

RESOLUTION No. 22-20

A RESOLUTION AUTHORIZING BROWNFIELD RESTORATION GROUP, LLC TO PERFORM CERTIFIED PROFESSIONAL SERVICES UNDER THE OHIO EPA VOLUNTARY ACTION PROGRAM FOR THE FORMER LEMPCO PROPERTY, AND DECLARING AN EMERGENCY.

WHEREAS, the Village is not under any contract for environmental professional services, and

WHEREAS, the Village of New Lexington is in need of Certified Professional Services in for the remediation of the former LEMPCO property of which was awarded a grant through Ohio Department of Development in the amount of \$998,040; and


WHEREAS, the remediation includes mitigation of certain activities involving environmental contaminants; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of New Lexington, Ohio:

Section 1: Brownfield Restoration Group, LLC is hereby authorized to provide a variety of certified professional services with an estimated cost estimate of \$188,690.

Section 2: Brownfield Restoration Group, LLC will serve as the Village Certified Professional Environmental to the Village as described to the contract made part of this Resolution and attached herein.

Passed: 8-5-22



MAYOR



PRESIDENT OF COUNCIL

ATTEST:



STANDARD AGREEMENT For ENVIRONMENTAL SERVICES

Agreement effective as of the _____ day of _____, 2022, between Brownfield Restoration Group, LLC. (BRG) and the Village of New Lexington, Ohio (the "CLIENT").

The Agreement between the parties consists of these TERMS, the attached BRG Proposal for Voluntary Action Program (VAP) Remediation – Certified Professional Oversight/Management/NFA services dated July 7, 2022 (Proposal No. P21062), on the Former Lempco site located in New Lexington, Perry County, Ohio; any future PROPOSALS accepted and approved by the CLIENT, including the scope of services; and any other attachments noted in such PROPOSALS. All work authorized by the CLIENT, but not specifically described within the scope of services of a PROPOSAL, will be performed on a "time and materials" basis in accordance with BRG's STANDARD RATE SCHEDULE and the terms of this Agreement. Together, these elements will constitute the entire Agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this Agreement must be mutually agreed to in writing.

ARTICLE 1.0 - STANDARD OF CARE

BRG agrees to strive to perform the services set forth in the Agreement in accordance with generally accepted practices, in the same or similar localities, related to the nature of work accomplished, at the time the services are performed. BRG's services shall not be subject to any express or implied warranties whatsoever.

ARTICLE 2.0 - PAYMENT TERMS

CLIENT agrees to pay our invoice upon receipt. If payment is not received within 30 days from date of invoice, CLIENT agrees to pay a service charge on the past due amount at the prevailing legal rate, including collection fees and reasonable attorney's fees. If CLIENT objects to all or any portion of any invoice, CLIENT shall so notify BRG in writing within seven (7) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid. No deduction shall be made from BRG's invoice on account of liquidated damages or other sum withheld from payments to contractors or others. The rates listed in the PROPOSAL shall be valid for a minimum of six (6) months from the date of the PROPOSAL, after which they may be subject to change.

CLIENT agrees to compensate all costs, including labor and preparation time, incurred by BRG in relation to litigation; wherefore, BRG's personnel shall act as "Expert Witness" or shall provide data/information as such. Compensation for said "Expert Testimony" shall be on a "time and materials basis" in accordance with the attached STANDARD RATE SCHEDULE.

Either party may terminate Agreement without cause upon 30 days written notice to the other party. In the event CLIENT requests termination prior to completion, CLIENT agrees to pay BRG for all costs incurred, plus reasonable charges associated with termination of the work.

ARTICLE 3.0 - RESPONSIBILITIES OF THE CLIENT

3.1 Information. The CLIENT shall provide all information in its possession, custody, or control which relates to the site, its present and prior uses, or to activities at the site which may bear upon the services of BRG under this Agreement, including, but not limited to, the following:

- identification of the location of utilities, underground tanks, and other structures and the routing thereof at the site, including available plans of the site;

- a description of activities which were conducted at the site at any time by the CLIENT or by any person or entity which would relate to the services provided by BRG; and
- identification by name, quantity, location, and date, of any releases or handling of hazardous substances, materials, or wastes.

