

## ORDINANCE NO. 23-188

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL DESIGN SERVICES AGREEMENT WITH OHM ADVISORS OF CLEVELAND, OHIO, FOR THE SANDUSKY WHEELS PARK DESIGN AND CONSTRUCTION DOCUMENTATION PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the City desires to update the Skate Park located behind the Sandusky Police Department on Meigs Street to create a destination public skate park accessible to users of all wheels, all ages, and all skill levels; and

**WHEREAS**, this City Commission approved a Professional Design Services Agreement with OHM Advisors of Cleveland, Ohio, for the Sandusky Skate Park – Design Development Project for the preliminary design and community engagement process for a new skate park by Ordinance No. 22-194, passed on September 26, 2022; and

**WHEREAS**, the City issued a Requests for Qualifications (RFQ) for the Wheels Park Design and Construction Documentation Project in which two (2) submittals were received, evaluated and ranked by a selection committee and based upon the firm’s experience, professional expertise and knowledge, past performance with similar projects, project approach, schedule and location, it was determined, OHM Advisors of Cleveland, Ohio, was the most qualified; and

**WHEREAS**, OHM Advisors will be providing professional design services for the Sandusky Wheels Park Design and Construction Documentation Project which involves four (4) tasks: Review and Analysis, Design and Construction Documentation, Bidding Documents, and Bidding, 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 cost of the professional design services is \$49,700.00 and will be paid with American Rescue Plan Act (ARPA) Stimulus Funds; 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 immediately proceed with the professional services so the design can be completed by January of 2024; 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 operation of the Municipal Departments, including the Department of Planning, 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

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agreement for Professional Design Services with OHM Advisors of Cleveland, Ohio, for the Sandusky Wheels Park Design and Construction Documentation Project, substantially in the same form as attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as not being adverse to the City and consistent with carrying out the terms of this Ordinance, at an amount **not to exceed** Forty-Nine Thousand Seven Hundred and 00/100 Dollars (\$49,700.00).

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:

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CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: September 11, 2023

AGREEMENT  
FOR  
PROFESSIONAL DESIGN SERVICES

This Agreement for Professional Design 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 “Chief Planner”), and OHM Advisors (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 design services for the following project (the “Project”):

Project Name: Sandusky Wheels Park Design and Construction

Director of Community Development:  
Address: Colleen Gilson  
Department of Community Development  
City of Sandusky  
240 Columbus Ave  
Sandusky, Ohio 44870  
Cgilson@cityofsandusky.com

Architect/Engineer:  
Contact: OHM Advisors  
Matt Hils  
Address: 6001 Euclid Ave., Suite 130  
Cleveland, Ohio 44103  
Matt.hils@ohm-advisors.com

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 design 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 design 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 Chief Planner 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 Chief Planner, 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 Chief Planner. 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 Chief Planner 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 Chief Planner is absent or unavailable, the City 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. Basis of Compensation**

5.2.1. 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 5.3 hereof in the amount of forty nine thousand seven hundred and 00/100 dollars (\$49,700.00). A change in the Basic Fee may be made only by an amendment in accordance with Subparagraph 9.5.2.

5.2.2. Additional Fees. For Additional Services provided by the Architect/Engineer, 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.

5.2.3. 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, , 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.

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

## **5.3. Method and Terms of Payment**

5.3.1. Basic Fee. Payment of the Basic Fee shall be made in accordance with the Compensation Table in Exhibit A 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.

5.3.2. Additional Fees. Payments of Additional Fees for Additional Services in accordance with Article III and Subparagraph 5.2.2 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.

5.3.3. 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.

5.3.4. 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), 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), which result from infringement of 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 Subparagraph 5.3.1. 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.

**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 with Additional Services completely performed prior to the termination 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 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 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 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 supersede 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. 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 transmission to the City at Cgilson@cityofsandusky.com, cc [ablair@ci.sandusky.oh.us](mailto:ablair@ci.sandusky.oh.us) and to the Architect/Engineer at \_\_\_\_\_. Notices, certificates, requests, or other communications sent by email 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 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.

