

ORDINANCE NO. 20-115

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ACCEPT GRANT FUNDS IN THE AMOUNT OF \$4,029,500.00 FROM THE OHIO DEPARTMENT OF NATURAL RESOURCES IN COOPERATION WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY FOR THE CEDAR POINT CAUSEWAY WETLAND PROJECT - PHASE 1 AND THE RELATED SANDUSKY BAY INITIATIVE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT AND TO EXPEND THE FUNDS CONSISTENT WITH THE GRANT AGREEMENT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City Commission authorized and directed the City Manager to accept grant funds in the amount of \$1,000,000.00 from the Ohio Environmental Protection Agency through the Ohio Department of Natural Resources (ODNR) for costs associated with the Healthy Lake Erie Initiative Sustainable Sediment Management Pilot Project Expansion by Ordinance No. 16-231, passed on December 27, 2016, to develop a series of projects along the nearshore within the jurisdictional boundaries of the City; and

WHEREAS, the City Commission authorized and directed the City Manager to accept grant funds in the amount of \$240,000.00 from the Ohio Department of Natural Resources (ODNR) for costs associated with the Sandusky Bay Strategic Restoration Initiative by Ordinance No. 17-079, passed on April 10, 2017; and

WHEREAS, the City Commission authorized and directed the City Manager to accept grant funds in the amount of \$140,500.00 from the Ohio Department of Natural Resources (ODNR) for the Sandusky Bay Causeway Wetland Restoration Project and the related Sandusky Bay Initiative by Ordinance No. 18-183, passed on September 10, 2018; and

WHEREAS, the Sandusky Bay Initiative (SBI) Project 2, renamed the Cedar Point Causeway Wetland Project - Phase 1, involves the area along the western edge of the Cedar Point Causeway immediately to the south of the overflow/employee parking lot and the object is to create nearshore wetland areas with variations in water depth, water flow, and native wetland vegetation; and

WHEREAS, the Ohio Department of Natural Resources has appropriated grant funds in the amount of \$4,029,500.00 for costs associated with the Cedar Point Causeway Wetland Project - Phase 1; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to execute a grant agreement and proceed with bidding the project so that construction activities can proceed this winter and not interfere with Cedar Point's summer activities in 2021; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take

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immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission authorizes and directs the City Manager and or Finance Director to accept grant funds from the Ohio Department of Natural Resources (ODNR) for the Cedar Point Causeway Wetland Project - Phase 1 and the related Sandusky Bay Initiative, in the amount of Four Million Twenty Nine Thousand Five Hundred and 00/100 Dollars (\$4,029,500.00).

Section 2. This City Commission authorizes and directs the City Manager to execute the Healthy Lake Erie Grant Agreement between the City of Sandusky and the Ohio Department of Natural Resources in relation to the Cedar Point Causeway Wetland Project - Phase 1, substantially in the same form as attached to this Ordinance and marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as being consistent with the objectives and requirements of this Ordinance and with carrying out the City's public purposes, and to lawfully expend the funds consistent with the Grant Agreement.

Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5. That for reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

MCKENZIE E. SPRIGGS
CLERK OF THE CITY COMMISSION

Passed: August 10, 2020

**Healthy Lake Erie Grant Agreement
Between the City of Sandusky
And the
Ohio Department of Natural Resources**

This Grant Agreement (the “Agreement”) is made and entered into by and between the State of Ohio, Department of Natural Resources, (the “ODNR”), acting by and through its Director, in cooperation with the Ohio Environmental Protection Agency (the “OEPA”), pursuant to Section 1501.01 of the Ohio Revised Code and Amended House Bill No. 529, passed by the 132nd General Assembly of the State of Ohio and signed by the Governor of Ohio on 30 March, 2018 (effective date 1 July, 2018) and the City of Sandusky Ohio, (the “Grantee”). The effective date of this agreement shall be July 1, 2020.

All notices, demands, requests, consents, approvals, and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing.

