

CONTRACTOR AGREEMENT

THIS AGREEMENT made this ____ day of ____, 200__ to become effective on the ____ day of ____, 200__, by and between Water Resource Improvement Trust., (WRIT) an _____ corporation with its principal office at _____ (hereinafter "WRIT") and _____ a _____ corporation with its principal office at _____ (hereinafter "CONTRACTOR").

RECITALS

WHEREAS, on or about the ____ day of ____, 200__ WRIT received a permit from the US Army Corps of Engineers(hereinafter "PERMITTER") (#_____) (hereinafter "PERMIT") to construct a stream mitigation bank located _____, Cuyahoga County, Ohio, more particularly described as the Euclid Creek Stream Bank (hereinafter the "Project") In addition, on or about the ____ day of ____, 20__ WRIT entered into an agreement (hereinafter "AGREEMENT") with _____. (hereinafter "OWNER"), to construct the Project. All such work, material and/or labor is to be done and/or furnished in accordance with the terms of said PERMIT and such AGREEMENT and all specifications, conditions, drawings, plans, whether furnished as of the date hereof or hereafter, (hereinafter collectively the "Contract Documents") are expressly incorporated into this Agreement by reference.

WHEREAS, CONTRACTOR has proposed to contract with WRIT for the furnishing by CONTRACTOR of certain work as described herein as an independent WRIT and CONTRACTOR's bid or proposal for doing said work has been accepted by WRIT.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties, it is agreed as follows:

ARTICLE 1 SCOPE OF WORK

1.1 CONTRACTOR'S WORK. CONTRACTOR shall, to the satisfaction of WRIT, PERMITTER and OWNER or OWNER's representative, provide all supervision, materials, labor, tools, equipment, facilities and personnel necessary for the performance of certain work on the Project as more particularly described in attached Schedule A which is incorporated into this Agreement by reference (hereinafter referred to as "CONTRACTOR's Work"). CONTRACTOR shall pay for all materials and labor, all consumable tools, the rental of all rented tools, equipment and facilities, all freight, shipping and transportation costs in connection with delivery of materials, tools, equipment and facilities to the building site as such may be necessary for the performance of CONTRACTOR's Work.

1.2 CONTRACT DOCUMENTS. CONTRACTOR shall be bound by the terms of the Contract Documents including, but not limited to, the PERMIT and AGREEMENT and any and all conditions, drawings, specifications and addenda thereto as such may apply to CONTRACTOR's Work.

1.3 CONFLICTS. In the event of a conflict between this Agreement and the Contract Documents in connection with the performance of CONTRACTOR's Work, CONTRACTOR shall comply with the terms of the PERMIT and AGREEMENT unless more stringent obligations are imposed under this Agreement. If CONTRACTOR is uncertain as to its obligations in light of any such conflict, CONTRACTOR shall so advise WRIT in writing and WRIT shall direct CONTRACTOR as to the manner in which CONTRACTOR is to proceed.

ARTICLE 2 SCHEDULE OF WORK

2.1 TIME IS OF THE ESSENCE. Time is of the essence for both parties and they mutually agree to the performance of their respective work and the work of their CONTRACTORS, if any, so that the entire Project may be completed in accordance with the Contract Documents and this Agreement. WRIT shall prepare the schedule of work and revise such schedule as the work progresses. WRIT and CONTRACTOR shall be bound by the schedule of work. CONTRACTOR shall provide WRIT with any requested schedule information for CONTRACTOR's Work. The schedule of work and all subsequent changes thereto shall be submitted to CONTRACTOR in advance of the required performance. It is recognized that changes will be made in the schedule of work and each party agrees to comply with such changes subject to a reservation of rights arising hereunder.

2.2 PRIORITY OF WORK. WRIT shall have the right to decide the time, order and priority in which various portions of the work shall be performed and all matters relative to the timely and orderly conduct of CONTRACTOR's Work. CONTRACTOR shall commence work within 10 (ten) days of the notice to proceed from WRIT and, if such work is interrupted for any reason, CONTRACTOR shall resume such work within two (2) working days from WRIT's notice to do so. CONTRACTOR agrees that, in connection with the schedule of work, it has taken into consideration and made appropriate allowances for the ordinary delays and hindrances incident to such work including, but not limited to, delays in securing material or workmen and slight omissions or alterations.

