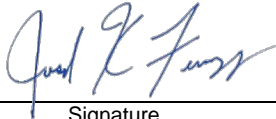




## Professional Services Agreement

<b>Design Professional:</b>	<b>Client:</b>
The Osborn Engineering Company 1111 Superior Ave., Suite 2100 Cleveland, OH 44114-2530	City of Willowick 21230 Vine Street Willowick, Ohio 44095
<b>Project No.</b> J20241987	<b>Date:</b> 10/14/2024
<b>Project Name:</b> Owners' Representative Services LAK E 305th Street Resurface Project (PID 120114)	
<b>Location:</b> East 305th Street Willowick Ohio	
<b>Scope of Services shall be as described below or in Proposal letter:</b>	
Scope of services proposal letter dated September 19, 2024 attached as Exhibit A	
<b>Fee Arrangement:</b> <i>Fee as stated in proposal letter dated September 19, 2024</i>	
<b>Rates shall be as shown on attached rate sheet.</b> Not applicable	
<b>Retainer Amounts:</b> None	
<b>Special Conditions:</b> None	
<b>Offered by:</b>	<b>Accepted by: (Client):</b>
 Signature	 Signature <span style="float: right;">Date</span>
Director of Infrastructure/Principal Printed name / title	 Printed name / title Signature indicates the authority to bind the company to the terms herein
<b><u>The terms and conditions on the following pages are part of this Agreement. Authorization by the Client to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition or deletion. No waiver or modification of the terms and conditions set forth herein shall be binding upon Design Professional unless made in writing and signed by Design Professional's authorized representative.</u></b>	

## TERMS & CONDITIONS

### Fee

The total fee, except for a stated lump sum, shall be understood to be an estimate, based upon Scope of Service, and shall not be exceeded by more than ten percent, without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that are attached to the proposal. Reimbursable expenses invoiced with a mark-up of no greater than 1.10%.

### Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, at the Design Professional's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. Design Professional shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and the Design Professional shall have no liability for any resultant delays or damages incurred by Client as a result of such suspension/termination. Retainers shall be credited on the final invoice.

### Standard of Care

In providing services under this agreement, the Design Professional will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Design Professional will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of Design Professional's part of the Project. Regardless of any other term or condition of this Agreement, Design Professional makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

### Consequential Damages

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor the Design Professional shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

### Hidden Conditions *(If work is in existing structure or project)*

A condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. If the Design Professional has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such due notification, or (2) the Design Professional has no reason to believe that such a condition exists, the Design Professional shall not be responsible for the existing conditions or any resulting damages or losses resulting there from.

### Hazardous Materials/Mold

The Design Professional shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The existing or constructed building may, as a result of post-construction, use, maintenance, operation or occupation, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures and costs for which the Design Professional shall have no responsibility.

### Indemnifications

The Design Professional further agrees, subject to the Limitation of Liability, to indemnify the Client for damages to the extent arising from its own negligent errors acts or omissions. Notwithstanding anything to the contrary Consultant is not responsible for delays outside of its control.

### Termination of Services

This agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay the Design Professional for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

### Betterment

If a required item or component of the Project is omitted from the Design Professional's documents, the Design Professional shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been included or required in the Design Professional's original documents. In no event will the Design professional be responsible for any costs or expense that provides betterment or upgrades or enhances the value of the Project.

### Ownership of Documents

All documents produced by the Design Professional under this agreement, including electronic files, shall remain the property of the Design Professional and may not be used by this Client for any other purpose without the written consent of the Design Professional. Any such use or reuse shall be at the sole risk of Client who shall defend, indemnify and hold Design Professional and its sub-consultants harmless from any and all claims and/or damages arising there from. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to Design Professional and its consultants.

### Defects in Service

The Client shall promptly report to the Design Professional any defects or suspected defects in the Consultant's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

### Construction Activities

The Design Professional shall not be responsible for the acts or omissions of any person performing any of the Work or for instructions given by the Client or its representatives to anyone performing any of the Work, nor for means and methods or job-site safety.

### Dispute Resolution

Any claim or dispute between the Client and the Design Professional shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). If the Parties cannot agree upon a mediator, the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect. Unless otherwise specified, the laws of the State of Ohio shall govern this agreement.

### Relationship of the Parties

All services provided by Design Professional are for the sole use and benefit of the Client. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Design Professional.

### Entire of Agreement

This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. Should any portion of this Agreement be found to be illegal or unenforceable, such portion shall be deleted and the balance shall remain in effect.

