

CITY OF OBERLIN, OHIO

ORDINANCE No. 19-31 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ENVIRONMENTAL DESIGN GROUP, INC. OF AKRON, OHIO, FOR PROFESSIONAL ENGINEERING SERVICES FOR THE DEVELOPMENT OF AN ALTERNATIVES ANALYSIS FOR THE OBERLIN WATERWORKS UPGROUND RESERVOIRS NO. 1 & 2 AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with Environmental Design Group, Inc. of Akron, Ohio for professional engineering services for the development of an Alternatives Analysis for the Oberlin Waterworks Upground Reservoirs No. 1 & 2 on Morgan St. in the City of Oberlin in an amount not to exceed \$71,200.00. A copy of the proposed contract is attached hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to proceed with planning and design for improvements to the Oberlin Waterworks Upground Reservoirs, No. 1 & 2 in a timely manner to ensure compliance with Ohio Department of Natural Resources regulations, and shall take effect immediately upon passage.

PASSED: 1st Reading: May 20, 2019 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 05/20/2019

EFFECTIVE DATE: 05/21/2019

19 MAY 28 PM 12:24

ORIGINAL



May 16, 2019

Mr. Jeff Baumann
City of Oberlin
Public Works Director
85 South Main Street
Oberlin, Ohio 44074

**RE: Oberlin Waterworks Upground Reservoirs No. 1 & 2 Alternatives Analysis
Environmental Design Group No. 19-00153-01P**

Dear Mr. Baumann:

Thank you for the opportunity to present this proposal for professional technical services to the City of Oberlin (Client) for the referenced project. Our proposed scope of services, outlined below, is based on the City's Request for Qualifications and our Statement of Qualifications dated March 11, 2019. We have also included a list of assumptions and exclusions that will help clarify the intended scope of work, both for the City of Oberlin and for Environmental Design Group.

The work will be performed in two stages. This initial proposal includes the first stage, which will include background research and surveying, followed by development of alternatives for presentation to the City. Based on the alternative(s) selected in this proposal, a separate scope and fee will be provided to the City for the second stage, which will include the necessary engineering services to implement the required repairs and necessary documentation.

SCOPE OF SERVICES

The services to be performed by Environmental Design Group in accordance with this proposal are as follows:

Task 1 – Site Reconnaissance

Environmental Design Group will perform a kickoff meeting (1) with City personnel to discuss the goals and vision for the project. During this time, we will outline the project schedule and discuss deliverables. We will also perform a site visit during this meeting and mark in the field obvious geotechnical test locations and/or areas of concern.

Our team will evaluate available background information regarding the construction, infrastructure and operation of the Oberlin Waterworks Upground Reservoirs No. 1 & 2. The City will provide information available including, but not limited to, construction drawings, utility maps, and other documents pertaining to the structure and its past and present operation.

During this task, we will coordinate with the Ohio Department of Natural Resources (ODNR) Division of Water Resources Ohio Dam Safety Program as necessary. No submittal to ONDR is included in this scope.

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19 MAY 28 PM 12:28
CORPORATE
450 Grant Street / Akron, OH 44311
P 330.375.1390 / F 330.375.1590
TF 800.835.1390

CLEVELAND OFFICE
2800 Euclid Avenue, Suite 620
Cleveland, Ohio 44115

COLUMBUS OFFICE
88 East Broad Street, Suite 880
Columbus, Ohio 43215

envdesigngroup.com

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We will perform a field survey of the property, within the extents shown in Exhibit B, including the following:

1. Detailed topographic survey and base mapping with sufficient ground points to produce one (1) foot interval topographic contours (1" = 20'). Surveying will also obtain pertinent dam infrastructure and related topographic features.
2. Installation of two (2) control points for use during the construction phase.
3. Identify platted rights-of-way, lot numbers, house address, ownership lines, block numbers, and dedicated easements according to record plats. Identify and locate property lines, existing buildings, and existing edge of pavement within the survey limits. Survey the property boundaries within the survey limits to state minimum standards. The property boundary lines will be shown on the base map created.
4. Locate existing utilities within the survey area, including but not limited to gas, water, storm sewer, sanitary sewer, force main, cable, overhead power/telephone and poles, geotechnical investigation locations and all related utility appurtenances (including but not limited to: valve boxes, fire hydrants, sampling stations, splice boxes, conduit pull boxes, manholes, backflow prevention devices, meters, aerial pipeline crossings, etc.). Contact the Ohio Utilities Protection Service (OUPS) and other agencies for existing plans and field markings of subsurface utilities. Subsurface utilities will be shown from the surveyed location of visible utility facilities (manholes, valves, etc.), field marking provided by the OUPS and others. The locations will be correlated with existing plans provided by OUPS, City and others. Known unresolved or missing utility, water and sewer information will be summarized and provided on the survey or in a separate document. All utility contact information will be maintained in a utility contact document that will provide utility contact information, contact log, and status. Review existing record drawings to obtain depths of all utilities within the survey area. Assumed depth information so obtained shall be provided and referenced as to the source of the information. Vertical elevations of utilities or other items that will be potentially in conflict with the proposed alternatives shall also be surveyed. Sewer Surveys – Collect rim elevations, grate elevations, pipe sizes, length, identify material, and invert elevations for all existing structures (drainage and sewerage) within the survey area. Storm and sanitary sewer manholes will be opened where possible to obtain pipe invert elevations, sizes, and flow directions.
5. Fixed Improvements – Roadway surveys shall include location and identification of: street names, rights-of-way, existing edge of pavement limits, utilities as described previously, gutters, curb inlets, sidewalks, medians, guardrail, road signs, curbs, road centerlines, walls, inlets, culvert materials, size, inverts, and driveway type (i.e., grass, paved, gravel, etc.). Locate and identify fences including type and size within the survey limits. Locate and identify trees six (6) inches diameter at breast height and larger within the survey area (excluding trees within wooded areas). Edge of tree line will be surveyed. Locate path through woods connecting to the southwest corner of the eastern reservoir within survey limits.
6. An estimate of each reservoir's storage area – Survey will include five (5) points in each reservoir plus one (1) cross section on the reservoir side of the embankment for each reservoir to estimate the side slope inside of each reservoir.

Deliverables for Task 1 include one (1) kickoff meeting with site visit; a CAD topographic basemap of the site including topographic, utility, boundary survey and reservoir survey; a summary memo documenting the background information collected.

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Task 2 – Alternatives Analysis

Utilizing the information collected in Task 1, our team will perform a desktop hydrologic analysis to determine surface runoff impacts to the reservoirs and flow paths to Plum Creek from the reservoirs. This will help the team identify potential dam modifications and/or dam removal.

During this task, we will identify potential geotechnical approaches to resolving the existing dam deficiencies and develop alternatives for potential dam removal or modification.

We will meet with City personnel for an alternatives workshop where ideas and priorities will be exchanged, and alternatives explored. Our team will utilize the information collected in Task 1 for this meeting and explore pros and cons of alternatives with the staff during this workshop.

Based upon discussion from the workshop, we will prepare up to three (3) alternatives for improvements. It is assumed that one alternative will be improvements necessary to address ODNR's comments in their September 18, 2018 Dam Safety Inspection Report. Other alternatives will include improvements to remove the dam from ODNR jurisdiction. Each alternative will include the preparation of an 11x17 color rendering showing the improvements. We will prepare an opinion of potential project costs for each alternative.

Our team will then present the alternatives to participants at a public meeting. The City shall schedule, advertise and set up this meeting. Our team will prepare presentation materials, meeting notes and facilitate the meeting.

Based upon input from the public and the City, we will identify a preferred alternative. Once the preferred alternative is identified, our team will develop geotechnical investigation strategy in coordination with ODNR and the City. The geotechnical investigation identified in this step will not be performed until the second stage of the project and will be included in the second stage scope and fee.

We will prepare a draft report that summarizes the results and material. We will submit this to the City for review. This report shall be submitted electronically in PDF format for review. Upon review from the City, our team will address comments and finalize the report. The final report will be submitted electronically and one (1) color bound report.

Deliverables for Task 2 include one (1) alternatives workshop; one (1) public meeting; up to three (3) alternative renderings 11x17 color PDFs; a draft and Final Alternatives Analysis Report in PDF format.

Task 3 – Bathymetric Survey

In addition to Task 1 and 2, Environmental Design Group will perform the following work, if authorized. Authorization of this task can be done by initialing the line in the Project Quotation section below.