ARTICLE 3 CONTRACT PRICE

3.1 PAYMENT. Upon full and final completion of the various line items of CONTRACTOR's Work by CONTRACTOR, WRIT shall pay to CONTRACTOR the amount as set forth in attached Schedule B which is incorporated into this Agreement by reference. Items for Maintenance and Monitoring shall be paid in quarterly installments after the work has been complete for the particular quarter. In no event shall WRIT be required to pay CONTRACTOR until such time as WRIT has received payment for CONTRACTOR's Work, or any portion thereof, from proceeds from the sale of wetland credits, and further, at no time shall WRIT be required to make any payments that will reduce the difference between the total contract price and the amount paid below an amount sufficient, in WRIT's opinion, to complete CONTRACTOR's Work. No payment shall be considered an admission on the part of WRIT that this Agreement, or any part thereof, has been complied with and such shall not release CONTRACTOR for the full and complete performance of all terms and conditions hereof. Acceptance of payment by CONTRACTOR shall be deemed a waiver of any and all claims, demands or causes of action it may have against WRIT under this Agreement or such portion of CONTRACTOR's Work that relates to said payment. WRIT shall have the right to retain out of any payments due or to become due to CONTRACTOR a reasonable amount to protect WRIT from any and all loss, damage or expense, including attorney's fees, arising out of or relating to any claim or lien asserted or which WRIT reasonably believes may be asserted until any such claim or lien has been satisfied and/or proper provision is made therefor through bonding or other appropriate means. The contract price as provided herein shall include any and all sales, use or other taxes that may be applicable to the purchase, furnishing and/or installation of any goods or services in regard to this Agreement. CONTRACTOR shall provide appropriate waivers and/or releases from CONTRACTOR's CONTRACTORS and suppliers together with all

requests for payment under this Agreement.

Profit share payments shall be made after all project costs have been paid, or placed in escrow. Profit share payments shall be made once every six months, based upon the proceeds from the sale of wetland credits sold in the prior six month period.

ARTICLE 4
INSURANCE, BONDING, WARRANTY AND INDEMNIFICATION

4.1 WORKERS COMPENSATION AND PUBLIC LIABILITY INSURANCE.

CONTRACTOR agrees to indemnify and save harmless WRIT and OWNER from and against all claims asserted or suits brought against either or both arising out of or because of an injury, or occupational disability or disease, or death received or sustained by any person or persons by reason of any act, omission or negligence of CONTRACTOR, its agents, employees, suppliers or CONTRACTORS, or sustained by any employee of CONTRACTOR or its CONTRACTORS whether or not such injury, death or damage, or occupational disability or disease shall be contributed to by any failure of WRIT to comply with any law, ordinance or regulation applicable as a result of the Project. CONTRACTOR agrees to carry public liability insurance protecting CONTRACTOR against injury occurring to persons in connection with CONTRACTOR's Work, and operation of motor vehicles and, in addition, workers compensation insurance covering all liabilities imposed by the Workers Compensation Act in respect to employees engaged in the performance of this Agreement, with companies and in a form and amount satisfactory to WRIT and in accordance with the Contract Documents. CONTRACTOR agrees to indemnify and hold OWNER, PERMITTER and WRIT harmless for any and all loss or damage which either or both may sustain on account of any claim, demand or suit under any of the provisions of the Workers Compensation Act, or of any other law or laws of the state in which this Agreement is to be performed by or on behalf of any person injured by CONTRACTOR, its servants, agents, representatives, CONTRACTORS or employees. CONTRACTOR agrees to carry contractual liability insurance covering the CONTRACTOR's Work. CONTRACTOR shall provide WRIT with certificates of insurance, in such form as required by WRIT covering all insurance required under this Agreement. As a condition precedent to the commencement of CONTRACTOR's Work, all insurance coverages shall

provide that the policy shall not be canceled, permitted to expire or be materially changed without thirty (30) days' advance notice to WRIT. WRIT, all shareholders of WRIT and OWNER shall be named as additional insureds on each policy required by this Agreement (except workers compensation).