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

OHM Advisors

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

\_\_\_\_\_  
Printed Name & Title

CITY OF SANDUSKY, OHIO

By: \_\_\_\_\_  
John Orzech  
City Manager

APPROVAL:

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

\_\_\_\_\_  
Justin Harris (#0078252)  
Interim Law Director

CERTIFICATE OF FUNDS

In the matter of: Sandusky Wheels Park Design and Construction

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

By: \_\_\_\_\_  
Michelle Reeder, CPA  
Finance Director

\_\_\_\_\_  
Account Number

\_\_\_\_\_  
Not to Exceed Amount

September 1, 2023

Arin Blair, AICP  
Chief Planner  
City of Sandusky  
240 Columbus Avenue  
Sandusky, OH 44870

**RE: Sandusky Wheels Park Design and Construction Documentation**  
Proposal #22209

Dear Arin:

As the Community Advancement firm, OHM Advisors (OHM, Consultant,) is grateful for the opportunity to continue working with the City of Sandusky (City, Client,) on the final design and construction documentation of the new wheels park.

This proposal represents our understanding of the project, work plan, schedule and cost of services.

### **Understanding**

OHM will finalize the design, bidding, and construction documentation for the new wheels park including a pump track that accommodates all modes of rolling and abilities, shade elements, seating elements, drinking fountain, pedestrian circulation, and landscaping. We understand the construction budget will be between \$800,000 and \$900,000, based on the developed concept plan shown on the attached Exhibit 'A'.

### **Work Plan**

OHM Advisors team will work with the City to complete the following scope of work:

#### **Task #1 – Kick-off, Existing Conditions Review and Analysis**

- Project kickoff meeting: Representatives from OHM meet in person, on site, with representatives from the City to confirm the existing conditions, challenges, opportunities, client team roles and responsibilities, and project line of communication.
- Meetings: (1) In-person meeting (Meeting #1)
- Deliverables: Meeting minutes

#### **Task #2 – Design and Construction Documentation**

- Create a construction document set that will meet the requirements for necessary permits and will detail the requirements for construction of the improvements. The documents will illustrate and describe the scope, relationships, forms, sizes, quantities, finishes, and appearance by means of plans, elevations, sections and/or construction details, including specifications that identify major systems, materials, quality levels, and quantities. The drawings will include:
  - Project Cover Sheet
  - General Notes



- Site preparation plan(s)
- Layout and materials plan(s)
- Grading and drainage plan(s)
- Utility plan (water, and sanitary)
- Stormwater pollution prevention plan, including stormwater calculations, as required.
- Landscaping plan
- Details
- Sections, elevations, schedules, and any other documentation necessary to define the intended design.
- Confer with all necessary regulatory agencies, via email and phone, and incorporate their comments into the construction document and permit set. OHM will submit the project permit set to the necessary regulatory agencies for their review and approval. Submission will include completing required applications.
- OHM will provide any technical specifications establishing in detail, the requirements for materials and installation.
- Estimate of construction costs.
- Present all documents to City, for review and coordination. All review comments will be incorporated into final documents.
- Perform regular QA & QC reviews throughout the duration of the project to minimize risk for the Client and for OHM.
- Meetings:
  - Biweekly coordination virtual calls with the City.
  - (1) in-person progress submission review meetings with City Administration and Staff (Meeting #2).
- Deliverables:
  - 75% Construction Documents progress drawings, and cost estimate in PDF format.
  - 100% Permit and Construction Documents, including cost estimate in PDF format.
  - Memo letter summarizing regulatory requirements.
  - Meeting minutes.

