

ORDINANCE NO. 76-2020

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PERSONAL SERVICES AGREEMENT WITH THE MANNIK & SMITH GROUP, INC. FOR A SAFETY STUDY OF US 6 (LAKE ROAD) WITHIN AVON LAKE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to retain the personal services of the Mannik & Smith Group, Inc. to conduct a Safety Study of a section of US 6 (Lake Road) within the corporation limits;

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 with the Mannik & Smith Group, Inc. of Shaker Heights, Ohio to conduct a safety study of the existing conditions, roadway operations, crash history and identification of contributing factors of crashes to develop improvements and enhance safety operations of existing and projected traffic conditions.

Section No. 2: That said agreement (Exhibit A) shall state among its terms that the cost of said personal, professional services shall not exceed \$23,500.00. Upon receipt of an itemized billing, in conformance with the guidelines and scope of work as set forth in said agreement to the satisfaction of the Public Works Director, the Director of Finance is hereby directed to deliver to the Mannik & Smith Group, Inc. the warrant of this City in the amount due and payable and to cause said warrant to be paid.

Section No. 3: 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. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity to complete a safety study to improve and enhance this highly traveled road, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

PASSED: 7/13/2020

/s/ Martin E. O'Donnell

President of Council

POSTED: 7/17/2020

APPROVED: 7/14/2020

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor



July 2, 2020

Joseph R. Reitz, PE | Public Works Director
Ted Esborn | Economic Development Director
City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012

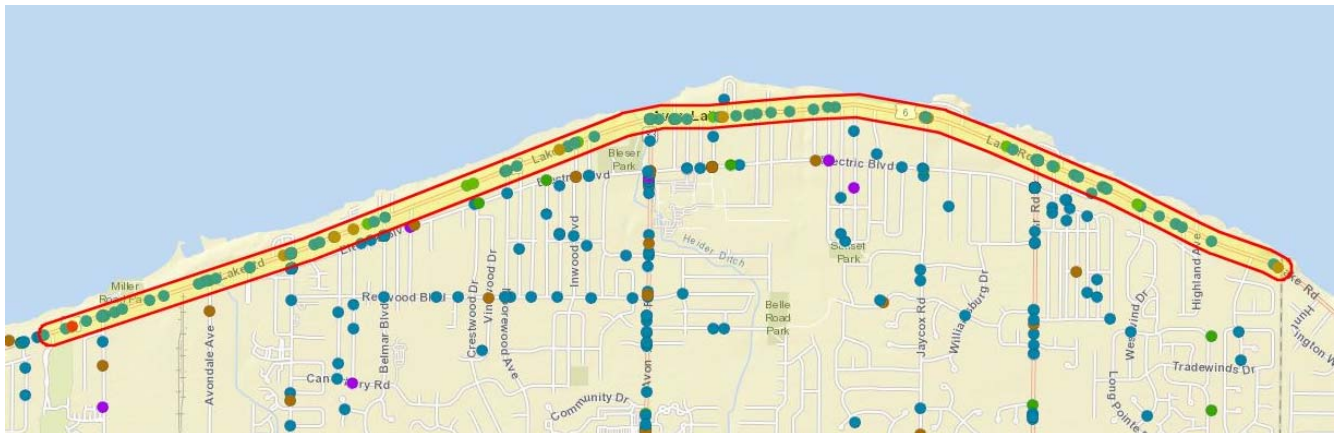
RE: Proposal for Conducting a Detailed Safety Study of US6 (Lake Road) within Avon Lake, OH

Dear Mr. Reitz and Mr. Esborn:

Please find herein a proposal to conduct a detailed ODOT-Style Safety Study for the US6 (Lake Road) corridor within the corporation limits of Avon Lake from near Aquamarine Boulevard on the western edge of the City to Brunswick Drive on the eastern side. Following is a detailed scope of work proposed to conduct the Safety Study.