4.2 UNEMPLOYMENT INSURANCE. CONTRACTOR shall make such payments to the state and/or federal unemployment insurance fund or any other appropriate governmental office as may be required by applicable law to protect all employees of CONTRACTOR entitled to such benefits or protection. Upon request, CONTRACTOR shall furnish evidence of CONTRACTOR's compliance with this provision. In the event CONTRACTOR fails to make payments as provided herein or provide evidence of such payment upon demand, WRIT shall have the right to make such payments and charge them to CONTRACTOR.

4.3 BONDING. CONTRACTOR shall deliver to WRIT a performance and payment bond conditioned that CONTRACTOR will keep and perform all terms, covenants and conditions of this Agreement in the amount set forth in attached Schedule B which is incorporated into this Agreement by reference.

4.3 WARRANTY. CONTRACTOR warrants that all materials and equipment furnished for installation in connection with CONTRACTOR's Work shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from all faults, deficiencies and defects and in conformance with the PERMIT and AGREEMENT. All work not conforming to these requirements, including substitutions not properly approved or authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

4.4 INDEMNIFICATION. CONTRACTOR shall indemnify and forever hold harmless OWNER, PERMITTER, WRIT and WRIT's shareholders, officers and directors and all of their

agents, representatives and employees from and against all claims, damages, losses attorneys' fees and other expenses arising out of or resulting from the performance of CONTRACTOR's Work under this Agreement, whether such arises from a breach of CONTRACTOR's obligations hereunder, a breach of CONTRACTOR's warranty hereunder or otherwise. CONTRACTOR's obligations under this indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR under workers compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 5

MISCELLANEOUS

5.1 ARBITRATION. All claims or disputes between WRIT and CONTRACTOR arising out of or relating to this Agreement, or the breach thereof, shall be decided by arbitration. In the event of a dispute as to the proper construction and meaning of drawings and specifications or scope of work, WRIT may request that CONTRACTOR perform work which CONTRACTOR contents was not pursuant to the drawings, specifications or scope of CONTRACTOR's Work and CONTRACTOR shall perform such work so that there will be no delay in the completion of the Project as a result of the disagreement. The performance of said disputed work by CONTRACTOR shall not be deemed an acceptance of WRIT's construction of the plans, specifications or scope of work.

The parties shall agree in writing to select a mutually acceptable outside arbitrator to resolve any such claim or dispute. In the event the parties cannot agree on a single arbitrator, WRIT shall select an arbitrator, CONTRACTOR shall select an arbitrator and the two arbitrators so chosen shall select a third arbitrator. The decision of the majority of the three arbitrators shall be final. Any such arbitration proceeding shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect; provided, however, that the American Arbitration Association will not be used to select the arbitrators unless the parties mutually agree otherwise. Notice of a demand for arbitration shall be filed in writing with the other party to this agreement within a reasonable time, but not more than fifteen (15) days, after the dispute has arisen. It is agreed that selection of arbitrators as provided herein shall be completed within fifteen (15) days after receipt of any such demand for arbitration. Unless otherwise agreed, the location of the arbitration proceeding shall be the office of WRIT. The agreement to arbitrate as provided herein shall be specifically enforceable

under the applicable law of any court having jurisdiction and any award rendered by the arbitrators shall be final and judgment may be entered thereon.

5.2 CONTRACTORS OF CONTRACTOR. CONTRACTOR shall not delegate or subcontract its work under this Agreement without the written consent of WRIT. WRIT may reject any CONTRACTOR proposed by CONTRACTOR for any reason in WRIT's exclusive discretion.

