

**UNION COUNTY LAND REUTILIZATION CORPORATION
SPECIAL BOARD MEETING
MINUTES OF MAY 16, 2023**

Attendance:

Voting Members Andrew Smarra, President, and Union County Treasurer; David A. Lawrence, Union County Commissioner; Shelley Beeney, Local Realtor; and Terry Emery, Marysville City Manager were present.

Also in attendance were: Savannah Allen, Union County-Marysville Economic Development Project Coordinator; Letitia Rayl, Assistant County Administrator/Budget Officer and Land Bank Treasurer; Zach Andrews, City of Marysville Code Enforcement; William Narducci, Union County Administrator; and Sara Early, Clerk to the Board of Commissioners and Acting Secretary to the Land Reutilization Corporation Board.

Mr. Smarra called the special meeting to order at 1:57 p.m.

301 North Main Street/Minit Lube

The purpose of this meeting was to consider a proposal for a Phase I Environmental Site Assessment and Asbestos Survey at the property known as 301 North Main Street, Marysville, Ohio; and to consider, for passage, a resolution to initiate bids for demolition and/or remediation of the site following the completion of the Phase I Environmental Site Assessment and Asbestos Survey.

Mr. Smarra requested authorization for the Phase I Environmental Site Assessment and Asbestos Survey for 301 North Main Street, Marysville, OH. The fee for the Phase I ESA is \$2,850 and the fee for the Asbestos Survey is \$1,950.

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Resolution 23-24 – Approve the Agreement for a Phase I Environmental Site Assessment and Asbestos Survey at the Property Known as 301 North Main Street, Marysville, OH



May 10, 2023

Transmitted Electronically

Andrew Smarra, President
Union County Land Reutilization Corporation
233 West Sixth Street, 2nd Floor
Marysville, Ohio 43040
Email: asmarra@unioncountyohio.gov

**RE: Phase I Environmental Site Assessment (ESA) and Asbestos Survey
301 North Main Street, Marysville, Ohio 43040**

Dear Mr. Smarra:

The Mannik & Smith Group, Inc. (MSG) is pleased to provide the Union County Land Reutilization Corporation (Land Bank) with this scope of work and cost estimate to complete an ASTM-International (ASTM) Standard E1527-21-compliant Phase I Environmental Site Assessment (ESA) and asbestos survey of the property addressed at 301 North Main Street, Marysville, Union County, Ohio (hereinafter referred to as the "Subject Property").

Based on the information you provided and gleaned from the Union County Auditor's website, we understand that the Subject Property is comprised of Union County parcel number 2900050400000, addressed as 301 North Main Street, Marysville, Ohio. The Subject Property consists of approximately 0.745 acre of land developed with an approximately 2,520 square-foot building constructed circa 1953 and remodeled in 1983.

SCOPE OF WORK

Task 1: Phase I ESA

MSG proposes to complete a Phase I ESA of the above referenced Subject Property in general conformance with the scope and limitations of the ASTM Standard Practice E1527-21, "Environmental Site Assessments: Phase I Environmental Site Assessment Process," which complies with the federal All Appropriate Inquiries (AAI) rule codified in 40 CFR Part 312 of the Federal Register.

The goal of the process established by this practice is to identify recognized environmental conditions (RECs), historical RECs (HRECs), controlled RECs (CRECs), and de minimis conditions, as defined within Standard Practice E1527-21 in connection with the Subject Property. Additionally, this Phase I ESA will permit the user, whom we understand to be the Union County Land Bank to satisfy the requirements necessary to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser defenses, as defined within the Small Business Liability Relief and Brownfields Revitalization Act amendments to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Document Review

MSG will review records that are publicly available, reasonably obtainable, and practically reviewable, as described in ASTM Standard Practice E1527-21. For the purposes of this Phase I ESA, we assume that visits to regulatory

agencies to complete in-person file reviews are not included in the scope of work. If in the judgment of the *Environmental Professional* (EP) responsible for completing the Phase I ESA, performance of a regulatory file review is warranted to address whether or not an environmental condition does or does not constitute a REC, CREC, or HREC at the Subject Property MSG will contact you regarding the scope and schedule implications of such a determination. MSG will not complete a regulatory agency file review without your express written authorization.

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

MSG will review a combination records and historical sources for the Subject Property, as available, to comply with ASTM Standard E1527-21.

