



March 5, 2021

City of Gahanna
Department of Public Service and Engineering
200 South Hamilton Road
Gahanna, OH 43230

Attention: Mr. John Moorehead, P.E.

Reference: **Fee Proposal - Engineering and Design Services**
Cherry Bottom Road Slope Stabilization – Areas 1 and 2
Gahanna, OH
S&ME Proposal No. 205464

Dear Mr. Moorehead:

In accordance with your email request and notice of firm selection on February 12, 2021, S&ME is pleased to provide this proposal to complete investigation, design and construction services for slope stabilization measures along Cherry Bottom Road in two (2) separate areas, designated as Areas #1 and #2 that are experiencing distress (i.e., slips/erosion).

In addition to the Cherry Bottom Road area, this proposal also includes a scope of work and proposed fee to perform a jurisdictional waters study for a proposed mountain bike skills course at Academy Park. Per your request, these additional environmental services are listed as an 'if-authorized' cost in this proposal.

This proposal describes our understanding of the project, outlines our planned approach, and presents schedules and fees for our services. Our Agreement for Services, Form AS-071, is attached and included as a part of this proposal.

If you have any questions with respect to this proposal, please do not hesitate to contact us.

Sincerely,

S&ME, Inc.

A handwritten signature in blue ink that reads "Stephen J. Loskota".

Stephen J. Loskota, P.E.
Project Manager/Senior Engineer

A handwritten signature in blue ink that reads "Jason D. Ross".

Jason D. Ross, P.E.
Project Engineer



◆ Project Understanding

Area 1 is located near the southern edge of the parking lot for Academy Park between Cherry Bottom Road and a tributary of Big Walnut Creek. The area has a temporary repair consisting of driven wooden posts and guardrail. It is our understanding that the City has been observing the area for about a year and believes the movement has been occurring for a number of years. Erosion of the toe is believed to be a contributor to movement and there is visible evidence of multiple scarps within the area of concern. S&ME provided repair alternatives for this area in our report to the City dated July 30, 2000. The report identified several repair options including a gabion buttress to the road, a retaining wall, and soil nails.



Area 1 Existing Slope – July 15, 2020

Area 2 is located on the west side of Cherry Bottom Road between Springbrook Drive and a private driveway. McKenna Creek (Beem Ditch) is located at the base of the roadway embankment. The City has indicated that pavement distress related to slippage/erosion is evident. Personnel from S&ME recently observed the area and agree that the roadway embankment is being eroded by flows in McKenna Creek. It is evident that the guardrail posts are losing soil support due to erosion. A steel sheet pile wall just north of Area 2 was also observed and its location appeared to be consistent with the 2010 repair plans developed by the City. Based on the apparent good condition of the wall, it may be advantageous to utilize the same design of this wall (or slight variation) and extend it southward to protect Cherry Bottom Road. We believe that the advantages of this option would include minimal disturbance of the creek, straightforward permitting (Nationwide Permit), and a visual look consistent with the existing wall.



Area 2 Existing Conditions – January 10, 2021

S&ME provided an initial evaluation of four (4) areas of concern along Cherry Bottom Road for the City of Gahanna in 2020. Our Initial Evaluation report consisted of completion of a site reconnaissance, a literature review, and a discussion on remediation options for each repair area, including conceptual repair sketches. A summary of remediation options was provided that included future scopes of work and estimated costs.

S&ME understands that the current scope of services for this Cherry Bottom Road Slope Stabilization project is intended to address one of these four areas (Area 1) and a new area (Area 2) that are exhibiting signs of distress.



Project Phases

The project team has identified the following phases for the project:

1. Geotechnical Exploration, Laboratory Testing and Environmental Field Work
2. Design Services, Surveying and Environmental Permitting
3. Construction Phase Services

It is noted that construction phase services will depend on the type and complexity of repairs developed in the Design Services Phase and are currently not known. Additionally, S&ME's level of involvement with the construction phase could vary depending on the City's preferences and availability of staff when the work is to be performed. As such, S&ME has developed a 'placeholder' cost for this item to be used for budgeting purposes and is described in the following sections of this proposal.

