

ORDINANCE NO. 23-015

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE MANNIK & SMITH GROUP, INC. OF MAUMEE, OHIO, FOR PROFESSIONAL ENVIRONMENTAL SERVICES IN CONJUNCTION WITH THE FY 2022 BROWNFIELDS ASSESSMENT GRANT RECEIVED FROM THE U.S. ENVIRONMENTAL PROTECTION AGENCY; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City Commission approved the acceptance of grant funds from the U.S. Environmental Protection Agency (EPA) through the FY 2022 Brownfields Assessment Grant Program by Ordinance No. 22-107, passed on June 13, 2022, and subsequently entered into a Cooperative Agreement with the US EPA for awarded funds in the amount of \$500,000.00; and

WHEREAS, a Request for Qualifications (RFQ) was issued for the implementation of the Community-wide Brownfields Assessment Grant in which eight (8) submittals were received and evaluated by a Selection Committee and at the recommendation of Staff to select two (2) firms, it was determined to select Terracon Consultants, Inc. of Cleveland, Ohio, and Mannik & Smith Group, Inc., of Maumee, Ohio, as the most qualified based upon the firm's experience, professional expertise and professional knowledge and success with similar projects; and

WHEREAS, Mannik & Smith Group, Inc. will be providing Professional Environmental Services relating to the FY2022 Brownfields Assessment Grant and these services are more fully described in the Scope of Services, which is attached to this Ordinance and marked Exhibit "A" and specifically incorporated herein; and

WHEREAS, the total cost of the professional services from the Mannik & Smith Group is \$230,500.00 and will be paid with funds received through the Brownfields Grant; and

WHEREAS, it is being requested in companion legislation to enter into an agreement with Terracon Consultants, Inc. for Professional Environmental Services in conjunction with the FY 2022 Brownfields Assessment Grant received from the U.S. Environmental Protection Agency in the amount of \$264,500.00; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to execute the agreement and expend the available funds to move forward with activities associated with the FY22 Brownfields Assessment Grant Program; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily

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operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into an agreement with the Mannik & Smith Group, Inc. of Maumee, Ohio, for Professional Environmental Services in conjunction with the Brownfields Assessment Grant received from the U.S. Environmental Protection Agency, substantially in the same form as reflected in Exhibit "1" which is attached to this Ordinance and specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance, at an amount **not to exceed** Two Hundred Thirty Thousand Five Hundred and 00/100 Dollars (\$230,500.00).

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

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RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: February 13, 2023

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement for Professional Services (this “Agreement”), made as of _____, 2023, by and between the City of Sandusky (the “City”), whose contact person shall be the Director of Community Development designated below or successor (the “Director”), and _____ (the “Architect/Engineer”), whose contact person and address are set forth below.

WHEREAS, the City is operating under its Charter, ordinances, and regulations, and it is the intention of the City, in the exercise of its powers, to obtain professional services for the following project (the “Project”):

Project Name: FY22 US EPA Brownfields Assessment Grant

Director of Community Development: Jonathan Holody
Address: Dept of Community Development
City of Sandusky
240 Columbus Ave
Sandusky, Ohio 44870

Architect/Engineer: Mannik Smith Group
Contact: Sally L. Gladwell, CP, CEM, CEI
Address: 1800 Indian Wood Circle
Maumee, Ohio 43537

WHEREAS, the compensation of the Architect/Engineer set forth herein is determined to be fair and reasonable to the City and the Architect/Engineer; and

WHEREAS, the Architect/Engineer desires, and is licensed and capable, to provide professional services for the Project;

WHEREAS, the Architect/Engineer has previously provided certain professional services for the Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the City and the Architect/Engineer agree as follows:

ARTICLE 1. RESPONSIBILITIES OF ARCHITECT/ENGINEER

1.1. Architect/Engineer’s Services

1.1.1. Scope of Services; Applicable Law. The Architect/Engineer shall provide professional services, including, without limitation, services customarily furnished in accordance with generally-accepted architectural or engineering services, for the Project in accordance with the terms of this Agreement. The Architect/Engineer shall provide such services in accordance with the applicable Sections of the Ohio Revised Code and any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations and the Contract Documents.

1.1.2. Timeliness; Standard of Care. The Project Schedule shall be established by mutual agreement between the City and the Architect/Engineer within thirty (30) days after the execution hereof. The Architect/Engineer shall perform the Architect/Engineer's services in accordance with professional standards of skill, care, and diligence in a timely manner in accordance with the Project Schedule so as to cause no delay, interference, disruption, or hindrance in the Work, and so that the Project shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the City.

1.1.3. Non-Discrimination. The Architect/Engineer represents that the Architect/Engineer is in compliance with all applicable equal employment opportunity requirements under law, if required by Section 153.59 of the Ohio Revised Code or any other applicable state or federal law.