The records and sources include:

- standard ASTM federal and state environmental databases;
- additional state and local environmental databases;
- current United States Geological Survey (USGS) 7.5-minute topographic map of the Subject Property;
- aerial photographs;
- fire insurance maps;
- historical ownership information;
- local city directories;
- zoning/land use records; and,
- alternate historical sources, as *appropriate and available*.

Site Reconnaissance

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

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

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

Interviews

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

User Provided Information

To qualify for one of the Landowner Liability Protections offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2001, 40 CFR §§ 312.25, 312.28, 312.29, 312.30, and 312.31 requires that user provided information be included in the Phase I ESA report. The user is the entity that will use the Phase I ESA report, which we assume to be the Union County Land Bank. User provided information includes judicial and title records, environmental liens, specialized knowledge of the Subject Property, valuation reduction of the property due to environmental issues, and reasons for performing the Phase I ESA. We anticipate that you or your designee will provide this information to MSG for inclusion in the Phase I ESA report for the Subject Property. If this information is not provided, MSG may note such information in our report as a limiting condition. For your convenience, we have attached to this proposal a copy of our *User Questionnaire* for the Subject Property, which should be completed and returned to MSG with project authorization.

Evaluation and Report Preparation

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

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

MSG will provide one electronic (*portable document format, PDF*) copy of the final Phase I ESA report, prepared under the supervision of a qualified *Environmental Professional*, to the Union County Land Bank for your use. MSG will consider all work, reports, drawings, and results confidential. MSG will not release information or discuss with any third party without prior approval from you.

Task 2: Asbestos Survey

MSG will provide a State of Ohio accredited Asbestos Hazard Evaluation Specialist to complete a National Emission Standards for Hazardous Air Pollutants (NESHAP)-compliant asbestos inspection of the Subject Property building for the presence of asbestos-containing materials (ACM). Based on the age, size, and assumed layout of the Subject Property building, MSG assumes that a maximum of 40 samples may be collected from the building and submitted to a National Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory for analysis of asbestos by polarized light microscopy (PLM). **Furthermore, MSG understands that destructive sampling techniques (i.e., cutting holes/breaking into in walls, ceilings, floors, roofing materials, etc.) is acceptable.**

Assumptions:

- *Union County will obtain permission from the current land owner to access the Subject Property building and complete all necessary survey activities;*
- *Five-day turnaround time for asbestos analytical data is sufficient to meet the project timeline;*
- *All areas of the Subject Property building will be accessible to be evaluated and work can be performed during regular business hours without the use of specialized equipment (e.g., lifts);*
- *After completion of field activities and laboratory testing, the findings from the asbestos survey will be*

- incorporated into the Phase I ESA report for the Subject Property;
- Positive stop analysis will be used for the PLM-analyzed samples;
- Point count analysis for asbestos fibers is not included in this scope of work; and,
- The asbestos survey and the Phase I ESA site reconnaissance are able to be completed during one mobilization.

PROJECT SCHEDULE

MSG will begin work on this project upon receipt of a written authorization to proceed. MSG will complete the Phase I ESA and asbestos survey within four weeks of our receipt of authorization to proceed, provided Subject Property access is available within the first week of authorization.

PROJECT FEES

MSG proposes to perform this project on a lump sum fee basis for the following amounts:

Phase I ESA	\$2,850
Asbestos Survey	\$1,950

For the purposes of fiscal control, MSG guarantees that our costs for the above work will not exceed the total indicated above. We agree that reasonable variation to the proposed Scope of Work may be made, but reserve the right to renegotiate the above amount should significant variation be requested.

For work requested beyond the proposed Scope of Work, e.g., meetings, presentations, report copies, or other related activities beyond those described above, MSG will charge on a time and materials fee basis.

AGREEMENT

The costs provided in this proposal are confirmed for a period not to exceed 60 days. If this proposal meets with your approval, you may signify acceptance by signing and dating the designated locations attached and returning one signed copy to the undersigned. Your signature will be our written authorization to proceed with the project. Alternately, you may issue a purchase order referencing the date and scope of this proposal.

MSG appreciates the opportunity to provide this proposal and looks forward to serving the Union County Land Bank. Please do not hesitate to contact the undersigned if you have any questions, require clarifications pertaining to the specifics of this proposal, or would like additional information.