◆ **Scope of Services**

Geotechnical Exploration and Laboratory Testing

For Areas 1 and 2 and in general, S&ME's exploration objectives are to determine depth to bedrock, analyze the overburden soil, determine if groundwater is present and at what depth(s), estimate at what depth slope movement/weak soils may be present, and prepare a geotechnical data report for use in design of repairs.

S&ME has reviewed the 2009 Geotechnical Engineering Report prepared by HC Nutting for the slope adjacent to Area 2. One soil boring was performed for that project and a likely failure zone was identified at a depth between 7 and 10 feet. Bedrock was encountered at 31 feet. S&ME intends to utilize information contained in the report and augment that data with one additional boring located adjacent to the current area.

For the Geotechnical Exploration and Laboratory Testing phase, S&ME proposes to perform the following:

- Make one (1) site visit to field locate and stake or paint exploration locations;
- Obtain any required right-of-way permits from the City of Gahanna;
- Contact Ohio 811 (formerly Ohio Utilities Protection Service - OUPS) at least 48 hours prior to drilling;
- Arrange for traffic control (signs, cones, and flaggers) for one lane closure while drilling;
- Obtain any necessary road closure permits from the City of Gahanna for the field exploration;
- In Area 1, perform one (1) boring up to a depth of 10 feet using hand sampling techniques and located at the toe of the slope;
- In Area 1, perform two (2) borings in the pavement at the top of the slope to a depth of 30 feet, including a minimum of 10 feet of rock core, if bedrock is encountered (for cost estimating purposes, we have considered bedrock at a depth of 15 feet);
- In Area 2, perform one (1) boring in the pavement at the top of the slope to a depth of 35 feet or bedrock refusal;
- Retrieve SPT samples at 2-1/2-foot intervals in the top 10 feet and then at 5-foot intervals thereafter;
- Attempt at minimum one (1) undisturbed (Shelby Tube) sample;



- Perform laboratory classification testing (moistures, limits, grain sizes), along with specialty strength testing of the soil and rock; and,
- Prepare a geotechnical data report presenting our findings, including soil and rock strength values to be used for design of remedial repairs.

The report will also include the final boring logs and results of all laboratory testing. It is expected that the data report will be submitted along with the plans and specifications prepared in the Design Phase and will be available for bidders and the construction contractor.

If bedrock is not encountered within the proposed boring depths, then S&ME may recommend additional or deeper explorations.

As referenced above, S&ME will contact the Ohio 811 (formerly OUPS) at least 48 hours prior to drilling. As it is possible that utility companies which are not notified by OUPS may have lines or structures in the area of the explorations, S&ME requests that City of Gahanna advise S&ME of the locations of known or suspected underground features or utilities which could affect our services and arrange to have them marked before beginning field work. Our firm cannot be held responsible for damage to utility lines or subsequent loss of service if utility locations are not made known to us or are incorrectly marked by others.

Design Services

Utilizing the results of the Exploration and Laboratory Phase, S&ME will perform analyses to support design of the eventual repairs. In accordance with the City of Gahanna's request for services, preliminary design of two (2) alternative repair solutions will be prepared for each area (Area 1, Area 2). It is likely that the alternatives will include a retaining wall option and slope armoring option. In the unlikely event that a structural retaining wall is not feasible, S&ME will consider and recommend other options, such as gabion walls. S&ME will provide an engineer's estimate of probable construction cost for each alternative. A discussion on environmental permitting will accompany each alternative (further discussion is provided in the next section).

After the City has selected a repair alternative, S&ME will prepare 90%, 100% complete, and Issued for Bid (IFB) drawings. The drawings will include plan views, cross sections, details, and technical specifications in the form of plan notes. The design of the repairs will also include drainage considerations to convey surface water runoff safely to the stream at the toe of slope and internal drainage behind the wall or within the repair mass as would be the case for Gabions or slope armoring. Construction quantities will be tabulated, and an Engineer's opinion of probable cost will be prepared. S&ME has assumed the City of Gahanna will provide front end documents and the construction contract.

