

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Resolution No. 2025- **14**

Introduced By: Mayor Matthew Castelli

**A RESOLUTION  
AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH  
CIVIL & ENVIRONMENTAL CONSULTANTS, INC. (CEC) TO SERVE AS OWNER'S  
REPRESENTATIVE ON THE TRANSFORMATIONAL GRANT-FUNDED  
BROWNFIELD PROJECT AT THE FORMER SEARS PROPERTIES**

WHEREAS, the City desires to retain the services of a competent and qualified contractor to serve as Owner's Representative during remediation activities; and

WHEREAS, Civil & Environmental Consultants, Inc. is competent and qualified to furnish services to the City and has provided a responsive and responsible proposal and desires to provide Owner's Representative Services and Grant Administration; and

WHEREAS, CEC will serve as owner's representative to guide and review the work in accordance with the existing demolition specifications to ensure the City's interests are met.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized to enter into an agreement with Civil & Environmental Consultants, Inc. to provide Owner's Representative Services and Grant Administration to the City related to the asbestos abatement, waste removal, demolition and site restoration activities of the former Sears properties, parcel numbers 372-31-006 & 372-31-009, a copy of which is attached hereto and marked "Exhibit A".

Section 2: That there is hereby appropriated \$187,200.00 from the Capital Improvements Fund to implement this Resolution.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: 3/11/25

Dave Bortolotto  
President of Council

Attest: M. Meola  
Clerk of Council

Approved On: 3-12-25

Presented to Mayor: 3/12/25

Matthew Costello  
Mayor

	Yea	Nay
Bortolotto	<u>X</u>	_____
Ali	<u>X</u>	_____
Sage	<u>X</u>	_____
Meany	<u>X</u>	_____
McGregor	<u>X</u>	_____
Ference	<u>X</u>	_____
Zakel	<u>X</u>	_____

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res. 2025-14 adopted by the Council of the City of Middleburg Hts., on 3/11/25 was posted for a period of fifteen days, beginning 3/13/25 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola  
Clerk

**CERTIFICATE**

I, Mary Ann Meola, Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2025-14 passed on the 11<sup>th</sup> day of March 2025 by said Council.

Mary Ann Meola  
Clerk of Council

## 1. AGREEMENT

The following terms and conditions ("TERMS") shall apply to and are an integral part of the attached proposal ("PROPOSAL") between Civil & Environmental Consultants, Inc. ("CEC") and the client ("CLIENT") named in the attached PROPOSAL. CLIENT's acceptance of the PROPOSAL includes acceptance of these TERMS and acceptance of this PROPOSAL shall form the entire agreement between the parties ("AGREEMENT"). In the event of a conflict or inconsistency between these TERMS and the PROPOSAL, these TERMS shall take precedence. Acceptance of the AGREEMENT by CLIENT will occur when CLIENT directs CEC, orally or in writing, to commence performance of its services.

## 2. STANDARD OF CARE

CEC shall perform its services consistent with the professional skill and care ordinarily provided by professionals, such as CEC, practicing in the same or similar locality under the same or similar circumstances and in effect at the time of performance. CEC provides no warranties or guarantees whether express or implied.

## 3. SITE ACCESS, SITE CONDITIONS AND SUBSURFACE FEATURES

CLIENT will grant or obtain free access to the site for all equipment and personnel for CEC to perform the services set forth in this AGREEMENT. CEC will take reasonable precautions to limit damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

The CLIENT is responsible for the accuracy of locations for all subsurface structures and utilities. CEC will take reasonable precautions to avoid known subsurface structures.

CEC may, but is not required to, undertake an investigation to locate any utilities, structures or materials as CEC deems prudent. Such investigation by CEC shall not impose any additional obligation or liabilities on CEC and CLIENT agrees that such investigation, if undertaken, is for CEC's convenience only.

The CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretation, and recommendations by CEC will be based solely on information available to CEC. CEC is responsible for the data, interpretations, and recommendations based on its services, but will not be responsible for other parties' interpretations or use of the information developed.

## 4. BIOLOGICAL POLLUTANTS, HAZARDOUS MATERIALS AND HAZARDOUS CONDITIONS

CLIENT has provided CEC with information of known or suspected Biological Pollutants, Hazardous Materials and hazardous conditions on or near the site. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, and viruses, and the by-product of any such biological organisms. The term "Hazardous Materials" shall mean any toxic substances, chemicals, pollutants, or other materials, in whatever form or state, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, minerals, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal or plant organisms, or which are known or suspected to impair the environment in any way whatsoever. Hazardous Materials shall also include, but not be limited to, those substances defined, designated, or listed in Section 404 of the Solid Waste Disposal Act (42 USC Subsection 6903); Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Subsection 9601(14)); as listed or designated under Sections 1317 and 1321(b)(2)(a) of the Title 33 (33 USC Subsections 1317 and 1321(b)(2)(a)); or as defined, designated, or listed under any other federal, state, or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollutants.