INTRODUCTION AND SCOPE OF WORK:

The Mannik & Smith Group, Inc. (MSG) is pleased to present the City of Avon Lake with a proposal to conduct a Safety Study for improving the section of US6 (Lake Road) from near Aquamarine Boulevard eastward to the eastern corporation limits near Brunswick Drive as shown on the graphic insert.



The purpose of the safety study will be to evaluate the physical and operational conditions of the corridor; assess the safety issues; determine needed safety improvements to address crash patterns/frequency; assess non motorized improvements given a prevalence of bike & pedestrian crashes; and to evaluate capacity and operational needs for future transportation conditions. The improvements would focus on addressing crash patterns such as providing enhanced safety of bicycle facilities; improved pedestrian crossings; traffic calming techniques; potential road diets where feasible; intersection geometric and traffic control improvements; filling in any sidewalk or bike facility gaps in coverage; upgrading all curb ramps to ADA standards if not present; and determine if additional right of way is needed to implement improvements.

**TECHNICAL SKILL.
CREATIVE SPIRIT.**

OP200911_AvonLake_SafetyStudy_US6-LakeRd_Scope-Fee.docx

MSG will conduct the Safety Study to ODOT standards so it can be used to submit to the ODOT Highway Safety Improvement Program (HSIP) for a safety funding application. This study will include all of the necessary data as listed in the ODOT criteria for the application. MSG will prepare the funding application and attend any meetings requested by ODOT as well. Please be aware that the HSIP is currently offering 100% funding of projects awarded in 2020 applications if your project ranks high enough to receive funding, after 2020, the Safety Program goes back to a maximum of up to 90% funding. MSG will also evaluate in the study if there are any other funding programs that might be potential sources such as the Urban Paving program through ODOT and the Transportation Alternatives Program, STBG, and CMAQ programs through NOACA in case the project does not rank high enough to win safety funds.

BACKGROUND

Our proposal is based upon the ODOT requirements for applying to the Safety Program; familiarity of the transportation network from our recent site visit; previous discussions on the project with the City; and MSG's experience/success in securing Safety Funds for similar projects. This proposal demonstrates that MSG understands your needs, is experienced in completing these types of studies/funding applications, and has the desire to perform this project in an efficient, timely and cost-effective manner. We trust that the scope of our service(s) detailed herein conveys the expertise of our project team and our commitment to provide the quality consulting service you expect and deserve.

OBJECTIVE

The objective of the Safety Study is to review and analyze the section of roadway as discussed previously and prepare documentation of the existing conditions; roadway operations; crash history; identify possible contributing factors of crashes; and develop improvements for enhancing operational conditions and safety for existing and projected traffic conditions. Typical improvements that are often evaluated include: upgrading roadways to current design standards; geometric improvements primarily at intersections; potential roundabouts and/or traditional stop control improvements; pedestrian/bicycle improvements such as Pedestrian Hybrid Beacon (PHB) signals or Solar LED Rectangular Rapid Flashing Beacon (RRFB) marked crosswalks; and improving sight distance issues that can limit views of oncoming traffic. The Safety Study will be used to submit with a funding application to the Safety Program (or other applicable funding programs) to request funds for the identified project improvements.

DETAILED SCOPE OF WORK

The Safety Study will be conducted in accordance with the Ohio Department of Transportation's (ODOT) guidance of required data and analyses for a Safety Program Application. Specifically, we propose the study to contain the following information based on ODOT criteria:

Safety Study Items:

- A. ***Project Location Map*** – A map will be developed that shows the project location as well as the functional classification of the roadway.
- B. ***Photos of Project Site*** – Photos of the project limits will be taken and incorporated into the study to document the project need and proposed improvements.
- C. ***Project Purpose & Need Summary*** – This statement will briefly outline the identified need elements for the project and the intended purpose of the project.
- D. ***Project Scope & Schedule*** – A *timeline of the proposed conceptual improvements identified in the study* will be developed based on the cost of the project, coordination with other projects in area, availability of local match requirement, and other funding sources that may be associated with the project.