Sincerely,



Haley S. Frager
Project Manager



Matthew S. Pesci, CP, CPG
Senior Associate / Senior Project Manager

Attachments

AGREEMENT FOR SERVICES

By execution of this Agreement, the Client authorizes The Mannik & Smith Group, Inc. to provide the services described within the proposal designated below. In the event client directs The Mannik & Smith Group, Inc. to proceed with the work, even if not signed below, the terms and conditions identified are considered accepted by the Client.

No terms or conditions, and no agreement or understanding oral or written, in any way purporting to modify these terms and conditions whether contained in Client's purchase order or elsewhere, shall be binding on MSG and its subcontractors unless hereafter made in writing and signed by an authorized representative of MSG. All proposals, negotiations, and representations, if any, made prior to, and referenced hereto, are merged herein.

APPROVAL AND ACCEPTANCE

The Mannik & Smith Group, Inc. is hereby directed and authorized to proceed with the services for the designated project in accordance with the provisions of this Agreement.

Proposal Date: May 10, 2023

Proposal Number: 401.2300075.000

UNION COUNTY LAND REUTILIZATION CORPORATION

THE MANNIK & SMITH GROUP, INC.



Signature




Signature



Name (Printed)

Matthew S. Pesci, CP, CPG

Name (Printed)



Title

Senior Associate / Senior Project Manager

Title



Date

May 10, 2023

Date

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**The Mannik & Smith Group, Inc.
Standard Terms and Conditions**

These Standard Terms and Conditions ("Terms") provide the terms and conditions pursuant to which The Mannik & Smith Group, Inc. ("MSG") will provide those certain services to you ("Client") for the project (hereinafter, "Project") set forth in the proposal issued to Client (the "Proposal") and as further described in the attached "Scope of Work." Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Proposal or Scope of Work, as the case may be. The terms of the Proposal, the Scope of Work, and these Terms shall be collectively referred to herein as this "Agreement."

1. **Services:** MSG will perform the Scope of Work as set forth in the Proposal and in accordance with these Terms. MSG has developed the Scope of Work, schedule, and compensation based on Client provided information and various assumptions about Client's needs and preferences. The Client acknowledges that equitable adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by MSG in performing their services.

Client further acknowledges that the Scope of Work was prepared at Client's request. In the event that the Scope of Work or a portion thereof, was developed by a party other than MSG, MSG makes no claims as to its adequacy. Accordingly, Client acknowledges that MSG is forced to assume that the Scope of Work is fully adequate for Client's purposes. Client also understands that MSG assumes that Client has an alternative source from which to obtain any needed or desired services not listed.

2. **Additional Services:** The Client and MSG acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, MSG shall notify the Client of the need for additional services, and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

3. **Project Requirements:** The Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project and shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception and provide any reports, testing, and documents necessary for MSG to complete its Scope of Work. MSG, Client, and Client's Consultants shall coordinate Project related services. MSG shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness and timeliness of services and information furnished by Client and Client's Consultants. However, MSG shall provide notice to the Client if MSG becomes aware of any error, omission or inconsistency in such services or information. If the Client has established design standards, they shall be furnished to MSG at Project inception. MSG will review the Client design standards and may recommend alternate standards considering the Standard of Care as defined in Section 5 herein. Client's Consultants shall be properly licensed to practice in the jurisdiction of the Project and shall maintain insurance, including professional liability insurance, as sufficient and appropriate for the Project. The Client shall identify a representative authorized to act on Client's behalf with respect to the Project.

4. **Compliance with Laws:** MSG shall perform its services in accordance with its Standard of Care as defined herein and will endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice or official interpretations thereof change during the Project, MSG shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

5. **Standard of Care:** Services provided by MSG will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances ("Standard of Care"). The Standard of Care shall exclusively be judged as of the time the services are rendered and not according to later standards. MSG

makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with the services rendered hereunder.

6. **Information from Third Parties:** The Client and MSG acknowledge that MSG will rely on information furnished by third parties in performing its services under the Project. MSG shall not be liable for any damages that may be incurred by the Client in the use of third-party information.