CEC and CLIENT agree that when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered it may be necessary for CEC to take immediate measures to protect health and safety. CEC agrees to immediately notify CLIENT when unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. In the event the site is not owned

by CLIENT, CLIENT recognizes that it is the CLIENT's responsibility to inform the property owner of the discovery of unanticipated or suspected Biological Pollutants, Hazardous Materials and/or hazardous conditions.

Nothing contained in this AGREEMENT shall be construed or interpreted as requiring CEC to assume liability for the generation, transportation, treatment, storage and/or disposal of hazardous waste within the meaning of the Resource Conservation and Recovery Act of 1976, as amended, or within the meaning of any similar federal, state, or local regulation or law.

If during remediation and/or construction activities waste manifests are required, CLIENT shall provide an authorized person to sign manifests or will provide CEC with a written limited power of attorney or agency agreement to sign manifests on CLIENT'S behalf.

## 5. EVOLVING TECHNOLOGIES

Services such as those provided by CEC may involve technologies which are new or emerging and these technologies may supersede current techniques. In addition, standards for our services, including statutes and regulations, may change with time. CLIENT understands that CEC's recommendations and/or services must be based upon the current Standard of Care utilizing established technologies and standards excluding new or emerging technologies unless agreed to by both parties in writing.

## 6. SAMPLE DISPOSAL

CEC will provide storage for samples collected for sixty (60) days. Further storage or transfer of samples can be made at CLIENT's expense and upon prior written request.

## 7. SAFETY/CONSTRUCTION OBSERVATION

CLIENT, its contractor or other representatives shall be solely responsible for working conditions on the site, including compliance with OSHA regulations and safety of all persons and property during the performance of the work. CEC will not be responsible for means, methods, techniques, sequences or procedures of construction including, but not limited to safety.

If CEC is retained by the CLIENT to provide a site representative for the purpose of observing specific portions of any construction work as set forth in the PROPOSAL, CEC will report observations and professional opinions. CEC's presence on the site does not in any way guarantee the completion or quality of the performance of the work by any party retained by the CLIENT to provide construction related services.

## 8. BILLING AND PAYMENTS

8.1 General: Invoices will be submitted in accordance with the provisions outlined in the PROPOSAL. Payment is due from CLIENT thirty (30) days from the invoice date. If a retainer or pre-payment is required by the PROPOSAL, payment must be received by CEC prior to commencement of services. Payment shall be made as follows:

### Electronic Payment:

PNC Bank, Pittsburgh, PA 15222  
PNC Bank Routing #043000096  
CEC Account #2272405  
SWIFT & BIC Code: PNCCUS33  
Remittance Detail: accountsreceivable@cecinc.com

### Lockbox (regular mail):

Civil & Environmental Consultants, Inc.  
P.O. Box 644246  
Pittsburgh, PA 15264-4246

Any retainer shall be applied to the final invoice and unused funds, if any, returned to CLIENT. In the event CLIENT fails to pay CEC within thirty (30) days of invoice, CLIENT agrees that CEC will have the right to suspend performance of services after written notice to CLIENT. CEC will be entitled to interest of one and one half percent (1.5%) per month for past due amounts. CEC will be entitled to collect for time and expenses (per CEC's current fee schedules), attorneys' fees and other costs incurred by CEC for collection of past due amounts.

8.2 Reimbursable Expenses. Direct non-salary expenses (e.g. Travel, Equipment, Subcontractors/Vendors) will be billed according to the terms of our PROPOSAL.

8.3 Litigation Services: If litigation services are not part of the PROPOSAL to which these TERMS are attached and are requested by CLIENT, the scope and

fee schedule for the requested litigation services will be identified in a separate PROPOSAL. CLIENT shall reimburse CEC for costs incurred in responding to subpoenas or other legal requests related to the services provided by CEC under this AGREEMENT.

8.4. Design Build: If CLIENT requests CEC to perform design-build services, such services will be performed in accordance with separate TERMS and a PROPOSAL for such design-build services

## 9. CHANGES

9.1 Changes: Upon a change in CEC's scope of services or discovery of unforeseen conditions, or any direction or instruction outside of the PROPOSAL, CEC will provide CLIENT with the estimated cost of performing the change and any change in the AGREEMENT schedule. Prior to CEC being required to implement the change, CLIENT shall authorize the requested change either verbally or in writing amending the AGREEMENT price and schedule.

