

fully executed

ORDINANCE NO. 145-14

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF MEDINA AND T&M ASSOCIATES FOR STREAMBANK RIPARIAN RESTORATION SERVICES FOR THE CHAMPION CREEK RESTORATION PROJECT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Mayor is hereby authorized and directed to execute an Agreement between T&M Associates and the City of Medina for Streambank Riparian Restoration Services for the Champion Creek Restoration Project.

SEC. 2: That a copy of the Agreement is marked Exhibit A, attached hereto, and incorporated herein.

SEC. 3: That the funds to cover the agreement, in the amount not to exceed \$270,000.00 are available as follows: \$197,075.00 in Account No. 134-0454-52215 and \$72,925.00 in Account No. 301-0454-52215.

SEC. 4: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance 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 action, were in meetings open to the public, in compliance with the law.

SEC. 5: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to proceed into restoration design phase immediately; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: September 8, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: September 9, 2014

SIGNED: Dennis Hanwell
Mayor

EXHIBIT A

ORB. 145-14

**AGREEMENT
FOR STREAMBANK RIPARIAN RESTORATION SERVICES
BETWEEN
T&M ASSOCIATES AND THE CITY OF MEDINA, OHIO**

THIS AGREEMENT, made and entered into this 9th day of September 2014 (the "Effective Date"), by and between The City of Medina, Ohio, hereinafter referred to as "Client," and T&M Associates, a New Jersey corporation, referred to as "Consultant" with multiple offices in Ohio.

RECITALS:

WHEREAS, Client desires to conduct streambank riparian restoration services in compliance with applicable laws and regulations; and

WHEREAS, Consultant has available and offers to provide qualified personnel and subcontractors necessary to perform the desired services under this Agreement;

NOW, THEREFORE, Client and Consultant agree as follows:

I. SCOPE OF WORK

The work to be performed by Consultant is streambank riparian restoration services described in Exhibit A, Scope of Work, including the documents incorporated therein by reference (the "Work"). The Work shall be performed at Champion Creek in Medina, Ohio (the "Site").

II. AUTHORIZATION TO PROCEED

Within thirty (30) days of the Effective Date of this Agreement, Client shall provide Consultant with a written Notice to Proceed and the contract time shall commence on the day indicated on the Notice to Proceed (the "Start Date"). The Work must be completed by May 31, 2016. Consultant shall use its best efforts to perform the Work specified in Exhibit A by this date.

III. COMPENSATION

- A. For the Work, Client agrees to pay, and Consultant agrees to accept, total compensation in accordance with Exhibit B.
- B. As long as Consultant has not defaulted under this Agreement, Client shall pay Consultant within 30 days of the date of Consultant's invoices for services performed and reimbursable expenses incurred under this Agreement. If Client has reason to question or contest any portion of any such invoice, amounts questioned or contested shall be identified and notice given to Consultant within 15 days of receipt of the invoice. Any portion of any invoice not contested shall be deemed to have been accepted and approved for payment and shall be paid to Consultant within 30 days of the date of the invoice. Client agrees to cooperate with Consultant in a mutual effort to resolve promptly any contested portions of Consultant's invoices.

In the event any uncontested portions of any invoice are not paid within 30 days of the date of Consultant's invoice, Consultant has the right to suspend Work pursuant to Article X, Suspension of Work. During the performance of the Work, and for a period of 3 years after final payment, Client and Client's accountants shall be afforded access from time to time, upon reasonable notice, to Consultant's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Consultant shall preserve for a period of 3 years after final payment.

IV. ACTIVITIES REQUIRED OF CLIENT

Client shall appoint a Client's representative with respect to the Work to be performed. Client's representative shall have complete authority to execute task orders, to transmit instructions, receive information, and communicate Client's policies to Consultant. Consultant shall be entitled to rely on representations made by Client's representative unless otherwise directed in writing by Client.

Client agrees to perform the following or cause the appropriate party to:

1. Provide access to Site, including coordination with any tenants for access, and furnish lands and easements as set forth in Article V, Availability of Lands.
2. Furnish to Consultant, as required for performance of Consultant's Work, the following, all of which Consultant may use and rely upon in performing Work under this Agreement:
 - a. property, boundary, easement, right-of-way, topographic and utility surveys;
 - b. zoning, deed and other land use restrictions
3. Review submittals that are subject to Client's review
4. Execute all regulatory paperwork required as part of the services performed, such as permits and notifications to regulatory agencies for the Work.