- (a) with respect to Exhibit A
Project progress and
Completion reports:

Scudder D. Mackey, Chief
ODNR Office of Coastal Management
105 West Shoreline Drive
Sandusky, OH 44870
Email: scudder.mackey@dnr.state.oh.us

- (b) with respect to project fiscal management:

Scudder D. Mackey, Chief
ODNR Office of Coastal Management
105 West Shoreline Drive
Sandusky, OH 44870
Email: scudder.mackey@dnr.state.oh.us

- (c) with respect to the project grantee:

Eric Wobser, City Manager
City of Sandusky
240 Columbus Avenue
Sandusky, OH 44870
Email: aklein@ci.sandusky.oh.us

Pursuant to Amended House Bill No. 529, the 132nd General Assembly of the State of Ohio has appropriated funds of which Four Million Twenty-Nine Thousand Five Hundred Dollars (\$4,029,500) has been awarded to the Grantee for costs associated with the Healthy Lake Erie Sandusky Cedar Point Causeway Project, (hereinafter referred to as “Project”).

The General Assembly has identified the Ohio Parks and Natural Resources Fund (Fund 7031), as the fund from which these monies will be disbursed.

The scope of service is set forth in Exhibit A, which is attached hereto and by reference fully incorporated into this Agreement, with the total amount funded subject to this agreement limited to the amount stated above.

NOW, THEREFORE, for the purposes of providing the funds to the Grantee pursuant to Amended House Bill No. 529, passed by the 132nd General Assembly, the parties hereto agree as follows:

1. ODNR agrees to provide the Grantee Four Million Twenty-Nine Thousand Five Hundred Dollars and no/100 (\$4,029,500.00) via: a) a qualifying advance not to exceed 10% of the total award, namely Four Hundred Two Thousand Nine Hundred Fifty Dollars (\$402,950) from the total Project award, and b) subsequent reimbursements, to be used toward the total cost of the Project. In no event shall ODNR's payment to Grantee exceed Four Million Twenty-Nine Thousand Five Hundred Dollars and no/100 (\$4,029,500.00). Funds for this Project have been released by the Controlling Board as of 15 June 2020 and encumbered by Contract Encumbrance Record Number DNR01-0000045621 and are so certified by the Director of Budget and Management on 19 June 2020. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code. The ODNR reserves the right to confirm compliance with the disbursement schedule and limitations set forth in this Paragraph 1. Any funds provided under this Agreement that are not timely spent shall be returned with interest to the State of Ohio in accordance with paragraph 6 of this Agreement.
2. This Agreement will terminate on 30 June 2022, at which time the Grantee agrees that the Project will be completed. Upon written request, and subject to appropriation and renewal of funds by the State of Ohio, the agreement may be renewed by the Parties.
3. The Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the property as an in-water coastal wetland created from dredged sediment as a sustainable alternative to open-lake dumping.
4. The Grantee shall be responsible for the administration of the Project. The Grantee shall have the full authority to contract with appropriate persons for the design and construction of the Project. The Grantee will secure all necessary permits and/or licenses for the Project. The Grantee warrants and certifies that it will cause the Project to be

constructed with all reasonable speed and reasonably adhere to the submitted development timeline.

5. The Grantee, or its assigns approved by ODNR, shall be solely responsible for the operation, maintenance, and upkeep of the property or facilities acquired or developed pursuant to this Agreement.
6. If for any reason funds and/or interest on such funds acquired through this Agreement are required to be paid, repaid or remitted to the State of Ohio, such shall be remitted in full within forty-five (45) days of demand to:

Treasurer of the State of Ohio
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Any such remittance shall include a copy of this agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to the Auditor of State and ODNR.