5.3 DRAWINGS. WRIT shall furnish CONTRACTOR with such drawings or explanations as may be supplied to WRIT in connection with CONTRACTOR's Work. CONTRACTOR shall conform to said drawings whether now in existence or created hereafter to the extent that such are consistent with the plans, drawings or specifications identified in the PERMIT and AGREEMENT. CONTRACTOR agrees that all drawings and specifications are, and shall remain, the property of WRIT. CONTRACTOR shall inform WRIT in writing as to such drawings or information not provided to CONTRACTOR which are necessary for the completion of CONTRACTOR's Work hereunder.

5.4 FIELD MEASUREMENTS AND TESTING. CONTRACTOR shall be responsible for the taking and the accuracy of all necessary field measurements and testing associated with CONTRACTOR's Work.

5.5 INSPECTION, APPROVAL AND UNSATISFACTORY WORK. CONTRACTOR agrees that all workmanship and materials shall be subject at all times to the inspection and approval of WRIT, PERMITTER and OWNER or OWNER's representative. CONTRACTOR shall at all times provide sufficient, safe and proper facilities for the inspection of CONTRACTOR's Work.

All workmanship and materials shall be made entirely satisfactory to both WRIT, PERMITTER and OWNER or OWNER's representative. If in the opinion of WRIT , PERMITTER or OWNER or OWNER's representative, any of the materials or workmanship, or

both, are unsatisfactory, or CONTRACTOR has failed to perform any of its obligations with respect thereto, or if any workmanship and/or materials are disapproved by either WRIT, PERMITTER or OWNER or OWNER's representative, CONTRACTOR shall within twenty-four (24) hours after receiving written notice to that effect proceed to remove all materials and/or workmanship so disapproved, whether worked or unworked, and to take down all portions of the work disapproved as unsound or improper or in any way failing to conform to the drawings and/or specifications and, further, shall replace such materials and/or workmanship with materials and/or workmanship satisfactory to WRIT, PERMITTER or OWNER or OWNER's representative. CONTRACTOR shall proceed to perform its obligations hereunder without additional cost or expense to OWNER, PERMITTER or WRIT.

If CONTRACTOR shall refuse or fail to proceed to make the workmanship and/or materials entirely satisfactory to both WRIT, PERMITTER and OWNER or OWNER's representative, either by removal and replacement thereof or by reworking, within twenty-four (24) hours following notice as stated above, WRIT may proceed to complete the work or, at WRIT's option, may retain other CONTRACTORS to satisfactorily complete said work. The entire cost and expense to WRIT for completion of said work to the satisfaction of WRIT, PERMITTER and OWNER or OWNER's representative may be deducted from any money due or to become due to CONTRACTOR hereunder together with reimbursement to WRIT for any costs and expenses incurred over and above such money due or to become due. No act of WRIT performed pursuant to completion of unsatisfactory work or disapproved work shall be construed as a waiver or a release of CONTRACTOR's liability under this provision.

In the event of an emergency affecting the safety of persons or property, WRIT may proceed as set forth above without notice to CONTRACTOR.

5.6 COMPLIANCE WITH LAWS. CONTRACTOR agrees to comply with all federal, state, municipal and other applicable laws and regulations including, but not limited to, labor

standards, kickback regulations, minimum wage rates and nondiscrimination in employment. CONTRACTOR shall submit certificates of compliance and copies of weekly payrolls to the extent such may be required by the Contract Documents. CONTRACTOR acknowledges its obligation to comply with all applicable federal, state and local acts and regulations including, but not limited to, the Occupational Safety and Health Act as amended. CONTRACTOR's indemnification obligations as provided in this Agreement shall include indemnification to WRIT from and against any and all liability imposed on WRIT for violation of the Occupational Safety and Health Act arising out of CONTRACTOR's Work.

5.7 COOPERATION. CONTRACTOR shall proceed with due diligence and at such reasonable times as may be necessary and proper to complete CONTRACTOR's Work in a substantial and workmanlike manner within the time frame specified in this Agreement. CONTRACTOR shall employ sufficient labor, personnel and work sufficient hours or shifts so as not to hinder or delay the actual progress of WRIT or other CONTRACTORS. CONTRACTOR shall cooperate with WRIT and all others whose work may interfere with CONTRACTOR's Work, specifically note an immediately advise WRIT of any such interference with CONTRACTOR's Work and participate in the preparation of coordination, drawings and work schedules in areas of congestion.