Although current aerial imagery and OSIP lidar topographic information will be utilized to the fullest extent possible, ground surveying and mapping will be required in the repair areas to provide the most accurate quantities. S&ME plans to sub-contract Carpenter Marty Transportation Inc., (CM) for survey and mapping. For this project, CM will perform topographic surveys for each area and provide mapping for the eventual preparation of drawings. The prepared mapping will be used for the geometric basis in any slope stability analysis. Three temporary benchmarks will be set in each Area for use as controls for site construction.



Based on our knowledge of the site and design of repairs for similar projects, S&ME anticipates the drawing set for each repair area will consist of 6 to 7 plan sheets and will include the following:

- Title Sheet;
- General Notes that will serve as the project specifications. The notes will reference the current version of the ODOT CMS for item numbers and specifications;
- Site Plan depicting wall location and proposed grading;
- Cross-Sections;
- Construction Details; and,
- Erosion and Sediment Control plans, details, and notes.

The site plans for each area will be set at a drawing scale sufficient to depict the repair area and adjacent site/survey features on one sheet. Existing and proposed grade contours will be displayed at a 2-foot interval. The grading plan will reflect final grades; subsurface grading will be depicted on select cross-sections. Construction details and technical specifications in the form of general notes will be developed and incorporated into the plan set.

Plan sheets presenting site specific erosion and sediment control details and general notes will be developed separately from the general construction details. The erosion and sediment control locations will be demarcated in plan view. Development of erosion and sediment controls will be based on the current edition of the Ohio Rainwater and Land Development Manual.

S&ME will prepare a "Draft" plan set for your review and, following receipt of your comments, a final package. Drawings will be prepared using AutoCAD Civil 3D 2018 on 22" x 34" plan sheets. Text sizes will be selected so that the drawings are reasonably legible in half-size format.

Environmental Permitting

Clean Water Act Section 404 / 401

S&ME anticipates that Area 1 and Area 2 may require waterway permitting through the United States Army Corps of Engineers (USACE) for work in a stream or any adjacent wetland areas. S&ME will complete a jurisdictional waters delineation to identify the jurisdictional stream limits and any special aquatic sites (e.g., wetlands). Based on the Ohio EPA 401 Water Quality Certification for Nationwide Permit (NWP) Eligibility guidance, both project areas are located in a "Possibly Eligible" area. Stream habitat assessments will be completed to confirm each project area is eligible for an NWP. Waterway permitting requirements will be identified after proposed impacts are determined. Stream or wetland impacts for Area 1 and Area 2 can likely be covered under Nationwide Permit No. 13 (NWP-13) for Bank Stabilization. United States Fish and Wildlife Service (USFWS) and Ohio Department of Natural Resources (ODNR) database records will be reviewed to determine if rare, threatened, or endangered (RTE) species, or other natural resources of concern may be affected by each project area. S&ME will document potential RTE habitat, if applicable, in the project area and coordinate with the USFWS and ODNR as needed. A cultural resources (CR) desktop review will be completed to determine if any records are located in the vicinity of Area 1 or Area 2. If necessary, a CR scoping request will be submitted to the Ohio Historic Preservation Office to confirm if additional CR evaluation is needed. A Pre-Construction Notification (PCN) may be required for NWP-13.



S&ME will prepare the necessary permitting documentation and will submit a PCN to the USACE, if required. The draft PCN can be provided to the City for review prior to submittal to the USACE.

FEMA Floodplains

Both project areas lie in or adjacent to FEMA flood hazard zones. S&ME believes that it is likely that our design(s) will minimize stream impacts and will not reduce capacity or flow area of the two streams. For Area 1 (northernmost area), it is anticipated that S&ME will prepare a floodplain development permit which will be coordinated with the City and submitted to the local floodplain administrator for approval.

