

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH SIXMO, INC. AND DECLARING AN EMERGENCY.

WHEREAS, Section 59 of the Avon Lake City Charter, entitled Competitive Bidding, authorizes the expenditure of funds without public bidding for “personal services” as defined in the Charter; and

WHEREAS, the City of Avon Lake desires to retain the personal services of Sixmo, Inc. of Cleveland, Ohio related to criteria architect for a design-build delivery system using the public procurement process for a new playground system in Bleser Park, known as the Avon Lake Play Space (ALPS).

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF  
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into an agreement (Exhibit A) with Sixmo, Inc. of Cleveland, Ohio, for professional architectural design services that will include a criteria design phase, a procurement phase, and a construction phase for the new playground system. The agreement shall state among its terms that the cost of said personal services shall not exceed \$62,400. Upon completion of their services to the satisfaction of the Director of Finance, he is hereby directed to deliver to Sixmo, Inc. the warrant of this City and to cause said warrant to be paid.

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing criteria design services for a new playground system in Bleser Park, thus for the health, safety, and welfare of the citizens of Avon Lake. Therefore, this Ordinance shall take effect and be in full force immediately after its passage and approval by the Mayor.

PASSED: 11/14/2022

/s/ Martin E. O'Donnell

President of Council

POSTED: 11/18/2022

APPROVED: 11/15/2022

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor



Blessor Park Accessible Playground Criteria Architect  
City of Avon Lake  
Proposal Number 51400322r1  
October 17, 2022

- + **Architects**
- + **Engineers**
- + **Planners**
- + **Code Compliance**

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### **Cleveland Office**

1101 Auburn Avenue  
Cleveland, Ohio 44113  
216-767-5400

### **Zanesville Office**

534 Market Street  
Zanesville, Ohio 43701  
740-452-7434

### **Marietta Office**

204 Front Street  
Marietta Ohio 45750  
740-809-2400



October 17, 2022

Erin Fach  
Recreation Director  
City of Avon Lake  
150 Avon Belden Rd.  
Avon Lake, OH 44012  
440-930-4125  
[efach@avonlake.org](mailto:efach@avonlake.org)

Re: Professional Services Proposal Number 51400322r1  
Blessers Park Accessible Playground Criteria Architect

Erin,

We appreciate the opportunity to provide you with this professional services proposal regarding the above referenced project. We have reviewed the information you provided in an effort to develop a thorough understanding of the project parameters. This understanding is reflected in the following proposal for professional services.

Please review this document and feel free to contact me if you have any questions or comments in its regard. I am generally available between 7:30 AM - 5:00 PM EST in our office at 216-767-5400, extension 100, and always available via email at [pthornton@sixmoae.com](mailto:pthornton@sixmoae.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "Pat E. Thornton", with a long, sweeping horizontal line extending to the right.

Patrick E. Thornton, AIA  
Principal  
Sixmo, Inc.

## PROJECT UNDERSTANDING

The City of Avon Lake (Client) is seeking a proposal for professional services related to Criteria Architect for a design-build delivery system using the public procurement process for a new playground system at Blessers Park.

Sixmo Inc. (Consultant) will provide professional services as described in the following section.

## SCOPE OF SERVICES

The scope of professional services for this project shall include the following:

1. Pre-Design Phase
  - a. Review Client provided documents
  - b. Review and research applicable codes and regulations
  - c. Facilitate project kick-off conference
2. Criteria Design Development Phase
  - a. Coordinate designs with City Engineer and related/adjacent projects
  - b. Develop concept design
  - c. Present concept design to the Client
  - d. Revise concept design
  - e. Facilitate community engagement
    - i. One in-person engagement included
    - ii. Input into online survey content, and review of results is included
  - f. Develop criteria plan, specifications, and preliminary opinion of probable construction costs (OPCC)
  - g. Present criteria plan to Client
  - h. Revise criteria plan documents and adjust OPCC
  - i. Present final criteria package for approval to proceed with Procurement
3. Procurement Phase
  - a. Prepare procurement package
  - b. Prepare and coordinate the issue of advertisement for proposals
  - c. Facilitate pre-proposal conference
  - d. Provide responses to proposer written requests for information
    - i. Issue written addenda to all proposers for any supplemental information generated
  - e. Facilitate proposal acceptance and opening
  - f. Facilitate evaluation of proposals from design-builders
    - i. Proposals will be evaluated utilizing unbiased metrics
    - ii. Proposal evaluations will be based on State of Ohio Standard Forms and Documents system (customized) using a numeric value assigned to a series of qualification criteria summing to a total, rankable score.

