

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A MODIFICATION TO THE PERSONAL SERVICES AGREEMENT WITH THE MANNIK & SMITH GROUP, INC. FOR THE LOR-US6-18.52 PEDESTRIAN IMPROVEMENT PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, Council authorized the Mayor to negotiate a personal services agreement with the Mannik & Smith Group, Inc. for design services associated with the LOR-US6-18.52 Pedestrian Improvement Project by Ordinance No. 22-174; and

WHEREAS, ODOT and the Mannik & Smith Group have determined that the right of way impacts required in the project have increased from 25 to approximately 60 impacts; and

WHEREAS, design services for 35 additional right of way impacts are necessary for the project to continue, and a modification to the negotiated agreement is required.

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 execute a modification to the agreement (Exhibit A) with the Mannik & Smith Group, Inc. of Shaker Heights, Ohio to design pedestrian safety improvements that will include sidewalks, ADA-compliant curb ramps, and pedestrian crossings from S.R. 83 to the eastern corporation limit of Bay Village for the additional sum of \$116,425.00.

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 to improve accessibility along Lake Road and provide pedestrian safety improvements, 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: 7/10/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 7/14/2023

APPROVED: 7/11/2023

ATTEST: /s/ Valerie E. Rosmarin

Clerk of Council

/s/ Gregory J. Zilka

Mayor



July 7, 2023

Chris Howard, PE | Consulting City Engineer

City of Avon Lake

150 Avon Belden Road
Avon Lake, Ohio 44012

RE: PID 117317 – LOR-US6-18.52 (Avon Lake, OH) – Modification 1

Dear Mr. Howard:

The Mannik & Smith Group, Inc. (MSG) appreciates the opportunity to continue to provide the City of Avon Lake design and coordination services to enhance the safety of its transportation network along Lake Road (US 6) from Avon Belden Road (SR 83) to the eastern corporation limit of Bay Village. This modification serves to update plan design and development based on our discussion June 13, 2023 and previous coordination related to right-of-way impacts within the project corridor.

BACKGROUND

This project is a continuation of the US 6 curb ramp improvement and Urban Paving Project (PID 107477) and accounts for the remaining sidewalk upgrades along the US 6 corridor from SR 83 east to the corporation limits with Bay Village, Ohio. Recent coordination efforts have determined that there is a greater number of right of way impacts based on refined right of way information and updated design requirements to update the proposed sidewalk width from four (4) feet to five (5) feet where possible.

MSG will incorporate the balance of the pedestrian improvements as recommended in the US 6 Safety Study as developed for the City of Avon Lake by MSG in 2021. This second phase of improvements focuses on improved pedestrian safety which includes the addition of sidewalks to complete sidewalk connections, upgrades to curb ramps to meet ADA guidelines, and the addition Rectangular Rapid Flashing Beacons (RRFB) at the intersections of US 6 with Armour Road and Jaycox Road.

SCOPE OF WORK

MSG has been retained by the City of Avon Lake to provide design documents and quantities for sidewalks, curb ramps, and RRFBs. Modifications to the original scope of work will be performed according to ODOT specifications and as detailed in the attached ODOT worksheets as provided in **Appendix A**. The general projects limits are as shown in **Appendix B** and was provided in the original scoping documents.

Survey

Minor additional topographic survey to cover 35 additional property impacts within the corridor. Topography will cover those areas of right-of-way impacted by new construction. Permanent structures will be located using aerial photography where not covered by topography covered in areas with impacts.

Traffic and Curb Ramp Design

Lake Road (US 6) Sidewalk, Curb Ramp Design, Details and Quantities

The scope of work remains the same, however, additional effort is included to review updating the sidewalk width from four (4) feet to five (5) feet where practical and minimizing both utility conflicts and the need for additional R/W. This effort will result in updates to the project design and plan sheet detailing. Additionally, ODOT has stated if no

work is performed on the parcels that contain existing sidewalk outside of the existing R/W, the walks can remain “as is” except where proposed sidewalk connects to existing sidewalk. This requirement may impact directly connecting proposed sidewalks to existing sidewalks at some locations.