1.1.4. Consultants. The Architect/Engineer may provide services through one or more consultants employed by the Architect/Engineer (the "Consultants"); provided, however, the Architect/Engineer shall remain responsible to the City for all duties and obligations of the Architect/Engineer under this Agreement. Unless waived or otherwise modified in writing by the City upon written request of the Architect/Engineer, no Consultant shall be retained upon terms inconsistent with this Agreement. The Architect/Engineer shall provide the Director with the names and qualifications of any other proposed Consultant, together with a description of the services to be provided by such Consultant for approval. Once approved by the Director, the identity of any Consultant and the extent of such Consultant's participation in performing the Architect/Engineer's services shall not be altered without the written consent of the Director. Upon the request of the City, the Architect/Engineer shall terminate the employment of any Consultant. The City may communicate with any Consultant either through the Architect/Engineer or directly to the Consultant with notice to the Architect/Engineer.

1.1.5. Ethics Laws. The Architect/Engineer represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.6. Limitation of Authority. The Architect/Engineer shall not have any authority to bind the City for the payment of any costs or expenses without the express written approval of the City. The Architect/Engineer shall have authority to act on behalf of the City only to the extent provided herein. The Architect/Engineer's authority to act on behalf of the City shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

ARTICLE 2. SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

2.1. General

2.1.1. Basic Services to be provided by the Architect/Engineer shall consist of the services set forth in Exhibit A attached hereto and incorporated by reference herein as if fully rewritten.

ARTICLE 3. ADDITIONAL SERVICES

3.1. General

3.1.1. Any services related to the Project not included in Basic Services are Additional Services. Additional Services shall be provided only if requested by the City in writing. Additional Services shall be paid for as provided in this Agreement in addition to the compensation for Basic Services; provided, however, the Architect/Engineer shall not be compensated for any of the following services

made necessary by the act or omission of the Architect/Engineer or any Consultant. Unless waived by the City in writing, authorization to provide Additional Services must be obtained prior to providing the Additional Services.

ARTICLE 4. RESPONSIBILITIES OF THE CITY

4.1. Required Actions. The City shall review, approve, or take such actions as are required of the City by this Agreement and applicable law in a reasonable and timely manner.

4.2. Instructions to Contractors. All instructions of the City to Contractors shall be through, or in consultation with, the Architect/Engineer.

4.3. City's Requirements. The City shall provide full information regarding its requirements for the Project, any agreements related to the Project, and any design and construction standards and work rules which set forth the City's use, design, time and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, systems and site requirements. The Architect/Engineer shall be entitled to rely upon the accuracy and completeness of information provided by the City under this paragraph which the City represents in writing is complete and accurate; provided, however, the City makes no representation for, and the Architect/Engineer may not rely upon, information from third parties.

4.4. Authorized Representative. The City has designated the Director or successor to be the City's Authorized Representative, i.e., a person authorized to act on the City's behalf with respect to the Project to the extent provided in the Contract Documents. If the Director is absent or unavailable, the City's Project Engineer shall serve as the City's Authorized Representative.

4.5. Notice to Architect/Engineer. If the City observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, prompt notice thereof shall be given to the Architect/Engineer.

4.6. Legal Representation. The City shall not be responsible to provide, or pay for, any legal representation of the Architect/Engineer.

ARTICLE 5. COMPENSATION

5.1. Direct Personnel Expense

5.1.1. Definition. Direct Personnel Expense shall mean the portion of direct salaries and wages of all personnel of the Architect/Engineer or any Consultants, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pension and profit sharing pursuant to plans qualified under federal law and similar benefits related to their time devoted to the Project. Direct Personnel Expense shall not include any bonus or similar plan or arrangement related to the Architect/Engineer's performance on, or profit from, the Project.

5.1.2. Records. Direct Personnel Expense for the Architect/Engineer's employees for such hours of their time as are devoted to performing services to the Project shall be evidenced by time records certified by the Architect/Engineer.

5.1.3. Limit. The Architect/Engineer shall use all reasonable means to minimize Direct Personnel Expense.

5.2. Reimbursable Expenses

5.2.1. Definition. Reimbursable Expenses means actual expenditures incurred by the Architect/Engineer or its Consultants in the interest of the Project approved by the City for travel (if approved in advance) in accordance with City policies, transportation between the office of the Architect/Engineer and the Project, long-distance telephone, facsimile communications, reproduction, mailing, computer time, supplies and materials and Consultants. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Subparagraph 9.5.2.

