

For Grantee

Heather Elmer  
Executive Director  
Chagrin River Watershed Partners  
P.O. Box 229  
Willoughby, Ohio 44096-0229  
helmer@crwp.org

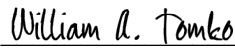
Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc. and ODNR


26. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
27. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN TESTIMONY WHEREOF, the Grantee and ODNR have caused this Agreement to be executed by their respective officers on the dates indicated below.

### FOR CHAGRIN RIVER WATERSHED PARTNERS

DocuSigned by:  
  
9234156D115947E7  
William A. Tomko  
President  
  
10/21/2021  
\_\_\_\_\_  
Date

### FOR THE ODNR

  
\_\_\_\_\_  
Mary Mertz  
Director  
  
10/22/2021  
\_\_\_\_\_  
Date

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

**Exhibit A****Scope of Work****East Branch Chagrin River Restoration**

The East Branch of the Chagrin River, a state designated Scenic River, joins the mainstem of the Chagrin River at Daniels Park in the City of Willoughby before eventually flowing to Lake Erie (Figure 1). Immediately downstream of this confluence, the Chagrin River at river mile (RM) 4.95 is in full attainment of its warmwater habitat (WWH) aquatic life use (ALU) designation, in addition to all other downstream Ohio EPA monitoring locations. However, full attainment at RM 4.95 is threatened due to causes of impairment including sedimentation and flow regime alterations and sources of impairment including loss of riparian vegetation and streambank destabilization. Both the Chagrin River south of State Route 84 and the East Branch near its confluence with the Chagrin River have been affected by substantial streambank erosion which is contributing sediment to the river and threatening downstream attainment of the Chagrin River's ALU designation. Several factors have contributed to erosion and slumping on the west bank of the Chagrin River between State Route 84 and Interstate 90: lack of adequate riparian vegetation, accumulation of sediment along the eastern bank, and the collapse of a downstream lowhead dam for a water supply pool at Daniels Park in 2005 which lowered the base level flow of the river. The erosion and migration of the Chagrin River's western bank has resulted in deposition and aggradation of the eastern bank. A point bar on the eastern bank and associated transverse riffle are directing flow towards the western bank. Within the channel of the East Branch, deteriorating former City water intake structures are contributing to unstable stream hydraulics and substantial streambank erosion. Addressing this erosion is crucial to ensure that the East Branch and the Chagrin River at this site and downstream reaches continue to support healthy fish and macroinvertebrate communities and for reducing sediment and nutrient pollution to Lake Erie.

H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

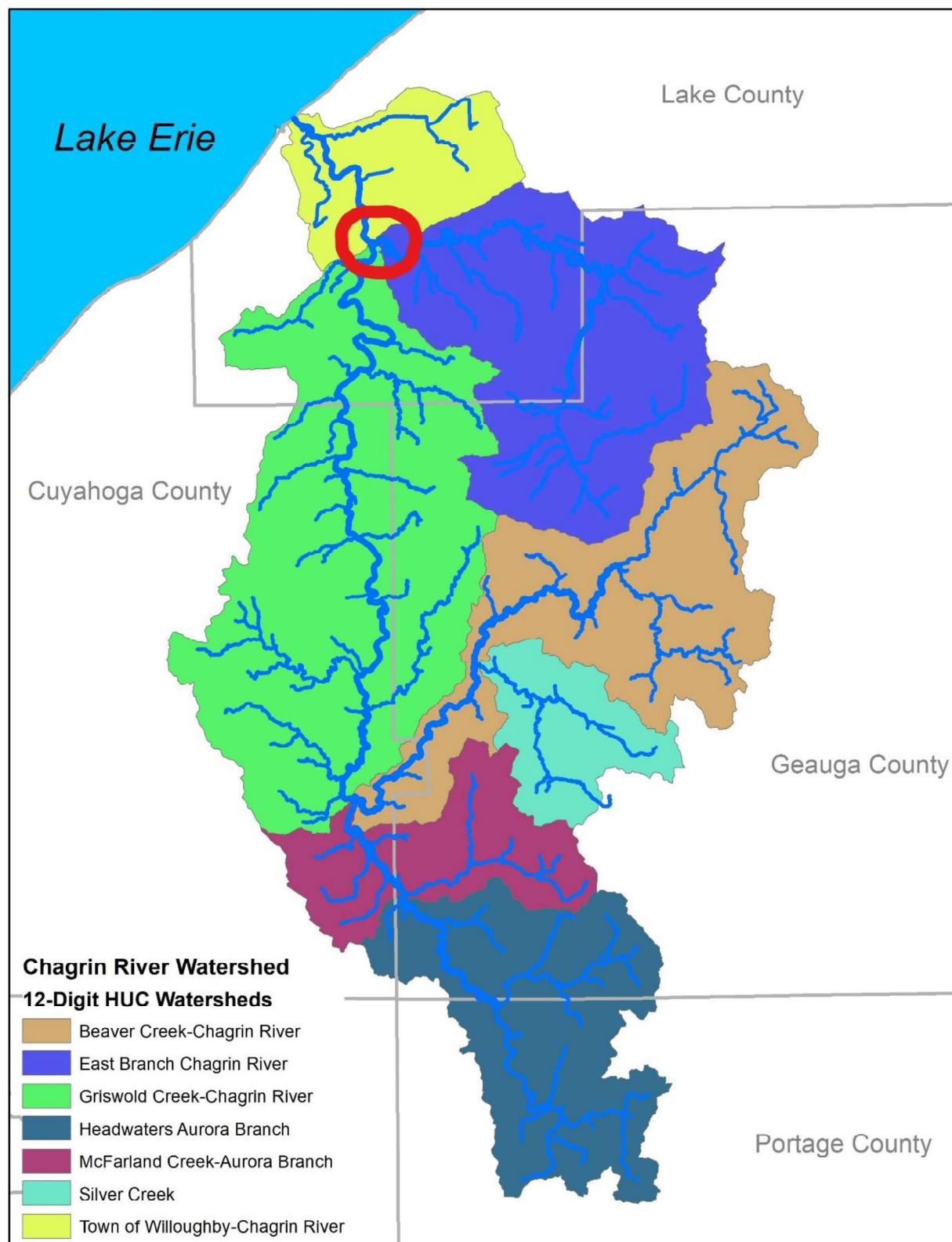


Figure 1. Location of project area (in red circle) within the Chagrin River Watershed and in relation to Lake Erie.

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

The East Branch Chagrin River Restoration Project (Figure 2) will stabilize eroding streambanks on the mainstem of the Chagrin River using bioengineering methods and riparian revegetation, realign the East Branch channel to a more stable configuration and remove the influence of the former water intake structures on the East Branch of the Chagrin River, create an oxbow wetland within a portion of the old East Branch channel, remove lowhead dam remnants within the Chagrin River, treat invasive plant species, and permanently protect important riparian areas and wetlands within the Chagrin River and East Branch corridors. This project will help maintain the Chagrin River's full attainment of its ALU designation at RM 4.95 and other downstream Ohio EPA monitoring locations, reduce sediment and nutrient loads to the Chagrin River and Lake Erie, improve salmonid habitat and restore complete fish passage to upstream reaches, increase safe and public access to the river, and enhance current and future connectivity to other protected areas in the Chagrin River corridor.

Restoration of the Chagrin River will include the following components: 1) stabilize 685 linear feet of eroding streambank using bioengineering methods; 2) install bendway weirs (rock structures to direct flow into the center of the channel), keyed into the bank to prevent the river from eroding behind them (or boulder toe as necessary depending on permitting and hydraulic constraints); 3) create a bankfull bench (floodplain area to store water and dissipate velocity during high flow events); 4) remove the point bar on the eastern bank and realign the transverse riffle; and 5) restore 1.5 acres of riparian area with native tree and shrub species to maintain stable banks and filter stormwater runoff flowing to the river. Restoration of 700 linear feet of the East Branch will include the following components: 1) realign the East Branch channel to a more stable configuration with one meander located in the low area of the floodplain and remove the influence of former water intake structures on the flow hydraulics (or two meanders depending on hydraulic constraints); 2) use toe wood to help stabilize the restored channel; and 3) restore 1 acre of old river channel to an oxbow wetland to provide nursery areas for young fish and waterfowl habitat. The project includes the following additional components: 1) remove dam remnants from the Chagrin River and stabilize the restored area (0.5 acre) to improve stream hydraulics and aquatic habitat; 2) protect riparian lands within the Chagrin River and East Branch corridors (78.4 acres) from risk of future development, including the acquisition and permanent protection of fourteen City-owned parcels and permanent protection of two Western Reserve Land Conservancy (WRLC)-owned parcels (the West Property), including 25 acres of Category 3 wetlands; and 3) management of invasive plant species (at least 1 year) within the entire project area (78.4 acres).

