

ORDINANCE NO. 9-23

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ENVIROSCIENCE, INC. FOR SITE INVESTIGATION, DESIGN, PERMITTING AND CONSTRUCTION OVERSITE SERVICES AS PART OF THE ROCKY RIVER STABILIZATION PROJECT AT HUFFMAN CUNNINGHAM PARK.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized to execute a contract with EnviroScience, Inc. for site investigation, design, permitting and construction oversight services as part of the Rocky River Stabilization Project at Huffman Cunningham Park.
- SEC. 2:** That a copy of the Contract is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 3:** That the funds to cover the contract, in the estimated amount of \$42,500.00 are available in Account #171-0301-52215 (ARPA Fund).
- SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: January 9, 2023

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: January 10, 2023

SIGNED: Dennis Hanwell
Mayor

December 06, 2022

ORD 9-23
EXH. A

Jansen Werhley
City of Medina
132 Elmwood Ave.
Medina, OH 44256

RE: Rocky River Stabilization Project at Huffman Cunningham Park

Dear Mr. Werhley,

EnviroScience is pleased to submit a scope and fee for site investigation, design, permitting, and construction oversight services as part of the proposed bank stabilization project at Huffman Cunningham Park located on the Rocky River in Medina, OH. The following scope and associated fees are a necessary step in resolving the erosion problems.

Task 1: Site Investigation - \$3,300. Data Collection is required to collect topographic elevations for design and modeling. EnviroScience will contact OUPS to locate any known utilities but if Medina staff know of private utilities running through or adjacent to the project area we would appreciate any plans or locations marked such that they can be incorporated into the plans. This information is critical to successful development of a 30% and 60% design.

Task 2. Design Development - \$17,700. Task 1 will illuminate the design limits for stabilizing the bank. A preliminary 30% design plan and a 60% design set will be generated to include the following sheets. A client review period will take place after each plan set deliverable. Project bidding will occur at 60% level plan set. Specifications for the project will be included in the plans, no specifications book will be created as part of this task.

- 30% Plans should include
 - Title Sheet
 - General Notes and Specifications (2 sheets)
 - Property Boundary/Survey Plan (if provided by professional surveyor)
 - Existing Conditions & Demolition Plan
 - We usually combine this into one sheet however can be split into two if necessary for clarity
 - Overall Plan
 - Plan & Profiles – avg slopes in profile for prop tw and bkf (include ex bkf and rtob/lto), rough riffle/pool locations
 - Standard Details
 - Typical Sections
- 60% Plans should include all sheets already started in 30% plus the following:
 - Plan & Profiles – detailed riffle, run, pool, glide elevations; bankfull elevations at begin/end riffle at minimum
 - Cross Sections
 - Planting Plan (trees, seeding, details)
 - SWPPP (4 sheets total)
 - 1 gen notes



5070 Stow Road
Stow, OH 44224

- 1 plan
- 2 details

Task 3: Environmental Permitting - \$4,500. This task covers the development of the USACE Nationwide 13 application in order to place fill below the ordinary high water mark. This task does not include the development of a Notice of Intent (NOI) as that will be the responsibility to fill by City of Medina as the owner of the property. We have included 4 hours of coordination time with local floodplain administrator as this is in a FEMA Zone A. We have not included any coordination with FEMA and a LOMR is not included in this estimate. We do not anticipate the need for a LOMR or substantial coordination with FEMA because a Zone A designation allows for up to a 1 foot rise in base elevation.

Task 4: Mussel Reconnaissance Survey and Report - \$9,000. This task covers the minimum required mussel reconnaissance, report, and agency coordination to obtain site specific approval to complete the stabilization project. In the event the reconnaissance survey discovers mussels are found, a full mussel survey and relocation effort is then required. All mussels in Ohio are protected by the Ohio Division of Natural Resources. The earliest date the investigation can begin is May 1st. We will complete the mussel recon survey as part of the permit application. This price includes the mussel recon survey and report. If live or dead mussels are detected, a full mussel survey will be needed along with possible relocation. The full mussel survey and potential relocation would be additional costs. Survey data are considered valid for a period of five (5) years from the date of the initial survey.

Task 6: Construction Oversight - \$8,000. Construction oversight will consist of approximately 60 hours of oversight for the entirety of the projected three (3) weeks of construction. Typically, these hours are front-loaded to help the contractor understand the intent of the project and answer specific questions while overseeing work. Oversight will ensure that the contractor builds the project to the specifications of the design to reduce the risk of project failure. The City of Medina representative will receive a progress report for each day that oversight is conducted. The plan set was developed to a 60%-level to allow for flexibility during construction. This flexibility will allow for minor adjustments that may be needed in the field as construction progresses towards the goal of a sustainable solution to the currently severely eroded bank. This fee includes a pre-construction meeting and final walk through meeting to identify any punch-list items that may need addressed prior to demobilization.

If you find the scope and fee (\$42,500.00) acceptable, please sign the acceptance page of this letter proposal and return it to us. We will return a fully executed copy for your records.

Sincerely,



Julie Bingham
Restoration Practice Area Manager

CC: Tom Prewitt, Restoration Biologist / Project Manager

AUTHORIZATION TO PROCEED

EnviroScience, Inc. is prepared to begin work immediately upon written authorization to proceed. Costs for this proposal are \$42,500.00. This is a lump sum agreement. The price in this proposal is valid for 60 days from the date of issuance. Terms and Conditions are provided below.