5.2.2. Limits. The Architect/Engineer shall use all reasonable means to minimize Reimbursable Expenses.

5.3. Basis of Compensation

5.3.1. Basic Fee. For Basic Services provided by the Architect/Engineer and all Consultants, the City shall pay the Architect/Engineer a Basic Fee in accordance with Paragraph 5.4 hereof in the amount of \$230,500 (two hundred thirty thousand five hundred dollars and zero cents) A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.3.2. Additional Fees. For Additional Services provided by the Architect/Engineer and any Consultants in accordance with Article III, the City shall pay the Architect/Engineer Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the City and the Architect/Engineer, but in all events, such Additional Fees shall not exceed two and half (2.5) times the Direct Personnel Expense and any applicable Consultant in providing those Additional Services. Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2.

5.3.3. Extent of Basic Fee. The Architect/Engineer's Basic Fee includes all compensation for Basic Services, including without limitation, for salaries or other compensation of the Architect/Engineer's employees at the principal office, branch offices and the field office, general operating expenses of the Architect/Engineer's principal office, branch offices and the field office, any part of the Architect/Engineer's capital expenses, including interest on the Architect/Engineer's capital employed for the Project, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the negligence of the Architect/Engineer, the Architect/Engineer's general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

5.3.4. Total Compensation. The total compensation of the Architect/Engineer and all Consultants shall consist of the Basic Fee, any Additional Fees, and Reimbursable Expenses.

5.4. Method and Terms of Payment

5.4.1. Basic Fee. Payment of the Basic Fee shall be made monthly upon invoice of actual services performed. The Basic Fee shall be subject to all setoffs in favor of the City for claims against the Architect/Engineer.

5.4.2. Additional Fees, Reimbursable Expenses. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.3.2 and for Reimbursable Expenses as set

forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed and supported invoice of the Architect/Engineer. Invoices shall be sufficiently detailed and supported to permit review by the City for approval or disapproval of any amounts set forth in the invoice.

5.4.3. Payments by Architect/Engineer. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Architect/Engineer shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4. Compensation for Extension of Project Time. If the Architect/Engineer notifies the City not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule established pursuant to Subparagraph 1.1.2, that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Architect/Engineer, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the City and the Architect/Engineer. If, as a result of such negotiation, the City agrees that the Architect/Engineer shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 9.5.2 before the Architect/Engineer renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the City.

ARTICLE 6. INSURANCE AND INDEMNIFICATION

6.1. Insurance

6.1.1. Casualty Insurance. Except when a modification is requested in writing by the Architect/Engineer and approved in writing by the City, the Architect/Engineer shall carry and maintain at the Architect/Engineer's cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement:

- a. Workers' Compensation and employer's liability insurance to the full extent as required by applicable law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 - i. General Aggregate Limit: \$2,000,000
 - ii. Each Occurrence Limit: \$1,000,000 each occurrence;
- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

6.1.2. Professional Liability Insurance. Subject to the City's waiver or modification of Professional Liability Insurance upon written request of the Architect/Engineer, the Architect/Engineer shall maintain insurance to protect against claims arising from the performance of the Architect/Engineer's services caused by any negligent acts, errors, or omissions for which the Architect/Engineer is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the City upon written request of the Architect/Engineer, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Architect/Engineer shall

endeavor to keep such insurance in effect for so long as the Architect/Engineer may be held liable for its performance of services for the Project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Architect/Engineer commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

6.1.3. Certificates. The Architect/Engineer shall provide the City with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days' prior written notice to the City.

6.2. Indemnification

6.2.1. Indemnification by Architect/Engineer Generally. To the fullest extent permitted by law, the Architect/Engineer shall and does agree to indemnify and hold harmless the City and its members, officers, officials, employees, and representatives from and against insurable damages, losses, and expenses (including reasonable attorney's fees and other reasonable costs of defense), of any nature, kind or description, which (a) arise out of, are caused by, or result from performance of the Architect/Engineer's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors, or omissions of the Architect/Engineer, anyone directly or indirectly employed by the Architect/Engineer or anyone for whose acts the Architect/Engineer is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code, to the fullest extent permitted.

6.2.2. Intellectual Property Indemnification. To the fullest extent permitted by law, the Architect/Engineer shall and does agree to indemnify and hold harmless the City and its members, officials, officers, employees, and representatives from and against insurable damages, losses, and expenses (including reasonable attorney's fees and other reasonable costs of defense), of any nature, kind or description, which result from infringement of any copyright, patent, or other intangible property right to the extent caused by the negligent act, errors, or omissions of the Architect/Engineer, anyone directly or indirectly employed by the Architect/Engineer or anyone for whose acts the Architect/Engineer is legally liable. The Architect/Engineer shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the City.