For Area 2, which is close to Big Walnut Creek, flood elevations are known, and the site is within a special flood hazard area (SFHA) and possibly in the floodway. Improvements in this area will likely require a “no-rise” study and certification to demonstrate that flood levels are not impacted by the construction. S&ME anticipates performing hydraulic analyses in support of the no-rise certification and anticipates coordinating with the local floodplain administrator. This is based on the assumption that the Effective model is available from FEMA in its native digital format and that the No-Rise analysis is reviewed and approved by the local Floodplain Administrator. S&ME will strive to minimize impacts and reduce the potential need for flood map revisions in which coordination with FEMA would be required. In the event that the repair option has no impact to floodways or floodplains and a no-rise certification is not required, S&ME will reduce our fees for this task accordingly.

Jurisdictional Waters Delineation – Academy Park (If Authorized)

Per your request, we are including an additional ‘if authorized’ jurisdictional waters delineation for the Academy Park site that is being evaluated for potential development of a biking skills course (Phase 1). The Phase 1 area is indicated on the exhibit (attached) that was provided on February 15, 2021. S&ME will delineate stream and wetland boundaries and mark the delineated features with plastic flagging. The boundaries will be recorded with a GPS unit capable of sub-meter accuracy. A brief letter report will be prepared to summarize the results of the investigation. The report will include representative site photographs and mapping of identified jurisdictional features.

It is understood that the goal is to avoid stream and wetland impacts associated with the skills course. If a jurisdictional determination is needed from the USACE, S&ME can provide a proposal to complete a more detailed report with background information, sampling points, etc. We can also provide a proposal for waterway permitting support in the event that jurisdictional features will be impacted in order to facilitate construction of the skills course.

Construction Phase Services

As would be required for any construction, observing the work for compliance with the drawings and specifications is critical. The level of effort associated with construction administration and observation is directly tied to the construction schedule and complexity of repairs. In our previous municipal experiences, we understand that each City has a different level of desired involvement in the construction phase. As such, it is proposed that this phase and associated costs be evaluated once a repair option is selected and designed.



◆ Excluded Services

Without attempting to be a list of all services or potential services that will be excluded, the following services are specifically excluded from this proposal. If any of the excluded services are required, please contact us so that we can modify this proposal or prepare a proposal for additional services.

- Front end documents and the construction contract.
- Preparation of the Stormwater Pollution Protection Plan (SWPPP). S&ME would provide the erosion and sediment control drawings that could be used as part of the SWPPP application by the Contractor.
- Design of more than one alternative repair. If the chosen alternative is not considered feasible based on the results of the geotechnical exploration, the City will be notified.
- Permit Fees, as required for the Project.

◆ Client Responsibilities

The Scope of Services, schedules, and fees presented herein are contingent upon the client fulfilling the following responsibilities:

- Information on any utilities serving the project site and the presence and accurate locations of hidden or obscure man-made objects relative to field tests or boring locations;
- Provide the contractor front end bid documents; and,
- Provide any on-going observations made by the City of Gahanna.

◆ Use of Proposal/Report

This proposal is solely intended for the services described in the Scope of Services. The Scope of Services may not be modified or amended, unless the changes are first agreed to in writing by the Client and S&ME. Use of this proposal and corresponding final report is limited to above-referenced project and client. No other use is authorized by S&ME.



◆ Fee

S&ME proposed to perform all project phases except for construction as a lump sum fee. Because the construction could vary significantly from that assumed herein, it is proposed to perform construction phase services on a unit rate basis in accordance with rates agreed upon prior to construction. A summary of the estimated fee for each phase is included in Table 1.

Table 1: Estimated Fees

Phase	Estimated Fee	Total Fee
Geotechnical	\$24,500	
Survey and Mapping	\$17,000	
Environmental – Clean Water Act Section 404/401	\$16,000	
Environmental – FEMA Floodplain	\$18,000	
Design – Alternatives Report, Analysis and Construction Drawings	\$48,500	
Total Estimated Fee – Areas 1 and 2		
If Authorized		
Jurisdictional Waters Delineation – Academy Park		\$2,100

*could vary depending on repair method selected.