7. On and after the date of this agreement, the Grantee agrees not to seek any determination of liability against ODNR in the case of claim or suit arising from the Project including acquisition of property or any future condition, construction, operation, maintenance or use of property or facilities which may be developed in relation to the Project.
8. Prior to release of funds, Grantee will provide ODNR with a document that demonstrates that all employees or agents of Grantee who are responsible for maintaining or disbursing funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds or interest acquired by Grantee through this Agreement shall be spent to obtain bonding or insurance. All funds acquired by Grantee through this Agreement shall be deposited in one or more financial institutions that fully insure, secure or otherwise protect the funds from loss.
9. The Grantee will assure compliance with all applicable Federal, State, and local laws and regulations pertaining to handling, management, and accountability in relation to public funds, competitive bidding for public projects, procurement of equipment and materials, and the like.
10. The Grantee will keep and make all Project-related records available to the state Auditor or the Auditor's designee for a period of not less than five (5) years after the date of Project closeout as described in Paragraph 5 above. The Grantee acknowledges that the

Auditor of State, ODNR or OEPA may audit this Project at any time, including before, during and after completion.

11. The Grantee affirmatively states that Grantee is fully aware of the restrictions and guidelines for expending such funds and intends to comply fully with same. Grantee will implement appropriate monitoring controls to ensure that funds acquired through this Agreement and any interest thereon are expended in accordance with all applicable laws, rules and requirements.
12. The Grantee assures compliance with all applicable Federal, State and local laws and regulations, for the Project, including, but not limited to:
 - a. Prevailing wage pursuant to ORC Chapter 4115
 - b. Worker's Compensation
 - c. Equal Opportunity Laws

The Grantee agrees that it will fully comply with all state and federal non-discrimination laws and promptly comply with all requests and directions from the State of Ohio in this regard.
 - d. Domestic Steel pursuant to ORC 153.011
 - e. Environmental and Historical Preservation Laws and Regulations

The Grantee assures compliance with all applicable Federal, State, and local environmental and historic preservation laws and regulations pertaining to the Project.
 - f. Drug-free Workplace

The Grantee agrees to comply with all applicable State and Federal laws regarding a drug-free workplace. The Grantee will make a good faith effort to ensure that all contract employees, while working on Grantee's property, will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way.
 - g. Laws of Professional Design

The Grantee will comply with all laws that may require approval of the Project by a registered professional engineer, surveyor, architect or landscape architect.

- 13.** The Grantee affirmatively represents and warrants to the State that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section.
- 14.** The State of Ohio reserves the right to terminate this agreement with 30 days' notice if the Grantee is unable to proceed with the Project described in the Project Agreement, or if Grantee violates any of the terms herein.
- 15.** The Grantee will assure that monies expended under this Agreement are spent in conformity with their intended purpose as provided by Amended House Bill No. 497, 130th General Assembly and Chapters 151 and 154 of the Ohio Revised Code and all other laws that apply to expenditure of monies by the Grantee.
- 16.** This Agreement may be modified if agreed to in writing by both parties.
- 17.** The Grantee, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- 18.** No personnel of either Party who exercises any functions or responsibilities in connection with the review or approval of this Agreement shall, prior to the completion of the Work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to this Agreement. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest shall immediately disclose his or her interest to the other Party in writing. Thereafter, he or she shall not participate in any action affecting the Work, unless the other Party determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- 19.** The Grantee hereby certifies that neither it nor any of its officers or directors, nor the spouse of any such person, has made contributions to the ODNR or the Governor in excess of the limitations specified in R.C. 3517.13.

- 20.** Each provision hereof shall be separate and independent and the breach of any provision by either party hereto shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it hereunder. If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.
- 21.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio.
- 22.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- 23.** Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by the Grantee, without the prior written consent of the ODNR.
- 24.** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 25.** This Agreement is not binding upon the ODNR unless executed in full and is effective as of 21 July 2020.
- 26.** All notices, consents and communications required hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof and shall be sent to the addresses first set forth above. Notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

27. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
28. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN TESTIMONY WHEREOF, the Grantee and the State have caused this Agreement to be executed by their respective officers duly authorized as of the date on which the Director of the Department of Natural Resources signs this Agreement.