ARTICLE 7. DISPUTE RESOLUTION PROVISIONS

7.1. Mediation. Instead of, or in addition to, the procedures set forth below, the City and the Architect/Engineer may, by written agreement, submit any claims, requests, disputes, or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

7.2. Notice and Filing of Requests. Any request by the Architect/Engineer for additional fees or expenses shall be made in writing to the Authorized Representative and filed prior to the final payment of the Basic Fee. Failure of the Architect/Engineer to timely make such a request shall constitute a waiver by the Architect/Engineer of any request for such fees and expenses.

7.3. Request Information. In every written request filed pursuant to Paragraph 7.2, the Architect/Engineer shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

7.4. Meeting with Authorized Representative. If the Architect/Engineer files a written request with the Authorized Representative pursuant to Paragraph 7.2, the Authorized Representative shall, within thirty (30) days of receipt of the request, schedule a meeting in an effort to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting scheduled by the Authorized Representative shall be attended by Persons expressly and fully authorized to resolve the request on behalf of the Architect/Engineer. The Authorized Representative shall render a decision on the request within thirty (30) days of the meeting unless a mutual agreement is made to extend the time for decision.

7.5. Appeal to City Manager. If the efforts of the Authorized Representative do not lead to resolution of the request within sixty (60) days of receipt of the request provided pursuant to Paragraph 7.2 the Architect/Engineer may appeal to the City Manager by written notice to the Authorized Representative who shall provide the Architect/Engineer an opportunity to present the claim to the City Manager. The City Manager shall render a decision on the request within thirty (30) days of receipt of the claim unless a mutual agreement is made to extend the time for decision. The decision of the City Manager shall be final and conclusive, subject to litigation in a court of competent jurisdiction.

7.6. Delegation. No provision of this Paragraph shall prevent the Authorized Representative or the Commission from delegating the duties or authorities of the Authorized Representative or the City to any other Person selected at the discretion of the Authorized Representative.

7.7. Performance. The Architect/Engineer shall proceed with the Architect/Engineer's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Architect/Engineer and the City in writing. The City shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute in accordance with this Paragraph.

ARTICLE 8. TERMINATION AND REMEDIES

8.1. Termination of Agreement

8.1.1. Means of Termination. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail to perform in accordance with the terms of this Agreement; provided, however, the Architect/Engineer shall not terminate this Agreement for non-payment if the City initiates the payment process by preparing, executing, and submitting a voucher

for all reasonably undisputed amounts due to the Architect/Engineer within ten (10) days of receipt of the Architect/Engineer's written notice to terminate. This Agreement may be terminated by the City in whole or in part, without cause upon fifteen (15) days written notice to the Architect/Engineer. This Agreement may be terminated in whole or in part, at any time upon the mutual consent of the City and the Architect/Engineer.

8.1.2. Architect/Engineer's Remedies Upon Termination by City Without Cause or Upon Termination by Architect/Engineer. In the event of a termination which is not due to the failure of the Architect/Engineer to perform in accordance with the terms of this Agreement, the Architect/Engineer shall be compensated for all Basic Services of a completed phase performed prior to the termination date in accordance with the percentages set forth in Subparagraph 5.4.1, together with Reimbursable Expenses incurred prior to the termination date. In such event, for services rendered prior to the termination date in an uncompleted Part and for Additional Services, the Architect/Engineer shall receive compensation based on the percentages of completion of that Part or those Additional Services, as applicable, and as reasonably determined by the City, together with Reimbursable Expenses incurred prior to the termination date.

8.1.3. Architect/Engineer's Remedies Upon Termination by City for Cause. In the event of a termination which is due to the failure of the Architect/Engineer to perform in accordance with the terms of this Agreement, the Architect/Engineer shall be compensated only for Basic Services performed and paid for prior to the termination date in accordance with the actual time at billing rates as set forth in 5.3.1., together with Additional Services completely performed prior to the termination date. In such event, the Architect/Engineer shall be reimbursed only for Reimbursable Expenses incurred prior to the date of the notice of termination, unless the City consents in writing to the payment of Reimbursable Expenses incurred after that date.

8.1.4. Architect/Engineer's Remedies Upon Termination by Mutual Consent. In the event of a termination upon the mutual consent of the City and the Architect/Engineer, any compensation for Basic Services or for Additional Services or payment of Reimbursable Expenses shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to such termination.

8.1.5. Post-Termination Matters. If the City and the Architect/Engineer agree that any services are to be performed for the Project by the Architect/Engineer after any termination date, the amount of any compensation and the method and terms of payment of such compensation or any Reimbursable Expenses related to such services shall be negotiated and set forth in an amendment to this Agreement in accordance with Subparagraph 9.5.2 prior to the commencement of such services. Such amendment and any relevant provisions of this Agreement shall survive termination of this Agreement.