This project is a partnership of Chagrin River Watershed Partners (CRWP), the City of Willoughby, WRLC, and many other local stakeholders. This project has the support of the City of Willoughby, CRWP, WRLC, Andrews Osborne Academy, Village of Waite Hill, Lake Metroparks, Lake County Stormwater Management Department, Lake County Soil and Water Conservation District, Northeast Ohio Regional Sewer District, Ohio Department of Transportation – Office of Environmental Services, and the Willoughby Burroughs Nature Club.



## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

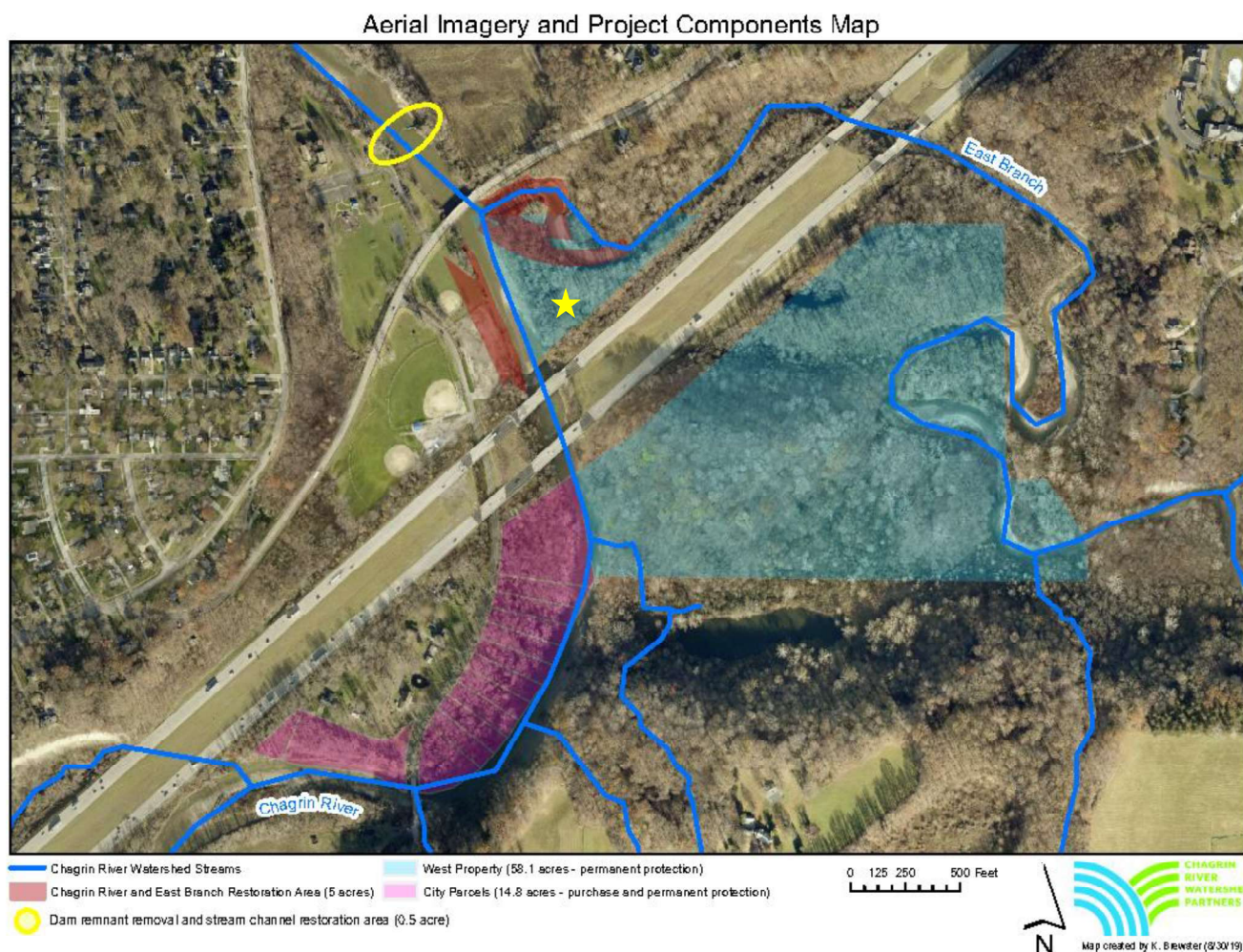


Figure 2. Conceptual plan depicting all project components, prepared by Chagrin River Watershed Partners.

### Description of Sediment and Nutrient Load Reduction Benefits per Project Component:

- 1) Chagrin River and East Branch Stream Channel and Oxbow Wetland Restoration (at Daniels Park and the West Property)
  - These restoration deliverables will provide estimated pollutant load reductions of 1,078.7 pounds/year of nitrogen, 497.9 pounds per year of phosphorus, and 414.9 tons per year of sediment to the Chagrin River and Lake Erie (estimates prepared by a consultant).
- 2) Dam Remnant Removal on the Chagrin River (at Daniels Park)
  - A lowhead dam in the Chagrin River dam breached in 2005 and remnants of the structure remain in the river channel on parcels owned by the City and Andrews Osborne Academy. The collapse of the lowhead dam lowered the base level flow of the river, contributing to substantial channel instability for both the Chagrin River south of State Route 84 and the East Branch near its confluence with the

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

Chagrin River. This project will remove the dam remnants from the Chagrin River. In tandem with the restoration to occur on the Chagrin River and East Branch, this work will further stabilize the restored area to improve stream hydraulics and aquatic habitat. The inclusion of the dam remnant removal in this project was recommended by Ohio EPA.

3) Invasive Plant Species Treatment (entire project area)

- Invasive plant species treatment at the West Property and the 14 small parcels is necessary to help ensure that invasive plant species do not encroach into the restored stream channel and wetland restoration areas and jeopardize the success of this restoration work. Further, invasive plant species treatment will protect native plant species at the project area, and these native plant species have deep roots which provide soil stabilization and filtration of sediment and nutrient pollution.

4) Acquisition and Permanent Protection of Chagrin River Floodplain and Riparian Corridor (at West Property and 14 City Parcels)

- **Protection of Sensitive Areas:** 25 acres of forested floodplain wetlands will be protected at the West Property; these wetlands have been identified as Category 3 wetlands (ORAM score of 70.5 and VIBI score of 81; 2019 assessment by Davey Resource Group). Wetlands are one of the most effective stormwater management practices for pollutant removal. According to Ohio EPA's Nonpoint Source Management Plan Update (2020), wetlands can remove more than 70% of suspended solids and up to 56% of total phosphorus from urban stormwater runoff. Additionally, "riparian wetland areas are highly effective at assimilating nutrients through infiltration and/or vegetative uptake" and "re-establishing, restoring, and enhancing existing riparian wetlands to serve as detention areas" is critical for reducing the impact of nutrient laden runoff (Ohio EPA, 2020). The land protection components of this project will protect approximately 60 acres of FEMA-designated 100-year floodplain at the West Property and the 14 City parcels. According to Ohio EPA's Nonpoint Source Management Plan Update (2020), "riparian corridors provide important streamside habitat for wildlife, and important shading to the water, thereby reducing algae blooms and water temperatures."
- **Nutrient and Soil Loss Prevention Benefits:** A portion of the West Property (and 16.1% of the entire project area) contains steep areas of GoF soils (Gosport silty clay loam, 25 to 70 percent slopes), which are classified as a Highly Erodible Land soil type. These areas should be protected from vegetative clearing and development to avoid soil erosion and loss of sediments and nutrients to the Chagrin River and Lake Erie. The U.S. Department of Agriculture Natural Resources Conservation Service's Revised Universal Soil Loss Equation, Version 2 (RUSLE2) was used to estimate the soil loss that can be expected if the West Property and the 14 City Parcels would be converted from forest to agriculture. If the West Property were to be converted from forest to agriculture, this would result in an increase of 2.5 tons of soil loss per year to 1,019 tons of soil loss per year (a 40,660% increase) due to the steep slopes and soil types on this property. If the 14 City Parcels were to be converted from forest to agriculture, this would result in an

## H2Ohio Grant Award Agreement Between Chagrin Watershed Partners, Inc and ODNR -Exhibit A

increase of 0.2 tons of soil loss per year to 20.7 tons of soil loss per year (a 10,250% increase). Phosphorus and other nutrients attach to soil particles, so these soil losses would also increase nutrient loads to the Chagrin River and Lake Erie if these properties were converted from their currently forested land uses.

