

ORDINANCE NO. 15-26

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO
AN AGREEMENT WITH MKSK TO PERFORM SITE DESIGN SERVICES
FOR THE TRAXLER PARK/ARBORETUM PROJECT IN THE CITY OF AVON
AND DECLARING AN EMERGENCY**

WHEREAS, on or about August 25, 2023, the City of Avon acquired approximately 37.5 acres of land (PPN# 04-00-011-102-123) from the Traxler Family Limited Partnership; and

WHEREAS, Council passed Ord. No. 35-24 on March 25, 2024 to officially name this park the “Traxler Family Arboretum”; and

WHEREAS, the City of Avon proposes to construct, operate, and maintain an arboretum with walking trails, seating, fencing, and restrooms on this property (PPN 04-00-011-102-123); and

WHEREAS, the Administration, working with the Avon Tree Commission and City Arborist, sought a proposal from MKSK to perform design services for the Traxler Family Arboretum to enhance Avon’s quality, character, livability, safety, and economic development potential; and

WHEREAS, the MKSK proposal was reviewed by the City Administration who it to be responsive to the project scope; and

WHEREAS, City Council has reviewed the contract for professional site design services submitted by MKSK and finds the proposal to be in the best interests of the health, safety, and welfare of the citizens of Avon in facilitating the planning and design of the Traxler Park/Arboretum project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the Mayor is hereby authorized to execute an agreement with MKSK for site design services related to the Traxler Park/Arboretum Project in substantially the form as set forth in the attached Exhibit A, which is incorporated herein and made a part of this Ordinance.

Section 2 - Payment up to the amount of **Thirty-Thousand Dollars and 00/100 Cents (\$30,000.00)** to MKSK shall be made from the Traxler Fund No. 407 in said amount. The Finance Director is further authorized to increase this appropriation by a reasonable amount for engineering and legal fees associated with this project.

Section 3 - 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 of any of its committees that 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 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to enter into an agreement with MKSK for site design services for the Traxler Park/Arboretum project as soon as possible to enable the project to begin during the 2026 construction season; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: February 23, 2026 DATE SIGNED: February 23, 2026

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: February 24, 2026



Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara J. Brooks
Barbara J. Brooks, Clerk of Council

Posted: February 25, 2026
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 15-26, passed by the Council of said City on February 23, 2026.

IN WITNESS WHEREOF, I have on this 24th day of February 2026, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

PROJECT NAME: Avon Traxler Site Design Services**MKSK PROJECT #:** TBD**DATE:** 01/26/2026

TO: Bryan Jensen, Mayor, City of Avon**PHONE:** 440-937-7800**EMAIL:** bjensen@cityofavon.com

FROM: Chris Hermann, Principal, MKSK**PHONE:** 614.563.4104**EMAIL:** chermann@mkskstudios.com

DESCRIPTION OF PROJECT

Thank you for reaching out to MKSK with the opportunity to assist the City of Avon with various planning and design projects. As we discussed, our goal is to collaborate with you on efforts to enhance Avon's quality, character, livability, safety, and economic development potential. For this first effort, MKSK will provide hourly design assistance to develop a conceptual plan for the Traxler property to support the city's State funding submission.

We understand that a conceptual plan for a passive park/arboretum is needed quickly for city reviews and inclusion in an early-April submittal. Upon execution of this agreement, we will work with you, the Tree Commission, the City Arborist, and other Staff as needed to provide a conceptual plan and an opinion of probable costs in late February or early March, with additional refinements as needed and as the schedule allows. We expect to provide a full-color aspirational plan for the park that identifies agreed-upon improvements and recommendations. This process will include only a limited number of internal stakeholders and coordination meetings, with no public engagement at this time. Our team will prepare materials for each meeting as directed and mutually agreed upon.

COMPENSATION**PROJECT FEE:** \$30,000☒ HOURLY☐ LUMP SUM**ADDITIONAL SERVICES FEE:** NA☐ HOURLY☐ LUMP SUM**PROJECT EXPENSES:** Included in fee.**TOTAL PROJECT FEES:** \$30,000

AUTHORIZATION**MKSK:** Chris Hermann, Principal, MKSK**CLIENT:** City of Avon**DATE:** 01/26/2026

See attached MKSK Terms & Conditions (4 pages)

TERMS AND CONDITIONS OF PROPOSAL

MKSK

ADDITIONAL SERVICES / STANDARD HOURLY RATES If the Scope of Services is substantially revised, the amount of total compensation shall be equitably adjusted. Fees for requested additional services shall be computed at our standard hourly rates below or outlined under a separate proposal. Rates may be adjusted annually.

