

CITY OF OBERLIN, OHIO

ORDINANCE No. 23-56 AC CMS

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A MASTER SERVICE AGREEMENT WITH ENVIRONMENTAL DESIGN GROUP, LLC OF AKRON, OHIO FOR PROFESSIONAL PLANNING AND ECONOMIC DEVELOPMENT SERVICES.

BE IT ORDAINED BY THE COUNCIL of the City of Oberlin, County of Lorain, State of Ohio:

Section 1. That the City Manager is hereby authorized and directed to enter into a Master Service Agreement with Environmental Design Group, LLC of Akron, Ohio for professional planning and economic development services for the City of Oberlin. A copy of the Master Service Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

Section 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading: August 21, 2023
2nd Reading: _____
3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 08/22/2023

EFFECTIVE DATE: 9/20/2023



August 16, 2023 - REVISED

Robert Hillard
City Administrator
City of Oberlin
85 South Main Street
Oberlin, Ohio 44074

**Subject: Master Services Agreement for Calendar Year 2023 through 2024 - REVISED
Environmental Design Group No. 23-00388-01P**

Dear Robert:

Environmental Design Group is pleased to submit our Master Services Agreement to the City of Oberlin (Client) to provide planning, design, market analysis, public involvement, GIS, and other professional services on a task order basis. This agreement will be in effect until December 31, 2024.

The Client desires to engage Environmental Design Group to provide planning, design, engineering, and related professional services ("Services") from time to time in connection with Client's projects ("PROJECTS"). The services and associated fee will be described in and agreed to in writing on a project-by-project basis by the parties in Task Order format that reference this Agreement. Services performed under a Task Order will be governed by the Terms and Conditions in this Agreement.

If a contract is not fully executed between the Client and Environmental Design Group, LLC, this project will operate under Environmental Design Group's Standard Terms and Conditions.

If there is a need for clarification or if changes in contractual arrangements are desired, please contact me at (330) 375-1390. We look forward to working with you and appreciate your business.

Sincerely,

Katherine G. Holmok, P.L.A., ASLA | kholmok@envdesigngroup.com | 440.829.9383
Director

Enclosures:

- Exhibit A: Scope of Services, Fee, & Assumptions
- Exhibit B: Contract

ACCEPTANCE BY CLIENT

I / We hereby authorize Environmental Design Group to perform the services as outlined above and accept the terms listed. Please sign, fill out AP information, and return one (1) copy to our office via email.

Signature

Print

Date

Approved as to form:
Jon D. Clark, Law Director

The community impact people.

CORPORATE

450 Grant Street / Akron, OH 44311
P 330 375 1390 / F 330 375 1690
TF 800 835 1390

COLUMBUS OFFICE

7965 North High Street, Suite 050
Columbus, Ohio 43235

CLEVELAND OFFICE

2814 Detroit Avenue
Cleveland, Ohio 44115

MARIETTA OFFICE

204 Front Street
Marietta, Ohio 45750

NEWARK OFFICE

33 West Main Street, Suite 206-A
Newark, Ohio 43055

envdesigngroup.com

Robert Hillard, City Manager
City of Oberlin
August 16, 2023
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Special Instructions: _____

We will be sending invoices and payment reminders via e-mail. By sending these documents via email, we can ensure each includes the information you require. Please provide the following information:

AP Contact _____

AP Email _____

AP Phone _____

Email an additional copy of the Invoice to:

1. _____

2. _____

We accept all major credit cards for payment of services. A 4% service charge will be applied at the time of payment. Payments can be submitted directly over the phone by calling 330-375-1390 or securely through our payment portal on our website (envdesigngroup.com). Please have the following information readily available when processing payment: Client Name, Invoice Number, Project Number, Total Amount, and credit card information.