- Protection of H2Ohio Investment:** The protection of riparian corridor upstream of the restoration components of this project (on both the Chagrin River and the East Branch of the Chagrin River) is necessary to ensure the long-term success of the river and wetland restoration components of this project and protect the H2Ohio funding investment in the restoration components. If the West Property (including the East Branch restoration area) and the 14 City Parcels upstream in the riparian corridor were to be developed or timbered in the future, the removal of riparian vegetation could destabilize floodplain and riverbank on those lands and contribute to instability, siltation of restored stream and wetland restoration areas completed through the H2Ohio project, and nutrient and sediment losses to the Chagrin River and Lake Erie.
- Development Risk:** Development and loss of these important riparian and floodplain lands is a real threat, as demonstrated by existing residential developments and active recreation areas at Daniels Park and associated parking areas. There is currently proposed development within the Chagrin River corridor immediately downstream of the project site. Timbering is another threat to these forested properties.
- Public Recreation Access Benefits:** CRWP, WRLC, the City of Willoughby, and many other local and regional partners have been investing in development of a Chagrin River Corridor and Lakefront Trail Connection plan in western Lake County. This trail planning and public access initiative is funded by the Cleveland Foundation's Lake Geauga-Fund and in collaboration with the Northeast Ohio Areawide Coordinating Agency and support from 26 local partners and communities. The plan will be completed in the coming months. In addition to the sediment and nutrient load reduction benefits of the East Branch Chagrin River Restoration Project, the land protection components of the project will ensure that the Chagrin River corridor in this area will be protected from development, connected to the new trail network, and someday opened to the public for recreational access to the Chagrin River and Lake Erie.

Table 1. Description of project deliverables by project area.

Project Area	Description of Proposed Deliverables
West Property (blue area in Figure 2)	Stream and wetland restoration of East Branch of Chagrin River; permanent protection through a conservation easement (and ODNR deed restrictions, if required); invasive plant species treatment



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City-Owned Parcels (pink area in Figure 2)	Purchase and permanent protection through a conservation easement (and ODNR deed restrictions, if required); invasive plant species treatment
Daniels Park (City of Willoughby) (red area in Figure 2)	Stream restoration of Chagrin River; permanent protection of restored areas through ODNR deed restrictions; invasive plant species treatment
Daniels Park/Andrews Osborne Academy Property (yellow circle in Figure 2)	Dam remnant removal and stream channel restoration; permanent protection of restored areas through ODNR deed restrictions; invasive plant species treatment

**Task 1 – Conceptual Design**

In 2017, CRWP coordinated with the City of Willoughby to secure funding through the U.S. EPA Great Lakes Restoration Initiative that allowed CRWP to contract with Biohabitats to develop conceptual restoration plans for this site. Completed in 2018, these conceptual plans were used to develop the stream and wetland restoration components of this project. The conceptual plans were included in an overall project concept plan, submitted with the H2Ohio project nomination. The stream and wetland restoration approach will be finalized during the full design and engineering phase of this project.

**Deliverable 1**

The conceptual design for this project is complete (Figure 3).

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Figure 3. Restoration conceptual plan (Alternative 1/Preferred Alternative), prepared by Biohabitats.

## Task 2 – Implementation (Land Protection Project Components)

This project includes the purchase and permanent protection of fourteen properties currently owned by the City of Willoughby (totaling 14.8 acres, pink area in Figure 2). In 2019, the City entered into a non-binding letter of intent with Western Reserve Land Conservancy (WRLC) to allow WRLC to purchase and permanently protect these fourteen parcels as a component of this project.

WRLC will also protect two currently unencumbered parcels (the West Property) in perpetuity through a permanent conservation easement (area in blue in Figure 2). A small, triangle-shaped portion of the West Property north of I-90 (yellow star in Figure 2) may be split and transferred to the City prior to the initiation of restoration activities in that area, or this may occur at a later date. For all the City-owned parcels at Daniels Park where river restoration will occur (red area in Figure 2), the City of Willoughby will place ODNR's deed restrictions over the restored areas.

As for the fourteen parcels currently owned by the City (pink area in Figure 2) and the two parcels comprising the West Property (total 73.5 acres), the fee title interest will be held by Natural Areas Land Conservancy, an Ohio nonprofit corporation and supporting organization to WRLC. NALC

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will grant a permanent conservation easement to; WRLC will hold a single permanent conservation easement over the roughly 73.5 acres in perpetuity.

**Deliverable 2** – The land protection components of this project will result in the permanent protection of 78.4 acres of riparian lands and 7,000 linear feet of streams in the Chagrin River and East Branch corridors. This will be documented through a conservation easement/environmental covenant or series of covenants.

### **Task 3- Engineering and Design** (for Restoration Components of Project)

Chagrin River Watershed Partners (CRWP) will use a competitive Request for Proposals process to select an experienced ecological restoration design-build contractor/team to enter into contract for completing design and engineering for the restoration components of this project. The selected design-build team will include professional licensed engineering representatives and construction contractors experienced in stream and wetland restoration.

### **Deliverable 3** –

The design-build team will produce 30%, 60%, and final plan sets for the restoration and dam removal components of this project. The final engineering plan set will be endorsed and signed by a professional licensed engineer experienced in stream and wetland restoration. ODNR, CRWP, the City of Willoughby, WRLC, and other project partners will have the opportunity to review and provide feedback on plans at each design stage to ensure the ecological success of the project. The design-build contractor will also be responsible for developing a site maintenance/management plan for the restored area.

### **Task 4 – Permitting**

Per its subcontract with CRWP, the selected design-build restoration team will be responsible for securing any necessary federal, state, and local permits, certifications, and authorizations for the project prior to commencement of restoration activities, including preparing and filing permit applications and paying for any associated fees. Anticipated permitting needs include Ohio EPA Section 401 Water Quality Certification, US Army Corps of Engineers Section 404 Permit, State Historic Preservation Office Section 106 review, local special flood hazard area development permit, and NPDES permits for Construction Site Storm Water including preparation of a Stormwater Pollution Prevention Plan (SWP3).

### **Deliverable 4** –

The selected design-build restoration team will be responsible for any permit compliance, monitoring, and reporting requirements. Copies of all secured permits and permit compliance reports will be shared with CRWP, the City of Willoughby, and ODNR. All permits will be in hand prior to construction.

### **Task 5 – Implementation (Restoration Project Components)**

Proposed river restoration is depicted by the red areas in Figure 2; the dam remnant removal is depicted with a yellow circle in Figure 2. CRWP will hire an experienced design-build contractor

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to complete the stream restoration and dam remnant removal components of the project and complete invasive plant species management for the entire project area (in addition to the stream restoration sites). The selected contractor will be responsible for scheduling regular progress meetings during the design and construction phases of the project.

The entire project will take place on 20 parcels (78.4 acres). Stream/wetland restoration and dam remnant removal will occur on portions of five parcels: three City-owned parcels, one parcel owned by WRLC, and one parcel owned by the Andrews Osborne Academy (AOA), a private school. Restoration of the East Branch stream channel (700 linear feet of stream channel restoration and 1 acre of oxbow wetland restoration) will be located on a parcel that is currently under private ownership by WRLC. To make this property available for restoration, WRLC must place an easement over the property, which will be completed through Task 2 of this project. The dam remnant removal component of this project will partially take place on AOA property. AOA has entered into a voluntary landowner agreement with the City to demonstrate support for this project, including support for the completion of the dam remnant removal. The total stream restoration area is approximately 5.5 acres.

Invasive plant species are consistently present at a low-moderate density throughout the project area, with higher densities in open canopy areas along riparian corridors. There are no dense stands of monoculture invasive plant species with the exception of small patches of butterbur (*Petasites hybridus*) in the understory along river corridors. Examples of other invasive plant species detected on the properties include Japanese knotweed (*Polygonum cuspidatum*), phragmites (*Phragmites australis*), and multiflora rose (*Rosa multiflora*). Invasive plant species management (at least 1 year) will be completed for the entire project area (78.4 acres). Invasive species will be controlled using both mechanical and chemical methods, with care taken to selectively target invasive species and not harm native species. Control methods may be modified by the selected invasive plant species management consultant based on updated conditions at the time of project implementation. Management will be adjusted as needed for greatest effectiveness. Invasive plant species management for the river and wetland restoration areas will be included in the design-build restoration contract for the Chagrin River and East Branch restoration project. Invasive plant species management for all other land in the project area (78.4 acres) may be completed through an additional contract, if not included within the design-build restoration contract.