Principal	\$ 360
Associate Principal	\$ 290
Senior Associate	\$ 270
Associate	\$ 240
Landscape Architect III	\$ 190
Landscape Architect II	\$ 170
Landscape Architect I	\$ 150
Urban Planner III	\$ 190
Urban Planner II	\$ 170
Urban Planner I	\$ 150
Intern	\$ 100
Administration	\$ 100

PAYMENT DUE Invoices shall be submitted monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. The Consultant has been commissioned by the Client to provide professional services, which are independent of whether the Project for which they are provided is executed by the Client or not. Client shall not withhold amounts from Consultant's compensation to impose a penalty or liquidated damages on Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

DISPUTED INVOICE If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within a reasonable amount of time of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within a reasonable amount of time after presentation of invoice by direct negotiation between the parties shall be resolved in accordance with the Dispute Resolution provision of this Agreement.

SUSPENSION OF SERVICES If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Consultant may suspend performance of services upon seven (7) days' written notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. Upon payment in full by the Client or cure of the breach to the satisfaction of the Consultant, the Consultant shall resume services under this Agreement, and the time for performance of Consultant's services and Consultant's compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

TERMINATION OF SERVICES If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the Consultant.

TERMINATION OF AGREEMENT This Agreement may be terminated by either party upon seven (7) days written notice with or without cause. In the event of termination not initiated by the Consultant, the Consultant shall be compensated for all services performed to the date of termination by Consultant and its Subconsultants, if any, together with their direct project expenses incurred.

MEDIATION In an effort to resolve any conflicts that arise during the design of the Project or following the completion of the Project, the Client and the Design Professional agree that all disputes between them arising out of or relating to this Agreement shall be submitted to mediation pursuant to applicable state law of alternative dispute resolution unless the parties mutually agree to another form of mediation, which shall be a condition precedent to initiation of binding dispute resolution.

APPLICABLE LAW Unless otherwise specified by applicable law, this Agreement shall be governed by the laws of the State of Ohio.

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ENTIRE AGREEMENT This Agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Client and Consultant.

UNAUTHORIZED CHANGES The Consultant, upon delivery of documents to the Client shall not be responsible for any liability, cost or damage that may result from the interpretation or subsequent revision of documents for which the Consultant was not responsible.

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.

OWNERSHIP OF INSTRUMENTS OF SERVICE All reports, drawings, specifications, electronic files, field data, notes and other documents and instruments prepared by the Consultant as instruments of services shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto.

OPINIONS OF PROBABLE CONSTRUCTION COST In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or over the construction contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that subsequent bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

INFORMATION PROVIDED BY OTHERS The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

DELIVERY OF ELECTRONIC FILES In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project for which they were prepared. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant. The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

SEVERABILITY Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

SURVIVAL Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

ASSIGNMENT Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

PROPRIETARY INFORMATION The Client agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Consultant pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant.

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MKSK

ADA COMPLIANCE The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Client understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Consultant, however, cannot and does not warrant or guarantee that the Client's Project will comply with all interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

CORPORATE PROTECTION It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit in negligence, shall be directed and/or asserted only against the Consultant, an Ohio corporation, and not against any of the Consultant's individual employees, officers or directors.

DEFECTS IN SERVICE The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect.

CONSEQUENTIAL DAMAGES Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, construction 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 or 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.

CHANGED CONDITIONS If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

CLIENT IS INTENDED THIRD PARTY BENEFICIARY OF ANY SUBCONSULTANT AGREEMENT To the extent that Consultant enters into one or more Subconsultant Agreements for a portion of the services which Consultant is obligated to perform pursuant to this Agreement, the Client is an intended third-party beneficiary of each such Subconsultant's obligations to the Consultant under the Subconsultant Agreement. Consultant shall incorporate language to this effect into each Subconsultant Agreement. Other than the foregoing, nothing in this Agreement shall create a contractual relationship with or cause of action in favor of a third party to this Agreement.

COMMENCEMENT OF CLAIMS AND CAUSES OF ACTION Both parties agree that any and all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this clause.

ARTIFICIAL INTELLIGENCE The Client understands and agrees that Artificial Intelligence (AI) may be used on the Project. The Parties agree that any AI-generated input used, or output produced, under this Agreement shall be owned by the Consultant and may be used for the purposes outlined herein. The Consultant commits to employing AI technology responsibly and ethically, adhering to industry practices and guidelines, and has developed an internal policy to guide AI usage accordingly. However, due to the inherent complexities and external factors involved in AI, the Consultant is not providing any warranty or guarantee regarding any output produced under this Agreement.

PROMOTIONAL AND PROFESSIONAL MATERIALS Consultant shall have the right, with written consent of the Client, to include photographic or artistic representations of the design of the Project among its promotional and professional materials and be given reasonable access to the completed Project to make such representations. Client shall provide Consultant professional credit in Client's promotional materials for the Project.