

CITY OF OBERLIN, OHIO

ORDINANCE No. 24-39 AC CMS

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH ZONECO, LLC OF CINCINNATI, OHIO, FOR PROFESSIONAL CONSULTING SERVICES FOR THE PREPARATION OF A NEW ZONING CODE FOR THE CITY OF OBERLIN TO GO INTO IMMEDIATE EFFECT

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 Professional Services Agreement with ZoneCo, LLC of Cincinnati, Ohio for professional consulting services for the preparation of a new Zoning Code for the City of Oberlin in an amount not to exceed \$86,250.00. A copy of the Professional Services 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. To proceed with the development of a new Zoning Code for the City of Oberlin as soon as possible and provided that at least five (5) members of Council determine by motion, this Ordinance shall go into full force and effect immediately after its passage; otherwise, it shall take effect on the earliest date allowed by law.

PASSED: 1st Reading: June 17, 2024

2nd Reading: July 1, 2024

3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



EBONI A. JOHNSON
PRESIDENT OF COUNCIL

POSTED: 07/02/2024

EFFECTIVE DATE: 07/01/2024

ZONECO^{LLC}

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PROFESSIONAL SERVICES AGREEMENT
(CITY OF OBERLIN, OHIO)

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of the last date of execution below (the "Effective Date") by and between the CITY OF OBERLIN, OHIO, a municipal corporation, having an address of 85 South Main Street, Oberlin, Ohio 44074, Attn: Carrie Porter, Director of Planning and Development (the "City"), and ZONECO, LLC, an Ohio limited liability company, having an address of 1502 Vine Street, Fourth Floor, Cincinnati, Ohio 45202, Attn: Sean S. Suder, Lead Principal ("Consultant"), on the following terms and conditions:

RECITALS

A. Whereas, the City is seeking consulting services in connection with re-writing Part Thirteen of the City of Oberlin Code of Ordinances (hereinafter, the "Project").

B. Whereas, Consultant provides zoning code and subdivision regulation consulting services to communities across a wide spectrum of geographies, sizes, and types, including in Ohio;

C. Whereas, the City desires to retain Consultant to provide professional consulting services, and Consultant desires to render such professional consulting services to the City, on the terms and conditions set forth herein.

NOW, THEREFORE, the parties intending to be legally bound hereby agree as follows:

AGREEMENT

1. Consulting Period. This Agreement shall be in effect for a term commencing on the Effective Date hereof and ending on the date that is one year thereafter (the "Consulting Period"). The Consulting Period may be extended upon the mutual written agreement of both parties. Notwithstanding anything contained in this Agreement, the City or the Consultant may terminate this Agreement prior to the end of the Consulting Period by providing the non-terminating party at least ten (10) days advance written notice. The Consulting Period may be extended by a written amendment to this Agreement signed by both parties.

2. Consulting Services. During the Consulting Period, Consultant agrees to provide the scope of consulting services set forth on Exhibit A attached hereto and made a part hereof (the "Services"). Each party shall designate a project contact, which may be changed at any time with written notice to the other party. The City agrees to provide clear communication to Consultant in writing on all matters of the Project and to be responsive

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to Consultant's questions related to the Project and to provide adequate staffing and to devote a reasonable amount of staff time to the Project. Consultant may rely on the representations, approvals, and other actions of the City's project contact. Consultant may rely upon the accuracy and completeness of information provided by the City.

3. Consulting Fee. During the Consulting Period, the City shall pay Consultant a total amount which shall not exceed the Total Consulting Fee of **Eighty-Six Thousand Two Hundred Fifty and 00/100 Dollars (\$86,250.00)** (the "Consulting Fee"), which shall be due after Consultant's completion of each Task as set forth on Exhibit A and no later than thirty (30) days following the City's receipt of Consultant's written invoice therefor. The Consulting Fee includes all of Consultant's expenses, and Consultant shall not receive any additional reimbursement for business or travel expenses beyond those expressly included in Exhibit A. Failure to timely pay Consultant for any past-due amounts may excuse Consultant from further performance of the Services within Consultant's reasonable discretion until payment for such increment is made. In the event of any early termination of this Agreement prior to the end of the Consulting Period, the City shall pay Consultant for Consultant's work performed through the date of such early termination within thirty (30) days following the City's receipt of Consultant's written invoice therefor.