7. **Period of Service:** MSG shall perform the services for the Project in a timely manner consistent with its Standard of Care. MSG will strive to perform its services according to the Project schedule set forth in the Proposal. The services of each task shall be considered complete when deliverables for the task have been presented to the Client for review and approval. MSG shall be entitled to an extension of time and compensation adjustment for any delay and/or disruption beyond MSG control. MSG is not responsible for any delay and/or disruption beyond its control, including, but not limited to, those Force Majeure Events set forth in Section 8 herein.

8. **Force Majeure:** MSG shall be entitled to an equitable adjustment to the Project schedule and compensation for force majeure events, including but not limited to: acts of God or the public enemy, Acts of any government in its sovereign and/or contractual capacities, fires, acts of war, terrorism, violence, floods, pandemics, epidemics, quarantine restrictions, strikes, embargoes, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism or hacking including a ransomware attack, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, unusually severe weather, and/or any other cause outside of the control of MSG (each a "Force Majeure Event"). MSG shall notify Client in writing after the beginning of any such cause becomes known, which would affect its performance. In the event a Force Majeure Event continues for more than thirty (30) days, MSG may terminate this Agreement for convenience and shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices.

9. **Compensation:** In consideration of the services performed by MSG, the Client shall pay MSG in the manner set forth in the Proposal. The parties acknowledge that terms of compensation are based on the orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays, disruptions or extensions of time beyond the control of MSG.

Where total project compensation has been separately identified for various Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, MSG may adjust the amounts allocated between the Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, as the work progresses so long as the total compensation amount for the Project is not exceeded except as otherwise provided herein.

The Client shall be solely obligated to pay and remit to the appropriate governmental authority such sales, value added, duties, withholding or other taxes on MSG's services, subcontracted services and reimbursable expenses without reduction of MSG's compensation, unless

and except when such subcontracted services and reimbursable expenses are included in the total project cost as specified in the Proposal or Scope of Work. Payment for MSG's services shall be made in United States dollars.

10. Changed Costs on Design Services and Project Development Services: MSG's rates are generally updated as of July 1st of each calendar year and are subject to periodic review and prospective change. Any non-lump sum fees and projects that are payable by Client for a "not to exceed" amount shall be subject to and adjusted based upon any rate increases or periodic changes.

11. Cost Estimates or Opinions on Construction Services: MSG may prepare cost estimates or opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and MSG acknowledge that neither the Client nor MSG has control over the cost of labor, materials, or equipment; a contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Therefore, actual costs may vary from the cost estimates or opinions prepared and MSG offers no guarantee related to the Project cost.

12. Payment Terms: Client recognizes that time is of the essence with respect to payment of Client's Consultants' invoices and that timely payment is a material part of the consideration of MSG's services. MSG shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Client will exercise reasonableness in contesting any billing or portion thereof. MSG shall be entitled to a 1.5% per month administrative charge in the event of payment delay. Client payment to MSG is not contingent on arrangement of project financing, property acquisition, or approvals necessary for project initiation through completion. Invoice payment delayed beyond sixty (60) calendar days shall give MSG the right to suspend services until payments are current. Non-payment beyond seventy (70) calendar days shall be just cause for termination of the services by MSG. MSG shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension or termination by MSG.

In cases where MSG has issued reports and/or letters of reliance, MSG may also notify the Client and any other party to which these reports and/or letters of reliance were issued of MSG's withdrawal of reliance upon the information contained therein, and request return of all written reports, data, and other information as the rightful property of MSG, based upon the Client's failure to pay. In the case of such a request, the Client agrees to return all documents and/or letters of reliance, and provide written notification to any party to which MSG's reports or data were disseminated, notifying them of MSG's withdrawal of reliance.

13. Lien Rights: MSG may file a lien against the Property in which the Project is situated and/or file a claim against any available payment bonds for the Project in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by MSG are considered property improvements and the Client waives the right to any legal defense to the contrary.