Based on further discussion with ODNR, a full bathymetric survey is not required to determine the storage volume of each reservoir. However, if the City would like this information, we will perform a detailed bathymetric survey and base mapping with sufficient

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under water depths to produce one (1) foot interval topographic contours (1" = 20') of each reservoir. Surveying will also obtain edge of water location and elevations.

Deliverable for Task 3 includes a CAD topographic basemap of the bathymetric survey.

PROJECT QUOTATION

Environmental Design Group's fee for these professional services will be a **lump sum as follows:**

Tasks 1 & 2 – Site Reconnaissance & Alternatives Analysis	\$71,200.00
Task 3 – Bathymetric Survey	\$9,700.00 _____ authorized

Task 3 may not be authorized separately. If Task 3 is authorized, City shall initial in the line above.

This offer remains valid for thirty (30) days; acceptance thereafter is subject to our approval. Reimbursable expenses (i.e., prints, reproductions, photos, mileage, consultant and agency fees, etc.) are included in the price shown for professional services.

From the date of acceptance of this agreement, the above fees will apply for one (1) year. If the work is not completed during that period, the agreement may be subject to renegotiation.

ASSUMPTIONS AND EXCLUSIONS

Below is a list of assumptions and exclusions that apply to our proposal for technical services for this project. These items were considered while defining the scope and cost of our services. These assumptions and exclusions also describe responsibilities both of Environmental Design Group and the Client, in the event there is a need for work outside the defined scope of services.

1. Unless the Client designates an alternate in writing, the person signing the agreement will be considered the Client's only official representative with respect to this agreement.
2. Client will provide timely review of submissions and invoices.
3. Client will provide engineering and surveying data and other existing information in the client's possession to Environmental Design Group that may be useful in the performance of the professional services described in the proposal. These items may include Environmental Site Assessments, Wetland Delineations, Boundary Surveys, Topographic Surveys, ALTA Surveys, plans and specifications of existing facilities and similar documents.
4. Client will make all provisions for Environmental Design Group personnel to enter upon public and private lands as required to perform the described services.
5. This proposal has been based on a continuous project development process from start to finish. After the project is authorized, should the project be put on hold by the Client, or otherwise be pursued in a start-stop-resume manner, Environmental Design Group reserves the right to renegotiate the fees established herein to account for the extra costs resulting therefrom.

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6. Opinions of construction cost or estimates of construction cost prepared by Environmental Design Group under this agreement are just that. Environmental Design Group does not warrant or guarantee that the project can be constructed for those amounts and the Client agrees that Environmental Design Group cannot be held liable for any discrepancies between bid costs and our opinions or estimates.
7. The scope of work contained in this proposal is for a conceptual planning document, it does not include any specific engineering analysis or work that can be construed as detailed design or construction documents. In addition, site conditions will be evaluated from a conceptual perspective; we will not be conducting formal environmental, ecological, geotechnical, or other site or infrastructure assessments. Any work in these areas will be general observations only.
8. Environmental Design Group will indicate the locations of subterranean structures (pipes, tanks, telephone cables, field tiles, etc.) on the project plans only to the accuracy and extent provided by the owners of the facilities, either by plans or marking in the field. Environmental Design Group is not responsible for such structures that are not called to Environmental Design Group's attention or correctly shown on plans of affected utilities provided to Environmental Design Group by the owners of such utilities. Should actual locations or depths of such subterranean structures be required, the costs of physically locating or exposing such structures are the responsibility of the Client.
9. ALTA/ACSM Land Title Surveys, if included in the proposal, will meet the 2016 Minimum Standard Detail Requirements as adopted by the American Land Title Association and the National Society of Professional Surveyors and will include specifically designated portions of Table A of the ALTA standards.

LIMITATION OF LIABILITY

Environmental Design Group warrants that it has adequate workers' compensation coverage, errors and omissions insurance and professional liability and such coverage under public liability and properties damage insurance policies as it deems to be adequate. Certificates of all such policies of insurance shall be provided to you upon request in writing. To the extent that it is lawful to do so, the Client hereby expressly waives and releases any cause of action or right of recovery which you may have hereafter against Environmental Design Group for any loss or damage to subject premises caused by fire, explosion or any other risk which may arise during our performance of services hereunder and which is covered by insurance.

Environmental Design Group's work being performed, and Environmental Design Group's findings and conclusions are for the benefit of the Client and appropriate regulatory agencies and are not to be relied upon by any other parties. A party's failure or delay to require strict performance on any provision of this agreement shall not be considered a waiver or deprive such party of the right to insist upon strict adherence to that term or other terms of this agreement.