### **Task #3 – Bidding Documents**

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- OHM will finalize the construction document set that will meet the requirements for necessary permits and detail the requirements for construction of the improvements.
- The project manual / bid book for public bidding will be developed by the City. OHM will provide final technical specifications for inclusion into the project manual / bid book.
- Update estimate of construction costs & provide unit price tabulation.
- Bidding documents will be developed for a single bid package, via a design-bid-build delivery method.
- Perform final QA & QC review.
- Meetings:
  - Biweekly coordination virtual calls with the City.
  - (1) in-person progress submission review meetings with City Administration and Staff (Meeting #3).
- Deliverables:
  - 100% Bidding & Construction documents, including drawings, technical specifications, bid form, and cost estimate in PDF format.
  - Meeting minutes.





#### **Task #4 – Bidding**

- Attend pre-bid meeting, answer bidding requests for information (RFI's), and prepare clarification documents or addenda.
- Meetings: (1) Pre-Bid meeting (Meeting #4)
- Deliverables: RFI, clarifications, or addendum responses in PDF format.

#### **Compensation and Timetable**

OHM Advisors will provide the above-outlined professional services in accordance with the following lump sum fee schedule. The timetable assumes a notice-to-proceed date of August 21<sup>st</sup>, 2023.

Task	Fee	Timetable
Task #1: Kick-off, Existing Conditions Review and Analysis	\$ 3,800	September
Task #2: Design and Construction Documentation	\$ 33,700	September - November
Task #3: Bidding Documents	\$7,700	December
Task #4: Bidding	\$4,700	January - February
<b>Total:</b>	<b>\$ 49,700</b>	

#### **Clarifications and Assumptions**

1. The OHM Team will be led by Jeremy Hinte as project manager and will include our landscape architecture and civil engineering groups.
2. All deliverables will be submitted electronically in PDF and/or CAD data format, as appropriate.
3. Construction administration and inspection is not provided within this scope of services. Once the project construction scope of work, including the bidding and construction schedule has been defined, OHM can provide a scope of service fee for construction administration and inspection.
4. All other work not listed above is excluded from this proposal but can be added as an additional service, if requested.
5. If additional labor effort is required, due to additional meetings not described in the Work Plan, change in schedule, Client-directed changes to the design that are departures from the design direction or scope of work and require rework of information completed in previous submissions, OHM will negotiate an amendment with the Client for additional services. OHM will not proceed with additional services, without written authorization to proceed from the Client.
6. Force Majeure: In the event either party is delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, including but not limited to, strike, labor or civil unrest or dispute, embargo, blockage, work stoppage, protest, pandemics, or acts of God, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be reasonable to perform after the cause of delay has been removed. In the event any such delay continues for a period of more than thirty (30) days, either party may terminate the Agreement upon written notice to the other party. In the event of any such termination, The Client shall pay OHM for work performed through the effective date of termination.



## Authorization

If this proposal is acceptable to you, your signature on this letter with a copy returned to me will serve as our authorization to proceed. Upon execution, this Proposal, the City of Sandusky Terms and Conditions, and the other attachments will form our agreement.

Thank you for giving us the opportunity to be of service! We look forward to working with you on this project. This proposal is valid for 30 days from the date of this letter. If you have any questions or comments, please contact me at 216-339-7412 or [jeremy.hinte@ohm-advisors.com](mailto:jeremy.hinte@ohm-advisors.com).

Sincerely,

OHM Advisors

Authorization to Proceed:  
City of Sandusky

Jeremy Hinte, PLA, ASLA, Project Manager  
[Jeremy.hinte@ohm-advisors.com](mailto:Jeremy.hinte@ohm-advisors.com)  
D: 216.865.1337 C: 216.339.7412

Signature

Date

Russ Critelli, PE, PMP, Principal  
[Russ.Critelli@ohm-advisors.com](mailto:Russ.Critelli@ohm-advisors.com)  
D: 216.865.1336 C: 216.346-2637

