



May 9, 2022

Mayor Rich Regovich
City of Willowick
VIA EMAIL

**RE: City of Willowick – Economic Development and Planning Services (2022)
Environmental Design Group Job No. 17-00375-07P**

Dear Mayor Regovich,

Environmental Design Group is pleased to submit our proposal for the above-referenced professional services. Our proposed scope of services is outlined below, and we have also included a list of assumptions and exclusions that will help clarify the intended scope of work, both for the City of Willowick (Client) and for Environmental Design Group.

SCOPE OF SERVICES

Task 1 – Economic Development and Planning Services

As requested by the Client, Environmental Design Group will provide general services to assist the City and staff with economic development and planning. These services may include but are not limited to, activities such as:

- Grant applications
- Attend in-person meetings, conference calls, and/or conferences, ~~including any associated meeting or travel expenses and associated conference registrations~~
- Preparation of meeting materials and/or meeting recaps
- General project management and/or coordination
- Materials/fliers/brochures/posters
- Market Analyses
- Base mapping & GIS services
- Site droning
- Graphic renderings

COMPENSATION

For and in consideration of the above-referenced services, Environmental Design Group will invoice the City of Willowick on a time and materials basis not-to-exceed **Nine Thousand Nine Hundred Ninety Dollars and No Cents (\$9,990.00)**.

The above fee will apply for one year from acceptance of this agreement. If the work is not completed during that period, the agreement may be subject to renegotiation.

ASSUMPTIONS AND EXCLUSIONS

Below is a list of assumptions and exclusions that apply to our proposal for technical services for this project. These items were considered while defining the scope and cost of our services. These assumptions and exclusions also describe responsibilities both of

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CORPORATE

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Cleveland, Ohio 44113

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Environmental Design Group and the client, in the event there is a need for work outside the defined scope of services.

1. Unless the Client designates an alternate in writing, the person signing the agreement will be considered the Client's only official representative with respect to this agreement.
2. Client will provide engineering and surveying data and other existing information in the client's possession to Environmental Design Group that may be useful in the performance of the professional services described in the proposal. These items include Environmental Site Assessments, Wetland Delineations, Boundary Surveys, Topographic Surveys, ALTA Surveys, plans and specifications of existing facilities and similar documents.
3. Client will make all provisions for Environmental Design Group personnel to enter upon public and private lands as required to perform the described services.
4. This proposal outlines the agreed upon scope of services. It supersedes any other previous requests, discussions, or versions including request for proposals or other owner-initiated scope documents.
5. This proposal has been based on a continuous project development process from start to finish. After the project is authorized, should the project be put on hold by the Client, or otherwise be pursued in a start-stop-resume manner, Environmental Design Group reserves the right to renegotiate the fees established herein to account for the extra costs resulting therefrom.
6. Opinions of construction cost or estimates of construction cost prepared by Environmental Design Group under this agreement are just that. Environmental Design Group does not warrant or guarantee that the project can be constructed for those amounts and the Client agrees that Environmental Design Group cannot be held liable for any discrepancies between bid costs and our opinions or estimates.
7. The scope of work contained in this proposal is for conceptual-level work, it does not include any specific engineering analysis or work that can be construed as detailed design or construction documents. In addition, site conditions will be evaluated from a master plan conceptual perspective; we will not be conducting formal environmental, ecological, geotechnical, survey, or other site or infrastructure assessments. Any work in these areas will be general observations only.
8. Environmental Design Group offers professional services and will work to accomplish the client's goals, but the fees established herein shall be paid regardless of the outcome. Environmental Design Group will advise the Client on the likely approvability of the project, but cannot guarantee that the desired approvals by regulatory agencies will be granted. Unfortunately, such approvability is not certain until the project has gone through the entire regulatory processes.
9. Environmental Design Group will assist the City in preparing an accurate and complete application. The City acknowledges that the success of the application is solely dependent on ranking and decision of the application submitted and therefore does not hold Environmental Design Group liable for the outcome of the application.
10. We cannot anticipate poor weather. We will not be able to fly the drone under poor weather conditions including temperatures below 40 degrees F, winds over 12 MPH, rainy conditions, or after sunset. If weather delays our original date, we will attempt to find an alternate date and time to fly the route. If an alternate date cannot be found, then the fee will be reduced from the task.

LIMITATION OF LIABILITY

Environmental Design Group warrants that it has workers' compensation coverage, and professional liability and such coverage under public liability and properties damage insurance

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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.

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.

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.

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.

INVOICING PROCEDURES AND TERMS

Invoices will be submitted monthly based on the amount of work actually completed.

If the Client fails to make any payment due Environmental Design Group, ~~within thirty (30) days after receipt of Environmental Design Group's invoice, the amounts due Environmental Design Group will include a charge at the rate of 1% per month from said thirtieth day.~~ **within ninety (90) days**, Environmental Design Group will stop working on the project until such invoices are paid in full. Invoices not paid within ninety (90) days of the date rendered may be referred for collection. You will be responsible for any and all expenses incurred by Environmental Design Group in the collection of any unpaid invoice, including actual fees and related costs incurred by legal counsel.

The attached Exhibit A – Standard Provisions of Agreement – is a part of this agreement and is binding on the Client.

PROJECT INITIATION PROCEDURES

If this proposal is satisfactory, you may authorize Environmental Design Group to proceed by signing and returning one copy of this letter to us.

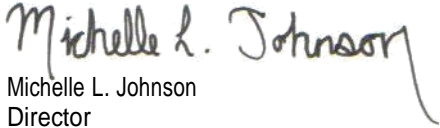
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If there is a need for clarification or if changes in contractual arrangements are desired, please contact me at 330-375-1390 or mjohnson@envdesigngroup.com.

We look forward to working with you.

Sincerely,


Michelle L. Johnson
Director

ACCEPTED: **City of Willowick**

By _____ Date _____

Title _____

Clients Designated Representative: _____

Special Instructions: _____

Invoicing Procedures:

In an effort to continue to provide an easy and effective method for communicating, 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. _____

In an effort to make our invoicing process more convenient, we are happy to announce that we now 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. Please have the following information at the time of the call: Client Name, Invoice Number, Project Number, Total Amount, and credit card information.

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EXHIBIT A STANDARD PROVISIONS OF AGREEMENT FISCAL YEAR 2022

Client and Environmental Design Group, LLC (Consultant) agree that the following provisions shall be part of their agreement:

1. 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.
2. This Agreement contains the entire agreement between 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.
3. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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

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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.

9. 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.
10. 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.
11. 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.
12. 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,

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or other documents prepared by Consultant, which are not signed by Consultant and permitting agencies.

13. 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.
14. 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 this Agreement is terminated before the completion of all services, Client agrees to release Consultant from all liability for work **performed to the extent permitted by law.** 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 through the date of termination.
15. 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.
16. 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 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.
17. Client agrees that in accordance with generally accepted construction practices, 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.
18. 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.
- ~~19. 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 not to terminate this Agreement but to suspend work until the account is brought current including accrued interest. In such event, the Client will bear any and all additional costs resulting from suspension of work including but not limited to~~

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~~increases to the stated fee as a result of inflation, promotions or other causes and/or additional fees incurred by Consultant as a result of changes necessitated by governmental agencies or other approving authorities.~~

20. Client and Consultant agree that they will first try to resolve any claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement via good faith negotiations. If negotiations prove unsuccessful, Client and Consultant further agree to submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this agreement.
21. 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.
22. 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.

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