STANDARD OF CARE

Services performed by Environmental Design Group under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by firms similar to

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Environmental Design Group which are currently providing similar services in the same geographical area.

Client recognizes that subsurface conditions or other field conditions may vary from those encountered at locations where borings, surveys or other observations are made by Environmental Design Group and that the data interpretations and recommendations by Environmental Design Group are based solely on information available to Environmental Design Group.

Environmental Design Group will be responsible for those data interpretations and recommendations but shall not be responsible for any interpretations by others of the information developed.

INVOICING PROCEDURES AND TERMS

Invoices will be submitted monthly based on Environmental Design Group's estimate of job progress.

If the client fails to make any payment due Environmental Design Group within thirty (30) days after receipt of Environmental Design Group's invoice, the amounts due Environmental Design Group will include a charge at the rate of 1% per month from said thirtieth day. In addition, Environmental Design Group may suspend services under this Agreement until all outstanding invoices have been paid in full plus accrued interest.

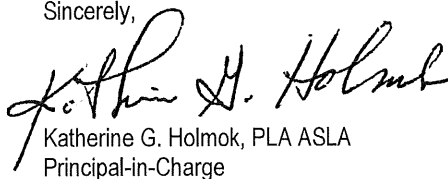
The attached Exhibit A – Standard Provisions of Agreement – is a part of this agreement and is binding on the client.

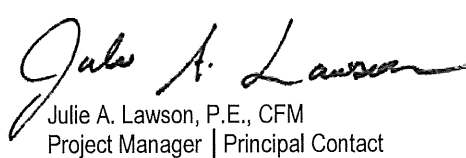
PROJECT INITIATION PROCEDURES

If this proposal is satisfactory, you may authorize Environmental Design Group to proceed by signing below and returning a copy of this letter to us. If there is a need for clarification or if changes in contractual arrangements are desired, please contact us at (330) 375-1390.

We look forward to working with you.

Sincerely,


Katherine G. Holmok, PLA ASLA
Principal-in-Charge


Julie A. Lawson, P.E., CFM
Project Manager | Principal Contact

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ACCEPTED: Rob Hillard, City of Oberlin

All invoices should be sent to:

By:  Name: Jeff Baumann

Title: City Manager Address: 85 South Main Street

Date: 5/23/2019 Oberlin, Ohio 44074

Name of Client's Designated Representative: Email: jbaumann@cityofoberlin.com

Jeff Baumann, Public Works Director Email Invoices: ☒ Yes ☐ No

Notes: _____

Jon D. Clark
Law Director

APPROVED AS TO FORM

Date: 5/27/19


Jon D. Clark, Oberlin City Law Director

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CIVIL ENGINEERING / LANDSCAPE ARCHITECTURE / PLANNING / SURVEYING / ENVIRONMENTAL SERVICES / CONSTRUCTION MANAGEMENT

EXHIBIT A STANDARD PROVISIONS OF AGREEMENT FISCAL YEAR 2019

Client and Environmental Design Group, LLC (Consultant) agree that the following provisions shall be part of their agreement:

1. This Agreement will be binding upon the heirs, executors, administrators, successors and assignees of Client and Consultant and will not be assigned by either Client or Consultant without the prior written consent of the other.
2. This Agreement contains the entire agreement between Client and Consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations that are not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement will be in writing and signed by both Client and Consultant. The Client may use purchase orders as an administrative convenience, however, any terms and conditions contained in such purchase orders are not to be considered terms and conditions of this Agreement and will not be binding upon Consultant unless expressly agreed to in writing by Consultant.
3. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
4. Client's or Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, will not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant, of this Agreement is held by a court of competent jurisdiction to be invalid, void or not enforceable, the remaining provisions of this agreement will be valid and binding on Client and Consultant.
6. Consultant will only act as an advisor in all governmental relations. Obtaining government approvals is not a term of this agreement unless expressly set forth herein.
7. Consultant is not responsible for delay or damages caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays or damages by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client or his agents to furnish timely information or approve or disapprove Consultant's work promptly, faulty performance by Client or other contractors, or the actions or inactions of governmental agencies including, but not limited to permit processing, changes in policy, environmental impact reports, dedications, general plans and amendments hereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant will not be deemed to be in default of this agreement.
8. The following will be considered as additional services to be performed for an additional fee: a) Changes to plans, specifications or other documents and/or field work