Once the task(s) have been accepted, an officer of EnviroScience will sign, and we will return a fully executed copy for your records.

EnviroScience Executive Officer

Date

Accepted and Authorized to Proceed

Dennis Hanwell Mayor
Name Title
Dennis Hanwell

January 10, 2023
Date

TERMS AND CONDITIONS

1. General

The following Standard Terms and Conditions, together with the attached Proposal and Fee Schedule, constitute the Agreement between EnviroScience, Inc. ("ES") and the entity or person to whom the proposal is addressed ("Client") for the performance of professional services outlined in the proposal. The Standard Fee Schedule may be omitted for Lump Sum type Agreements.

2. Performance of Services

ES's services will be performed in accordance with generally accepted practices of engineers and/or scientists providing similar services at the same time, in the same locale, and under like circumstances.

3. Invoices and Payments

ES will submit Invoices to the Client monthly for work completed during the previous month and a final invoice upon completion of services. Payment will be due within thirty (30) days from invoice date. The Client agrees to pay a service charge of one and one-half (1.5%) percent per month (18% per annum) on past due payments. If an invoice remains unpaid for a period in excess of sixty (60) days, ES reserves the right to pursue all appropriate remedies, including stopping work and retaining all drawings and information without recourse. In the event ES must engage counsel to enforce overdue payments, the Client will reimburse ES for all reasonable attorney's fees and court costs.

4. Insurance

ES is protected by Workers' Compensation Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance coverages. ES will furnish certificates of insurance upon the Client's request.

5. Disclosure of Hazards

ES will take reasonable precautions for the health and safety of ES's employees while at the Clients' Site with consideration for the available information regarding existing hazards. The Client will furnish to ES at the time of the Client's authorization to proceed, all information known to the Client, Client's Counsel, or Site Owner concerning physical hazards, oil, hazardous, toxic, radioactive, or asbestos material in, on, or near the site. If hazards are known to exist and the Client fails to advise ES of such substance or condition, and during the course of the work they are discovered, and such discovery in ES's opinion results or may result in injury or a health risk to persons, whether ES's employees or others, the Client agrees to assume full responsibility and liability and shall hold ES harmless for any and all claims, demands, suits, or liabilities for personal injury, including disease, medical expenses, including but not limited to, continued health monitoring, and/or death, or property damage, and for economic loss, including consequential damages.

6. Confidentiality

ES will hold confidential all business and technical information obtained or generated in performance of services under this Agreement. ES will not disclose such information without the Client's written and/or verbal consent except to the extent required for: 1) performance of services under this Agreement; 2) compliance with professional standards of conduct for the preservation of public safety, health, and welfare; 3) compliance with any court order, statute or law, or governmental directive; and/or 4) protection of ES against claims or liabilities arising from the performance of services under this Agreement. ES's obligations hereunder shall not apply to information in the public domain or lawfully obtained on a non-confidential basis from others.

7. Ownership of Documents and Processes

All documents (including drawings, specifications, estimates, field notes, and other data) and all processes (including scientific, technological, software, and other concepts, whether or not patentable), created, prepared, or furnished under this Agreement by ES or ES's independent contractors and consultants pursuant to this Agreement, are instruments of service in respect of the Project and shall remain the property of ES whether or not the Project is completed. ES shall retain ownership of all documents, drawings, specifications, estimates, field notes, other data, and developed technology or processes and any copyright or right to patent thereto. Upon payment in full to ES, the Client may make and retain copies thereof as is necessary to be used for completed Project only. Such documents are not intended or represented to be suitable for additions,

extension, alterations, or completion of the Project by others, or use in any other project. Any reuse without written verification or adaptation by ES for the specific purpose intended is at the Client's sole risk without liability or legal exposure to ES or its independent contractors or consultants.

8. Trade Secrets and Proprietary Information

The Client acknowledges that ES has developed a number of protocols, techniques, and procedures, as well as specialized equipment for performing and ensuring the quality of laboratory and field services that it provides. Further, the Client acknowledges that ES regards this technical information as being its trade secrets. Client agrees not to use or disclose, directly or indirectly, any such trade secret to any person or organization, unless expressly authorized by ES.

9. References

The Client agrees that ES has authority to use the Client's name and general descriptions of the project work or service performed as references to other clients.

10. Dispute Resolution

All claims, disputes, or controversies arising out of or in relation to the interpretation, application, or enforcement of this Agreement shall be first submitted to non-binding mediation pursuant to the Rules for Commercial Mediation of the American Arbitration Association before legal action is initiated by the other party.

11. Legal Action

All legal actions by either party against the other for any cause or causes, including but not limited to breach of this Agreement, negligence, misrepresentation, breach of warranty, or failure to perform in accordance with the standard of care, however denominated, shall be barred five (5) years from the day after completion of ES's services or the time that the party knew or should have known of this claim, whichever is sooner.

12. Precedence

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document.

13. Severability

If any of the Terms and Conditions are finally determined to be invalid or unenforceable in whole or part, the remaining provision shall remain in full force and effect, and be binding upon the parties. The parties agree to reform these Terms and Conditions to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

14. Survival

These conditions shall survive the completion of ES's services on this project and the termination of services for any cause.

15. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the state of Ohio.