CRWP will convene partners for a kickoff meeting and regular progress meetings, develop an RFP for selection of a design-build restoration contractor, issue the RFP, lead design-build consultant selection, provide restoration plan review, provide construction oversight, coordinate with all major project partners for public/stakeholder outreach and any educational deliverables, and complete quarterly reporting requirements to ODNR.

CRWP will partner with the City of Willoughby, ODNR, and WRLC to inform the public about this project and the benefits of stream restoration and land protection. Project information will be shared on City and CRWP websites and social media platforms. At least one news release and one factsheet about the project will be shared with local media outlets during and/or after implementation of the project. This project will also be highlighted at a CRWP Board of Directors

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meeting and in CRWP's annual report. As requested by ODNR, CRWP and its partners may hold a post-restoration tour of the project site.

CRWP's legal counsel will provide legal review of all contracts associated with the project. The City of Willoughby's Law Director will provide legal review of all contracts associated with the project entered by the City.

### **Deliverable 5 –**

The restoration components of this project will restore 1,385 linear feet of river and enhance 78.4 acres of riparian lands in the Chagrin River and East Branch corridors. Pollutant load reductions of 1,078.7 pounds/year of nitrogen, 497.9 pounds per year of phosphorus, and 414.9 tons per year of sediment to the Chagrin River and Lake Erie are anticipated as a result of the restoration component of this project. This project will enhance connectivity to other already protected lands in the Chagrin River corridor such as several nearby preserves managed by WRLC and Lake Metroparks' Gully Brook Park. This project will also build opportunities for future land protection and outdoor recreational opportunities within the Chagrin River and East Branch corridors, both upstream and downstream of the project site. The project will also improve salmonid habitat, restore complete fish passage to upstream reaches, and increase safety and public access to the river.

### **Task 6 – Construction Oversight:**

The selected design-build restoration contractor will provide design/engineering and construction services for the project. The City of Willoughby's Municipal Engineer will provide engineering oversight and approval for the project on behalf of the City. CRWP will provide restoration oversight to ensure that the sediment and nutrient reduction and wetland restoration goals of the project are met.

### **Deliverable 6:**

The selected design-build team will provide As-Built plans developed by a professional licensed engineer and approved by the City of Willoughby Municipal Engineer.

### **Task 7 – Project Management:**

CRWP will serve as the local project sponsor. Points of contact for all major project partners are as follows:

Heather Elmer, Executive Director  
Chagrin River Watershed Partners  
P.O. Box 229  
Willoughby, OH 44096-0229  
[helmer@crwp.org](mailto:helmer@crwp.org)  
440-975-3870 ext. 1001

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Kimberly Brewster, Deputy Director  
 Chagrin River Watershed Partners  
 P.O. Box 229  
 Willoughby, OH 44096-0229  
[kbrewster@crwp.org](mailto:kbrewster@crwp.org)  
 440-975-3870 ext. 1006

Mayor Robert Fiala  
 City of Willoughby  
 One Public Square  
 Willoughby, OH 44094  
[rfiala@willoughbyohio.com](mailto:rfiala@willoughbyohio.com)  
 440-951-2800

Brett Rodstrom, Vice President of Eastern Field Operations  
 Western Reserve Land Conservancy  
 3850 Chagrin River Road  
 Moreland Hills, OH 44022  
[brodstrom@wrlandconservancy.org](mailto:brodstrom@wrlandconservancy.org)  
 440-867-6659

**Deliverable 7:**

CRWP will deliver reporting to on a time frame and in a format as approved by ODNR.

Project Timeline – Chagrin River and East Branch Corridor Restoration and Protection Project	Q1 FY22 July 2021	Q2 FY22 Oct 2021	Q3 FY22 Jan 2022	Q4 FY22 April 2022	Q1 FY23 July 2022	Q2 FY23 Oct 2022	Q3 FY23 Jan 2023	Q4 FY23 April 2023
Task 1 – Conceptual Design		X						
Task 2 – Implementation (Land Protection Components)		X	X	X	X			
Task 3 – Engineering and Design			X	X				
Task 4 - Permitting			X	X				
Task 5 – Implementation (Restoration Components)					X	X	X	X
Task 6 – Construction Oversight					X	X	X	X
Task 7 – Project Management		X	X	X	X	X	X	X

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Budget Summary	
Reimbursable Item	\$ Amount
Salaries and Benefits	\$29,966.03
Travel	\$175.00
Supplies	\$0.00
Equipment	\$0.00
Contractual (Design-Build Restoration)	\$1,925,808.97
Contractual (Land Protection)	\$234,050.00
Contractual (City Legal/Engineering Review)	\$10,000.00
Other	\$0.00
Total Direct Expenses	\$2,200,000.00
Total Reimbursable	\$2,200,000.00

**Budget Justification****Total: (\$2,200,000.00)****Salaries and Benefits: (\$29,966.03)**

This budget line item includes CRWP staff time for serving as local project sponsor, including salary and fringe benefits (Table 1). CRWP will convene partners for a kickoff meeting and regular progress meetings, develop RFP(s) for selection of a design-build restoration contractor, issue RFP(s), lead design-build consultant selection, provide restoration plan review, provide construction oversight, coordinate with all major project partners for public/stakeholder outreach and any educational deliverables, and complete reporting requirements to ODNR. Cost estimates are based CRWP costs for similar projects.

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Table 2. Chagrin River Watershed Partners (CRWP) salaries and benefits budget.

CRWP Staff Name and Title	Project Role	2021 Hours	2021 Hourly Rate	2021 Fringe Rate	Fringe per hour	2022 Hours	2022 Hourly Rate	2022 fringe per hour	2023 Hours	2023 Hourly Rate	2023 fringe per hour	Total
Executive Director - Heather Elmer	Supervision and Leadership	47	47.29	19.55%	9.25	80	52.02	10.17	20	57.22	11.19	\$9,000.40
Deputy Director - Kimberly Brewster	Project Management, Technical Assistance	120	37.61	15.85%	5.96	120	41.37	6.56	60	45.51	7.21	\$14,143.21
Senior Project Manager - Keely Davidson-Bennett	Technical Assistance	12	36.99	11.72%	4.34	40	40.69	4.77	5	44.76	5.25	\$2,564.23
Senior Project Manager - Laura Bonnell	Technical Assistance	5	26.14	27.86%	7.28	10	28.75	8.01	5	31.63	8.81	\$736.97
Senior Project Manager - Kristen Hebebrand	Technical Assistance	5	26.87	18.53%	4.98	10	29.56	5.48	5	32.51	6.02	\$702.27
Senior Project Manager - Josh Myers	Technical Assistance	5	26.87	11.72%	3.15	10	29.56	3.46	5	32.51	3.81	\$661.92
Administrative Manager - Linda Moran	Financial Administrative and Reporting Assistance	5	33.66	25.24%	8.50	20	37.03	9.35	6	40.73	10.28	\$1,444.26
Marketing Specialist & Administrative Assistant - Mackenzie Snyder	Education and Outreach Deliverables	0	25.00	11.72%	2.93	10	27.50	3.22	12	30.25	3.55	\$712.77
<b>TOTAL</b>												<b>\$29,966.03</b>



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**Travel: (\$175.00)**

This budget line item includes mileage to and from the project site by CRWP and billed at the federal mileage rate (3.2 miles round trip from office to project site, estimated 4 site visits per month throughout project period = 153.6 miles x \$0.56/mile).

**Supplies: (\$0.00)**

N/A

**Equipment: (\$0.00)**

N/A

**Contractual (Design-Build Restoration): (\$1,925,808.97)**

CRWP will hire an experienced design-build contractor to complete the stream/wetland restoration, dam remnant removal, and invasive plant treatment components of the project. Stream and wetland restoration costs are based on cost estimates developed by Biohabitats. Invasive plant treatment costs based on estimates provided by a local contractor. Archaeological study cost estimates based on informal guidance from local conservation partners.

Subcontract Breakdown	
\$1,090,070.00	East Branch Restoration (Alternative 1) – <i>design/engineering, permitting, and construction</i>
\$500,738.97	Chagrin River Mainstem Restoration (Alternative 1) – <i>design/engineering, permitting, and construction</i>
\$250,000.00	Dam Remnant Removal and Channel Restoration – <i>design/engineering, permitting, and construction</i>
\$60,000.00	Invasive Plant Treatment (78.4 acres, minimum 1 year treatment)
\$25,000.00	Archaeological Study/SHPO Coordination
\$1,925,808.97	TOTAL

**Contractual (Land Protection Components): (\$234,050.00)**

The City will subcontract with WRLC (\$234,050.00) for technical assistance related to the land protection components of this project and for land purchase and permanent protection costs, as detailed previously in this Scope of Work. Land purchase and protection costs are based on appraisal reports.