8.2. Remedies

8.2.1. Cumulative Remedies. No remedy conferred upon the City by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the City shall be cumulative and shall be in addition to any other remedy given to the City hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Architect/Engineer by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Architect/Engineer shall be cumulative and shall be in addition to any other remedy given to the Architect/Engineer hereunder or now or hereafter existing.

8.2.2. Remedies Not Waived. No delay, omission, or forbearance to exercise any right, power, or remedy accruing to the City or the Architect/Engineer hereunder shall impair any such right, power, or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power, or remedy may be exercised from time to time and as often as deemed expedient.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1. Ownership and Use of Documents

9.1.1. Property of City. Drawings and other documents prepared by, or with the cooperation of, the Architect/Engineer or any Consultant pursuant to this Agreement, including all copyrights, are the property of the City whether or not the Project for which they are prepared is commenced or completed. The Architect/Engineer or Consultant, as applicable, may retain copies, including reproducible copies of such drawings and other documents for information and reference. Such drawings or other documents may be used by the City or others employed by the City for reference in any completion, construction, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without compensation to the Architect/Engineer or Consultant. Such drawings or other documents shall not be used by the City, or be given or sold by the City to be used by others, on other projects except by agreement in writing and with agreed upon appropriate compensation to the Architect/Engineer or Consultant, as applicable. If an event occurs for which the Architect/Engineer or Consultant may be liable, the City shall notify the Architect/Engineer or Consultant of such event as soon as practical after such event and shall provide access to the Project to the Architect/Engineer or Consultant and their representatives. This Subparagraph shall survive termination of this Agreement.

9.1.2. Architect/Engineer's Intellectual Property. All inventions, patents, design patents, and computer programs acquired or developed by the Architect/Engineer in connection with or relation to the Project shall remain the property of the Architect/Engineer and shall be protected by the City from use by others except by agreement in writing with appropriate and agreed upon compensation to the Architect/Engineer.

9.2. Public Relations. Prior to completion of the Project, any public relations or publicity about the Project shall be solely within the control and with the consent of the City. The Architect/Engineer shall not use the City's name or seal, nor any adaptation thereof, for any advertising or trade purposes, including without limitation press releases, without the express written consent of the City.

9.3. Records. The records of all of the Architect/Engineer's Direct Personnel Costs, Reimbursable Expenses and payments to Consultants pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City at all times and shall be maintained for seven (7) years after final acceptance of the Project by the City. All other records kept by the Architect/Engineer related to the Project shall be available to the City at all times and shall be maintained for six (6) years after final acceptance of the Project by the City. Records related to any claim or dispute shall be retained for any longer period necessary to finally resolve the claim or dispute.

9.4. Successors and Assigns. The City and the Architect/Engineer, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement. The Architect/Engineer shall not assign, or transfer any right, title or interest in this Agreement without the prior written consent of the City.

9.5. Extent of Agreement

9.5.1. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Architect/Engineer and supersedes all prior negotiations, representations or agreements, either written or oral.

9.5.2. Amendments. This Agreement may be amended only by an amendment prepared by the City and signed by both the Architect/Engineer and the City.

9.5.3. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.5.4. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

9.5.5. Conditions to Validity. None of the rights, duties, and obligations contained in this Agreement shall be binding on any party until all legal requirements have been complied with.

9.6. Governing Law

9.6.1. Law of Ohio. This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the Erie County, Ohio Court of Common Pleas shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.

9.6.2. Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning as those in the Standard Conditions, unless otherwise defined herein or unless another meaning is indicated by the context.

9.7. Notices

9.7.1. Addresses. All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the individual or to a member of the company or organization for whom the notice is intended, or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate address listed on the first page hereof.

9.7.2. Facsimiles/Emails. For convenience of communication only, notices, certificates, requests, or other communications hereunder of fewer than ten (10) pages, except requests for payment, may be sent by email or facsimile transmission to the City at JHolody@cityofsandusky.com (419) 627-5933 and to the Architect/Engineer SGladwell@manniksmithgroup.com (419) 891-1595. Notices, certificates, requests, or other communications sent by email or facsimile transmission shall not be deemed to be given unless a counterpart is received or mailed in accordance with Subparagraph 9.7.1. Requests for payment may be sent to the City by email or facsimile transmission only upon specific direction from the City.

9.7.3. Emergencies. In the event of an emergency involving the Project, including, without limitation, a fatality, serious injury, fire, collapse, flood, utility or power loss to occupied facilities, explosion, or environmental damage, the Architect/Engineer shall immediately notify the City by telephone.

9.7.4. Change of Address. The City or the Architect/Engineer may, by notice given hereunder, designate any further or different addresses telephone numbers or facsimile numbers to which subsequent notices, certificates, requests, or communications shall be sent.

9.8. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

9.9. Independent Contractor. The Architect/Engineer and any Consultant is an independent contractor with respect to any services performed hereunder. Neither the Architect/Engineer, nor any Consultant, shall be deemed to be servants, employees, or agents of the City.