◆ Schedule

Assuming a contract has been secured by March 31, 2021, the following basic schedule is anticipated:

- | | |
|--|-------------------|
| ◆ Geotechnical Exploration and Laboratory Testing - complete | May 14, 2021 |
| ◆ Preliminary Design Complete/Identification of Permits | June 1, 2021 |
| ◆ City Review and Alternative Selection - completed by | June 15, 2021 |
| ◆ Draft Construction Drawings - submittal for review | July 15, 2021 |
| ◆ City Review - completed by | August 2, 2021 |
| ◆ Final Construction Drawings/Permit Applications - submittal for review | August 31, 2021 |
| ◆ Issued for Bid (IFB) Drawings | September 7, 2021 |
| ◆ Bid and Award | October 2021 |
| ◆ Construction | Nov./Dec. 2021 |



◆ **Authorization**

An Agreement for Services (AS-071) is attached and incorporated as a part of this proposal. Please sign the agreement and return to our office as your authorization of the proposed scope of services and the associated fee. Upon receipt of the signed agreement, we will execute the agreement, return a copy to you, and proceed with the performance of our services. Any changes or modifications to AS-071 or the proposal are required to be acknowledged by both parties initialing acceptance of this proposal and agreement for services next to the change or modification.

If you elect to accept our proposal by issuing a purchase order, then please specifically reference this proposal number and date. Your purchase order will be an acceptance of our Agreement for Services and an authorization to proceed with the performance of our services. The terms and conditions included in any purchase order shall not apply, and are hereby specifically rejected, as our agreement is for services which are not compatible with purchase order agreements.

If this proposal is transmitted to you via e-mail, and if you choose to accept this proposal by e-mail, your reply e-mail acceptance will serve as your representation to S&ME that you have reviewed the proposal and the associated Agreement for Services (AS-071) and hereby accept both as written.



Proposed Phase 1
Bike Trail / Skills Course

Figure 1
S&ME Proposal No. 205464
March 3, 2021



AGREEMENT FOR SERVICES

Form AS-071

Date: 3/5/2021	
S&ME, Inc. (hereafter Consultant)	Client Name: City of Gahanna (hereafter Client)
Address: 6190 Enterprise Court City: Dublin State: OH Zip: 43016 Telephone: (614) 793-2226	Address: 200 S. Hamilton Road City: Gahanna State: Ohio Zip: 43230 Phone Number: (614) 342-4055
PROJECT	
Project Name: Engineering and Design Services - Cherry Bottom Road	
Project Location (Street Address): 4228 Cherry Bottom Road	
City: Gahanna State: Ohio Zip: 43230	
SERVICES TO BE RENDERED	
Proposal Number: 205464 dated: 3/5/2021 is incorporated into this Agreement for Services. This Agreement for Services is incorporated into the above Proposal.	

Client desires to contract with Consultant for the Services to be Rendered ("Services") on Client's Project, as contained in Consultant's Proposal. The Proposal and Client's Project are referenced immediately above.

THEREFORE, in consideration of the Mutual Covenants and Promises included herein, Client and Consultant agree as follows:

- ACCEPTANCE:** Client hereby accepts this offer by Consultant to provide the Services as contained in Consultant's Proposal and agrees that such Services and any additional Services performed by Consultant shall be governed by this Agreement. If Client directs that Services commence prior to execution of this Agreement, Client agrees that commencement of Services by Consultant is in reliance on Client having accepted the terms of this Agreement and acknowledgment that Client will execute this Agreement, forthwith. **CLIENT MAY ACCEPT THIS AGREEMENT FOR SERVICES THROUGH THE USE OF CLIENT'S PURCHASE ORDER, HOWEVER ALL PREPRINTED TERMS AND CONDITIONS ON CLIENT'S PURCHASE ORDER ARE INAPPLICABLE AND THE TERMS OF THIS AGREEMENT SHALL GOVERN.** Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, ninety (90) days from the date of issue.
- CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement for Services, the Proposal identified under "SERVICES TO BE RENDERED."
- SCOPE OF SERVICES:** Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services included in Consultant's proposal received by Client are adequate and sufficient for Client's intended purpose. Client shall communicate the provisions of this Agreement for Services to each and every third party to whom Client transmits any part of Consultant's work. Consultant shall have no duty or obligation to any third party greater than that set forth in Consultant's proposal, Client's acceptance thereof and this Agreement for Services. The ordering of work from Consultant, or the reliance on

any of Consultant's work, shall constitute acceptance of the terms of Consultant's proposal and this Agreement for Services, regardless of the terms of any subsequently issued document.