3.2 Authorized Access to the Property. The CLIENT shall be fully responsible for obtaining the necessary authorizations to allow BRG, its agents, subcontractors and representatives, to have access to the site and buildings thereon at reasonable times throughout contract performance by BRG. BRG will take reasonable precautions to minimize damage to the site from use of equipment, but incidental damage or alteration may occur and CLIENT agrees to assume responsibility for such incidental damage or alteration.

3.3 Notification and Reporting. To the extent required by law, CLIENT shall promptly report regulated conditions, including, without limitation, the discovery of releases of hazardous substances at the site to the appropriate public authorities in accordance with applicable law.

3.4 Underground Utilities. BRG will be responsible for contacting the Ohio Utility Protection Service (OUPS) at least 48 hours, but no greater than 10 days prior to drilling. The CLIENT agrees to assume responsibility for any claims whatsoever arising from rupturing, damaging, or otherwise interfering with subterranean structures such as pipes, tanks, and utility lines that are not correctly located, or properly marked in the field.

3.5 Reliance. The services, information, and other data required by this Article to be furnished by the CLIENT shall be at the CLIENT'S expense and BRG may rely upon all data furnished by the CLIENT, and the accuracy and completeness thereof.

ARTICLE 4.0 - LIMITATION OF RESPONSIBILITY

4.1 Limitation of Liability. CLIENT hereby agrees that to fullest extent permitted by law, BRG's total liability to CLIENT for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement from any cause or causes including but not limited to BRG's negligence, errors, or breach of warranty shall not exceed the total amount paid by the CLIENT for the services of BRG under this contract or \$50,000, whichever is greater.

4.2 No Special or Consequential Damages. CLIENT and BRG agree that to the fullest extent permitted by law, BRG shall not be liable to CLIENT for any special, indirect, or consequential damages whatsoever, whether caused by BRG's errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes whatsoever.



1000 S. Cleveland-Massillon Road
Suite 106
Akron, Ohio 44333

Phone: (330) 668-4600
Fax: (330) 668-8464
E-mail: brg@brgroupllc.com
Website: www.brgroupllc.com

July 7, 2022

Mayor Trent Thompson
Village of New Lexington
215 S. Main Street
New Lexington, Ohio 43764

**Re: Proposal for VAP Remediation - CP Oversight/Management/NFA
Former Lempco site
New Lexington, Perry County, Ohio
BRG Proposal No. P21062**

Dear Mayor Thompson:

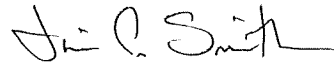
Brownfield Restoration Group, LLC (BRG) submits this proposal and cost estimate to provide Certified Professional services under the Ohio EPA Voluntary Action Program (VAP) to oversee, manage, and document remedial activities in support of No Further Action (NFA) status for the above referenced property. The scope of work for this proposal is based on the *Brownfield Remediation Program Scope of Work and Cost Estimate (January 28, 2022)* prepared by BRG as part of the successful grant application to the Ohio Department of Development (ODOD) Brownfield Remediation Program.

The BRG scope of services will include preparation of bid specifications and solicitation of bids from qualified Remediation Contractors to perform active mitigations measures (e.g., contaminated soil excavation, transportation, and off-site disposal). We will evaluate contractor bids received and make a recommendation for selection to the Village of New Lexington. It is presumed that the Village will contract directly with the successful Remediation Contractor. On behalf of the Village, BRG will oversee Remediation Contractor work, confirm and document its compliance with specifications, and evaluate contractor invoicing for accuracy.

BRG Certified Professionals will also be responsible for compliance with VAP requirements including remedial oversight documentation, confirmation sampling, report preparation, NFA compilation and submittal, interfacing with VAP and regulatory representatives, and representing the site cleanup interests of the Village of New Lexington on this project. The estimated cost of providing the technical Certified Professional services for this project is **\$188,690.00**. A detailed cost breakdown itemizing the various tasks to be completed by BRG is attached for your reference.

We appreciate the opportunity to present you with this scope of work and cost estimate. Should you have any questions, or if you require any additional information, please do not hesitate to contact our office.