14. Ownership of Documents: Documents prepared or furnished by MSG pursuant to this Agreement are instruments of MSG's professional services and MSG shall retain all ownership and property interest therein, including all copyrights. Upon payment for services rendered, MSG grants Client a non-exclusive license to use instruments of MSG's professional service for its intended purpose. It is expressly understood that computer-aided design and drafting ("CADD") and/or

building information modeling ("BIM") files are issued only as supplemental information for convenience to the Client or other authorized users. CADD and BIM, like any electronic data when transferred in any manner or translated from the system and format used by MSG pursuant to this Agreement to another system or form, are subject to errors and modifications that may affect the accuracy and reliability of the data, and, in addition, such electronic data may be altered or corrupted whether inadvertently or otherwise. As such, record documents of service shall be based on the printed copy. Reuse or modification of any such documents by Client, without MSG's written permission, shall be at Client's sole risk, and Client agrees to indemnify, defend and hold MSG harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client. Client may request electronic CADD and BIM files prepared by MSG upon submitting a signed MSG's Electronic File Release Agreement which specifies the electronic files requested. If and to the extent Client requests and receives electronic files prepared by MSG, the terms of the Electronic File Release Agreement are hereby incorporated herein by reference and apply in all respects.

15. Independent Contractor: MSG shall serve as an independent contractor for services provided under this Agreement. MSG shall retain control over the means and methods used in performing its services and may retain subconsultants to perform certain services as determined by MSG.

16. Insurance: At a minimum, MSG will maintain the following insurance and coverage limits during the period of service if such coverage is reasonably available at a commercially affordable premium. Upon request, the Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

Worker's Compensation:	As required by applicable state statute
Commercial General Liability:	\$1,000,000 per occurrence (bodily injury including death and property damage) \$2,000,000 aggregate
Automobile Liability:	\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability:	\$2,000,000 each claim and in the aggregate

The Client shall arrange for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. MSG shall be a named additional insured on those policies where MSG may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

17. Limitation of Liability: IN NO EVENT SHALL MSG BE LIABLE TO THE CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, DAMAGE TO PROPERTY, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS, EVEN IF MSG HAS BEEN ADVISED OF OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. In recognition of the relative risks and benefits of the Project to both the Client and MSG, the Client agrees to the fullest extent permitted by law, to limit the liability of MSG for any and all claims, losses, breaches, damages or expenses arising out of this Agreement and/or MSG's performance of services on the Project, from any and all causes, to \$50,000 or the fee realized by MSG for the Project, whichever is greater.

18. MSG as Business Entity: Client acknowledges that MSG is a business entity and agrees that any claim made by the Client arising out

of any act or omission of any member, owner, partner, manager, director, officer or employee of the business entity in the execution or performance of this Agreement shall be made solely against the business entity and not against any individual or group of individuals in any capacity.

19. **Indemnification:** MSG agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damage, liability or cost to the extent caused by MSG's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom MSG is legally liable.

~~The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from damage, liability or cost to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement. Neither party is obligated to indemnify the other in any manner whatsoever to the extent of the other's own negligence or the negligence of the other's agents, subcontractors or consultants, or anyone for whom the other is legally liable.~~

20. **Safety:** MSG shall be responsible solely for the safety precautions or programs of its employees and no other party. In no event will MSG be responsible for construction methods, means, techniques or sequences of construction, which are solely the responsibility of the Client or any other contractor or consultant engaged by the Client, nor shall MSG be responsible for the Client's or any other contractor or consultant engaged by the Client's failure to perform such party's work in accordance with the requirements of this Agreement.

21. **Defects in Service:** The Client shall promptly report to MSG any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its agreements with contractors and shall require all subcontracts at any level to contain a like provision. Failure by the Client or Client's contractors or subcontractors to notify MSG shall relieve MSG of the costs of remedying such defects in service, to the extent that the cost of remedy would have cost less had prompt notification been given when such defects were first discovered. MSG will correct defects, at its own costs, if timely notified by Client.

22. **Betterment:** If, due to MSG's error, any required item or component of the Project is omitted from MSG's reports, plans or construction documents, MSG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will MSG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project.

23. **Buried Utilities:** Client will furnish to MSG information identifying the type and location of utility lines and other artificial (for purposes of this Section 23, meaning made or produced by human beings rather than occurring naturally) objects beneath the Project site's surface. Using information provided by the Client, MSG will conduct research and prepare a plan indicating the locations intended for subsurface penetration with respect to assumed locations of underground improvements. Such services by MSG will be performed in a manner consistent with the Standard of Care as defined herein. Client recognizes that the research may not identify all underground improvements and that the information of which MSG relies may contain errors or may not be complete. Client and MSG mutually agree to field validate the location of underground utilities or other artificial objects and vet final subsurface penetration locations to the satisfaction of both parties. Further, MSG reserves the right to notify local utility protection agencies or services, and to delay Project implementation until these agencies or services have identified known