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Subcontract Breakdown	
\$155,000.00	West Property Permanent Protection, 58.1 acres (based on appraisal)
\$70,000.00	City Parcel Purchase and Permanent Protection, 14.8 acres (based on appraisal)
\$2,050.00	Title Work Costs (\$1,200 for West Property, \$850 for City-owned parcels)
\$7,000.00	Closing costs (WRLC estimate)
\$234,050.00	TOTAL

**Contractual (City Legal/Engineering Review): (\$10,000)**

Services may include financial administration, engineering oversight, parks and recreation department technical assistance, and legal counsel oversight for all agreements, subcontracts, and other legal documents.

**Other: (\$0.00)**

N/A

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Exhibit B

**GRANT OF CONSERVATION EASEMENT  
AND  
COVENANT FOR STEWARDSHIP FEES**

This Grant of Conservation Easement and Covenant for Stewardship Fees (this “**Grant**” or this “**Conservation Easement**”) is made by \_\_\_\_\_ (“**Grantor**”), a political subdivision of the State of Ohio [or a park district formed under the authority of Chapter 1545 of the Ohio Revised Code], to Western Reserve Land Conservancy (“**Grantee**”), an Ohio nonprofit corporation.

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of \_\_\_\_\_ parcels of real property aggregating approximately \_\_\_\_ acres in area, located on \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ County, Ohio (the “**Protected Property**”), known as permanent parcel number(s) \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ and legally described in Exhibit A and further described and depicted in a Baseline Documentation Report designated Exhibit B, with the Property Identification map of Exhibit B depicting the Protected Property in crosshatch, both of which exhibits are attached hereto and made a part hereof; and

**WHEREAS**, the Protected Property possesses significant scenic, natural, and open space values (collectively, the “**Conservation Values**”) of great importance to Grantor, Grantee, to the residents of \_\_\_\_\_ Township, \_\_\_\_\_ County, and to the State of Ohio; and

**WHEREAS**, Grantor and Grantee agree that the Baseline Documentation Report provides an accurate representation of the Protected Property and the Conservation Values as of the effective date of this Grant and that it is intended to serve as an objective information baseline for monitoring compliance with the terms of this Grant; and

**WHEREAS**, the Protected Property is located within Grantee’s service area and has substantial value as a scenic, natural, and educational resource in its present state as a natural, scenic, and open area, constituting a natural habitat for plants and wildlife; and

**WHEREAS**, the Protected Property is located within one mile of \_\_\_\_ properties that are permanently protected by Grantee totaling \_\_\_\_\_ acres, and two managed parks/preserves totaling \_\_\_\_\_ acres, thereby creating a significant opportunity to connect those properties and the Protected Property to establish a corridor of preserved properties in this area of recent high development pressure; and

**WHEREAS**, the Protected Property contains approximately \_\_\_\_\_ linear feet of \_\_\_\_\_, a tributary to the \_\_\_\_\_ River; and

**WHEREAS**, the Protected Property contains [insert tree and plant species highlights here]; and

**WHEREAS**, [INSERT ADDITIONAL PROPERTY-SPECIFIC RECITALS HERE, INCLUDING (HOPEFULLY) A DESCRIPTION OF CLEARLY DELINEATED GOVERNMENTAL POLICIES]

**WHEREAS**, there are situated on the Protected Property an existing driveway and parking area (the “**Existing Improvements**”) as described and depicted in Exhibit B; and

**WHEREAS**, Grantee is a charitable organization referred to in Section 5301.69 of the Ohio Revised Code (“**ORC**”) and Section 501(c)(3) of the Internal Revenue Code of 1986 (“**IRC**”), as amended, and the regulations promulgated thereunder, and is authorized to acquire conservation easements in accordance with the provisions of ORC Section 5301.69(B); and

**WHEREAS**, Grantee is a “qualified organization,” as that term is defined in IRC Section 170(h); and

**WHEREAS**, Grantor and Grantee recognize the aforesaid Conservation Values of the Protected Property in its present state, and have, by the conveyance and acceptance of this Conservation Easement, respectively, the common purpose of (a) conserving and protecting the Protected Property in perpetuity as natural habitat for plants and wildlife, (b) providing long-term benefits to the citizens of \_\_\_\_\_, Ohio and \_\_\_\_\_ County by operating the Protected Property as a Passive Use Public Park (as hereinafter defined), and (c) preventing the use or development of the Protected Property contrary to the mission of Grantor’s park commission to preserve, conserve and protect the natural features of \_\_\_\_\_, Ohio (the “Park District Mission”); and

**WHEREAS**, “**Passive Use Public Park**” means a park that is operated for Passive Park Uses, as distinguished from active uses; and

**WHEREAS**, “Passive Park Uses” excludes active recreational uses, such as sports fields and courts, golf courses and motor vehicle tracks, but includes uses and management practices which (a) maintain and enhance environmental quality, (b) provide sanctuary for native plants and animals, (c) avoid significant degradation of soils, wildlife, plant habitats and water quality by use of vegetative buffers along streams and wetlands, and (d) limit physical alteration of the Protected Property to creation and maintenance of trails and to the Future Improvements and to those activities not otherwise restricted by subparagraph 4(c); and

**WHEREAS**, “ecological, scientific, educational, and aesthetic value,” “natural, scenic and open condition” and “natural values” as used herein shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Protected Property at the time of this Grant, meaning that native plants and wildlife are permitted to exist in a relatively natural state; and

**WHEREAS**, Grantor and Grantee intend that this Conservation Easement shall be a “conservation easement” as defined in ORC Section 5301.67; and

**WHEREAS**, Grantee is willing to accept this Conservation Easement subject to the reservations and to the terms, conditions and obligations set out herein; and

**WHEREAS**, consistent with IRC regulations Section 1.170A-14(c) requiring Grantee to have a commitment to protect the Conservation Purposes (as defined below) and the resources to enforce the restrictions contained in this Grant, (a) Grantee’s obligation under this Conservation Easement entails a commitment to defend the ecological, scientific, educational and aesthetic value, the natural, scenic and open condition, and natural values of the Protected Property; (b) significant costs are necessary to carry out this commitment; and (c) accordingly, Grantor and Grantee have reached agreement on the payment by Grantor of a stewardship fee as described in paragraph 18 below.

**NOW, THEREFORE**, for and in consideration of the premises and the foregoing recitations, and other good and valuable consideration in hand paid, and in further consideration of the mutual promises, covenants, terms, conditions and restrictions hereinafter set forth, with the intention of making an absolute and unconditional gift, Grantor does hereby grant, give, and convey unto Grantee its successors and assigns, in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, for the purposes of preserving, protecting, and maintaining the Protected Property pursuant to the Park District Mission as scenic, natural, and open areas, and as habitat for plants and wildlife and as a Passive Use Public Park, and together with the right of visual access to and views of the Protected Property in its

scenic, natural and predominately undeveloped wooded and open condition. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described in this Grant.

**A. PURPOSES FOR WHICH THIS CONSERVATION EASEMENT IS GRANTED:**

This Conservation Easement is granted for the purposes (the “**Conservation Purposes**”) of the (a) protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystems, (b) preservation of open space and forest land, together with the right of visual access to and a view of the Protected Property by the general public in its scenic, relatively natural and predominantly undeveloped, wooded and open condition, which will yield a significant public benefit, and (c) use of the Protected Property as a Passive Use Public Park in order to preserve and foster outdoor recreation and education of the general public.

**B. TERMS, CONDITIONS, AND RESTRICTIONS OF THIS CONSERVATION EASEMENT:**

**1. General Reserved Rights.**

- (a) Ordinary Rights and Privileges of Ownership. Grantor reserves all ordinary rights and privileges of ownership, including the right to sell and lease the Protected Property, as well as the right to continue the use of the Protected Property for all purposes consistent with the Conservation Purposes not destructive of Conservation Values, and not expressly prohibited or conditioned hereunder; provided that nothing contained in this Conservation Easement shall relieve Grantor of any obligation with respect to the Protected Property or restrictions on the use of the Protected Property imposed by law. Grantor reserves the right to engage in all acts or uses on the Protected Property that are not prohibited by governmental statute or regulation, are not expressly prohibited or conditioned herein, and are not inconsistent with the Conservation Purposes.
- (b) Use of Fertilizers and Herbicides. Grantor reserves the right to use natural and chemical fertilizers and herbicide controls on the Protected Property; provided such use is in compliance with all applicable federal, state and local statutes and regulations, but only to the extent such use does not have an adverse impact on the Conservation Values of the Protected Property and is otherwise consistent with the Conservation Purposes.