Consultant shall not be responsible for delays or increased costs to the extent caused by: (1) failure of Client to furnish timely information or to approve or disapprove Consultant's submittals promptly, or (2) faulty performance or nonperformance by Client, Client's independent Consultants or subcontractors, or governmental agencies. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof. Consultant will take reasonable steps to mitigate the impact of any such delay. If such conditions cause an increase or decrease in Consultant's cost of, or the time required for, performing any part of the Work, an equitable adjustment shall be made under this clause and the contract price and/ or times modified in writing by Change Order.

V. AVAILABILITY OF LANDS; DIFFERING SITE AND HAZARDOUS CONDITIONS

A. Availability of Lands

Client shall make available the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Consultant.

B. Examination of Documents and Site Conditions

Consultant acknowledges that it has examined relevant information, has inspected the Site, and is generally familiar with the type of risks, contingencies, and other circumstances and conditions that could affect or influence the Work. Consultant acknowledges that this information was secured by personal investigation, knowledge of the Site and review as a professional of type of Work to be undertaken.

Consultant has a continuing duty during the course of the Work to make reasonable inquiry and inspection of information relevant to the Site and the Work. Consultant shall make reasonable inquiry, based on Consultant's professional knowledge and judgment, as to the reasonableness of any data it is provided for its use in performing the Work. Consultant shall be responsible for the accuracy of the data it generates and all interpretations and recommendations it makes based on data Consultant has generated or otherwise relied upon. Consultant has not independently verified data generated by third parties except as required by the scope of Work.

C. Differing Site Conditions

Consultant shall promptly, and before the conditions are disturbed, give written notice to Client of any subsurface or latent physical condition at the Site discovered by Consultant which was previously unknown, or which differs materially from that indicated in the Scope of Work and is unanticipated taking into consideration the history of the Site and documentation of Site conditions provided by the Client.

If any condition does materially so differ and causes an increase or decrease in the Consultant's cost of, or the time required for, performing any part of the Work, an Equitable adjustment shall be made under this clause and the contract price and/or times modified in writing by change order.

D. Hazardous Conditions

If Consultant, during its performance of the Work, encounters a hazardous condition at the Site that did not exist at the time of Consultant's inspection of the Site or was otherwise unforeseen or unknown, Client will be responsible for such hazardous condition to the extent that such hazardous condition was not identified in the Scope of Work; provided, however, that Client shall not be responsible for materials creating a hazardous condition brought to the Site by Consultant, subcontractors, suppliers, or anyone else for whom Consultant is responsible.

Consultant and any affected subcontractor shall immediately (i) stop all Work in connection with such hazardous condition and in any area affected thereby and (ii) notify Client (and thereafter confirm such notice in writing).

Consultant shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after Client has obtained any required permits related thereto and delivered to Consultant special written notice signed by an authorized representative of Client, reasonably satisfactory to Consultant, (i) specifying that such hazardous condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely.

VI. CONSULTANT'S RESPONSIBILITIES

In performing the Work described in Exhibit A, Consultant's responsibilities shall include:

A. Standard of Care

The standard of care for all professional design services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession performing similar services at the time such services are performed.

B. Permits

Unless otherwise provided under this Agreement, Consultant shall directly, or through one or more subcontractors, obtain all necessary permits and licenses. Client shall assist Consultant, as necessary, in obtaining such permits and licenses.

C. Laws and Regulations

Consultant shall give all notices and comply with applicable laws and regulations of the location of the Site, which are applicable to performance of the Work.

D. Safety

Consultant shall be responsible for initiating, maintaining and supervising all safety precautions and programs reasonably required for the Work performed by Consultant.

E. Warranty

Consultant warrants to Client that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, and that all construction Work will be of good quality, free from improper workmanship and defective materials and in accordance with all applicable professional standards relating to the Work being performed hereunder. This warranty does not include defects caused by Client modifications, abuse, improper maintenance or improper operation. Consultant agrees to correct all work performed by it under this Agreement which proves to be defective in material or workmanship, so long as it receives written notice describing the defect, within a period of two (2) years from the date of completion of the Work. The foregoing warranty is the sole warranty made hereunder and is in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, all of which warranties are hereby expressly disclaimed.