utility lines or other subsurface artificial objects. MSG will take reasonable precautions to avoid damaging any identified utility lines or other artificial objects. Client agrees to waive any claim against MSG, and to defend, indemnify and hold MSG harmless from any claim or liability for injury or loss, including economic damages arising, or allegedly arising, from MSG's damaging underground utilities or other artificial objects that were not called to MSG's attention, which were not properly located on plans furnished to MSG, or were not identified or properly marked by any utility protection agency or service contracted by MSG unless damages are caused by the sole negligence or willful misconduct of MSG.

24. **Disease Transmission:** MSG shall have no responsibility for the transmission of communicable disease including, but not limited to, COVID-19 and other corona viruses (collectively, "Diseases"), or exposure of persons to Diseases discovered at the premises. MSG cannot prevent Client and/or Client's invitees from becoming exposed to, contracting, or spreading Diseases while utilizing MSG's services. It is not possible to prevent against the presence of Diseases. Therefore, if Client chooses to utilize MSG's services, Client may be exposing Client or Client's invitees to and/or increasing Client's and/or Client's invitees' risk of contracting or spreading Diseases. Client hereby releases, waives, discharges, and covenants not to sue MSG from any and all damages, injuries, losses, liability, claims, causes of action, litigation, or demands, including but not limited to those for personal injury, sickness, or death, as well as property damages and expenses, of any nature whatsoever which may be incurred, directly or indirectly, now or in the future, in any way related to any pandemic or public health situation, or any Disease related health issue or exposure.

25. **Notification of Hazardous Materials:** The Client warrants they have disclosed the location and quantity of all potential wastes, hazardous materials, including asbestos, and/or petroleum compounds (collectively, "Hazardous Materials"), whether regulated or unregulated, that are assumed or suspected to exist or may be encountered on the Project. In the event undisclosed and/or unknown materials/compounds are encountered where there is no reason to believe they could or should be present, MSG may be required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures MSG deems prudent to minimize risks to its employees, the public, and the environment. MSG shall notify Client as soon as practically possible in the event unanticipated Hazardous Materials or suspected Hazardous Materials are encountered. Under these circumstances, MSG shall be entitled to an equitable adjustment to the schedule and compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws.

In addition, Client understands and agrees that in seeking the professional services of MSG under this Agreement, Client may request MSG to undertake obligations involving or related to Hazardous Materials. To the fullest extent permitted by law, Client agrees to defend and indemnify MSG and its subcontractors, consultants, agents, officers, directors and employees from any claim or liability or loss, including reasonable attorneys' fees arising from or connected with the presence, discharge, release, or escape of Hazardous Materials or environmental liability of any nature or in any manner related to services performed by MSG as part of the Project, including the failure to discover any Hazardous Materials which may exist in, on, above, beneath, about or which have migrated onto, or under, the Project site except for those events caused by the sole negligence or willful misconduct of MSG. Without limiting the generality of the foregoing, the above indemnification extends to claims resulting from:

- a. Client's violation or alleged violation of any federal, state or local statute, regulation or ordinance relating to the disposal of Hazardous Materials;

- b. Client's or MSG's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of Hazardous Materials found or identified at the site;
- c. Hazardous Materials introduced at the Project site by Client or third persons before or after the completion of services herein;
- d. Allegations that MSG is a generator, operator, treater, storer, transporter, arranger for transport, handler, or disposer under the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA) or any other federal, state or local law, regulation or ordinance.

MSG and its subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons or property to Hazardous Materials in any form at the Project site.

26. Third-Party Claims: All services provided by MSG are for the sole use and benefit of the Client. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or MSG. However, in the case of a third-party claim, the Client will compensate MSG for services performed in defense of such claim unless the claim resulted from the negligent act, error or omission of MSG.