Maintenance of Traffic

No change of scope.

Traffic Control – Signals/Signing

No change of scope.

Traffic Control – Pavement Markings

No change of scope.

Drainage Design

Additional drainage analysis is required in an effort to provide additional five (5) foot segments of sidewalk. Drainage improvements will be considered where required to maintain positive drainage through the site. This includes reuse of existing inlets and the intent is to not provide new inlets as there are a limited number of existing inlets to tie into. Drainage design will be limited to minor grading and resetting or relocation of inlet castings.

Right-of-Way Plan Development

There are an estimated 310 total parcels within the project limits with approximately 35 additional parcels included for this modification. With the original anticipated 25 parcels, there is a total of 60 parcels requiring property strip takes to install the proposed sidewalk within the project limits. The remaining 250 parcels will not be detailed but will be displayed utilizing Lorain County GIS information. No deed research will be performed for the 250 parcels that are not impacted. Right-of-way plans will be developed using ODOT Standards covering the entire project corridor with only those parcels with right-of-way strip takes being detailed with additional effort included as a part of this modification.

Utility Coordination

No change of scope.

Environmental and NEPA Investigation

No change of scope.

Design Deliverables

- Plan sheets with sidewalk, curb ramp details, pavement marking details – 60 sheets (no change but additional effort to review updating sidewalk width from four (4) feet to five (5) feet in width.)
- Cross Sections – preliminary for utilities, drainage, grading and work limits – 150 Sheets (revisions in cross sections in consideration for updating sidewalk width from four (4) feet to five (5) feet in width.)
- Right-of-Way Plans (additional sheets for 35 additional parcels):
 - o Property Map – 3 Sheets (updates)
 - o Summary of Additional Right-of-Way – 5 Sheets (updates)
 - o Detailed ROW Plan Sheets – 35 Additional Sheets (only those sheets with right-of-way acquisition will be detailed)

SCHEDULE

From the date of notice to proceed and pending ODOT approval, the anticipated schedule for providing submittals based upon the following:

- | | |
|----------------------|---|
| - July 2023: | Authorization to Proceed with Modification Work |
| - October 30, 2023: | Preliminary R/W Submitted |
| - November 27, 2023: | Preliminary R/W Approved |
| - December 26, 2023: | Authorization for Preliminary R/W Acquisition |
| - February 15, 2024: | Final R/W Plans Submitted |
| - March 14, 2024: | Final R/W Plans Approved |

- March 29, 2024: Environmental Clear
- April 12, 2024: Detailed Design and Full R/W Authorization Received
- December 13, 2024: R/W Clear
- January 8, 2025: PS&E Package to District
- January 31, 2025: District R/W Cert
- February 5, 2025: Plan Package to C.O.
- April 2, 2025: Sale
- April 30, 2025: Award

PROJECT FEE

As justified upon consideration of project specifics, MSG proposes to perform this project on a time and materials, not to exceed fee basis. The not to exceed fee basis means that the project will be charged only for effort actually expended, to a maximum of the total identified below. Fees may be below but not above the project total without prior authorization upon justification to the Client. Fees will be based upon the number of actual hours work by each employee's actual rate with overhead and net fee applied.

The Scope of Work for this project has been detailed above and enables MSG to estimate the work effort required to complete each task for this modification to the original contract. Based upon the project scope identified above, MSG proposes to complete this project for the following amount:

Total Project Fee\$116,425

For the purposes of fiscal control, MSG will notify you at such time as it becomes apparent that costs may exceed the estimated amount and will seek your approval to proceed. 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 be 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, please forward your agreement terms at your convenience for review, approval, and signature.

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.

Thank you for the opportunity. Should you have any questions pertaining to this proposal, please contact me directly at 440-708-6891 or via email at jwatson@manniksmithgroup.com.