E. **Data to be Collected and Analyzed for the Project** – The following data listed below will be collected and analyzed for the project so they can be incorporated into the Feasibility Study:

- *Traffic Volumes*
- *Volume to Capacity Ratio*
- *Pavement Conditions Ratings (PCR) – If needed for type of project improvements*
- *Crash Rates and/or HSM Excess Crash Locations*
- *Crash Frequency or Density*
- *Relative Severity Index*
- *Crash History (3 most recent available years) and Collision Diagrams (2017-2019 assumed)*
- *Physical Conditions Diagram*
- *Any other supporting data such as utility conflicts; economic development needs; safety concerns of facility for pedestrians/bikes from school/recreational area, etc.*

Development of Base Traffic – The Ohio Department of Transportation (ODOT) currently has guidance that studies should not be conducting traffic counts during the reduced traffic volumes on our roadway networks from the impacts of the COVID-19 Pandemic. We anticipate using existing available traffic data if such is detailed enough to develop base traffic for the corridor. If by chance ODOT changes its guidance and indicates traffic counts are plausible to conduct again, then we will utilize our Miovision video traffic counters to collect turning movement counts at several key intersections. The anticipated intersections if counts can be conducted would include:

- Miller Road & Lake Road (US6)
- Moore Road & Lake Road (US6)
- Avon Belden Road (SR83) & Lake Road (US6)
- Armour Road & Lake Road (US6)
- Sunset Road & Lake Road (US6)
- Jaycox Road & Lake Road (US6)
- Lear Road & Lake Road (US6)
- Westwind Drive & Lake Road (US6)
- Brunswick Drive & Lake Road (US6)

F. **Data Analyses** – The data above will be analyzed to determine existing conditions, operations, and planned infrastructure improvements to develop improvement needs for the roadway.

G. **Conceptual Improvements & Cost Estimate** – Conceptual improvements will be developed and shown on an aerial of the proposed project layout. In addition, preliminary planning level cost estimates for the proposed improvements will be developed for application to funding programs.

SCHEDULE

The Safety Study can begin as soon as the authorization to proceed is received along with a purchase order number. In regards to time frames for submitting to the Safety Program, The next round of funding applications are due by September 30, 2020, however the local ODOT District 3 Office prefers to receive the draft safety study and recommendations about 6 weeks in advance of the deadline so they can have input on the recommendations and to rank the project locally on projects being submitted to the District. This would put the timeframe to submit the draft study and recommendations around August 17th to District 3. Depending on the authorization to proceed date, this could be a tight timeframe to achieve. The next submittal date would be April 30, 2021. MSG would make every attempt to get the safety study draft ready by mid-August this year, because in 2020 there currently is a funding allowed by ODOT of 100%. Then in 2021 submittal rounds this drops back to the traditional up to 90% being the maximum amount that can be requested.

ASSUMPTIONS

The following data is being requested from applicable agencies if it is available:

City of Avon Lake Data Needed (if available):

- Roadway plans on Lake Road (US6) along the corridor section. These plans would ideally show ROW limits, survey information (including topo), roadway widths, plan & profiles; pavement markings, and drives;
- Traffic signal plans that show timing/phasing;
- Utility plans along the Lake Road corridor;
- Any available traffic counts (especially turn movement counts);
- GIS data if available;
- Any other items that may be beneficial for the safety study

Possible Data Requests from Other Sources (if available):

- MSG will access the GCAT (GIS Crash Analysis Tool) from ODOT to analyze the crash history of the study area for the three most recent years that are available.
- Other various online sources of data (mostly NOACA and ODOT) will be accessed for data.
- ODOT data via online TIMS web program.

DELIVERABLES

We anticipate the following project deliverables:

- Full PDF of the finalized Safety Study;
- Conceptual Figures and Cost Estimates;
- MSG will prepare an ODOT Safety Program funding application and provide a PDF of the submittal items;
- MSG will prepare a PowerPoint presentation for the project interview to the Highway Safety Improvement Program (HSIP) review committee. MSG will attend any meeting requested by ODOT for presenting the project to their review team at no additional costs and will assist the City through the process.