FOR THE GRANTEE

FOR THE ODNR

Eric Wobser
City Manager

Mary Mertz
Director

Date

Date

**STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES**

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER [2019-12D]
Banning the Expenditure of Public Funds on Offshore Services**

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the CONTRACTOR/SUBCONTRACTOR affirms, understands, and will abide by the requirements of Executive Order 2019-12D. If awarded a contract, the CONTRACTOR/SUBCONTRACTOR becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Agreement outside of the United States.

The CONTRACTOR/SUBCONTRACTOR shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the CONTRACTOR/SUBCONTRACTOR not responsive and the Agreement will not be executed. If the CONTRACTOR/SUBCONTRACTOR will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces. Attach a supplemental sheet, if necessary.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

3. Location where State data will be stored, accessed, tested, maintained, or backed-up, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where State data will be stored, accessed, tested, maintained, or backed-up by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

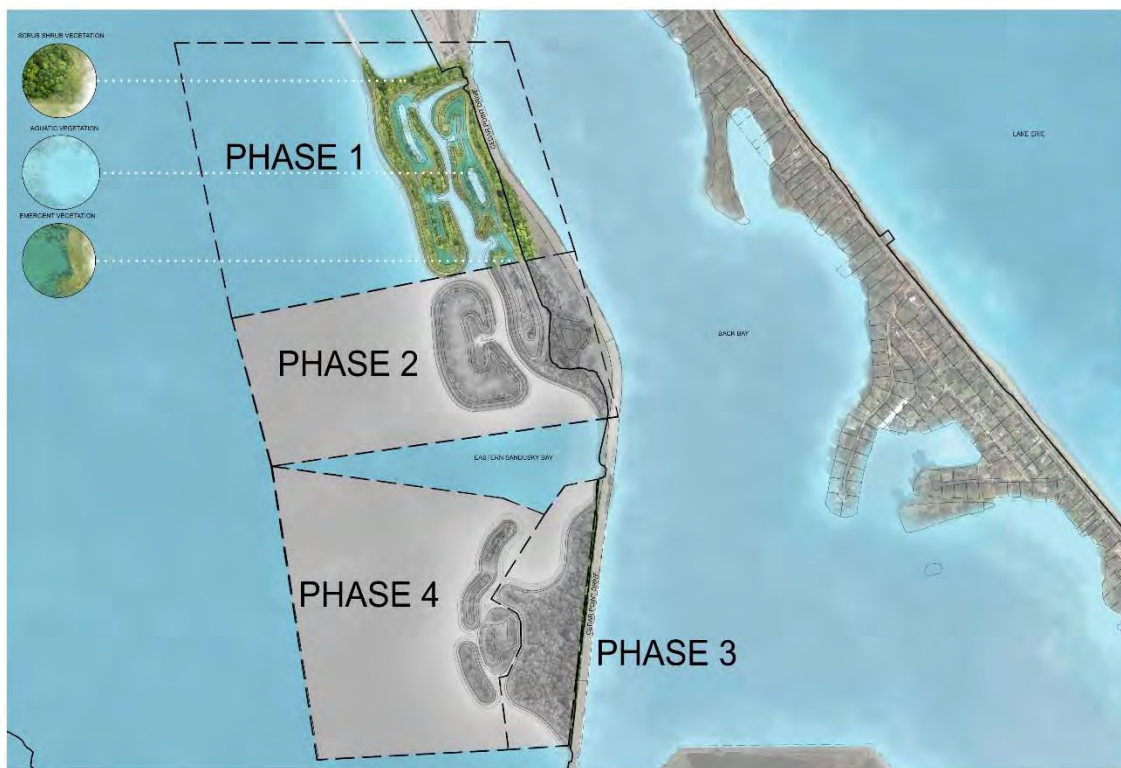
Sandusky Cedar Point Causeway Wetland Project Construction Scope of Work

Introduction

Sandusky Bay encompasses approximately 64 square miles of open water in the western Lake Erie basin that receives runoff from nearly one million acres of land from the Sandusky River and numerous tributaries that drain directly into the Bay. The Sandusky Bay is a significant and unique bay ecosystem within the Great Lakes and holds some of the most significant coastal wetland systems in the Lake Erie basin. In addition to coastal wetlands, Sandusky Bay is a highly productive fishery area and serves as a centerpiece for public recreation and tourism.