- (c) Tree Planting. Grantor reserves the right to plant anywhere on the Protected Property a diversity of native or non-invasive species of trees, shrubs and herbaceous plant materials in a manner that does not have an adverse impact on the Conservation Values of the Protected Property and is otherwise consistent with the Conservation Purposes. Provided, also, the Grantor will not introduce into the Protected Property any plant species as defined or listed as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies. The Grantor may reseed disturbed areas with high quality, certified weed-free seed that is commonly used and that is acceptable to the natural resource agencies in the State of Ohio.
- (d) Tree Removal. Grantor reserves the right to remove (i) from anywhere on the Protected Property dead, diseased or materially damaged trees and trees that pose a danger to human life or neighboring properties, and (ii) trees from areas within which existing trails are being widened or new trails created (as provided in subparagraph 4(c); provided, however, that any such removal does not impair significant conservation interests as described in the IRC.

**2. Major Reserved Rights.**

- (a) Existing Improvements. Notwithstanding anything to the contrary contained in this Grant, Grantor and Grantee agree that the Existing Improvements may continue to be maintained, repaired and replaced in their present location on the Protected Property.
- (b) Future Improvements. Notwithstanding anything to the contrary contained in this Grant, Grantor and Grantee agree that non-residential structures and associated improvements typically used in parks, such as, but not limited to, pavilions, parking areas, roads for access to parking areas and for management and maintenance activities, restroom facilities, fencing, landscaping and lawns (collectively, the “**Future Improvements**”), may be constructed and thereafter maintained (including mowing of the lawns), remodeled or expanded anywhere on the Protected Property.
- (c) Restoration Activities. Grantor reserves the right, notwithstanding any provision to the contrary in this Grant, to engage in restoration and other long term management activities consistent with and as necessary to further the purposes of Grantor’s Natural Resource Management Plan; provided that such restoration and long term management activities are not detrimental to water quality, significant natural habitats, or the scenic qualities of the Protected Property and are otherwise consistent with the Conservation Purposes and Conservation Values.

3. **Notice of Exercise of Reserved Rights.** As required by IRC regulations Section 1.170A-14(g)(5)(ii), Grantor agrees to notify Grantee, in writing, before exercising any Major Reserved Right reserved by Grantor in paragraph 2 of this Grant, which shall be subject to Grantee's approval or withholding of approval pursuant to paragraph 7, below.

4. **Use Restrictions.**

(a) **Structures; Signs.**

(i) **Structures.** Except for the Existing Improvements and the Future Improvements, and except as may otherwise be provided in this Grant, no residential, commercial, governmental or industrial structures, including, but not limited to, buildings, outbuildings, communication towers, asphalt, concrete or other impermeable surfaces, camping accommodations, mobile homes, and fences, shall be hereafter erected or placed on the Protected Property.

(ii) **Signs.** Except as may otherwise be provided in this Grant, no signs, billboards or advertising of any kind shall be erected or placed on the Protected Property, except signs which are reasonably consistent with the use and operation of the Protected Property as a passive use public park and whose placement, number and design do not significantly diminish the scenic character of the Protected Property, including signs that (A) state the name and address of the Protected Property; (B) state the fact that the Protected Property is protected by this Conservation Easement; (C) facilitate directions; (D) promote educational activities; (E) post the Protected Property to control unauthorized entry or use; and (F) identify sources of funding as required by such sources. Nothing contained herein shall prohibit short-term, temporary signs, advocating or opposing political causes or candidates, provided that such signs are installed within a reasonable time period prior to political elections and removed immediately after same.

(b) **Waste Disposal.** Except for leaves, mulch, wood chips and other similar materials typically used in the creation of compost (collectively, the "**Compost Materials**") generated on the Protected Property or for Compost Materials brought onto and used exclusively on the Protected Property for landscaping purposes in a manner compatible with the Conservation Purposes, there shall be no (i) dumping of Compost Materials or of soil, trash, garbage, waste, or other unsightly or offensive



material; (ii) placement of underground storage tanks; or (iii) application, storage, or placement of raw, untreated municipal, commercial or industrial sewage sludge or liquid generated from such sources on the Protected Property.

- (c) Filling or Excavation. Except as may otherwise be provided in this Grant, there shall be no fillings, excavations, construction of roads or other changes in the general topography of the Protected Property in any manner except the maintenance of existing and permitted low-impact, pervious trails or access roads (including placement of culverts and bridges associated with such trails or roads) and that caused by the forces of nature; provided, however, that existing trails may be widened and new trails may be created so long as they do not exceed eight feet in width, they are not covered with impervious materials and any tree removal involved in such widening or creation is restricted exclusively to the trail corridors. All trails and roads will be limited in scope and all trails and roads will be installed and maintained using best management practices to prevent soil erosion and other impacts on the Protected Property. Any activities permitted by this subparagraph 4(c) shall not be detrimental to water quality, significant natural habitats, or the scenic qualities of the Protected Property and shall be otherwise consistent with the Conservation Purposes and the Conservation Values.
- (d) Mining. Pursuant to IRC Section 170(h)(5)(B), there shall be no surface mining permitted on the Protected Property.
- (e) Oil and Gas Exploration. Except as otherwise may be permitted in this Grant, there shall be no drilling for oil, gas or similar substances from the Protected Property.
- (f) Habitat Disturbance. Except as otherwise permitted in this Grant, Grantor shall not cut down, remove or destroy native trees or other plants.
- (g) Power Lines or Communications Towers. Except for utility lines necessary for structures, uses and activities permitted on the Protected Property and as may be permitted by utility easements of record at the time of this Grant, there shall be no power transmission lines or communications towers erected on the Protected Property and no interests in the Protected Property shall be granted for such purpose.
- (h) Manipulation of Water Courses. There shall be no manipulation or alteration of natural water courses, marshes, or other water bodies or activities or uses detrimental to water quality; provided that existing lakes, dams and ponds, if any, on the Protected Property may be maintained, repaired, replaced and expanded. The

Protected Property includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Protected Property (collectively, the “**Water Rights**”). Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Protected Property or change the historic use of the Water Rights without the consent of Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of Grantee.

- (i) Limitation on Motor Vehicles. No motorized vehicles shall be operated on the Protected Property except in the confines of the driveways and parking areas included in the Existing Improvements and Future Improvements and for pickup trucks, tractors, and non-recreational all-terrain vehicles that are used in connection with maintenance, monitoring and management activities. Any permitted use of motorized vehicles on the Protected Property shall be in such a manner so as not to cause rutting or other damage to the surface of the Protected Property that could create a potential for erosion or contribute to other adverse impacts to the Conservation Values.
  - (j) Density Yield; Transfer of Development Rights. The acreage constituting the Protected Property shall not be taken into consideration and may not be used when calculating the lot area, building density, lot coverage, open space, or natural resource use for any future development of any property. Grantor may not transfer (whether or not for compensation) any development rights encumbered or extinguished by this Grant.
  - (k) Subdivision. Except as may be otherwise provided in this Grant, without the prior consent of Grantee, (i) the parcel(s) presently constituting the Protected Property shall not be divided, subdivided or transferred separately from the other; and (ii) any transfer of the Protected Property must include all parcels.
  - (l) Commercial Recreational Use. Except for those uses considered “*de minimis*” according to the provisions of IRC Section 2031(c)(8)(B), there shall be no commercial recreational use of the Protected Property.
5. **Real Property Interest.** This Conservation Easement constitutes a real property interest immediately vested in Grantee binding upon Grantor and Grantee, their respective agents,

personnel, representatives, heirs, assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

6. **Right to Enter and Inspect.** Grantee, or its duly authorized representatives, may enter the Protected Property at all reasonable times, after not less than 24 hours written or telephone notice, for the purposes of inspecting the Protected Property in order to further the objectives of and determine compliance with the terms of this Conservation Easement; provided that no such notice need be given prior to Grantee entering the Protected Property under emergency circumstances. For the purpose of this provision, “emergency circumstances” shall mean that Grantee has a good-faith basis to believe that a violation of this Conservation Easement is occurring or is imminent.
7. **Grantee’s Approval and Withholding of Approval.** When Grantee’s approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor’s written request therefor. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of Approval, and the conditions, if any, on which approval might otherwise be given.
  - (a) **Approval by Grantee of Certain Uses or Activities.** Grantor’s exercise of the Major Reserved Rights under paragraph 2 of this Conservation Easement shall be subject to the prior approval of Grantee. Grantor shall request such approval in writing and shall include therewith information identifying the proposed activity and the reasons for the proposed activity with reasonable specificity. Grantee’s evaluation of the request shall generally take into account the criteria included at subparagraph 7(b), below, as they relate to the activity itself as well as to the site for the proposed activity, and Grantee’s approval shall not be unreasonably withheld.
  - (b) **Approval by Grantee of Sites.** The exercise of the right to construct structures, improvements or other surface disturbing activity shall be subject to the prior approval by Grantee of the site for such proposed activity. Grantor shall request such approval in writing and shall include therewith information identifying the proposed site with reasonable specificity, evidencing conformity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. Grantee’s approval, which shall not be unreasonably withheld, shall take into account the following criteria:

- (i) the extent to which use of the site for the proposed activity would impair the scenic qualities of the Protected Property that are visible from public roads;
- (ii) the extent to which use of the site for the proposed activity would destroy an important habitat or would have a material adverse effect on the movement of wildlife;
- (iii) the extent to which use of the site for the proposed activity would impair water quality;
- (iv) in the case of any proposal to build new structures or roads, the extent to which the scenic quality of the Protected Property may be adversely impacted;
- (v) the extent to which the proposed activity or use of the site for the proposed activity would otherwise significantly impair the Conservation Values.