FEE SCHEDULE

The Scope of Work for this project has been detailed above and enables MSG to determine the work effort required to complete the project. MSG proposes to conduct this project on a lump sum fee basis and invoice on a percent completion basis. MSG proposes to complete this project for the following lump sum amount:

☒ LUMP SUM (Includes reimbursable & materials used)

Scope of Work (as outlined herein)..... \$23,500

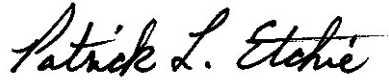
For the purposes of fiscal control, MSG will notify you at such time, as it becomes apparent that costs may exceed the estimated amount because of potential out of scope items that were not outlined herein, and will seek your approval to proceed. In the absence of such communication, we guarantee our costs for the above work will not exceed the total indicated. We agree that reasonable variation to the work to be performed may be made, but reserve the right to renegotiate the above amounts should significant variation or additional work beyond the scope is requested.

AGREEMENT

The costs provided in this proposal are confirmed for a period not to exceed sixty (60) days. If this proposal meets with your approval, you may signify acceptance by signing and dating the designated locations attached and returning one signed copy to the undersigned. Your signature will be our written authorization to proceed with the project. Alternately, you may issue a purchase order referencing the date and scope of this proposal.

MSG appreciates the opportunity to provide this proposal and looks forward to serving the City of Avon Lake. Please do not hesitate to contact the undersigned if you have any questions, require clarifications pertaining to the specifics of this proposal, or would like additional information.

Sincerely,



Patrick L. Etchie, AICP
Project Manager | Associate



Sheri L. Bokros
Principal | Client Services Representative

AGREEMENT FOR SERVICES

By execution of this Agreement, the Client authorizes The Mannik & Smith Group, Inc. to provide the services described within the proposal designated below according to the attached Terms and Conditions. In the event client directs The Mannik & Smith Group to proceed with the work, even if not signed below, the Terms and Conditions are considered accepted by the Client.

No terms or conditions other than those stated within the attached, and no agreement or understanding oral or written, in any way purporting to modify these terms and conditions whether contained in Client's purchase order or elsewhere, shall be binding on MSG and its subcontractors unless hereafter made in writing and signed by an authorized representative of MSG. All proposals, negotiations, and representations, if any, made prior to, and referenced hereto, are merged herein.

APPROVAL AND ACCEPTANCE

The Mannik & Smith Group, Inc. is hereby directed and authorized to proceed with the services for the designated project in accordance with the provisions of this Agreement.


Proposal Date: July 2, 2020

Proposal Number: OP200911

CITY OF AVON LAKE, OHIO

THE MANNIK & SMITH GROUP, INC.

Signature



Signature

Name (Printed)

Sheri L. Bokros

Name (Printed)

Title

Principal / Vice President

Title

Date

July 2, 2020

Date

**The Mannik & Smith Group, Inc.
Standard Terms and Conditions**

Services: The Mannik & Smith Group, Inc. (MSG) will perform the Scope of Work as set forth in MSG's proposal and in accordance with these Terms & Conditions. MSG has developed the Scope of Work, schedule, and compensation based on Client provided information and various assumptions about Client's needs and preferences. The Client acknowledges that equitable adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by MSG in performing their services.

Client further acknowledges that the Scope of Work for this Agreement was prepared at Client's request. In the event that the Scope of Work or a portion thereof for this Agreement, was developed by a party other than MSG, MSG makes no claims as to its adequacy, since MSG was not involved in or privy to the information and considerations that it reflects. Accordingly, Client acknowledges that MSG is forced to assume that the Scope of Work is fully adequate for Client's purposes. Client also understands that MSG assumes that Client has an alternative source from which to obtain any needed or desired services not listed.