Respectfully,
Brownfield Restoration Group, LLC.



Jim C. Smith, CP-121
President

Attachments:

Detail Cost Breakdown



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 Suite 106
 Akron, Ohio 44333
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 E-mail: brg@brgroupllc.com
 Website: www.brgroupllc.com

VAP REMEDIATION COST ESTIMATE
 CERTIFIED PROFESSIONAL OVERSIGHT/MANAGEMENT/NFA PREPARATION

Former Lempco Industries Site
 New Lexington, Perry County, Ohio
 BRG Project No. 21062

July 7, 2022

Task 1 - Project Management/Planning/Specifications

| | | | | |
|---------------------|-----|-------------------------------|------------------------|--------------------|
| Labor | | | | |
| 60 | hr. | Certified Professional | \$145.00 /hr. | \$8,700.00 |
| 80 | hr. | Project Manager | \$105.00 /hr. | \$8,400.00 |
| 20 | hr. | Project Geologist | \$90.00 /hr. | \$1,800.00 |
| 20 | hr. | Clerical Office Support Staff | \$40.00 /hr. | \$800.00 |
| Direct Costs | | | | |
| 900 | mi. | Vehicle Mileage | \$0.52 /mi. | \$468.00 |
| | | | Task 1 Subtotal | \$20,168.00 |

Task 2 - Remedial Actions

| | | | | |
|--|-----|------------------------|--------------------------|--------------------|
| Labor Costs | | | | |
| <i>Task 2a - Professional Labor (CP Oversight & VAP Documentation)</i> | | | | |
| 40 | hr. | Certified Professional | \$145.00 /hr. | \$5,800.00 |
| 120 | hr. | Project Manager | \$105.00 /hr. | \$12,600.00 |
| 80 | hr. | Project Geologist | \$90.00 /hr. | \$7,200.00 |
| 1200 | mi. | Vehicle Mileage | \$0.52 /mi. | \$624.00 |
| | | | Task 2a Subtotal: | \$26,224.00 |

Direct Costs*

| | | | | |
|---|-------|--|--------------------------|---------------|
| <i>Task 2b - Remediation Contractor (Dual-Phase Extraction System Installation & 4-Year Operation) - See Attached Chemviron Quote</i> | | | | |
| 0 | ls. | Pilot Test | \$13,590.00 /ea | \$0.00 |
| 0 | ls | Mobile Treatment Unit (MTU) | \$215,000.00 /ls | \$0.00 |
| 0 | ea. | Bi-Monthly System O&M Site Visit | \$950.00 /ea. | \$0.00 |
| 0 | ea. | System Cleaning | \$2,980.00 /ea. | \$0.00 |
| 0 | ea. | Non-Routine System Alarm Response | \$700.00 /ea. | \$0.00 |
| 0 | drums | GAC Cannister Changeouts | \$2,610.00 /drum | \$0.00 |
| 0 | drums | Hazardous Drum (spent carbon) Disposal | \$1,300.00 /drum | \$0.00 |
| 0 | ea. | TCLP Analyses | \$350.00 /ea. | \$0.00 |
| 0 | ea. | VOC Analyses | \$75.00 /ea. | \$0.00 |
| 0 | ea. | Extraction Well Installation | \$4,500.00 /ea. | \$0.00 |
| 0 | est. | Subsurface Trenching & Piping Installation | \$20,000.00 /est. | \$0.00 |
| 0 | est. | Electrical Service Installation | \$30,000.00 /est. | \$0.00 |
| 0 | month | Monthly Electrical Service | \$1,500.00 /month | \$0.00 |
| 0 | month | Treated Water Discharge Fee | \$150.00 /month | \$0.00 |
| 0 | est. | Water & Air Discharge Permitting | \$8,000.00 /est. | \$0.00 |
| | | | Task 2b Subtotal: | \$0.00 |