**Applicable Law** The law applicable to this Agreement is the state of the Project location.



September 19, 2024

Mr. Todd Shannon  
Director of Public Works  
City of Willowick  
21230 Vine Street  
Willowick, OH 44095

*sent via email: [tshannon@cityofwillowick.com](mailto:tshannon@cityofwillowick.com)*

Re: PROPOSAL  
Owners' Representative Services  
LAK E 305<sup>th</sup> Street Resurface Project (PID 120114)

Dear Mr. Shannon:

At your request, Osborn Engineering is pleased to submit this proposal to provide Owners' Representative Services throughout the Phase 3 Design and Construction Phase of the LAK E 305<sup>th</sup> Street Resurface Project (PID 120114). We understand our services will be focused on the design review of Construction Plans and Cost Estimates prepared by CT Consultants and the performance of construction related services during the planned construction of this project through Fall 2025. This proposal and the services offered will assure continuous involvement and assistance, as needed, by members of the Osborn Engineering team to assure that the needed reviews and approvals are processed.

### **SCOPE OF SERVICES**

Based upon experience with projects of this nature, we propose to perform the following Owners' Representative services for the City of Willowick.

#### 1. DESIGN-PHASE SERVICES

- 1.01 Perform a design review of the Stage 3 project submittal prepared by CT Consultants
- 1.02 Perform a design review of the Final Tracing stage plans provided by CT Consultants
- 1.03 Perform a review of the final engineers' cost estimate prepared by CT Consultants

#### 2. BID-PHASE SERVICES

- 2.01 Attend (1) Pre bid meeting as needed with ODOT Project Manager
- 2.02 Review questions during the bidding phase as provided by ODOT Project Manager and route to appropriate party for response.

#### 3. CONSTRUCTION-PHASE SERVICES

- 3.01 Participate in (1) one pre-construction conference including ODOT Project Manager, Osborn Engineering, Construction Inspector, the Contractor, and other parties appropriate and necessary for effective communication of the project. Meeting will be organized and led by ODOT Project Manager
- 3.02 Attendance in (16) sixteen bi-weekly construction meetings as established by the contractor, inspector and ODOT project manager. For purposes of this contract, we have included 16 meetings at the construction site or within close proximity of the construction site.
- 3.03 Review and/or respond to the following documents during construction, as requested by ODOT Project Manager for the limited purpose of reviewing for conformance with information given and the design concept expressed in the Contract Documents.



1. (8) Eight Monthly Pay application reviews as provided by the contractor and previously approved by ODOT Project Manager.
2. RFI (Request for information) by the contractor and vetted through the ODOT Project Manager or Construction Inspector. These questions are typically related to the design intent of the drawings or specs and after initial review will be forwarded to the design engineer for response.
3. (3) Three change order reviews as provided by contractor and vetted by the ODOT Project Manager. These reviews will consist of reviewing the reason for change order, cost associated and time extension to determine if they are appropriate and then provide a recommendation for approval or denial.
4. Final punch list walkthrough near end of project with ODOT Project Manager, Construction Inspector and Contractor

### **CLARIFICATIONS**

- We have included up to 3 change order reviews, if additional change orders are required these may be subject to additional fees.
- We have included up to 16 bi-weekly construction meetings, if additional meetings are required these may be subject to additional fees.

Our proposal does not include the following:

- Daily Construction Observation, assessment, reporting and any responsibility regarding the discovery, presence, handling, removal, and disposal of, or exposure of persons to, hazardous materials in any form at the project site, including but not limited to, asbestos, asbestos products, lead, polychlorinated biphenyl (PCB) or other toxic substance.
- Design of any changes needed for contract completion. All design related questions or work shall be forwarded to the design engineer.
- Material testing services.
- Full-Time On-site construction administration or management.

### **FEES**

We will provide the above services according to the following schedule of fees.

Design Phase Services - \$16,500.00

Bid Phase Services – \$1,500.00

Construction Phase Services -

1. Pre-construction Meeting - \$400.00
2. Bi-weekly construction meetings as needed - \$500.00 each (\$8,000.00)
3. Pay Application Reviews - \$400.00 each (\$3,200.00)
4. RFI Review and processing - \$1,000.00
5. Change Order reviews (3) - \$300.00 each (\$900.00)
6. Final Punch list walkthrough - \$600.00

The above fees are set up to provide flexibility with respect to the project. We anticipate the above work will need to be performed, however if there are fewer pay apps or bi-weekly meetings we will only bill for the actual work completed.



**SUMMARY**

We look forward to the opportunity to work with you on this project and are prepared to start immediately upon authorization. If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

**OSBORN ENGINEERING**

A handwritten signature in blue ink, appearing to read 'DJG', is positioned below the company name.

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Daniel J, Gerson P.E., P.S.  
Director of Municipal Engineering

cc: Joe Ferenczy, P.E. - Director of Infrastructure  
Dennis Albrecht, Jr., P.E. - Director of Transportation & Municipal