VII. DISPOSAL OF WASTE MATERIALS

Client will remain responsible as the generator of record for the disposal of contaminated and other waste materials generated by Consultant at the Site. Accordingly, Client shall sign all regulatory paperwork, including waste manifests or bills of lading. In the event Client is not able to directly arrange for the disposal of contaminated materials, Client authorizes Consultant to hire, on behalf of and as agent of Client, subcontractors to transport and dispose of contaminated or other waste material generated from the Site.

It is understood and agreed that Consultant shall not be deemed to be, and is not responsible as an owner, generator, operator, transporter, arranger or other "person" as described in Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act

of 1980 ("CERCLA"), as amended, or Section 7002 of the Resource Conservation and Recovery Act ("RCRA"), or applicable state or local laws. Rather, Consultant acts at the direction of Client solely as its agent to arrange for the transportation, storage, treatment, or disposal of the contaminated materials generated from Client's site(s).

VIII. INSURANCE

Consultant shall procure and maintain the following minimum insurance:

1. Professional Errors and Omissions insurance with a per claim limit of not less than \$3,000,000.
2. Commercial general liability insurance, including personal injury liability, blanket contractual liability, broad-form property damage liability coverage, and completed operations. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000; \$2,000,000 general aggregate.
3. Automobile bodily injury and property damage liability insurance covering owned, non-owned, rented and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
4. Statutory workers' compensation and employer's liability insurance as required by state law.
5. Consultant shall submit to Client certificates of insurance for the policies listed above. Client shall be included as an additional insured under Policies 1 and 2. The certificates shall provide that the insurance company gives written notice to Client at least 30 days prior to cancellation of the policy. Coverage shall remain in effect for at least two years after final payment has been made.

IX. INDEMNITY

Indemnification by Consultant

Consultant shall indemnify and hold harmless Client, Client's officers, directors, employees, agents and consultants from and against all claims, costs, losses and damages (including, but not limited to, reasonable attorney's fees and other reasonable legal expenses) to the extent arising out of or resulting from the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent such claim, cost, loss or damage is caused by any negligent act or omission or willful misconduct of Consultant, any subcontractor, any individual, or any entity directly or indirectly employed by any of them to perform or furnish any of the Work. This indemnification provision is subject to and limited by the provisions agreed to by the "Limitation of Liability" section of this Agreement.

Limitation of Liability

Client agrees that, to the fullest extent permitted by law, Consultant's total liability to Client in connection with this Agreement is limited to two (2) times the total amount of compensation paid to Consultant under this Agreement, regardless of the legal theory under

which such liability may be imposed. Client hereby releases Consultant from any liability above such amount.

Consequential Damages

In no event shall either Party hereto ever be liable to the other or obligated in any manner to pay to the other Party any indirect, special, incidental, consequential, punitive or similar damages whether such claims are based upon contract, tort, negligence, warranty, strict liability or under any other legal and equitable theory.

Indemnification by Client for Preexisting Conditions

Client acknowledges Consultant will perform Work at a Site that may contain hazardous materials or pollution conditions ("Preexisting Pollution Conditions"), and that Consultant had no prior role in the generation, treatment, storage, or disposition of such materials. Client's responsibility under this provision, however, shall not apply to the extent claims are caused by Consultant's negligence or willful misconduct.

X. SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. By Client. By written notice to Consultant, Client may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Client's control make normal progress of the Work impracticable. Consultant shall be compensated for its reasonable expenses resulting from such suspension including mobilization and de- mobilization.
2. By Consultant. By written notice to Client, Consultant may suspend the Work if Consultant reasonably determines that working conditions at the Site (outside Consultant's control) are unsafe, or in violation of applicable laws, or in the event Client has not made timely payment in accordance with Article III, Compensation, or for other circumstances not caused by Consultant that are interfering with the normal progress of the Work. If suspension is greater than 30 days, then Consultant shall have the right to terminate this Agreement in accordance with Article XI, Termination of Work. Consultant's suspension of Work hereunder shall be without prejudice to any other remedy of Consultant at law or equity.

XI. TERMINATION OF WORK

- A. This Agreement may be terminated by Client as follows: (1) for its convenience on 30 days' notice to Consultant, or (2) for cause, if Consultant materially breaches this Agreement through no fault of Client and Consultant neither cures such material breach nor makes reasonable progress toward cure within 30 days after Client has given written notice of the alleged breach to Consultant.
- B. This Agreement may be terminated by Consultant as follows: (1) for cause, if Client materially breaches this Agreement through no fault of Consultant and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after Consultant has given written notice of the alleged breach to Client, or (2) upon five days' notice if work under this Agreement has been suspended by either Client or Consultant for more than 30 days in the aggregate.