Additional Services: The Client and MSG acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, MSG shall notify the Client of the need for additional services, the Client shall pay for such additional services in an amount, and manner as the parties may subsequently agree.

Compensation: In consideration of the services performed by MSG, the Client shall pay MSG in the manner set forth in the MSG proposal. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays, disruptions or extensions of time beyond the control of MSG.

Where total project compensation has been separately identified for various Tasks/Work Orders, MSG may adjust the amounts allocated between Tasks or Work Orders as the work progresses so long as the total compensation amount for the Project is not exceeded.

The Client shall be solely obligated to pay and remit to the appropriate governmental authority such sales, value added, duties, withholding or other taxes on MSG's services, Subcontracted Services and Reimbursable Expenses without reduction of MSG's compensation. Payment for MSG's services shall be made in United States dollars.

Project Requirements: The Client has the right to retain its own consultants and contractors (Client's Consultants) to perform services on the Project and shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception and provide any reports, testing, and documents necessary for MSG to complete its Scope of Work. MSG, Client, and Client's Consultants shall coordinate Project related services. MSG shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness and timeliness of services and information furnished by Client and Client's Consultants. However, MSG shall provide notice to the Client if MSG becomes aware of any error, omission or inconsistency in such services or information. If the Client has established design standards, they shall be furnished to MSG at Project inception. MSG will review the Client design standards and may recommend alternate standards considering the Standard of Care provision. Client's Consultants shall be properly licensed to practice in the jurisdiction of the Project and shall maintain insurance, including professional liability

insurance, as sufficient and appropriate for the Project. The Client shall identify a representative authorized to act on Client's behalf with respect to the Project.

Period of Service: MSG shall perform the services for the Project in a timely manner consistent with its Standard of Care. MSG will strive to perform its services according to the Project schedule set forth in the MSG proposal. The services of each task shall be considered complete when deliverables for the task have been presented to the Client for review and approval. MSG shall be entitled to an extension of time and compensation adjustment for any delay and/or disruption beyond MSG control. MSG is not responsible for any delay and/or disruption beyond its control.

Payment Terms: Client recognizes that time is of the essence with respect to payment of Consultant's invoices and that timely payment is a material part of the consideration of this Agreement. MSG shall submit monthly invoices for services performed and Client shall pay the full invoice amount within 30 calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within 30 calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Client will exercise reasonableness in contesting any billing or portion thereof. MSG shall be entitled to a 1.5% per month administrative charge in the event of payment delay. Client payment to MSG is not contingent on arrangement of project financing, property acquisition, or approvals necessary for project initiation through completion. Invoice payment delayed beyond 60 calendar days shall give MSG the right to suspend services until payments are current. Non-payment beyond 70 calendar days shall be just cause for termination by MSG.

In cases where MSG has issued reports and/or letters of reliance, MSG may also notify the Client and any other party to which these reports and/or letters of reliance were issued of MSG's withdrawal of reliance upon the information contained therein, and request return of all written reports, data, and other information as the rightful property of MSG, based upon the Client's failure to pay. In the case of such a request, the Client agrees to return of all documents and/or letters of reliance, and provide written notification to any party to which MSG's reports or data were disseminated, notifying them of MSG's withdrawal of reliance. MSG shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension or termination.

Assignment: In lieu of any provision in this Agreement against assignment, MSG or the Client may propose an assignment of its rights and responsibilities under this Agreement to a third party when the following conditions have been met: prior to any assignment, the party proposing to assign its rights and responsibilities under this Agreement and that party's proposed assignee shall furnish to the other reasonable evidence that arrangements have been made by the proposed assignee to fulfill the assigning party's obligations, including financial obligations, under this Agreement. If the party subject to assignment has no reasonable objection to the proposed assignment, the proposing party may then assign the Agreement. Any expense incurred by MSG because of the assignment shall be considered as an Additional Service and compensated in accordance with this Agreement.