5.8 JOB MEETINGS. CONTRACTOR agrees to attend and participate in meetings if such is deemed necessary by WRIT.

5.9 SAFETY REGULATIONS. CONTRACTOR agrees to conform to all orders in safety as required by the state, county, municipality or other governmental authority where the contract is to be performed.

5.10 PERMITS. Except as otherwise provided, CONTRACTOR shall at its own cost and expense obtain all permits and licenses required in connection with CONTRACTOR's Work and all materials furnished by CONTRACTOR and the installation thereof shall comply in every

respect with all federal, state and municipal codes, ordinances and regulations.

5.11 CHANGES IN WORK. If required by WRIT, CONTRACTOR shall at any time during the term of this Agreement execute any extra work, make any substitutions in the work or omit any work as WRIT may direct. No such change shall be made except upon a written order from WRIT. In circumstances requiring additional work beyond CONTRACTOR's Work as specified herein, the parties shall stipulate to a unit and/or price for said additional work. In case of disagreement as to the adjustment of the contract price, CONTRACTOR shall proceed with the work and the determination of such additional amount shall be resolved by arbitration as provided herein.

5.12 TERMINATION OF CONTRACT. If, in the opinion of WRIT, PERMITTER and OWNER or OWNER's representative, CONTRACTOR should at any time refuse or neglect to supply sufficient number of properly skilled workers, or sufficient materials of the proper quality, or fail in any respect to prosecute CONTRACTOR's Work with promptness and diligence, or fail in the performance of any obligations of CONTRACTOR under this Agreement, WRIT may provide any such labor and material and deduct the cost thereof from any money then due or thereafter to become due to CONTRACTOR under this Agreement. Should such refusal, neglect or failure on the part of CONTRACTOR continue for twenty-four (24) hours after written notice thereof from WRIT (or without notice in case of emergency affecting the safety of persons or property), WRIT may also terminate the employment of CONTRACTOR, cancel this Agreement and enter upon the premises and take possession for the purpose of completing CONTRACTOR's Work as contemplated under this Agreement. In the case of cancellation of this Agreement or discontinuance of employment of CONTRACTOR, CONTRACTOR shall not be entitled to receive any further payments until the work shall be wholly finished at which time, if the unpaid balance of the amount to be paid shall exceed the expense incurred by WRIT in finishing the work, such excess shall be paid by WRIT to CONTRACTOR. If such expense shall

exceed the unpaid balance, CONTRACTOR shall pay the difference immediately upon demand.

Prior demands for performance by CONTRACTOR without cancellation of this Agreement shall not constitute a waiver of WRIT's rights hereunder.

5.13 BANKRUPTCY. Upon the appointment of a receiver for CONTRACTOR or upon CONTRACTOR making an assignment for the benefit of creditors, WRIT may terminate this Agreement upon three (3) working days' written notice, by personal delivery, facsimile transmission or certified mail to CONTRACTOR and its surety, if any. If any order for relief is entered under the Bankruptcy Code with respect to CONTRACTOR, WRIT may terminate this Agreement by giving three (3) working days' written notice to CONTRACTOR, its trustee and its surety, if any, unless CONTRACTOR, the surety or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurances of future performance;
- (c) compensates WRIT for actual pecuniary loss resulting from such defaults;
and
- (d) assumes the obligations of CONTRACTOR within the statutory time limits.

If CONTRACTOR is not performing in accordance with the schedule of work at the time of the entry of an order for relief, or at any subsequent time, WRIT, while awaiting the decision of CONTRACTOR or its trustee to reject or accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Agreement as are reasonably necessary to maintain the schedule of work. WRIT may offset any sums due or to become due to CONTRACTOR under this Agreement together with all costs incurred in pursuing any of the remedies provided hereunder including, but not limited to, reasonable overhead, profit and attorneys' fees. CONTRACTOR shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

5.14 VERBAL AGREEMENTS. CONTRACTOR agrees that no claims can or will be asserted by CONTRACTOR against WRIT in respect to changes and/or additions to this Agreement unless such modifications or changes have been reduced to writing and signed by both parties.