STANDARD PROVISIONS OF AGREEMENT (CONTRACT)

This Contract between the City of Oberlin (Client) and Environmental Design Group, an Ohio limited liability company; ("CONSULTANT"), is effective as of August 16, 2023. The parties agree as follows:

1. Consultant shall perform the services set forth in EXHIBIT A ("Contracted Services"), attached and incorporated herein by reference.
2. This Agreement will be binding upon the heirs, executors, administrators, successors, and assignees of Client and Consultant and will not be assigned by either Client or Consultant without the prior written consent of the other.
3. This Agreement contains the entire agreement between the Client and Consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations that are not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement will be in writing and signed by both Client and Consultant. The Client may use purchase orders as an administrative convenience, however, any terms and conditions contained in such purchase orders are not to be considered terms and conditions of this Agreement and will not be binding upon Consultant unless expressly agreed to in writing by Consultant.
4. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
5. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, will not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
6. If any term, condition, or covenant, of this Agreement is held by a court of competent jurisdiction to be invalid, void or not enforceable, the remaining provisions of this agreement will be valid and binding on Client and Consultant.
7. Consultant will only act as an advisor in all governmental relations. Obtaining government approvals is not a term of this agreement unless expressly set forth herein.
8. Consultant is not responsible for delay or damages caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays or damages by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client or his agents to furnish timely information or approve or disapprove Consultant's work promptly, faulty performance by Client or other contractors, or the actions or inactions of governmental agencies including, but not limited to permit processing, changes in policy, environmental impact reports, dedications, general plans and amendments hereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant will not be deemed to be in default of this agreement.
9. The following will be considered as additional services to be performed for an additional fee: a) Changes to plans, specifications or other documents and/or field work required by one or more governmental agency, as a result of changes or official interpretations in its ordinances, policies, procedures or requirements after the date of this Agreement; b) Any and all increase in costs and expenses contemplated by this Agreement due to the granting of wage increases and/or other employee benefits to field or office employees as a result of the terms of any labor agreement, or rise in the cost of living, during the lifetime of this agreement. Client will be billed for the additional, percentage increase applied to all remaining compensation due with respect to services performed pursuant to this Agreement; c) Incidental services as required by Client not specified in writing within the scope of work on the front hereof; d) Cost of replacing any staking destroyed, damaged, or disturbed by an act of God or parties other than Consultant; e) The costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.
10. Consultant makes no representations and does not guarantee expressly or implicitly: a) The estimated quantities made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and Consultant shall not be responsible for interpretational differences or fluctuations. Estimates of areas provided under this agreement are not to be considered precise unless Consultant specifically agrees to provide the precise determination of such areas. b) The completion or quality of performance

of Contractor or the completion or quality of performance of agreements by the construction contractor or contractors, or other third parties, nor is it responsible for their acts or omissions. c) Its findings, recommendations, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance. d) Soil conditions unless specifically included in writing in this Agreement, and it is further not liable for any damages arising out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing.

11. What may be referred to as a *cost estimate* or *engineer's estimate* as made by Consultant herein or in other correspondence regarding the Project shall be deemed an opinion of probable construction cost. In providing opinions of probable construction cost, it is recognized that neither Client nor Consultant has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding, or over market conditions. The opinion of probable construction costs is based on Consultant's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work will not vary from the Client's budget or from any opinion of probable cost prepared by Consultant. If Client wishes greater assurances as to Total Project or Construction Costs, Client may employ an independent cost estimator.
12. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. In the event there is a discrepancy between the electronic files and the hard copies, the hard copies govern. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant at the beginning of this Project.
13. All original papers, documents, drawings, and other work product of Consultant, and copies thereof, produced by Consultant pursuant to this Agreement, except documents which are to become permanent public record, will remain the property of the Consultant and may be used by Consultant without the consent of Client. Consultant retains all rights of copyright on work performed pursuant to this Agreement. All services provided pursuant to this Agreement may be used by Client only for the project described on the face hereof. Client agrees not to use or permit any other person to use plans, drawings, or other documents prepared by Consultant, which are not signed by Consultant and permitting agencies. Client agrees to be liable and responsible for any such use of unsigned plans, drawings, or other documents not signed by Consultant and agencies and will indemnify, hold harmless, and defend Consultant for any liability or damage incurred by Consultant as a result of such use.
14. Client acknowledges that all certifications of Consultant that appear on drawings shall be limited to the original purpose for which the respective drawings were to be used; that such certification and drawings are not intended to embrace any changes or modifications to such drawings regardless of their nature or scope; and that any obligations of Consultants attaching to such drawings shall be subject to the foregoing qualifications.
15. This agreement may be terminated by either party by thirty (30) days' written notice if the other party has substantially failed to perform in accordance with the terms herein through no fault of the terminating party. Otherwise, Consultant has a right to complete all services agreed to be rendered pursuant to this agreement. In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated by any party or for any reason, Client will pay Consultant for all fees, charges, and services provided for the project.
16. In the event that changes are made in the plans and specifications by Client or by any other person other than Consultant, any and all liability arising out of or resulting from such changes is waived by Client against Consultant, and Client assumes full responsibility and liability for such changes unless Client gives Consultant prior written notice of such changes and Consultant consents in writing to such changes. The Consultant will not be responsible for any unauthorized changes to the plans and specifications.
17. Client agrees that Consultant will not perform on-site construction review for this project unless specifically provided for in this agreement, that such services will be performed by others, and that the Client will defend, indemnify, and hold Consultant harmless from any and all liability arising from or resulting from the performance of construction review by other persons. Any review of shop drawings and/or submittals is solely for general conformance with the design concept and contract documents and shall not form the basis of any liability of Consultant. Reviews of shop drawings and/or submittals by Consultant shall not alter the terms of this Agreement and shall not be construed to relieve any construction contractor of its obligations.

18. Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and Client further agrees to defend, indemnify and hold Consultant harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of Consultant.
19. All fees and other charges will be billed monthly and will be due at the time of billing unless otherwise specified in this Agreement. Client agrees that the periodic billings from Consultant to Client are correct, conclusive, and binding on Client unless Client within twenty (20) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing. After ninety (90) days Environmental Design Group will stop working on the project until such invoices are paid in full.
20. If client fails to pay Consultant within thirty (30) days after invoices are rendered, Client agrees Consultant will have the right to consider such default in payment a material breach of this Agreement. Consultant may, upon written notice to Client, immediately terminate this Agreement. In such event, Client will immediately pay Consultant for all fees, charges, and services provided through the date of termination. Alternately, the Consultant may choose at its sole discretion not to terminate this Agreement but to suspend work until the account is brought current including accrued interest.
21. Under no circumstances will any legal action in any way connected with this Agreement or services performed hereunder be initiated by either party after five (5) years from the date of Substantial Completion, unless this Agreement is terminated prior to substantial completion, in which case the date of termination of this Agreement will be the date on which such period will commence.
22. The work is being conducted and the report prepared for the sole use of the Client and represents a professional opinion based on the information available to Consultant at the time of the investigation and report.
23. Assignment of reliance to third parties can be made, however this will be considered an additional service. Such letters of reliance may be provided on a case-by-case basis as requested. It is further understood that the scope, terms and conditions under which this report was originally prepared apply to any and all third-party recipients.
24. Insurance: Environmental Design Group warrants that it has workers' compensation coverage, and professional liability and such coverage under public liability and properties damage insurance policies as it deems to be adequate. Certificates of all such policies of insurance shall be provided to you upon request in writing. To the extent that it is lawful to do so, the Client hereby expressly waives and releases any cause of action or right of recovery which you may have hereafter against Environmental Design Group for any loss or damage to subject premises caused by fire, explosion or any other risk which may arise during our performance of services hereunder and which is covered by insurance. Professional liability insurance shall be not less than \$1,000,000 per claim/\$ 2,000,000 aggregate. Client shall be listed as additional insured on Auto and Commercial/General Liability.
25. Environmental Design Group's work being performed, and Environmental Design Group's findings and conclusions are for the benefit of the Client and appropriate regulatory agencies and are not to be relied upon by any other parties. A party's failure or delay to require strict performance on any provision of this agreement shall not be considered a waiver or deprive such party of the right to insist upon strict adherence to that term or other terms of this agreement.
26. Standard of Care: Services performed by Environmental Design Group under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by firms similar to Environmental Design Group which are currently providing similar services in the same geographical area.
27. Client recognizes that subsurface conditions or other field conditions may vary from those encountered at locations where borings, surveys or other observations are made by Environmental Design Group and that the data interpretations and recommendations by Environmental Design Group are based solely on information available to Environmental Design Group.

Environmental Design Group will be responsible for those data interpretations and recommendations but shall not be responsible for any interpretations by others of the information developed.

28. SPECIAL TERMS AND CONDITIONS

The community impact people.

The following articles are hereby modified and shall take precedence over the corresponding articles within the agreement:

Modification #	Modification Description