Betterment: If, due to MSG's error, any required item or component of the project is omitted from MSG's reports, plans or construction documents, MSG shall not be responsible for paying the cost to add such

item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will MSG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

Buried Utilities: Client will furnish to MSG information identifying the type and location of utility lines and other man-made objects beneath the Project Site's surface. Using information provided by the Client, MSG will conduct research and prepare a plan indicating the locations intended for subsurface penetration with respect to assumed locations of underground improvements. Such services by MSG will be performed in manner consistent with the Standard of Care. Client recognizes that the research may not identify all underground improvements and that the information of which MSG relies may contain errors or may not be complete. Client and MSG mutually agree to field validate the location of underground utilities or other man-made objects and vet final subsurface penetration locations to the satisfaction of both parties. Further, Consultant reserves the right to notify local utility protection agencies or services, and to delay project implementation until these agencies or services have identified known utility lines or other subsurface man-made objects. MSG will take reasonable precautions to avoid damaging any identified utility lines or other man-made objects. Client agrees to waive any claim against MSG, and to defend, indemnify and hold MSG harmless from any claim or liability for injury or loss, including economic damages arising, or allegedly arising, from MSG's damaging underground utilities or other man-made objects that were not called to MSG's attention, which were not properly located on plans furnished to MSG, or were not identified or properly marked by any utility protection agency or service contracted by MSG unless damages are caused by the sole negligence or willful misconduct of MSG.

Changed Costs: MSG shall have the right to increase its hourly rates, payable by Client to MSG, for any non-lump sum fee in the event that performance of this Agreement extends beyond one year from the date of execution.

Compliance with Laws: MSG shall perform its services consistent with its Standard of Care and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice or official interpretations thereof change during the Project, MSG shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Confidentiality: MSG will hold in confidence any information about the Client's operations that would normally be considered confidential. Such obligation shall not hold with respect to:

- a. Information which is in the public domain or which enters public domain in the future through no fault of MSG.
- b. Information known to MSG prior to disclosure by the Client or information disclosed to MSG at any time by a third party.
- c. Information that is released from its confidential status by the Client.
- d. Where disclosure is required by court order or governmental directive, provided that prior written notice is given the other party.
- e. Where disclosure is required to comply with a professional code of conduct or ethics.
- f. Where disclosure involves a dispute resolution proceeding between the parties.

The Client agrees that the technical methods, techniques and pricing information contained in any proposal submitted by MSG pertaining to this Project or Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of MSG.

Consequential Damages: The Client and MSG waive consequential damages which include but are not limited to profits, loss revenues, loss of use, loss of financing and loss of reputation, for claims, disputes or other matters in question arising out of, or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, equity or that might arise out of or being included with the parties' indemnification obligations.

Cost Estimates or Opinions: MSG may prepare cost estimates or opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and MSG acknowledge that neither the Client nor MSG has control over the cost of labor, materials, or equipment; a contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Therefore, actual costs may vary from the cost estimates or opinions prepared and that MSG offers no guarantee related to the Project cost.

Defects in Service: The Client shall promptly report to MSG any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor agreement and shall require all subcontracts at any level to contain a like provision. Failure by the Client and Client's contractors and subcontractors to notify MSG shall relieve MSG 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. MSG will correct defects, at its own cost, if timely notified by Client.

Design Professional as Business Entity: Client acknowledges that MSG is a business entity and agrees that any claim made by the Client arising out of any act or omission of any member, owner, partner, manager, director, officer or employee of the business entity in the execution or performance of the Agreement shall be made solely against the business entity and not against any individual or group of individuals in any capacity.

Dispute Resolution: In the event of a dispute between MSG and Client arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. The Client and MSG shall endeavor to resolve claims, disputes and other matters in question during a meet and confer session. A meet and confer session shall be attended by the Client and MSG or their authorized representatives who shall have the authority to bind the parties. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy. If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation.