Task 2 Subtotal \$26,224.00

Task 3 - Confirmatory Sampling and Monitoring Well Abandonments

| | | | | |
|---------------------|------|--|------------------|-------------|
| Labor | | | | |
| 24 | hr. | Project Manager | \$105.00 /hr. | \$2,520.00 |
| 80 | hr. | Project Geologist | \$90.00 /hr. | \$7,200.00 |
| Direct Costs | | | | |
| 1 | est. | Sampling Equipment & Supplies | \$1,000.00 /est. | \$1,000.00 |
| 4 | ea. | Monitoring Well Installations | \$4,000.00 /ea. | \$16,000.00 |
| 22 | ea. | Well Abandonments (16 monitoring wells & 6 extraction wells) | \$1,100.00 /ea. | \$24,200.00 |
| 60 | ea. | VOCs (8260) | \$75.00 /ea. | \$4,500.00 |
| 20 | ea. | Metals (6000/7000 Series) | \$95.00 /ea. | \$1,900.00 |
| 20 | ea. | PNA Analysis (Method 8270) | \$75.00 /ea. | \$1,500.00 |
| 20 | ea. | TPH, Full Range (8015) | \$75.00 /ea. | \$1,500.00 |
| 2400 | mi. | Vehicle Mileage | \$0.52 /mi. | \$1,248.00 |

CERTIFIED PROFESSIONAL OVERSIGHT/MANAGEMENT/NFA PREPARATION

Former Lempco Industries Site
New Lexington, Perry County, Ohio
BRG Project No. 21062

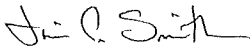
July 7, 2022

| | | | | |
|---|------|--|-----------------------------|----------------------------|
| | | | Task 3 Subtotal | <u><u>\$61,568.00</u></u> |
| Task 4 - Risk Assessment / Modeling | | | | |
| Labor | | | | |
| 20 | hr. | Certified Professional | \$145.00 /hr. | \$2,900.00 |
| 100 | hr. | Staff Risk Assessor | \$105.00 /hr. | \$10,500.00 |
| 40 | hr. | Project Geologist | \$90.00 /hr. | \$3,600.00 |
| 12 | hr. | Draftsperson/CAD Operator | \$70.00 /hr. | \$840.00 |
| 20 | hr. | Clerical Office Support Staff | \$40.00 /hr. | \$800.00 |
| | | | Task 4 Subtotal | <u><u>\$18,640.00</u></u> |
| Task 5 - Risk Mitigation Plan Preparation | | | | |
| Labor | | | | |
| 4 | hr. | Certified Professional | \$145.00 /hr. | \$580.00 |
| 24 | hr. | Staff Risk Assessor | \$105.00 /hr. | \$2,520.00 |
| 12 | hr. | Project Geologist | \$90.00 /hr. | \$1,080.00 |
| 4 | hr. | Draftsperson/CAD Operator | \$70.00 /hr. | \$280.00 |
| 20 | hr. | Clerical Office Support Staff | \$40.00 /hr. | \$800.00 |
| | | | Task 5 Subtotal | <u><u>\$5,260.00</u></u> |
| Task 6 - Remediation Report Preparation & Phase I Update | | | | |
| Labor | | | | |
| 30 | hr. | Certified Professional | \$145.00 /hr. | \$4,350.00 |
| 60 | hr. | Staff Risk Assessor | \$105.00 /hr. | \$6,300.00 |
| 80 | hr. | Senior Project Geologist | \$105.00 /hr. | \$8,400.00 |
| 16 | hr. | Draftsperson/CAD Operator | \$70.00 /hr. | \$1,120.00 |
| 20 | hr. | Clerical Office Support Staff | \$40.00 /hr. | \$800.00 |
| | | | Task 6 Subtotal | <u><u>\$20,970.00</u></u> |
| Task 7 - NFA Document Preparation | | | | |
| Labor | | | | |
| 40 | hr. | Certified Professional | \$145.00 /hr. | \$5,800.00 |
| 40 | hr. | Staff Risk Assessor | \$105.00 /hr. | \$4,200.00 |
| 60 | hr. | Senior Project Geologist | \$105.00 /hr. | \$6,300.00 |
| 8 | hr. | Draftsperson/CAD Operator | \$70.00 /hr. | \$560.00 |
| 20 | hr. | Clerical Office Support Staff | \$40.00 /hr. | \$800.00 |
| Direct Costs | | | | |
| 1 | est. | NFA Filing Fee (Paid to Ohio EPA for NFA Review) | \$18,200.00 estimate | \$18,200.00 |
| | | | Task 7 Subtotal | <u><u>\$35,860.00</u></u> |
| | | | PROJECT GRAND TOTAL: | <u><u>\$188,690.00</u></u> |

* Remediation Contractor costs assume that the client will contract directly with the Remediation Contractor rather than have BRG subcontract these services. This will avoid the standard 10% mark-up that is charged by BRG for handling/managing subcontracted services. In either case, BRG will provide oversight and management of separately contracted Remediation Contractors as well as any BRG subcontractors on this project.