EXHIBIT "1"

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Firm Name

By: _____

By: _____

CITY OF SANDUSKY, OHIO

By: _____

John Orzech
Interim City Manager

APPROVAL: **EXHIBIT "1"**

The legal form and correctness of the within instrument is hereby approved.

Brendan Heil
Law Director

CERTIFICATE OF FUNDS

In the matter of: _____

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky, Ohio under the foregoing Agreement have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to the appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code (ORC).

Dated: _____, 2023

CITY OF SANDUSKY, OHIO
EXHIBIT "1"

By: _____
Michelle Reeder, CPA
Finance Director

Account Number

Not to Exceed Amount



January 5, 2023

Ms. Colleen Gilson
Chief Neighborhood Development Officer
City of Sandusky
240 Columbus Avenue
Sandusky, Ohio 44870



RE: 2022-2025 U.S. EPA Brownfields Grant Implementation

Dear Ms. Gilson:

The Mannik & Smith Group, Inc. (MSG) is pleased to provide the City of Sandusky with the following general scope of work to implement activities funded by the City's U.S. Environmental Protection Agency (EPA) Fiscal Year 2022 (FY22) Community Wide Brownfields Assessment Grant project, including completing:

- Brownfield inventories;
- Phase I Environmental Site Assessments (ESAs);
- Asbestos Inspections;
- Geophysical Surveys;
- Phase II ESAs;
- Bureau of Underground Storage Tank Regulations (BUSTR) Tier 1 and Tier 2 Investigations;
- Remedial Planning and/or Remedial Action Plans (RAPs);
- Risk Assessments;
- Community Involvement / Reuse Planning; and,
- Grant required reporting and documentation via Assessment, Cleanup and Redevelopment Exchange System (ACRES).

BACKGROUND

The City of Sandusky has entered into a Cooperative Agreement (CA) with the U.S. EPA for the FY22 Community Wide Brownfields Assessment Grant project. Per the CA, grant monies will allow the City of Sandusky to take the first step in addressing the many brownfields that have significantly limited redevelopment options. The City anticipates that the assessment funds will help spur investment, ideally allowing the City to gain momentum as an attractive and healthy place to live and work. The grant award was for \$500,000, of which \$495,000 is allocated for contractual purposes.

SCOPE OF WORK

MSG will complete all work under the direction of an Ohio Voluntary Action Program (VAP) Certified Professional. Further, MSG's work will conform to the standards under the Ohio VAP, American Society of Testing and Materials

TECHNICAL SKILL.
CREATIVE SPIRIT.

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(ASTM), and/or the Ohio State Fire Marshall, Bureau of Underground Storage Tank Regulations (BUSTR) as appropriate depending on the current status of the site and/or its intended future use.

Each site assessed under this grant will require a site-specific scope and budget dependent on the type of services requested for the site. The following provides a general scope of work for some of the types of environmental assessment projects that are anticipated to be completed under the grant. MSG understands that the City of Sandusky will issue individual work orders for identified sites to be assessed under this grant project.

Phase I ESAs

MSG will complete all Phase I ESAs under this grant project in conformance with the scope and limitations of **ASTM Standard Practices E1527-13 and/or E1527-21 "Environmental Site Assessments: Phase I Environmental Site Assessment Process."** ASTM E1527-13 currently complies with the federal **All Appropriate Inquiries (AAI)** rule codified in 40 CFR Part 312 of the Federal Register; however, the U.S. EPA amended the AAI rule on December 15, 2022 to establish E1527-21 as the ASTM standard for satisfying AAI requirements effective on February 13, 2023. Accordingly, MSG's Phase I ESAs will conform with the ASTM standard in compliance with AAI at the time of completion of the Phase I ESA. Further, to afford the City maximum flexibility for further assessment and/or cleanup of brownfield sites, MSG will complete all Phase I ESAs under this grant project in conformance with the standards set forth under the Ohio VAP in accordance with Ohio Administrative Code (OAC) 3745-300-06.

The goal of the process established by the ASTM practices is to identify recognized environmental conditions (RECs), historical RECs (HRECs), controlled RECs (CRECs), and *de minimis* conditions, as defined within Standard Practices E1527-13 and E1527-21 and, per the VAP, document Identified Areas (IAs) and/or Off-Site Source(s) or Source Area(s) of potential environmental contamination in accordance with OAC 3745-300-06. Additionally, Phase I ESAs will permit the user, whom we understand to be the City of Sandusky, to satisfy the requirements necessary to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser defenses, as defined within the Small Business Liability Relief and Brownfields Revitalization Act amendments to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Document Review

MSG will review records that are publicly available, reasonably obtainable, and practically reviewable, as described in ASTM Standard Practices E1527-13 and E1527-21. For the purposes of the Phase I ESAs completed under this grant, we assume that visits to regulatory agencies to complete in-person file reviews are not included in the scope of work. If in the judgment of the *Environmental Professional* (EP) responsible for completing a Phase I ESA, performance of a regulatory file review is warranted to address whether or not an environmental condition does or does not constitute a REC, CREC, HREC and/or IA we will contact you regarding the scope and schedule implications of such a determination. No such regulatory agency file review will be completed without your express written authorization.