C. Payment upon Termination

In the event of termination, Consultant shall perform such additional work as is reasonably necessary for the orderly closing of the Work. Consultant shall be compensated for all work satisfactorily performed prior to the effective date of termination, plus work required for the orderly closing of the Work, including: (1) authorized work performed up to the termination date plus termination expenses, including all labor and expenses, at Consultant's standard billing rates, directly attributable to termination; (2) all efforts necessary to document the work completed or in progress; and (3) any termination reports requested by Client.

Except for termination of Consultant by Client for cause, Consultant shall also receive a termination fee equal to Consultant's actual costs for Consultant's rescheduling adjustments, reassignment of personnel, and related costs incurred due to termination.

XII. FORCE MAJEURE

Consultant shall not be responsible for delays or increased costs caused by circumstances beyond its reasonable control and without its fault, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents; and (2) acts of God. Consultant shall not be liable for damages arising out of any such delay, nor shall the Consultant be deemed to be in breach of this Agreement as a result thereof. Consultant will take reasonable steps to mitigate the impact of any force majeure. If force majeure conditions cause an increase or decrease in Consultant's cost of, or the time required for, performing any part of the Work, an equitable adjustment shall be made under this clause and the contract price and/or times modified in writing by Change Order.

XIII. NOTICES

Each party shall send in writing any notice that this Agreement requires. For the purposes of this Agreement, any such notice shall be deemed to have been given three business days after the day on which a party mails it to the other party.

Notices to Client shall be addressed to:

The City of Medina, Ohio
132 North Elmwood Avenue
Medina, OH 44256
Attn: Gregory Huber, Law Director

Notices to Consultant shall be addressed to:

T&M Associates
4675 Lakehurst Court, Suite 250
Columbus, OH 43016
Attn: Ihsan Al-Fayyomi, Sr. Vice President

XIV. CONFIDENTIALITY

Consultant agrees it will keep confidential information it receives from Client which Client has clearly identified as "Confidential" and will not disclose, distribute, or publish to any third party such confidential information without the prior written permission of Client. Notwithstanding the foregoing, Consultant shall have no confidentiality obligation with respect to information that:

1. becomes generally available to the public other than as a result of disclosure by Consultant or its agents or employees;
2. was available to Consultant on a non-confidential basis prior to its disclosure by Client;
3. becomes available to Consultant from a third party who is not, to the knowledge of Consultant, bound to retain such information in confidence.

In the event Consultant is compelled by subpoena, court order, or administrative order to disclose any confidential information, Consultant shall promptly notify Client and shall cooperate with Client prior to disclosure so that Client may take necessary actions to protect such confidential information from disclosure.

XV. SUBCONTRACTS

Consultant shall be entitled, to the extent determined appropriate by Consultant with the approval of Client, to subcontract any portion of the work to be performed under this Agreement.

XVI. ASSIGNMENT

This Agreement is binding on the heirs, successors and permitted assigns of the parties hereto. Neither Client nor Consultant may assign this Agreement without prior written consent of the other, which consent shall not be unreasonably withheld.

XVII. NO BENEFIT FOR THIRD PARTIES

The services and any professional work product to be provided by Consultant are based upon the specific scope of work authorized by Client and, as such, are intended solely for the benefit and use of Client. No benefit is intended to be conferred on, nor contractual relationship

established with, any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely upon Consultant's services, reports, opinions, recommendations, plans, or specifications provided hereunder.

XVIII. SEVERABILITY

If any part of this Agreement is found unenforceable under applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall remain in full force and effect.

XIX. ATTORNEYS' FEES

In the event either party commences legal proceedings against the other, then each party shall be responsible for its own attorneys' fees and all other costs of such proceeding.

XX. JURISDICTION

This Agreement shall be administered and interpreted under the laws of the State of Ohio.