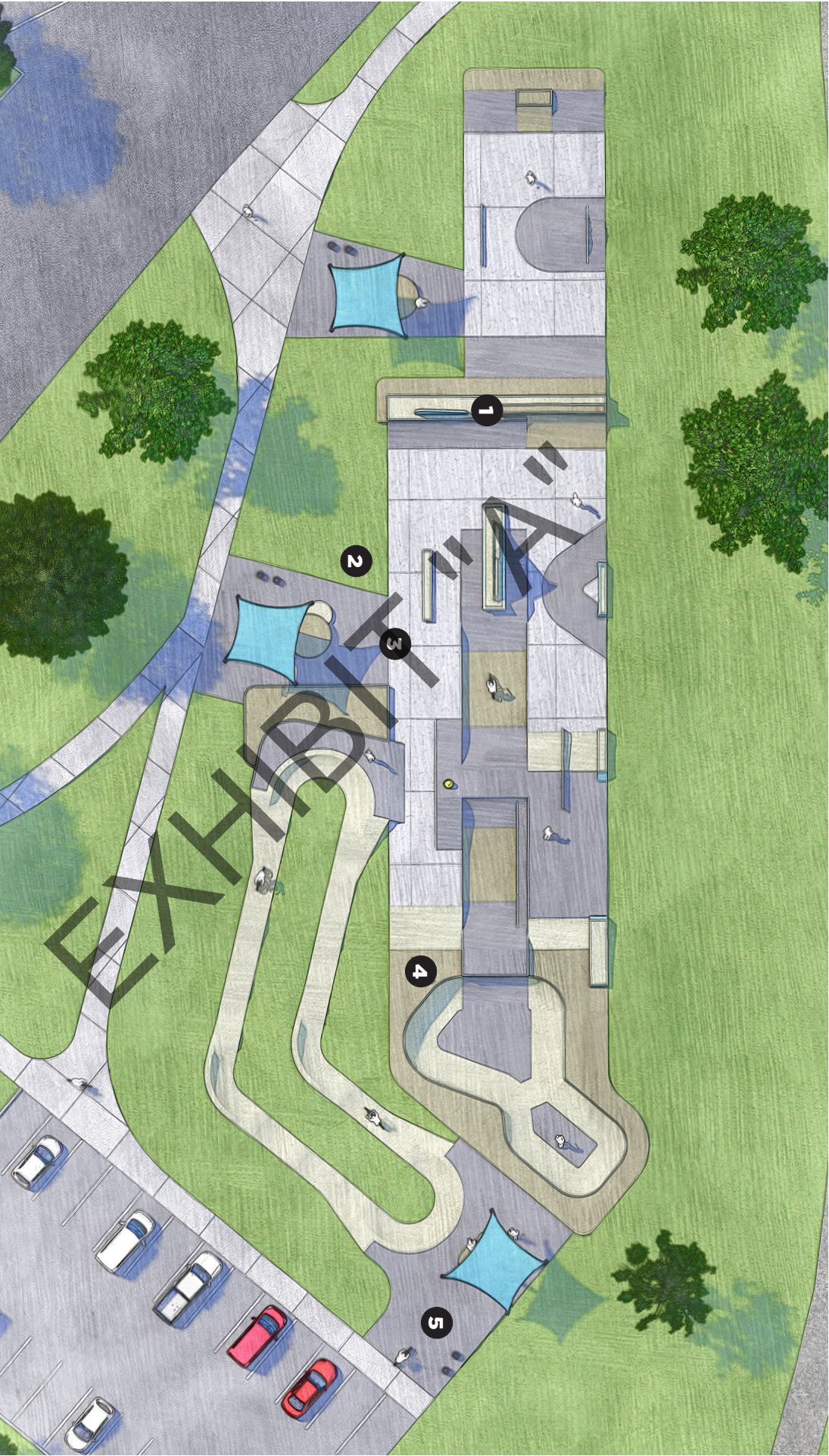
Printed Name

Title

EXHIBIT "A"



# SANDUSKY WHEELS PARK



VIEW 1

VIEW 2

VIEW 3

VIEW 4

VIEW 5