- iii. Proposal evaluations will include assigned City of Avon Lake representatives evaluating proposal information via a Consultant generated web portal that eliminates the identity of the proposing firms – leaving only the raw design and qualification data to be considered as a measure to eliminate bias while engaging the City's stakeholders.
- g. Prepare recommendation regarding proposals from design-builders
- h. Present procurement results to the City
  - i. Anticipate 2-3 meetings
- i. Assist the City in the development of a contract between the City and successful proposer
- 4. Design-Build Construction Phase:
  - a. Attend 2 design-build meetings during the design phase
    - i. Facilitated by the design-builder
    - ii. Review design-builder's design for conformance with the Criteria documents
    - iii. Conduct weekly site observation visits during construction / installation to verify conformance with the intent of the criteria
      - 1. Develop site observation reports for each visit+
    - iv. Attend weekly construction progress meetings
    - v. Attend punch-out walk through upon substantial completion and prepare punch-list
    - vi. Manage change process during design and construction
      - 1. Recommend action regarding design-builder change proposals
      - 2. Author/curate change management documents

## DELIVERABLES

Consultant shall provide PDF files and high-resolution images suitable for reproduction for all deliverables, transmitted via email. Additional hard copies of deliverables are available to the Client at Consultant's cost of reproduction and labor, plus 10%.

## CLARIFICATIONS AND EXCEPTIONS

The following clarifications and exceptions refine Sixmo's understanding and offering to this project:

- 1. Plan review and permit fees are excluded.
- 2. Deliverables will be completed on a Consultant title block utilizing Consultant graphic and design standards, such as layers, font styles, line colors, etc. Work will be completed utilizing Autodesk Revit or AutoCad.
- 3. Civil Engineering is not included in this scope of services. Utility design, topographic design, SWPPP and other site design components are not included.
- 4. Changes to the design that are not initiated by the Consultant after the beginning of the development of final criteria documents shall be included in the design and the changes shall be executed as an

additional service. Design changes recommended by the Consultant shall be reviewed with the Client prior to integration and executed as negotiated additional services.

5. Coordination with design professionals executing work related to the services provided by the Consultant shall be the responsibility of the Client. Consultant will endeavor to coordinate work with other disciplines but shall accept no responsibility for conflicts resulting from the Client's or other design professional's or vendor's lack of coordination, communication, quality, omissions or errors.

## SCHEDULE

A mutually agreeable schedule will be established once a signed proposal is received. We anticipate the following general durations by phase:

Pre-Design Phase:	October/November 2022
Criteria Design Development Phase:	December - February 2022
Procurement Phase:	March 2023
Construction Phase:	June-August 2023

## PROFESSIONAL FEES

The professional services outlined herein shall be provided as follows:

Pre-Design Phase:	\$2,400
Criteria Design Development Phase:	\$20,000
Procurement Phase:	\$24,000
Construction Phase:	\$16,000

Total Lump Sum Amount of: **\$62,400**

Additional Services will be charged at an hourly rate of \$200.00. Additional services will only be executed upon written direction from the Client. Consultant can provide the Client with an estimate to complete for all hourly additional services prior to the initiation of any task.

These fees are based on the language included in this professional services proposal. Any requested alterations to the language of this agreement may result in an adjustment to the proposed fee.

## EXPENSES

Expenses included in the professional fees above include:

1. Reproduction of deliverables and in-house progress documents required to execute our services.
2. Mileage/Travel costs related to project meetings, and other local travel required to execute the scope of work.