XXI. DISPUTE RESOLUTION

Any dispute, controversy or claim arising out of or in connection with the interpretation or performance of any term or condition of this Agreement or any breach or alleged breach of this Agreement, shall at the time such dispute, controversy or claim arises, be submitted to non-binding mediation by a neutral and independent mediator, who shall be selected by the parties by mutual agreement, or if the parties are unable to agree upon the selection of a mediator, then in accordance with the rules of the American Arbitration Association. Referral of any dispute to mediation and completion of the mediation process is required before any party files a lawsuit concerning any dispute. The cost of the mediator and any other mediation costs shall be borne equally by the parties. The mediation process and the outcome of the mediation shall remain confidential. Notwithstanding the foregoing terms, the parties shall make every reasonable effort to resolve disputes, controversies or claims between themselves in a cooperative fashion prior to submitting a dispute to mediation. Unless otherwise mutually agreed in writing by the parties, neither party may commence an action at law or equity until either cooperative negotiation or non-binding mediation provided herein has been concluded; provided, however, that a party will not be required to wait until mediation has been concluded if doing so would materially prejudice such party's rights, including but not limited to causing such party to exceed the applicable statute of limitations.

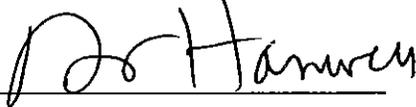
XXII. AUTHORIZATION

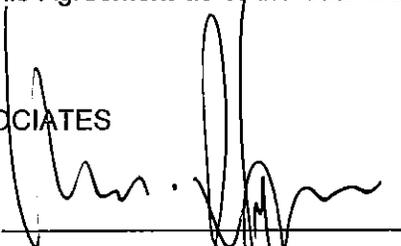
The persons executing this Agreement on behalf of the parties hereto represent and warrant that the parties have all legal authority and authorization necessary to enter into this Agreement, and that such persons have been duly authorized to execute this Agreement on their behalf.

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

THE CITY OF MEDINA, OHIO

T&M ASSOCIATES

Signature: 

Signature: 

Name: Dennis Hanwell

Name: Hasan Afayyom

Title: Mayor

Title: Sr. VP.

9-9-14

EXHIBIT A

SCOPE OF WORK

The Scope of Work is as defined in the following documents:

1. May 27, 2014 Informational Packet, *Qualifications statements for Creek Restoration Design-Build Services for City of Medina Champion Creek Streambank Riparian Restoration*, issued by Community Development Department, City of Medina, Ohio.
2. June 13, 2014 Statement of Qualifications, *Creek Restoration Design-Build Services, City of Medina Champion Creek Streambank Riparian Restoration*, prepared by T&M Associates, Medina, Ohio.

The Scope of work must be completed by May 31, 2016.

EXHIBIT B
BASIS OF PAYMENT

A. Total Fee

Consultant's not-to-exceed fee for the Work is \$270,000.

B. Summary of Charges

Consultant will invoice Client for services provided on a monthly basis in accordance with the attached, Summary of Charges (2 pages).



T&M SUMMARY OF CHARGES

Schedule of Hourly Billing Rates

Billing Titles	Billing Rate/Hour
Technical and Field Staff Entry Level	\$65
Field Staff - Grade 1	\$70
Technical Staff - Grade 1, Administrative Support Staff	\$75
Field Staff - Grade 2	\$80
Technical Staff - Grade 2 Professional Entry Level	\$95
Field Staff - Grade 3	\$95
Technical Staff - Grade 3	\$110
Field Staff - Grade 4	\$110
Technical Staff - Grade 4 Professional I	\$120
Field Staff - Grade 5	\$120
Technical Staff - Grade 5 Professional II	\$130
Professional III Supervising Field Staff	\$140
Professional IV Supervising Technical Staff	\$155
Professional V (Field & Support)	\$155
Professional V	\$175
Supervising Professional Unit Supervisor, Professional VI	\$185
Group Manager Professional VII	\$190
Principal, Manager, Professional VIII, IX	\$210



T&M SUMMARY OF CHARGES

Schedule of Miscellaneous Charges

CONTRACTED SERVICES including subconsultants,
contracted labor, subprofessionals and
subcontractors.....Invoice Cost + 5%

DIRECT EXPENSES

- **Disbursements to agencies, vendors & suppliers**
Including equipment, interstate transportation; permit, application,
review & similar fees; printing, plotting, reproduction, binding &
other graphic services; outside computer services; title, research and
data services; Courier and express services; project field office
expense; & out-of-state telephone costs.....Invoice Cost

- **Other charges:**
 - MileageCommensurate with IRS Guidelines

 - Travel and SubsistenceInvoice Cost