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. Any court action required to enforce the terms of this Agreement and/or any legal proceeding to enforce, enter judgment upon, vacate and/or modify the dispute award shall be filed in the Court of Commons Pleas, Lorain County, Ohio. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

Force Majeure: MSG shall be entitled to an equitable adjustment to the schedule and compensation for force majeure events, including but not limited to: acts of God or the public enemy, Acts of any government in its sovereign and/or contractual capacities, fires, acts of war, terrorism, violence, floods, epidemics, quarantine restrictions, strikes, embargoes, and unusually severe weather or any other cause outside of the control of

MSG. MSG shall notify Client in writing after the beginning of any such cause becomes known, which would affect its performance. In the event a force majeure event continues for more than 30 days, MSG may terminate this Agreement for convenience and shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices.

Governing Law: The terms of this Agreement shall be governed by the laws of the State of Ohio without regard to any choice of law principles. Nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the State of Ohio.

Independent Consultant: MSG shall serve as an independent consultant for services provided under this Agreement. MSG shall retain control over the means and methods used in performing their services and may retain subconsultants to perform certain services as determined by MSG.

Information from Other Parties: The Client and MSG acknowledge that MSG will rely on information furnished by other parties in performing its services under the Project. MSG shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Insurance: At a minimum, MSG will maintain the following insurance and coverage limits during the period of service if such coverage is reasonably available at commercially affordable premium. Upon request, the Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

Worker's Compensation:	As required by applicable state statute
Commercial General Liability:	\$1,000,000 per occurrence (bodily injury including death and property damage) \$2,000,000 aggregate
Automobile Liability:	\$1,000,000 combined single limit for bodily injury and property damage
Professional Liability:	\$2,000,000 each claim and in the aggregate

The Client shall arrange for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. MSG shall be a named additional insured on those policies where MSG may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Integration: This Agreement constitutes the entire agreement between the parties and may only be amended by written agreement by both parties. Should any portion be found to be illegal or non-enforceable, such portion shall be deleted and the balance shall remain in effect.

Lien Rights: MSG may file a lien against the Property in which the Project is situated and/or file a claim against any available payment bonds for the Project in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by MSG are considered property improvements and the Client waives the right to any legal defense to the contrary.

Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and MSG, the Client agrees to the fullest extent permitted by law, to limit the liability of MSG for any and all claims, losses, breaches, damages or expenses arising out of this Agreement and/or MSG's performance of services on the Project, from any and all

causes, to \$50,000 or the fee realized by MSG for the Project, whichever is greater.

Notification of Hazardous Materials: The Client warrants they have disclosed the location and quantity of all potential wastes, hazardous materials, including asbestos, and/or petroleum compounds (Hazardous Materials), whether regulated or unregulated, that are assumed or suspected to exist or may be encountered on the Project. In the event undisclosed and/or unknown materials/compounds are encountered where there is no reason to believe they could or should be present, MSG may be required to take appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations, and to follow procedures MSG deems prudent to minimize risks to its employees, the public, and the environment. MSG shall notify Client as soon as practically possible in the event unanticipated Hazardous Materials or suspected Hazardous Materials are encountered. Under these circumstances, MSG shall be entitled to an equitable adjustment to the schedule and compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws.

In addition, Client understands and agrees that in seeking the professional services of MSG under this Agreement, Client may request MSG to undertake obligations involving or related to Hazardous Materials. To the fullest extent permitted by law, Client agrees to defend and indemnify MSG and its subcontractors, consultants, agents, officers, directors and employees from any claim or liability or loss, including reasonable attorney fees arising from or connected with the presence, discharge, release, or escape of Hazardous Materials or environmental liability of any nature or in any manner related to services performed by MSG as part of the Project, including the failure to discover any Hazardous Materials which may exist in, on, above, beneath, about or which have migrated onto, or under, the Project Site except for those events caused by the sole negligence or willful misconduct of MSG. Without limiting the generality of the foregoing, the above indemnification extends to claims resulting from:

- Client's violation or alleged violation of any federal, state or local statute, regulation or ordinance relating to the disposal of Hazardous Materials;
- Client's or MSG's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of Hazardous Materials found or identified at the site;
- Hazardous Materials introduced at the Project site by Client or third persons before or after the completion of services herein;
- Allegations that MSG is a generator, operator, treater, storer, transporter, arranger for transport, handler, or disposer under RCRA, the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA") or any other federal, state or local law, regulation or ordinance.