4. **CHANGE ORDERS**: Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
5. **PAYMENT**: Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the type of services performed shall control. Consultant will submit progress invoices to Client monthly and a final invoice upon completion of Services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late fee of one and one-half percent per month (18 percent per annum) or the highest amount allowed by applicable law on the outstanding balance, whichever is less. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Client. The Client's obligation to pay under this Agreement is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or Client's successful completion of the Project. In addition, CONSULTANT reserves the right to suspend the performance of all services in any case where invoices remain unpaid more than sixty (60) days from the invoice date.
6. **STANDARD OF CARE**: Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **LIMITATION OF LIABILITY**: Client agrees that Consultant's services will not subject Consultant's individual employees, officers or directors to any personal liability, and that notwithstanding any other provision of this agreement, Client agrees that its sole and exclusive remedy shall be to direct or assert any claim, demand, or suit only against Consultant. Statements made in Consultant's reports are opinions based upon engineering judgment and are not to be construed as representations of fact. Client and Consultant have evaluated the risks and rewards associated with this project, including Consultant's fee relative to the risks assumed, and agree to allocate certain of the associated risks. To the fullest extent permitted by law, Consultant's aggregate liability to Client, including that of Consultant's officers, directors, employees and agents, is limited to \$100,000, hereinafter referred to as LIMITATION OF LIABILITY. This LIMITATION OF LIABILITY applies to all lawsuits, claims or actions, whether identified as arising in tort, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, contract, or other legal theory, including without limitation, Consultant's indemnity obligations to Client related to the Services provided in this Agreement and any continuation or extension of Consultant's Services.

By entering into this Agreement, Client acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Client has had an opportunity to seek legal advice regarding this provision.

8. **DISCLAIMER OF CONSEQUENTIAL DAMAGES:** In no event shall Consultant or Client be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to Services provided by Consultant.
9. **REPORTS:** In connection with the performance of the Services, Consultant shall deliver to Client reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the Consultant reflecting Services provided and the results of such Services. All reports and written documents delivered to Client ("Instruments of Service") are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and with Client's permission, Client's contractors, designers and employees for the purpose and the Project described therein and are not to be used or relied upon by third parties or in connection with other projects. Subject to the permitted use of Client, and Client's agents, and employees, all Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
10. **SAFETY:** Consultant is solely responsible for the safety and health of Consultant's employees. Consultant shall take necessary precautions for the safety of its employees. Consultant specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **SAMPLES:** Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests and analysis. Upon written request, Consultant will retain samples for an agreed to duration and for a mutually acceptable storage charge. In the event that samples contain or may contain hazardous materials, Consultant shall, after completion of testing and at Client's expense, return such samples to Client or make samples available for disposal by Client's agent. Client recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said samples.
12. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.
13. **CLIENT OBLIGATIONS:**
 - (a) Client warrants that all information provided to Consultant regarding the Project and Project location are complete and accurate to the best of Client's knowledge.
 - (b) Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
 - (c) Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. Client acknowledges that some site disturbance is inherent in the work for which Consultant will not be responsible. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and arrange for the repair of any alteration and damage.
 - (d) Client agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.

(e) Our job site activities do not change any agreement between Client and any other party. Only Client has the right to reject or stop work of its contractors or agents. Our presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client to provide field or construction/remediation services. We are not responsible for, and do not have control or charge of, the specific means, methods, techniques, sequences or procedures of construction or remediation selected by any contractor or agent of Client.

(f) Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or problem in the PROJECT, including any errors or omissions in CONSULTANT'S work.