4. Work Product. All documents and materials prepared pursuant to this Agreement are the property of the City, although Consultant may retain physical possession of same during the Consulting Period only. The City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement. Upon any termination of this Agreement, Consultant shall immediately return all City documents and materials to the City and shall provide the City with a digital copy of all work performed through the date of termination.

5. Understanding of Relationship. The parties hereby acknowledge and agree to the following provisions regarding Consultant's provision of the Services.

A. *Independent Contractor*. Consultant's status at all times shall be that of an independent contractor. Consultant may not, at any time, act as a representative for or on behalf of the City, for any purpose or transaction, and may not bind or otherwise obligate the City in any manner whatsoever without first obtaining the written approval of the City. In recognition of its status as an independent contractor, Consultant hereby waives any rights as an employee or deemed employee of the City. Consultant shall pay directly all taxes associated with the compensation it receives under the Prime Contract.

B. *Non-Attorney*. Although Consultant is affiliated with the law firm of Suder, LLC, its principal place of business being located at 1502 Vine Street, Fourth Floor, Cincinnati, OH 45202, and although some of Consultant's employees and principals are attorneys who may be separately engaged to provide legal representation in a state where they are licensed to practice law, Consultant is not a law firm and does not provide legal representation or legal services. The City understands, acknowledges, and agrees that engaging or otherwise contracting with Consultant or its principals or employees does

not form an attorney-client relationship and, as such, the protections of the attorney-client relationship do not apply to the provision of the services, or any communication related thereto. Further, the City retains the sole and exclusive responsibility to determine whether the language that Consultant proposes to amend the Codified Ordinances of Oberlin, Ohio will comply with applicable law, and the City shall retain its own legal counsel to review Consultant's proposed language for issues of legal compliance. Consultant expressly disclaims any and all representations and warranties related to the legal effect of proposed amendment language, and the City acknowledges and agrees that it and is not relying on Consultant for any legal advice whatsoever.

C. *Non-Lobbyist.* Consultant is not a registered lobbyist and does not provide any lobbying (formal or informal), government affairs, media, public relations or other marketing, branding, or communications services.

6. Insurance. During the performance of the Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- (a) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- (b) Automobile Liability Insurance, including non-owned auto coverage, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (c) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- (d) Worker's Compensation Insurance in accordance with the statutory requirements of the Ohio Revised Code.

All insurance policies required pursuant to this Agreement shall be carried and maintained during the entire term with a provider which is rated "A-" or better by A.M. Best, and shall state that such insurance may not be cancelled, terminated or modified except upon thirty (30) days prior written notice to the City (except for cancellation due to non-payment of premiums, which shall require at least ten (10) days advance written notice to the City), and shall provide for a waiver of any right of recovery by way of subrogation against the City in the event of any loss. Consultant shall identify the City as an additional insured under each insurance policy and shall provide a certificate of insurance to the City evidencing such coverage detailed above delivered to the City simultaneously with the delivery of Consultant's executed Agreement, and also at any other time upon the request of the City.

7. Termination. Either party may terminate this Agreement prior to the end of the Consulting Period by providing the other party with thirty (30) days' written notice, in which case the City shall pay to Consultant the pro-rata portion of the Consulting Fee for the Services that Consultant has performed prior to receiving the notice of termination, as outlined in Section 3 above.

8. Compliance with Laws. Consultant shall comply with all applicable federal, state, and local laws and regulations, including without limitation, those governing non-discrimination in employment and the provision of services and the protection of the environment. Where such statutes, ordinances, plans, or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between the authorities and shall notify the City in a timely manner of the conflict, the nature of the attempted resolution, and a planned course of action. The City shall comply with all applicable laws, regulations, and policies regarding procurement for professional services for this Project and has the authority to enter into this Agreement.