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required by one or more governmental agency, as a result of changes or official interpretations in its ordinances, policies, procedures or requirements after the date of this Agreement; b) Any and all increase in costs and expenses contemplated by this Agreement due to the granting of wage increases and/or other employee benefits to field or office employees as a result of the terms of any labor agreement, or rise in the cost of living, during the lifetime of this agreement. Client will be billed for the additional, percentage increase applied to all remaining compensation due with respect to services performed pursuant to this Agreement; c) Incidental services as required by Client not specified in writing within the scope of work on the front hereof; d) Cost of replacing any staking destroyed, damaged, or disturbed by an act of God or parties other than Consultant; e) The costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

9. Consultant makes no representations and does not guarantee expressly or implicitly: a) The estimated quantities made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and Consultant shall not be responsible for interpretational differences or fluctuations. Estimates of areas provided under this agreement are not to be considered precise unless Consultant specifically agrees to provide the precise determination of such areas. b) The completion or quality of performance of Contractor or the completion or quality of performance of agreements by the construction contractor or contractors, or other third parties, nor is it responsible for their acts or omissions. c) Its findings, recommendations, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance. d) Soil conditions unless specifically included in writing in this Agreement, and it is further not liable for any damages arising out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.
10. What may be referred to as a *cost estimate* or *engineer's estimate* as made by Consultant herein or in other correspondence regarding the Project shall be deemed an opinion of probable construction cost. In providing opinions of probable construction cost, it is recognized that neither Client nor Consultant has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding, or over market conditions. The opinion of probable construction costs is based on Consultant's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the Client's budget or from any opinion of probable cost prepared by Consultant. If Client wishes greater assurances as to Total Project or Construction Costs, Client may employ an independent cost estimator.
11. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. In the event there is a discrepancy between the electronic files and the hard copies, the hard copies govern. When transferring documents in electronic media format, Consultant makes no

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representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of this Project.

12. All original papers, documents, drawings and other work product of Consultant, and copies thereof, produced by Consultant pursuant to this Agreement, except documents which are to become permanent public record, will remain the property of the Consultant and may be used by Consultant without the consent of Client. Consultant retains all rights of copyright on work performed pursuant to this Agreement. All services provided pursuant to this Agreement may be used by Client only for the project described on the face hereof. Client agrees not to use or permit any other person to use plans, drawings, or other documents prepared by Consultant, which are not signed by Consultant and permitting agencies. Client agrees to be liable and responsible for any such use of unsigned plans, drawings, or other documents not signed by Consultant.
13. Client acknowledges that all certifications of Consultant that appear on drawings shall be limited to the original purpose for which the respective drawings were to be used; that such certification and drawings are not intended to embrace any changes or modifications to such drawings regardless of their nature or scope; and that any obligations of Consultants attaching to such drawings shall be subject to the foregoing qualifications.
14. This agreement may be terminated by either party by thirty (30) days' written notice if the other party has substantially failed to perform in accordance with the terms herein through no fault of the terminating party. Otherwise, Consultant has a right to complete all services agreed to be rendered pursuant to this agreement. In the event this Agreement is terminated before the completion of all services, Client agrees to release Consultant from all liability for work performed. In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated by any party or for any reason, Client will pay Consultant for all fees, charges, and services provided for the project to the date of said suspension, abandonment or termination.
15. In the event that changes are made in the plans and specifications by Client or by any other person other than Consultant, any and all liability arising out of or resulting from such changes is waived by Client against Consultant, and Client assumes full responsibility and liability for such changes unless Client gives Consultant prior written notice of such changes and Consultant consents in writing to such changes. Client agrees to indemnify Consultant against any and all liability, loss, costs, damages, fees of attorneys and other expenses which Consultant may sustain or incur as a result of such unconsented changes.
16. All fees and other charges will be billed monthly and will be due at the time of billing unless otherwise specified in this Agreement. Client agrees that the periodic billings from Consultant to Client are correct, conclusive, and binding on Client unless Client within twenty (20) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing. Client agrees to pay a late payment charge which will be computed at the periodic rate specified on the

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front hereof and will be applied to any unpaid balance commencing thirty (30) days after the date of the original billing.