MSG will review historical use information to develop a history of the previous uses of the selected sites and surrounding areas to help identify the likelihood that past uses have led to RECs, CRECs, HRECs, or IAs. Pursuant with the ASTM standards, we will attempt to identify known uses of each site from the present, back to each site's obvious first developed use or 1940—*whichever is earlier*.

MSG will review a combination records and historical sources for each site, as available, to comply with ASTM Standards E1527-13 and E1527-21 and OAC 3745-300-06.

The records and sources include:

- standard ASTM and VAP federal and state environmental databases;
- additional state and local environmental databases;
- current United States Geological Survey (USGS) 7.5-minute topographic map of each site;

- aerial photographs;
- fire insurance maps;
- mineral, oil, and gas development maps;
- historical ownership information;
- local city directories;
- zoning/land use records; and,
- alternate historical sources, *as appropriate and available.*

Site Reconnaissance

MSG will complete a reconnaissance of each site to observe the periphery of the site to the extent not obstructed by bodies of water, adjacent buildings, or other obstacles. Furthermore, MSG will review the interiors and exteriors of buildings on each site. For the purpose of this proposal, we have assumed that access to sites will be available and that we will coordinate our efforts with you and/or your designee.

Further objectives of the site reconnaissance will be to identify the following:

- current use of the site and adjoining properties;
- past use of the site and adjoining properties;
- current and past use of the surrounding area;
- geologic (*soils*), hydrologic (*surface waters*) and topographic conditions;
- general description of structures, roads, potable water supply, and sewage disposal system;
- hazardous substances and petroleum products in connection with identified and unidentified uses;
- underground and aboveground storage tanks, and drums;
- pungent or noxious odors, and pools of liquid;
- unidentified substance containers;
- suspect poly-chlorinated biphenyl (*PCB*)—containing equipment, stains and corrosion;
- possible source of vapor intrusion on and off the Site;
- pits, ponds, lagoons and stressed vegetation;
- solid waste and waste water; and
- wells and septic systems.

Interviews

Unless requested otherwise by our client, MSG will attempt to interview the current property owner(s), tenant(s) and/or previous property owner(s) for each site.

User Provided Information

ASTM Standard Practices E1527-13 and E1527-21 require that *User Provided Information* be included in Phase I ESA reports. The *User* is the entity that will use the Phase I ESA report, which we assume to be the City of Sandusky. *User Provided Information* includes judicial and title records, environmental liens, specialized knowledge of the site, valuation reduction of the property due to environmental issues, and reasons for performing the Phase I ESA. We anticipate that this information will be provided to MSG from you or your designee for inclusion in the each Phase I ESA report. If this information is not provided, MSG may note such information in our reports as a limiting condition.

Evaluation and Report Preparation

Phase I ESA reports will, at a minimum, include the following:

- executive summary;
- introduction;
- Site description;

- user provided information;
- records review;
- information from Site reconnaissance and interviews;
- findings, data gaps, opinions and conclusions;
- references to identify sources of information;
- a Site location map using the most currently available USGS topographic map;
- a Site layout map that identifies pertinent site features;
- color photographs from the Site reconnaissance;
- signatures and qualifications of *Environmental Professionals*; and,
- appendices of supporting documentation.

Phase II ESAs and BUSTR Tier 1 and 2 Investigations

A Phase II ESA or BUSTR Tier 1 or 2 Investigation may be requested following completion of a Phase I ESA. MSG will complete all Phase II ESAs for hazardous substance sites in accordance with Ohio VAP standards and guidance. For petroleum sites involving underground storage tanks (USTs), MSG will complete Phase II ESA and/or Tier 1 or 2 Investigations in accordance with BUSTR guidelines. Phase II ESAs or BUSTR Tier Investigations may include sampling soil, groundwater, soil vapor, and/or indoor air. MSG will send environmental samples designated for analysis to an independent laboratory certified to complete the required analyses in accordance with regulatory program requirements. MSG will complete sampling in accordance with industry standards and according to MSG Standard Operating Procedures (SOPs). MSG will develop a site-specific sampling plan and health and safety plan for each site investigated. If Phase II ESA or BUSTR Tier 1 or 2 services are requested, MSG will submit a detailed proposal fully describing the services to be provided (i.e number of soil borings and/or monitoring wells, sampling protocol, proposed analytical parameters, etc.). The proposed services will be site-specific, based upon site knowledge, and will be tailored to satisfy the requirements of a specific regulatory program, such as the Ohio VAP or BUSTR, as appropriate, and we will complete all work in compliance with the U.S. EPA approved Quality Assurance Project Plan (QAPP).