Expenses that will be considered reimbursable, shall include:

- Reproductions not included in the base scope of services.
  - Reproductions produced in-house will be billed at the following rates:
    - 8-1/2 x 11: \$.25 per page (single or double sided, color or B&W)
    - 11 x 17: \$.50 per page (single or double sided, color or B&W)
    - Large Format: \$1 per square foot
- 3. Mileage/Travel over and above that specifically indicated as included in the base scope of services. This includes mileage and travel expenses incurred resulting from any additional services not specifically addressed above.
- 4. Postage/shipping costs for other than normal day-to-day firm operations, including the cost of shipping hard copies of construction documents and revisions to authorities having jurisdiction and to the Client.

Additional expenses, besides those described above, will be invoiced based on cost +10%. This includes additional subconsultant fees over and above the base services of this scope of work; the payment of permit and application fees that are not specifically included in the base scope of services, and other miscellaneous expenses incurred at the direction of the Client. Additional expenses will only be incurred upon written direction from the Client.

## METHOD OF PAYMENT

Payment for the proposed professional services will be invoiced monthly, in proportion to services provided and expenses incurred between the first and last day of the month, or upon completion of the scope of services. Payments are due **Net 30 Days** from their receipt.

Client agrees that any non-payment of the professional fees under this Agreement will result in interest being charged at the rate of eighteen percent (18%) per annum or the highest amount legally to be charged. Client also agrees that it will be responsible for any costs or fees, including attorney's fees, in the collection of any unpaid professional fee.

If the Client fails to make payments to Consultant in accordance with this agreement, such failure shall be considered substantial non-performance and cause for termination; or, at Consultant's option, cause for



suspension of performance of services under this agreement. If Consultant elects to suspend services, Consultant shall give seven days' written notice to the Client before suspending services. In the event of a suspension of services, Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension, and any expenses incurred in the interruption and resumption of Consultant's services. Consultant's fees for the remaining services and the time schedules may be equitably adjusted.

## STANDARD OF CARE

In providing services under this agreement, the Consultant 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. Consultant will perform its services as expeditiously as is consistent with professional skill and care, and the orderly progress of Consultant's part of the Project. Regardless of any other term or condition of this Agreement, Consultant 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.

## DEFECTS IN SERVICE

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

## COPYRIGHTS AND LICENSES

The Consultant and the Client shall warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service, including drawings and specifications, and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this agreement, the Consultant grants the Client a nonexclusive license to utilize the instruments of service solely for the project, provided that the Client performs its obligations, including payment based on the terms of this document.

If the Instruments of Service are used without retaining the Consultant or without the written permission of the Consultant, the Client releases the Consultant and Consultant's subconsultants from any and all claims and causes of action arising from such use. Any unauthorized use of the Instruments of Service shall be at the Client's risk and without liability to the Consultant.

The Instruments of Service shall be defined as any representation, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and their subconsultants under their respective professional services agreements.

## DISPUTE RESOLUTION

Any claim or dispute between the Client and the Consultant shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. 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.

## CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, subject to Risk Allocation below, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

## THIRD-PARTY BENEFICIARIES

Nothing contained 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 Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

## RISK ALLOCATION

In recognition of the relative risks and benefits of the Project to both the Client (**City of Avon Lake**) and the Consultant (**Sixmo Inc.**), the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the Consultant's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.



## ACKNOWLEDGEMENT

Please acknowledge acceptance of this proposal by signing below and returning a copy to the Consultant. Authorization to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition or deletion.

**Acknowledgement  
and Acceptance:  
(Consultant)**

Sixmo Inc.

By: Patrick E. Thornton, AIA

Title: Principal

Date: October 17, 2022

**Acknowledgement  
and Acceptance:  
(Client)**

City of Avon Lake

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ACCOUNTS PAYABLE

By accepting and acknowledging the terms of this proposal, the Client designates the following individuals to receive invoices and issue payment to Consultant for services rendered on this project.

**Direct all invoices to:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**Carbon copy all invoices to: (optional)**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_