9. Miscellaneous. This Agreement shall be governed by the laws of the State of Ohio. The parties agree that the exclusive jurisdiction and venue regarding any which may arise under this Agreement shall be with the state courts of Ohio located in Lorain County, Ohio. This Agreement contains the parties' entire understanding and supersedes all prior negotiations, proposals, or agreements concerning the services described herein. This Agreement may only be modified by written instrument duly executed by both parties. The rights and interests under this Agreement shall not be assigned or otherwise transferred without the prior written consent of the other party. To the extent that any provision of this Agreement is finally adjudged invalid by a court of competent jurisdiction, that provision shall be deleted or modified, as necessary, to make it enforceable, and the remaining provisions of the Agreement shall remain in full force and effect and be binding upon the parties hereto. All communications required by this Agreement shall be personally delivered or mailed to the other party at the address set forth above. Either party's notice address may be changed by written notice given to the other party as provided in this paragraph. This Agreement shall be binding on each party's permitted successors and permitted assigns.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the dates shown below.

CONSULTANT:

ZONECO, LLC, an Ohio limited liability company

By: Sean Suder

Sean S. Suder, Lead Principal

Date: August 8, 2024

CITY:

CITY OF OBERLIN, OHIO, a municipal corporation

By: Jon D. Clark

Name: Jon D. Clark

Title: Interim City Manager

Date: 8/7/2024

FISCAL OFFICER'S CERTIFICATE

Pursuant to Ohio Revised Code Section 5705.41, I hereby certify that the \$ 86,250⁰⁰ required for the City's payment of the Consulting Fee under this Agreement has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

By: Sal Talarico

Name: Sal Talarico

Title: Finance Director

Date: August 8, 2024

APPROVED AS TO FORM:

Jon D. Clark
Jon D. Clark, Law Director

EXHIBIT A
SCOPE OF SERVICES

Module A: Calibrate

Duration: Months 1-3
Deliverables: Draft Calibration Table, Final Calibrations
Total fee budget: \$25,000

Module A Tasks:

- A.1 Discuss Proposed Districts and Revisions to Zoning Map Reflecting the Plan
- A.2 Draft Calibration Table and Review with Staff
- A.3 Finalize Use and Standards Calibrations
- A.4 Create Code Format and Layout

Module B: Codify

Duration: Months 4-10
Deliverables: Full Code: Administrative Draft, Public Review Draft, Adoption Draft
Total fee budget: \$61,250

Module B Tasks:

- B.1 Administrative Draft Code for Staff Review
- B.2 Public Review Draft Code for Public Review (public engagement TBD)
- B.3 Planning Commission Review (virtual)
- B.4 City Council Review of Adoption Draft (in-person)
- B.5 Adoption Meeting (virtual)

N.1 The code shall be drafted in Microsoft Word and the final code shall be delivered in Word.
N.2 Consultant will create a GIS story map and an online public survey.

Total Project Budget: \$86,250

All fees are inclusive of all ordinary costs and expenses. Additional scope items will require additional discussion and a separate proposal.

The following assumptions and scope exclusions apply:

- (a) Consultant is not responsible for identifying individual members of stakeholder, working groups, and committees related to the Project.
- (b) Consultant is not responsible for coordination of any public meetings/stakeholder group meetings, including meeting times, locations, invitations, a/v equipment, or costs associated with those meetings.
- (c) Consultant is not responsible for any mailings, fees associated with mailings, and contact with the media regarding this project or the posting of any project information to any Project social media accounts.

(d) Local approval of the deliverables will be carried out by the City and the City will generate all formal documentation necessary for the adoption of the regulations.

(e) Any additional meetings not expressly included in the Scope of Services will be performed on an hourly basis or by separate agreement between Consultant and the City.

(g) Consultant will not be responsible for revisions to any GIS shape files associated with the project.