Prepared By:

I have prepared and/or reviewed the above cost estimates and it is my professional opinion that the costs reflect a reasonable estimate of the level of effort required to perform the remedial activities employing normal and customary methods for this type of work.



Jim C. Smith, CP-121

4.3 Indemnification. To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold BRG, its agents, subcontractors, and employees harmless from and against any and all claims, defense costs, including attorney's fees, damages, and other liabilities arising out of or in any way related to BRG's reports or recommendations concerning this Agreement, BRG presence on the project property, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the project property, and including all adverse health effects thereof; **provided that** CLIENT shall not indemnify BRG against liability for damages to the extent caused by the sole negligence or intentional misconduct of BRG, its agents, subcontractors, or employees.

ARTICLE 5.0 - DISCOVERY OF UNANTICIPATED POLLUTANT RISKS

If, while performing the services, pollutants are discovered that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated project cost will be reconsidered and that this contract shall immediately become subject to renegotiation or termination.

CLIENT also agrees that the discovery of unanticipated hazardous substances may make it necessary for BRG to take immediate measures to protect health and safety. BRG agrees to notify CLIENT as soon as practically possible should unanticipated hazardous substances or suspected hazardous substances be encountered. CLIENT authorizes BRG to take measures that in BRG's sole judgment are justified to preserve and protect the health and safety of BRG's personnel and the public. CLIENT agrees to compensate BRG for the additional cost of working to protect employees' and the public's health and safety.

ARTICLE 6.0 - REPORTS, RECOMMENDATIONS & OWNERSHIP OF DOCUMENTS

Reports, recommendations, and other materials resulting from BRG's efforts are intended solely for purposes of this Agreement; any reuse by CLIENT or others for purposes outside this Agreement or any failure to follow BRG's recommendations, without BRG's written permission, shall be at the user's sole risk. CLIENT will furnish such reports, data, studies, plans, specifications, documents, and other information deemed necessary by BRG for proper performance of its services. BRG may rely upon CLIENT-provided documents in performing the services required under this Agreement; however, BRG assumes no responsibility or liability for their accuracy. CLIENT-provided

documents will remain property of CLIENT. All reports, field notes, calculations, estimates, and other documents that are prepared as instruments of service, shall remain BRG's property and BRG shall retain copyrights to these materials. BRG will retain all pertinent records relating to services performed for a period of four years following submission of a report, during which period the records will be made available to CLIENT at all reasonable times.

ARTICLE 7.0 - INDEPENDENT CONTRACTOR

It is agreed that BRG shall be an independent contractor in performing the services under this contract and shall not act as an agent or employee of the CLIENT except under special circumstances specifically defined and mutually agreed to in writing. Neither party shall have the right to create any obligation, expressed or implied, on behalf of the other. CLIENT recognizes and agrees that under no circumstances will BRG assume the title to any sample or waste generated, handled, encountered, transported, stored, or disposed of during or as a result of the performance of this contract.

ARTICLE 8.0 - FORCE MAJEURE

Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

ARTICLE 9.0 - SEVERABILITY AND SURVIVAL

Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, CLIENT and BRG will, in good faith, attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability between CLIENT and BRG shall survive the completion of the services hereunder and the termination of this Agreement.

ARTICLE 10.0 - GOVERNING LAW

This Agreement is to be governed by the laws of the State of Ohio.

The parties have read the foregoing, understand completely the terms and conditions, and willingly enter into this Agreement.

BROWNFIELD RESTORATION GROUP, LLC.

By: _____

Position: _____

Date: _____

CLIENT

By: John Mann

Position: Mayor

Date: 8/5/22