~~27. **Violations of Law:** The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from any and all violations of laws and/or failure to comply with governmental regulations, including but not limited to the Foreign Corrupt Practice Act (15 USC §79dd-1 et seq.), the False Claims Act (31 USC § 3729 et seq.), the Buy American Act (41 USC § 8301 et seq.) and the "Buy American" Provisions (Section 1605) of the American Recovery and Reinvestment Act (Pub. L. 111-5), to the extent caused by the Client or its contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.~~

28. Confidentiality: MSG will hold in confidence any information about the Client's operations that would normally be considered confidential. Such obligation shall not hold with respect to:

- a. Information which is in the public domain or which enters public domain in the future through no fault of MSG.
- b. Information known to MSG prior to disclosure by the Client or information disclosed to MSG at any time by a third party.
- c. Information that is released from its confidential status by the Client.
- d. Where disclosure is required by court order or governmental directive, provided that prior written notice is given to Client.
- e. Where disclosure is required to comply with a professional code of conduct or ethics.
- f. Where disclosure involves a dispute resolution proceeding between the parties.

The Client agrees that the technical methods, techniques and pricing information contained in any proposal submitted by MSG pertaining to this Project or Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of MSG.

29. Dispute Resolution: In the event of a dispute between MSG and Client arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. The Client and MSG shall endeavor to resolve claims, disputes and other matters in question during a meet and confer session. A meet and confer session shall be attended by the Client and MSG or their authorized representatives who shall have the authority to bind the parties. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim,

dispute or controversy. If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation.

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. Any court action required to enforce the terms of this Agreement and/or any legal proceeding to enforce, enter judgment upon, vacate and/or modify the dispute award shall be filed in the Court of Commons Pleas, Lucas County, Ohio. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

30. Suspension of Work: The Client may suspend services performed by MSG upon fourteen (14) calendar days written notice. MSG shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days. MSG shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

MSG may suspend services if Client fails to make payments to MSG in accordance with Section 12 of this Agreement or fails to meet its other material responsibilities under this Agreement. Such failure shall be considered substantial nonperformance and cause for termination or, at MSG's option, cause for suspension of performance of services under this Agreement or as otherwise set forth in Section 12 hereof. In the event of a suspension of services, MSG shall have no liability to the Client for delay or damage because of such suspension of services. Before resuming services, MSG shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MSG's services. MSG's fees for the remaining services and the time schedules shall be equitably adjusted.

31. Termination for Default or Breach: Except as otherwise provided herein, in the event of a Default (as defined herein) by either party, the non-Defaulting or non-breaching party shall give written notice to the Defaulting party of the Defaulting party's obligation to cure the Default with diligence and promptness. If the Defaulting party fails to cure such Default within seven (7) days after receipt of written notice, then the other party without prejudice to other remedies it has, may terminate this Agreement for cause. In the event of a termination, MSG shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days. For purposes of this Agreement, "Default" means (i) a party fails to perform any of its material duties or obligations under this Agreement, (ii) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a material breach of this Agreement or default, or (iii) a party files a petition or otherwise commences or authorizes the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or has any such petition filed or proceeding commenced against it or its assets, or otherwise become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due.

32. Termination Without Cause: Client may terminate this Agreement at any time without cause upon providing at least fourteen (14) days prior written notice to MSG.

33. Assignment: The Client may not assign any of its rights or obligations under this Agreement, by operation of law or otherwise, without first obtaining MSG's written consent. Any attempt to assign the Client's rights or obligations under this Agreement in breach of this paragraph shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their

respective successors and permitted assigns. MSG's consent to an assignment is contingent upon the Client's compliance with the following: prior to any assignment, the party proposing to assign its rights and responsibilities under this Agreement and that party's proposed assignee shall furnish to the other party reasonable evidence that arrangements have been made by the proposed assignee to fulfill the assigning party's obligations, including financial obligations, under this Agreement. If the non-assigning party has no reasonable objection to the proposed assignment, the proposing party may then assign the Agreement. Any expense incurred by MSG because of the assignment shall be considered as an additional service and compensated in accordance with this Agreement. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

34. **Waiver of Rights:** The failure of either party to enforce any provision of these Terms shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

35. **Headings:** The headings contained herein are inserted for convenience only and do not define, limit, or construe the contents of the articles, sections, or subsections to which they refer.

36. **Governing Law:** The terms of this Agreement shall be governed by the laws of the State of Ohio without regard to any choice of law principles. Nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the State of Ohio.

37. **Integration:** This Agreement constitutes the entire agreement between the parties and may only be amended by written agreement by both parties.