5.15 COMPLETE AGREEMENT - PRINCIPAL CONTRACT. Unless otherwise specified herein, CONTRACTOR is bound to WRIT by the same provisions and the same extent WRIT is bound to OWNER and PERMITTER under the PERMIT and AGREEMENT to the extent any such terms and provisions are applicable to CONTRACTOR's Work. Except as provided in this Agreement, this Agreement shall be the entire, full and complete agreement of the parties and supersedes all prior agreements in connection with the Project. There are no representations, inducements, promises or agreements, oral or otherwise, between the parties which are not embodied in this Agreement and/or of which are of any force or effect with reference to this Agreement or otherwise. No amendment, change or variance from this Agreement shall be binding on either party unless executed in accordance with the terms hereof. This Agreement shall inure to the benefit of and shall bind the executors, administrators, successors and assigns of the parties.

5.16 SEVERABILITY AND WAIVER. The partial or complete invalidity of any one or more of the provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right in respect to further performance.

5.17 NOTICE. Any notice provided for herein shall be deemed effectively given if personally delivered to the address set forth below, sent by facsimile transmission or mailed by certified mail, return receipt requested to:

If to CONTRACTOR: _____

If to WRIT: Water Resources Improvement Trust, Inc.

Notice is deemed given when personally delivered or on the next regular business day after the date of facsimile transmission and/or date of mailing.

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

WRIT:

CONTRACTOR:

WATER RESOURCES IMPROVEMENT TRUST, INC. _____

By: _____

By: _____

Title: _____

Title: _____

SCHEDULE A

CONTRACTOR'S SCOPE OF WORK

(see planting spec.doc)

SCHEDULE B

CONTRACT PRICE

Contract shall be at the unit prices as follows:

Items	Unit	Estimated Quantity	Unit Price	Total
Site Preparation, before grading	LS	1.00		\$0.00
Site Preparation, after grading	LS	1.00		\$0.00
Temporary Cover Crop (Allowance)	Acre			\$0.00
Buffer Seed & Mulch	Acre	7.70		\$0.00
Outlot and Proposed ROW Seed & Mulch	Acre	18.00		\$0.00
Wet Prairie Area Plants & Seed	Acre	66.70		\$0.00
Emergant Area Plants & Seed	Acre	27.60		\$0.00
Riparian Area Plants, Seed & Erosion Blanket	Acre	1.50		\$0.00
Landscape Trees - 3"BB	Each	25.00		\$0.00
Monitoring	Year	5.00		\$0.00
Maintenance	Year	5.00		\$0.00
Planting/ Maintenance Bond	Each	1.00		\$0.00
Total				\$0.00

Temporary Cover Crop shall be billed at a rate of \$_____ per acre. The WRIT and CONTRACTOR will agree upon the total acreage before placement.

The CONTRACTOR shall bill the maintenance and monitoring at yearly lump sum price in quarterly increments. The CONTRACTOR assumes the risk that the work may cost more or less than the listed price in order to meet the performance requirements of the Corps of Engineers Permit #_____

The CONTRACTOR shall be eligible for a profit share of ____% of the net of the sales minus the calculated cost of the work. The calculated costs of the work are \$_____. The profit share will be paid out only after all costs are paid for.

AMOUNT OF PERFORMANCE/PAYMENT BOND

The CONTRACTOR shall provide a performance bond naming WRIT, [UNDERLYING LANDOWNER] and the [TOWN WHICH PROJECT IS LOCATED] for the following items:

Plantings \$_____

Maintenance and Monitoring

Year 1 - \$ _____
Year 2 - \$ _____
Year 3 - \$ _____
Year 4 - \$ _____
Year 5 - \$ _____

WRIT shall reimburse the CONTRACTOR for the bond premium at cost. A copy of the invoice from the CONTRACTOR's bonding company shall be submitted to WRIT with the invoice for its payment.