9.2. Unauthorized Changes: If changes are made in CEC work products by CLIENT or persons other than CEC, any and all liability against CEC arising out of such changes is waived and CLIENT assumes full responsibility for such changes unless CLIENT has given us prior notice and has received written consent from CEC for such changes.

## 10. DELAYS

Delays not due to CEC shall result in an extension of the schedule equivalent to the length of delay. If such delays result in additional costs to CEC, the AGREEMENT price shall be equitably adjusted by the amount of such additional costs.

## 11. INSURANCE

CEC will maintain Workmen's Compensation Insurance as required by state law, General Liability Insurance for bodily injury and property damage with a limit of \$1,000,000 per occurrence and an aggregate limit of \$2,000,000 and Automobile Liability with a limit of \$1,000,000. Professional liability will be provided with a limit of \$1,000,000 per claim and \$1,000,000 in the aggregate, if applicable. CLIENT and/or the property owner will be listed as additional insured for General Liability Insurance upon CLIENT's written request.

## 12. ALLOCATION OF RISK

12.1. Limitation of Remedies: Except for liability arising from CEC's gross negligence or willful misconduct and except for CEC's indemnity obligations for third party claims for personal injury or property damage, CEC's liability is limited in the aggregate to the insurance provided under this Agreement.

12.2 Waiver of Consequential Damages: Except for CEC's indemnity obligations for third party claims for personal injury and property damage, CLIENT and CEC waive any claim against each other for consequential, indirect, special, or punitive damages.

12.3. Indemnification: CEC shall indemnify and hold harmless CLIENT from and against any and all claims, damages, or liability to the extent caused by the negligent performance of services under this AGREEMENT by CEC, including injuries to employees of CEC.

## 13. TERMINATION

This AGREEMENT may be terminated by either party seven (7) days after written notice: i) in the event of breach of any provision of this AGREEMENT, ii) if the CLIENT suspends the work for more than three (3) months in the aggregate; or iii) for CLIENT or CEC's convenience. In the event of termination for suspension or convenience, CEC will be paid for services performed prior to the date of termination plus reasonable termination and demobilization expenses, including, but not limited to the cost of completing analyses, records and reports necessary to document job status at the time of termination.

## 14. GOVERNING LAW

The law of the State of Ohio will govern the validity of these TERMS and the AGREEMENT, their interpretation and performance. If any of the provisions contained in these TERMS and the AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

## 15. DISPUTE RESOLUTION

15.1. Jurisdiction and Venue: After completion of the meet and confer, either party may proceed to litigation. CEC and CLIENT agree that any court of record in Cuyahoga County, Ohio, shall have the exclusive jurisdiction and venue over any claims relating to or arising under this AGREEMENT.

## 16. ASSIGNMENT

CLIENT and CEC each binds itself and its successors and assigns to the other and its successors and assigns with respect to all covenants of this AGREEMENT. Neither CLIENT nor CEC shall assign, sublet or transfer any rights under or interest in this AGREEMENT without the prior written consent of the other party. This section shall not, however, apply to subrogation rights (if any) of any insurer of either party.

## 17. OWNERSHIP

Upon payment pursuant to this AGREEMENT, Client shall have title to all drawings, specifications or other documents ("WORK PRODUCT") furnished to CLIENT and intended for use in connection with projects under this AGREEMENT. CLIENT may use and reproduce the WORK PRODUCT prepared by CEC for use in the execution of the project(s) under this AGREEMENT. CLIENT will not alter, modify or re-use the Work Product on other projects without authorization from CEC. CEC acknowledges that CLIENT is a municipality in the State of Ohio and subject to Ohio Public Records Act requirements. CLIENT will notify CEC of Public Records Requests and CLIENT'S determination as to those public records requests. If CEC requests non-release of the records, and CLIENT does not release the records, CEC shall agree to indemnify CLIENT if CEC and/or CLIENT does not release the records.

## 18. FILE RETENTION

Upon conclusion of the project, CEC's file on the project will be closed and may be sent offsite for storage. Unless CLIENT requests a longer retention period in writing, CEC reserves the right to destroy all file information seven (7) years after the project is closed.

## 19. SURVIVAL

In the event of termination, cancellation or avoidance of this AGREEMENT, the terms and conditions of Articles 3 (Site Access, Site Conditions and Subsurface Features), 4 (Biological Pollutants, Hazardous Materials and Hazardous Conditions), 5 (Evolving Technologies), 11 (Insurance), 12 (Allocation of Risk), 14 (Governing Law), and 15 (Dispute Resolution) shall survive termination of the AGREEMENT.

## END OF TERMS