14. **CERTIFICATIONS**: Client agrees not to require that Consultant execute any certification with regard to work performed, tested or observed under this Agreement unless: 1) Consultant believes that it has performed sufficient work to provide a sufficient basis to issue the certification; 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the Services performed by the Consultant, and does not constitute a warranty or guarantee, either expressed or implied.
15. **FAILURE TO FOLLOW RECOMMENDATIONS**: The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed. Accordingly, the Client waives any claim against the Consultant, and agrees to indemnify, and hold harmless the Consultant from any claim or liability for injury or loss that results from failure to implement the Consultant's recommendations or from implementation of the Consultant's recommendations in a manner that is not in strict accordance with them.
16. **TERMINATION**:
For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon receipt of a termination notice by either party, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
- For Cause –In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
17. **UNFORESEEN CONDITIONS OR OCCURRENCES**: If, during the performance of Services ,any unforeseen hazardous substance, material, element or constituent or other unforeseen conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify Client. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of TERMINATION FOR CONVENIENCE. Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client acknowledges that Consultant also may have reporting obligations under controlling law and regulations. Client waives any claim against Consultant and will indemnify and hold Consultant harmless from any claim, injury or loss arising from the discovery of unforeseen hazardous substances.
18. **FORCE MAJEURE**: Consultant shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Scope of Work results from any causes beyond its reasonable control.

For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Services covered by this Agreement.

19. **INSURANCE**: Consultant shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where services are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence / \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$5,000,000 each claim.
20. **INDEMNITY**: Client agrees to indemnify Consultant, its employees and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant, its employees and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Client's negligence or willful misconduct. Consultant agrees to indemnify Client from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Client may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Consultant's negligence or willful misconduct. Client and Consultant shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify each other in proportion to their relative degree of fault. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against Consultant, the Client and the party initiating such action shall pay to Consultant the costs and expenses incurred by Consultant to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that Consultant shall prevail in such suit.
21. **DISPUTE RESOLUTION**: Consultant may, in Consultant's sole discretion, pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultant's collection of past due invoices, if a dispute arises out of or relates to this contract, or the breach thereof, the parties will attempt to settle the matter through amicable discussion. If no agreement can be reached, the parties agree to use non-binding mediation before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, reasonable costs and attorneys' fees will be awarded to the prevailing party. All questions as to the interpretation or enforceability of this Agreement shall be governed in accordance with the laws of the state where the project is located. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in the state where the project is located. Notwithstanding the foregoing, Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services.
22. **ASSIGNMENT AND SUBCONTRACTS**: Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Consultant may subcontract for the Services of others without obtaining Client's consent if Consultant deems it necessary or desirable to have others perform Services.
23. **NO WAIVER**: No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.
24. **MISCELLANEOUS**: The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state where project is located. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of this subcontract is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provision.

25. **TIME BAR:** Notwithstanding any applicable state statute of repose or statute of limitation, the Parties agree that all legal actions by either party against the other concerning this Agreement or the work performed in relation to this Agreement, will become barred two (2) years from the time the party knew or should have known of the claim, or two (2) years after completion of Consultant's services, whichever occurs earlier.
26. **NO DISCRIMINATION:** To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) and the posting requirement under 29 CFR Part 471, appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT: <div style="text-align: center; margin-top: 10px;"> <u>City of Gahanna</u> </div>	<div style="text-align: center; margin-top: 10px;"> <u>S&ME, Inc.</u> </div>
BY: <div style="text-align: center; margin-top: 10px;"> <hr style="border: 0; border-top: 1px solid black;"/> (Signature) </div> <div style="text-align: center; margin-top: 10px;"> <hr style="border: 0; border-top: 1px solid black;"/> (Print Name / Title) </div>	BY: <div style="text-align: center; margin-top: 10px;"> <hr style="border: 0; border-top: 1px solid black;"/> (Signature) </div> <div style="text-align: center; margin-top: 10px;"> <hr style="border: 0; border-top: 1px solid black;"/> (Print Name / Title) </div>
DATE: <hr style="border: 0; border-top: 1px solid black;"/>	DATE: <hr style="border: 0; border-top: 1px solid black;"/>
PROPOSAL NUMBER: 205464 <hr style="border: 0; border-top: 1px solid black;"/>	
<u>Client's DIGITAL signature to be treated as original signature</u>	