Grantor and Grantee shall cooperate and shall act in good faith to arrive at agreement on suitable sites in connection with any determinations that are necessary to be made by them (either separately or jointly) under this paragraph 7. Notwithstanding the foregoing, Grantee's approval of a proposed site or activity shall be withheld if the site for the proposed activity would interfere with or impair the Conservation Values of the Protected Property.

- (c) Notice to Grantee. Following the receipt of Grantee's approval when required under subparagraph 7(a) or subparagraph 7(b), and not less than thirty (30) days prior to the commencement of any use or activity approved under subparagraph 7(a) or 7(b), Grantor agrees to notify Grantee in writing of the intention to exercise such right. The notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to monitor such activity. When such information was not provided to Grantee under the requirements of subparagraph 7(b), the notice shall also include information evidencing the conformity of such activity with the requirements of the applicable paragraphs under which the right is reserved hereunder, and, when applicable, evidencing conformity with existing land use regulations. At Grantee's sole discretion, Grantee may permit commencement of the activity less than thirty (30) days after receiving Grantor's written notice. Nothing in this paragraph shall diminish or limit Grantor's obligations under paragraph 17, with respect to Grantor's written notice to Grantee concerning a transfer of any interest in all or a portion of

the Protected Property.

- (d) Breach. Failure to secure such approval or give such notice as may be required by this paragraph 7 shall be a material breach of this Conservation Easement notwithstanding any other provision of this Conservation Easement and shall entitle Grantee to such rights or remedies as may be available under this Conservation Easement.

8. **Grantee's Remedies.** In the event of a violation of the terms of this Conservation Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, if the violation involves damage to the Protected Property resulting from any use or activity inconsistent with the Conservation Purposes, to restore the portion of the Protected Property so damaged. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or if the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing such violation within the 30-day period or, once having commenced a cure, fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation *ex parte* if necessary, by way of temporary or permanent injunction, to recover from Grantor any damages to which it may be entitled for violation of the terms of this Conservation Easement or damage to any of the Conservation Values arising from such violation, including damages for diminished environmental values, and to require the restoration of the Protected Property to the condition that existed prior to any such damage, without limiting Grantor's liability therefor. Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. If Grantee, in its reasonable discretion, determines that circumstances require its immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this paragraph upon giving notice to Grantor of such circumstances but without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violation of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both temporary and permanent, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual

damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph apply to violations caused directly by Grantor or by third persons, whether or not claiming by, through or under Grantor, and shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms, conditions and purposes of this Conservation Easement by prior failure to act. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this Conservation Easement shall be borne by Grantor.

9. **Upkeep and Maintenance.** Grantor shall be solely responsible for the upkeep and maintenance of the Protected Property to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property.
10. **Liability and Indemnification; Insurance.** Grantor and Grantee acknowledge and agree that Grantor retains the fee simple ownership of the Protected Property and therefore Grantor controls day-to-day activities on, and access to, the Protected Property, except for Grantee's limited rights to monitor the condition of the Conservation Values and to enforce the terms of this Conservation Easement. Grantor therefore agrees that general liability for risks, damages, injuries, claims or costs arising by virtue of Grantor's continued ownership, use, and control of the Protected Property shall remain with Grantor as a normal and customary incident of the right of property ownership. Accordingly, Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Protected Property and not caused by Grantee or its agents, contractors or invitees. Grantor shall keep the Protected Property insured with comprehensive general liability insurance in reasonable amounts (which insurance shall cover the contractual indemnity obligations of Grantor to Grantee hereunder) against claims for personal injury, death and property damage, cause Grantee to be named as an additional insured on such insurance policies, and provide evidence of such insurance to Grantee as of the effective date of this Conservation Easement and periodically thereafter as such insurance coverage is renewed or replaced. Such evidence shall be in the form of a certificate of insurance which (a) indicates that Grantee is an additional insured; and (b) requires written notice from the insurer to Grantee not less than 30 days before making a material change in or canceling such coverage.

11. **Taxes.** Grantor shall pay all taxes validly assessed and levied against the Protected Property, including any such taxes validly levied and assessed against this Conservation Easement by competent authorities, it being understood that no taxes are presently levied against conservation easements generally in the State of Ohio, or, to the knowledge of Grantor or Grantee, are such taxes contemplated by any taxing authority with jurisdiction over the Protected Property. At its option, Grantee may, but shall not be obligated to, discharge any tax lien (or other encumbrance) at any time levied or placed on the Protected Property should Grantor fail to do so. Before doing so, Grantee shall give Grantor notice of its intention to discharge any such tax lien or other encumbrance and Grantee shall not proceed unless Grantor has failed to discharge such tax lien or other encumbrance within 30 days after the giving of such notice. Grantor shall reimburse Grantee on demand for any payment so made.
12. **Incorporation in Subsequent Instruments.** In order to assure that the transferee of title to or a possessory interest in the Protected Property is aware of the existence of this Grant, Grantor agrees that a reference to this Conservation Easement shall be incorporated in any subsequent deed, or other legal instrument, by which Grantor divests either the fee simple title to, or a possessory interest in, the Protected Property.
13. **Amendment; Discretionary Approval.**
  - (a) **Background.** Grantee and Grantor recognize that future circumstances that are unforeseen at the time of this Grant may arise which make it beneficial or necessary to take certain action in order to ensure the continued protection of the Conservation Values of the Protected Property and to guaranty the perpetual nature of this Conservation Easement. Any such action, if determined to be beneficial or necessary, shall be in the form of either (i) an amendment, in the case of a permanent modification of the terms of this Conservation Easement, including but not by way of limitation, a clerical or technical correction or modification of a reserved right; or (ii) a discretionary approval, in the case of a temporary activity or impact relating to the maintenance or management of the Protected Property which does not require a permanent modification of the Conservation Easement terms. All amendments and discretionary approvals shall be subject to this paragraph 13. Nothing in this paragraph, however, shall require Grantor or Grantee to consult or negotiate regarding, or to agree to any amendment or discretionary approval.
  - (b) **Amendment.** This Grant may be amended only with the written consent of Grantee and Grantor. Grantee shall not consent to any amendment of this Conservation

Easement unless (i) Grantor submits a written request for amendment pursuant to Grantee's existing amendment policy and such amendment otherwise qualifies under Grantee's policy then in effect respecting conservation easement amendments; and (ii) the effect of such amendment is neutral with respect to or enhances the Conservation Purposes. Any such amendment shall be consistent with the purposes of this Grant and shall comply with IRC Sections 170(h) and 2031(c) and shall also be consistent with ORC Sections 5301.67 through 5301.70 and any regulations promulgated pursuant to such sections. Any such amendment shall be recorded in the Official Records of \_\_\_\_\_ County, Ohio. Grantor and Grantee may amend this Conservation Easement to be more restrictive to comply with the provisions of IRC Section 2031(c). Grantee shall require subordination of any mortgage as a condition of permitting any amendment to this Conservation Easement.

- (c) Discretionary Approval. Grantee's consent for activities otherwise prohibited under this Conservation Easement may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, the performance of an activity prohibited under this Conservation Easement is deemed beneficial or necessary by Grantor, Grantor may request, and Grantee may in its sole discretion grant, permission for such activity without resorting to the formalities of Grantee's amendment policy and process, subject to the following limitations. Such request for Grantee's consent shall (i) be made, and Grantee shall consider and respond to such request in accordance with the provisions of paragraph 7, entitled "Grantee's Approval or Withholding of Approval"; and (ii) describe the proposed activity in sufficient detail to allow Grantee to evaluate the consistency of the proposed activity with the purpose of this Conservation Easement. Grantee may grant its consent only if it determines that (x) the performance of such activity is, in fact, beneficial or necessary; and (xi) such activity (A) does not violate the purpose of this Conservation Easement, and (B) results in an outcome that is neutral with respect to or enhances the Conservation Purposes of this Conservation Easement.
- (d) General. Notwithstanding the foregoing, Grantee and Grantor shall have no power or right to agree to any activity that would (i) result in the extinguishment of this Conservation Easement; (ii) adversely affect the perpetual nature of this Conservation Easement; (iii) adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including IRC Sections



170(h) and 501(c)(3) and the laws of the State of Ohio; or (iv) result in either private benefit or inurement to any party. For purposes of this paragraph, the terms private benefit and inurement shall have the same meanings ascribed to them in IRC Section 501(c)(3) and associated Treasury Regulations.