MSG and its subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons or property to Hazardous Materials in any form at the Project site.

Ownership of Documents: Documents prepared or furnished by MSG pursuant to this Agreement are instruments of MSG's professional services and MSG shall retain an ownership and property interest therein, including all copyrights. Upon payment for services rendered, MSG grants Client a license to use instruments of MSG's professional service for its intended purpose. It is expressly understood that computer-aided design and drafting (CADD) and/or building information modeling (BIM) files are issued only as supplemental information for convenience to the Client or other authorized users. CADD and BIM, like any electronic data, transferred in any manner or translated from the system and format used by MSG pursuant to this Agreement, to another system or form, are

subject to errors and modifications that may affect the accuracy and reliability of the data, and, in addition, that electronic data may be altered or corrupted whether inadvertently or otherwise. As such, record documents of service shall be based on the printed copy. Reuse or modification of any such documents by Client, without MSG's written permission, shall be at Client's sole risk, and Client agrees to indemnify, defend and hold MSG harmless from all claims, damages and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client.

Relationship of The Parties: All services provided by MSG 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 MSG.

Safety: MSG shall be responsible solely for the safety precautions or programs of its employees and no other party. In no event will MSG be responsible for construction methods, means, techniques or sequences of construction, which are solely the responsibility of the Contractor, nor shall MSG be responsible for the Contractor's failure to perform Contractor's work in accordance with the requirements of the Contract Documents.

Severability: Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and MSG will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Standard of Care: Services provided by MSG will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances (Standard of Care). The standard of care shall exclusively be judged as of the time the services are rendered and not according to later standards. MSG makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services.

Survival: All provisions of these terms that allocate responsibility or liability between the Client and MSG shall survive the completion or termination of services for the Project.

Suspension of Work: The Client may suspend services performed by MSG with cause upon fourteen (14) calendar days written notice. MSG shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days. MSG shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

MSG may suspend services if Client fails to make payments to MSG in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement. Such failure shall be considered substantial nonperformance and cause for termination or, at MSG's option, cause for suspension of performance of services under this Agreement. If MSG elects to suspend services, MSG shall give fourteen (14) days' written notice to the Client before suspending services. In the event of a suspension of services, MSG shall have no liability to the Client for delay or damage because of such suspension of services. Before resuming services, MSG shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of MSG's services. MSG's fees for the remaining services and the time schedules shall be equitably adjusted.

Termination: In the event of substantial failure by a party to fulfill its obligations of the terms hereunder, that party may be deemed in default. If the party fails, within seven (7) calendar days after receipt of written notice to commence and continue satisfactory correction of the default with diligence and promptness, then the other party without prejudice to other remedies it has, may terminate this Agreement for cause. In the event of a termination, MSG shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices for accepted services within fourteen (14) calendar days.

Third Party Claims: 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 MSG. However, in the case of a third party claim, the Client will compensate MSG for services performed in defense of such claim unless the claim resulted from the negligent act, error or omission of MSG.

Violations of Law: The Client agrees, to the fullest extent permitted by law, to defend and hold MSG harmless from any and all violations of laws and/or failure to comply with governmental regulations, including but not limited to the Foreign Corrupt Practices Act (15 USC §78dd-1 et seq.), the False Claims Act (31 USC § 3729 et seq.), the Buy American Act (41 USC § 8301 et seq.) and the "Buy American" Provisions (Section 1605) of the American Recovery and Reinvestment Act (Pub. L. 111-5), to the extent caused by the Client or his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.

Waiver of Rights: The failure of either party to enforce any provision of these Terms and Conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Revised January 2020