38. **Severability:** Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue

in full force and effect. In such event, the Client and MSG will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

39. **Survival:** All provisions of these terms that allocate responsibility or liability between the Client and MSG shall survive the completion or termination of services for the Project.

40. **Notice:** Any notice to MSG or Client that is required or permitted by this Agreement shall be in writing and shall be deemed effectively given to the other party when personally delivered, upon confirmation of receipt or upon sender's receipt of a read receipt when sent by e-mail to the MSG representative or Client representative expressly designated in the Proposal or Scope of Work, or upon actual receipt when mailed by first class postage prepaid, registered or certified mail, return receipt requested, or when sent by overnight courier service to the address expressly designated in the Proposal or Scope of Work, or to such other person or address as either party may otherwise specify in writing.

~~41. **Changes to these Terms:** MSG reserves the right, from time to time, to change these Terms in its sole and absolute discretion. The most current version of the Terms will supersede all previous versions and shall continue to be binding on the Client in its revised form.~~

42. **Conflict:** In the event of a conflict between the Proposal or Scope of Work and these Terms, then these Terms shall control unless otherwise expressly identified or designated in the Proposal or Scope of Work as controlling.

Updated as of January 1, 2022

**USER QUESTIONNAIRE
TO COMPLY WITH THE FEDERAL ALL APPROPRIATE INQUIRIES RULE**

Site Location:	301 N. Main Street, Marysville, Ohio		
Name of Person Completing this Form:			
Return Completed Form to:	Haley Frager		
Email Address:	HFrager@MannikSmithGroup.com	Date Form Completed:	

1. What is the reason this Phase I Environmental Site Assessment (ESA) is being completed? _____

2. Have you had title work prepared for the Subject Property? If so, please provide us with a copy. _____
3. Did a search of land title records (or judicial records) identify any environmental liens filed or recorded against the Subject Property under federal, tribal, state, or local law? If so, please describe. _____

4. Did a search of land title records (or judicial records) identify any activity and use limitations (AULs), such as engineering controls, land use restrictions, or institutional controls that are in place at the Subject Property and/or have been filed or recorded against the Subject Property under federal, tribal, state, or local law? If so, please describe. _____

5. Do you have any specialized knowledge or experience related to the Subject Property or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the Subject Property or an adjoining property so that you would have specialized knowledge of the chemicals and processes used by this type of business? _____

6. Are you aware of commonly known or reasonably ascertainable information about the Subject Property that would help the Environmental Professional to identify conditions indicative of releases or threatened releases? For example, do you know: the former uses of the Subject Property; do you know of specific chemicals that are or may have been used at the Subject Property; do you know of any spills or chemical releases that may have occurred at the Subject Property; and/or are you aware of any environmental cleanups that may have occurred at the Subject Property? _____

7. Are you aware of any environmental reports already completed for the Subject Property? Environmental reports may include: environmental audits, environmental site assessments, environmental permits, underground storage tank registrations, hydrogeologic reports, drinking water well installation documentation and geotechnical studies. Please provide MSG with copies of all documents. _____

8. Is the lease or purchase price of the Subject Property significantly lower than market value? If so, why? _____

9. Based upon your knowledge and experience with the Subject Property, are there any obvious indicators that point to the presence or likely presence of releases (spills) at the Subject Property? If yes, please describe. _____

[If needed, please use additional pages to fully respond to each question.]

A motion was made by Commissioner Lawrence and seconded by Mr. Emery to approve the Agreement for a Phase I Environmental Site Assessment and Asbestos Survey at 301 North Main Street, Marysville, Ohio. All in favor, motion carried.

Mr. Smarra then requested approval to initiate bids for demolition and/or remediation of the site following the completion of the Phase I Environmental Site Assessment and Asbestos Survey.

Resolution 23-25 – Authorizing the President of the Land Reutilization Corporation Board, Andrew Smarra, to Initiate Bids for Demolition and/or Remediation of the Site Following the Completion of the Phase 1 Environmental Site Assessment and Asbestos Survey at the Property Known as 301 North Main Street, Marysville, OH

A motion was made by Commissioner Lawrence and seconded by Mr. Emery to approve this resolution. All in favor, motion carried.

Resolution 23-26

A motion was made by Mr. Emery and seconded by Ms. Beeney to adjourn the meeting. All in favor, motion carried.

Mr. Smarra adjourned the meeting at 1:59 p.m.