17. If client fails to pay Consultant within thirty (30) days after invoices are rendered, Client agrees Consultant will have the right to consider such default in payment a material breach of this Agreement. Consultant may, upon written notice to Client, immediately terminate this Agreement. In such event, Client will immediately pay Consultant for all fees, charges and services provided through the date of termination. Alternately, the Consultant may choose at its sole discretion not to terminate this Agreement but to suspend work until the account is brought current including accrued interest. In such event, the Client will bear any and all additional costs resulting from suspension of work including but not limited to increases to the stated fee as a result of inflation, promotions or other causes and/or additional fees incurred by Consultant as a result of changes necessitated by governmental agencies or other approving authorities.
18. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law and notwithstanding anything to the contrary in this Agreement, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall not exceed \$50,000, or the Consultant's total fee for services rendered on this Project and paid to Consultant, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
19. Client and Consultant agree that they will first try to resolve any claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement via good faith negotiations. If negotiations prove unsuccessful, Client and Consultant further agree to submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to be submitted to a court having jurisdiction in Lorain County.
20. Under no circumstances will any legal action in any way connected with this Agreement or services performed hereunder be initiated by either party after five (5) years from the date of Substantial Completion, unless this Agreement is terminated prior to substantial completion, in which case the date of termination of this Agreement will be the date on which such period will commence. Substantial completion is defined as deliverables submitted to the Client per the scope of services.
21. The work is being conducted and the report prepared for the sole use of the Client and represents a professional opinion based on the information available to Consultant at the time of the investigation and report.

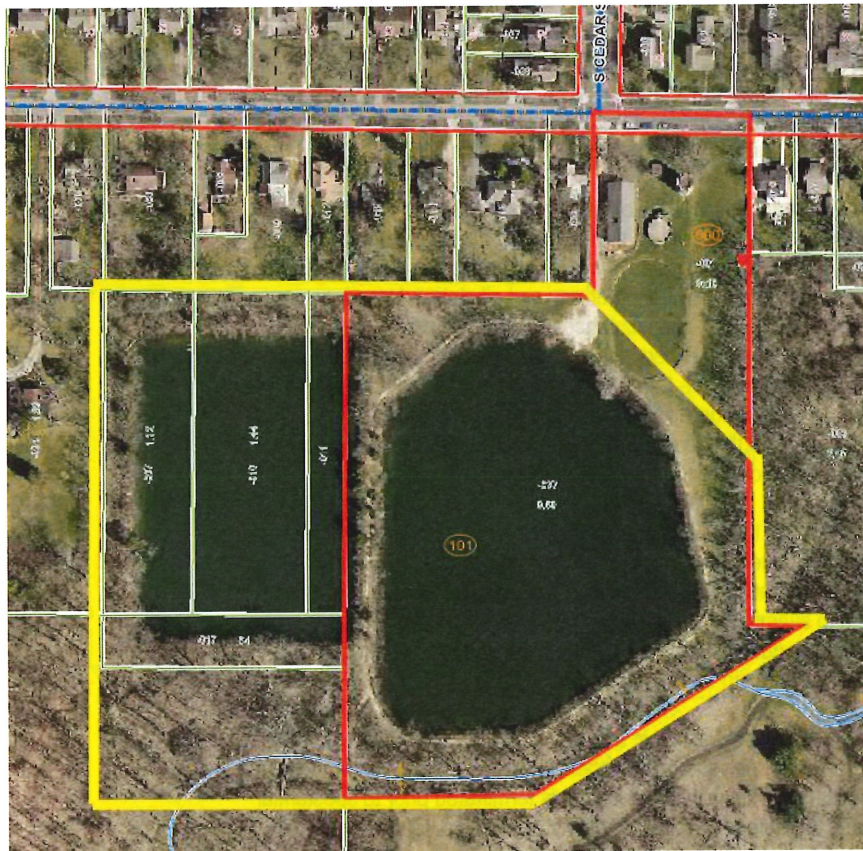
Assignment of reliance to third-parties can be made, however this will be considered an additional service. Such letters of reliance may be provided on a case-by-case basis as requested. It is further understood that the scope, terms and conditions under which this report was originally prepared apply to any and all third-party recipients.

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EXHIBIT B

FIELD SURVEY EXTENTS

The extents of the topographic survey listed in Task 1 of this proposal are within the yellow boundary shown on the map below.



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