14. **Assignment.** Grantee may transfer or assign all or less than all of Grantee's rights and obligations under this Conservation Easement if, in Grantee's opinion, the purposes of this Conservation Easement are better served by this Conservation Easement being held in the name of another organization or in the name of more than one organization which is a qualified organization at the time of transfer under IRC Section 170(h)(3) and the laws of the State of Ohio (especially ORC Section 5301.69), and is acceptable to Grantee. The selection of the transferee shall be made by the Board of Trustees of Grantee or if Grantee has ceased to exist, the statutory or court appointed successors of the last Board of Trustees of Grantee. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Conservation Easement is intended to advance continue to be carried out.

15. **Extinguishment.**

- (a) **Limitation.** If future circumstances render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a local court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of subparagraph 15(b), adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Conservation Purposes of this Conservation Easement.
- (b) **Percentage Interests.** For purposes of this paragraph 15, Grantor and Grantee stipulate that, as of the effective date of this Grant, this Conservation Easement and the restricted fee interest in the Protected Property each represent a percentage

interest in the fair market value of the Protected Property. Such percentage interests shall be determined by the ratio of (i) the value of this Conservation Easement on the effective date of this Grant to (ii) the value of the Protected Property, without deduction for the value of this Conservation Easement, on the effective date of this Grant. The values on the effective date of this Grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Grant, pursuant to IRC Section 170(h). Such values, if available on the date hereof, are set forth in an appraisal prepared for Grantor, a copy of which Grantor shall deliver to Grantee and to be retained thereafter in Grantee's files, and Grantor and Grantee shall thereafter amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or a court of competent jurisdiction. In the event such percentage interests, for whatever reason, cannot be determined as described above, the percentage interests of Grantor and Grantee in the fair market value of the Protected Property shall be deemed to be fifty percent (50%) each. For purposes of this paragraph, the ratio of the value of this Conservation Easement to the value of the Protected Property unencumbered by this Conservation Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant.

16. **Eminent Domain.** It is the intent of this Grant to convey to Grantee, its successors and assigns, such an interest in the Protected Property as is sufficient to discourage the exercise of the power of eminent domain by public utility and any other body or person. If all or any part of the Protected Property is taken, whether such taking involves the fee simple interest or a lesser interest, under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of subparagraph 15(a) (with respect to the allocation of proceeds). Such allocation shall be absolute and shall not take into account or be modified based on the relative impact of the taking on the respective interests of the parties.

The respective rights of Grantor and Grantee set forth in this paragraph 16 shall be in addition to, and not in limitation of, any rights they may have at common law.

17. **Notice of Proposed Transfer.** Grantor shall give Grantee notice of the proposed transfer of any interest in the Protected Property at least 20 days prior to such transfer.
18. **Stewardship Fee.** Grantor hereby covenants, promises, and agrees to pay, or to cause the closing agent in connection with the future transfer for value of all or less than all of the Protected Property to pay, to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, at closing, a Stewardship Fee (the “Fee”) in an amount equal to ten percent (10%) of the full consideration paid, including that portion of such consideration attributable to improvements. In the event the Fee is not paid as provided herein, Grantee shall have the right to initiate proceedings to impose a lien on the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee; provided that any lien securing payment of the Fee shall be subordinate to the lien of any first mortgage on the Protected Property. Such lien may be imposed, enforced and/or foreclosed in accordance with the laws of the State of Ohio.
19. **Separability.** Each provision of this Conservation Easement and the application thereof to the Protected Property are hereby declared to be independent of and severable from the remainder of this Conservation Easement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Conservation Easement.
20. **Notices.** Notices or other communications hereunder shall be in writing and shall be sent certified or by registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other parties. The notice addresses of the parties are as follows:

To Grantor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attention: Executive Director

To Grantee: Western Reserve Land Conservancy  
 3850 Chagrin River Road  
 Moreland Hills, OH 44022  
 Attention: President or General Counsel

21. **Applicable Law.** This Conservation Easement shall be governed by, and construed in accordance with, the laws of the State of Ohio.
22. **Forbearance Not a Waiver.** Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any violation of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such violation or another violation of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.
23. **Rules of Convenience.** For convenience, masculine pronouns used in this document include the feminine and neuter pronouns, and the singular tense includes the plural tense. Additionally, all references to either Grantor or Grantee include their respective personal representatives, heirs, successors, devisees and assigns unless otherwise noted. The captions in this Conservation Easement are for convenience only and are not intended by the parties to affect the meaning or interpretation of the terms thereof.
24. **Counterparts.** This Conservation Easement may be executed in multiple counterparts by Grantor and Grantee, each acting at different times and at separate locations, whether or not in the presence of each other, and any copy of this Conservation Easement to which the signatures of both Grantor and Grantee have been appended shall constitute an original hereof for all purposes, all such copies constituting one and the same original, and one of which shall constitute proof of the terms of this Conservation Easement without the necessity of producing any other original copy.
25. **Time of Essence.** Time is strictly of the essence in this Conservation Easement.
26. **Construction.** The parties acknowledge that each party has reviewed and revised this Conservation Easement and that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Conservation Easement and any amendment or exhibit hereto.
27. **Entire Agreement; Recitals and Exhibits.** This Grant sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein. Any and all recitals in this Conservation Easement are agreed by the parties to be accurate, are incorporated into this Conservation Easement by this reference, and shall constitute integral terms and conditions of this Grant. Any and all exhibits and

addenda attached to and referred to in this Conservation Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

28. **Effective Date; Mortgage Subordination; Mechanics Liens.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Easement is recorded in the Official Records of \_\_\_\_\_ County, Ohio, after all required signatures have been affixed hereto. Grantor (a) shall cause any mortgage encumbering the Protected Property to be subordinated to this Grant effective as of the date this Grant is so recorded; and (b) hereby represents to Grantee that no material or labor has been furnished to or performed on the Protected Property within the last 90 days that has not been paid for in full. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Easement.
29. **No Extinguishment Through Merger.** Grantor and Grantee herein agree that (a) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (b) should all or a portion of the fee interest subject to this Conservation Easement and the Conservation Easement, itself, come to be owned by the same owner, such owner as promptly as practicable shall assign this Conservation Easement of record to another holder in conformity with the requirements of paragraphs 14 and 17 (entitled "Assignment" and "Notice of Proposed Transfer", respectively). The instrument of assignment shall refer to the provisions of this paragraph, and shall contain confirmatory language suitable to reimpose this Conservation Easement to the extent, if any, necessary to continue it in force.
30. **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of that party's interest in this Conservation Easement or in the Protected Property, except that liability for acts or omissions occurring prior to such transfer shall survive transfer.
31. **Representations as to Authority.** Grantor hereby represents and warrants to Grantee that Grantor has the power to make this Grant and to carry out its obligations hereunder.

**TO HAVE AND TO HOLD**, unto and to the use of Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding not only upon Grantor and Grantee, but also their respective agents, personal representatives, heirs and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

GRANTOR:

\_\_\_\_\_

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

Its: \_\_\_\_\_

STATE OF OHIO                    )  
  )       SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, without the administration of an oath or affirmation to the signer, this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Instrument prepared by:  
Robert B. Owen, Esq.  
Western Reserve Land Conservancy  
3850 Chagrin River Road  
Moreland Hills, Ohio 44022

## ACCEPTANCE

The undersigned do hereby consent to and accept the within Conservation Easement and all obligations imposed thereby.

**IN WITNESS WHEREOF**, the undersigned have executed and delivered this Acceptance this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

### GRANTEE:

### WESTERN RESERVE LAND CONSERVANCY

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

Robert B. Owen

Its: Assistant Secretary

**STATE OF OHIO**

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SS:

**COUNTY OF CUYAHOGA**

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The foregoing instrument was acknowledged before me, without the administration of an oath or affirmation to the signer, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Robert B. Owen, Assistant Secretary of Western Reserve Land Conservancy, an Ohio nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public