With the July 1, 2020 State of Ohio ban on open-lake placement of dredged material into the Ohio waters of Lake Erie, alternative uses for the dredge material were considered under separate projects. One alternative was the beneficial reuse of dredged material to construct nearshore wetlands.

Healthy Lake Erie Initiative funds were used to develop a design to establish a nearshore wetland enhancement project as a demonstration project within Sandusky Bay that addresses State of Ohio Lake Erie Restoration plan priorities that include *nutrient pollution reduction, dredge material beneficial reuse and management, and in-water habitat restoration and species*. The concept design focuses on four separate phases along the western edge of the Cedar Point causeway located in Sandusky Bay south of the Cedar Point Amusement Park (Figure 1).



SANDUSKY BAY INITIATIVE: PROJECT SITE 1 AND SITE 2



CONCEPT DESIGN: SITE 2 PHASE 1

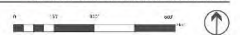


Figure 1. Final Concept Design for Cedar Point Causeway Wetland Site

EXHIBIT A

Each phase consists of a number of cells which will utilize a mixture of armor stone, wooden structures, and other natural materials to construct basins for placement of dredged material. The focus of the final plan is to create nearshore wetland areas with variations in water depth, water flow, and native wetland vegetation. Multiple habitat types are built into the designs to increase potential for usage by fish and wildlife . Figure 2 provides a cross-sectional views of how the wetland may look after dredge material placement and plantings.



Figure 2. Conceptual Post-Construction Cross Sections.

The City of Sandusky will coordinate project management and administration for the project. Design and permitting is nearing completion so this scope of work includes the Construction and Construction Engineering portions of Phase 1 shown above. This project will complement the overall objectives of the Sandusky Bay Initiative and will provide an opportunity through adaptive management to develop a process for implementing similar types of projects throughout Lake Erie and the rest of the Great Lakes.

The following Scope of Work includes project bidding, award, construction, and construction administration of the Cedar Point Causeway Wetland Site: Phase 1.

Scope of Work

The scope of work for this request is the funding of the construction and materials for constructing only the structure portions of the Cedar Point Causeway Wetland project.

Task 1: The City of Sandusky will proceed with project bidding and award

- Develop bidding and contract documents consistent with federal, state and local laws;
- Ensure contract documents include design goals, project objectives, construction details, specifications, construction drawings, timelines, and permit restrictions based on the ongoing design process;
 - All mobilization, insurance, labor, warranty, materials and other expenses for construction will be included as part of the bid documents to be provided by the contractor will be included;
- Advertise the project through public notice and established timelines and schedules;
- Establish and administer contractor selection process;
- Interview contractors, as needed;
- Evaluate bids for consistence with contract and bidding documents;
- Select a contractor compliant with the State of Ohio public bid process; and
- Provide all documents to State of Ohio for review prior to bidding.

Task 2: The City of Sandusky will proceed with hiring a consultant for Construction Oversight & Permit Compliance

- Advertise the RFQ through public notice with established timelines and schedule.
- Establish a selection process;
- Develop a project team to review Qualifications;
- Administer selection of consultant;
- Interview consultants, as needed; and
- Develop and administer sub-grant agreements with selected consultant(s).

Task 3: The City of Sandusky will proceed with Construction Administration and Project Management

- Develop and administer consultant and contractor agreement(s) as required;
- Administer invoicing;
- Submit quarterly progress reports;
- Develop agendas and run progress meetings;
- Coordinate with contractor(s), subcontractor(s), consultant(s) and sub-consultant(s) on project;
- Engage stakeholders, as necessary;
- Establish coordination with ODNR and other state agency partners; and
- Provide updates to ODNR on project work as necessary.