Asbestos Surveys

According to the National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulations covering asbestos, buildings that are renovated or demolished have to be "thoroughly inspected" for asbestos containing materials (ACM). Further friable (easily crumbled) ACM must be removed prior to demolition. If asbestos survey services are requested, MSG will submit a proposal that shall fully describe the services to be provided. The proposed services will be site-specific, based upon site knowledge, and MSG will base the anticipated samples of suspect materials to be collected on the ages, sizes, and layouts of the buildings to be assessed.

MSG will provide a State of Ohio accredited Asbestos Hazard Evaluation Specialist to complete NESHAP-compliant asbestos surveys of requested sites to identify suspect ACM. MSG will submit samples of suspect ACM to a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory for analysis of asbestos by polarized light microscopy (PLM). **Furthermore, MSG assumes that destructive sampling techniques will be acceptable for asbestos surveys completed under this grant program.** Destructive sampling techniques include opening hidden areas to inspect each building system (i.e behind walls, above ceilings, etc.) and peeling back exterior siding on every side of the structure to inspect for transite.

After completion of field activities and upon receipt of the laboratory analytical results, MSG will generate a summary report of the asbestos survey results. Documentation will include a discussion of sampling methodology, figures depicting the location of where suspect materials samples were collected, and a table summarizing the location, conditions, and quantities of materials found to be positive for asbestos that will require removal prior to demolition.

Assumptions:

- *All areas of buildings will be accessible to be evaluated;*
- *Five-day turnaround time for analytical data is sufficient to meet the project timeline;*

- Positive stop analysis will be used for the PLM samples to control costs for the City; and,
- Point count analysis, if needed, is not included in this scope of work and will be negotiated separately.

Geophysical Surveys

MSG will contract with a subcontractor to complete geophysical surveys at requested sites to investigate for the presence of abandoned underground storage tanks (USTs) or if not, their former locations. The geophysical surveys will include electromagnetic induction (EM) and ground-penetrating radar (GPR) methods to survey each site. Following completion of geophysical surveys, MSG will incorporate the results into an accompanying Phase I or II ESA report.

PROJECT SCHEDULE

Project schedules for assessments of sites under this grant program will be determined on a site-by-site basis based upon the type of service being requested. Typical timeframes for completing the services described above are outlined in the following table:

SCHEDULE OF ACTIVITIES	
TASK	TIMEFRAME FOR COMPLETION
Phase I ESA	Within three weeks from receipt of notice to proceed
Phase II ESA	Four to six weeks from receipt of notice to proceed
BUSTR Tier 1 Investigation	Four to six weeks from receipt of notice to proceed
BUSTR Tier 2 Evaluation	Six to eight weeks from receipt of notice to proceed
Asbestos Survey	Within three weeks from receipt of notice to proceed
Geophysical Survey	Within three weeks from receipt of notice to proceed

PROJECT FEE

MSG will determine budgets for assessments completed under this grant program on a site-by-site basis based upon the type of service being requested via a work order. The overall total for activities completed under this contract is shown below and will not be exceeded without prior written authorization from the City.

TOTAL PROJECT COST\$230,500

Fiscal Control

For the purposes of fiscal control, MSG will notify you at such time as it becomes apparent that costs may exceed the estimated amount and will seek your approval to proceed. In the absence of such communication, we guarantee our costs for the above work will not exceed the total indicated above. We agree that reasonable variation to the work to be performed may be made, but reserve the right to renegotiate the above amounts should significant variation be requested.

Additional Work

Work requested to be performed by the client beyond the Scope of Work, e.g., meetings, presentations, report copies, or other related activities beyond those described above will be charged on the same time and materials fee basis.

AGREEMENT

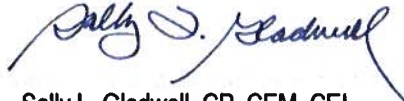
MSG understands that the City of Sandusky will issue an Agreement for Professional Services (Agreement) for the contract amount listed above and attach this proposal as an exhibit outlining the basic services MSG will perform under the Agreement.

MSG appreciates the opportunity to provide this proposal and looks forward to serving the City of Sandusky. Please do not hesitate to contact the undersigned if you have any questions or would like additional information.

Sincerely,



Matthew S. Pesci, CPG
Associate / Senior Project Manager



Sally L. Gladwell, CP, CEM, CEI
Senior Vice President / Senior Principal