Sincerely,



Sheri Bokros
Vice President / Principal



Jason M. Watson, P.E.
Vice President

AGREEMENT FOR SERVICES

By execution of this Agreement, the Client authorizes The Mannik & Smith Group, Inc. (MSG) to provide the services described within the proposal designated below according to the attached Terms and Conditions. In the event Client directs MSG 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 7, 2023

Proposal Number: OP221711

CITY OF AVON LAKE

THE MANNIK & SMITH GROUP, INC.

Signature



Signature

Name (Printed)

Sheri L. Bokros

Name (Printed)

Title

Principal; Vice President

Title

Date

July 7, 2023

Date

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

These Standard Terms and Conditions ("Terms") provide the terms and conditions pursuant to which The Mannik & Smith Group, Inc. ("MSG") will provide those certain services to you ("Client") for the project (hereinafter, "Project") set forth in the proposal issued to Client (the "Proposal") and as further described in the attached "Scope of Work." Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Proposal or Scope of Work, as the case may be. The terms of the Proposal, the Scope of Work, and these Terms shall be collectively referred to herein as this "Agreement."

1. **Services:** MSG will perform the Scope of Work as set forth in the Proposal and in accordance with these Terms. 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 was prepared at Client's request. In the event that the Scope of Work or a portion thereof, was developed by a party other than MSG, MSG makes no claims as to its adequacy. 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.

2. **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, and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

3. **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 as defined in Section 5 herein. 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.

4. **Compliance with Laws:** MSG shall perform its services in accordance with its Standard of Care as defined herein and will 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.

5. **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 the services rendered hereunder.

6. **Information from Third Parties:** The Client and MSG acknowledge that MSG will rely on information furnished by third 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.

7. **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 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, including, but not limited to, those Force Majeure Events set forth in Section 8 herein.

8. **Force Majeure:** MSG shall be entitled to an equitable adjustment to the Project 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, pandemics, epidemics, quarantine restrictions, strikes, embargoes, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism or hacking including a ransomware attack, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, unusually severe weather, and/or any other cause outside of the control of MSG (each a "Force Majeure Event"). 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 thirty (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.

9. **Compensation:** In consideration of the services performed by MSG, the Client shall pay MSG in the manner set forth in the Proposal. The parties acknowledge that terms of compensation are based on the 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 Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, MSG may adjust the amounts allocated between the Work Orders, Scope of Work, and/or Tasks identified therein, as applicable, as the work progresses so long as the total compensation amount for the Project is not exceeded except as otherwise provided herein.

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, unless and except when such subcontracted services and reimbursable expenses are included in the total project cost as specified in the Proposal or Scope of Work. Payment for MSG's services shall be made in United States dollars.

10. Changed Costs on Design Services and Project Development Services: MSG's rates are generally updated as of July 1st of each calendar year and are subject to periodic review and prospective change. Any non-lump sum fees and projects that are payable by Client for a "not to exceed" amount shall be subject to and adjusted based upon any rate increases or periodic changes.

11. Cost Estimates or Opinions on Construction Services: 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 MSG offers no guarantee related to the Project cost.

12. Payment Terms: Client recognizes that time is of the essence with respect to payment of Client's Consultants' invoices and that timely payment is a material part of the consideration of MSG's services. MSG shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) 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 sixty (60) calendar days shall give MSG the right to suspend services until payments are current. Non-payment beyond seventy (70) calendar days shall be just cause for termination of the services by MSG. MSG shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension or 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 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.

13. 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.

14. Ownership of Documents: Documents prepared or furnished by MSG pursuant to this Agreement are instruments of MSG's professional services and MSG shall retain all ownership and property interest therein, including all copyrights. Upon payment for services

rendered, MSG grants Client a non-exclusive 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 when 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, such 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 attorneys' fees, arising out of such reuse by Client or by others acting through Client. Client may request electronic CADD and BIM files prepared by MSG upon submitting a signed MSG's Electronic File Release Agreement which specifies the electronic files requested. If and to the extent Client requests and receives electronic files prepared by MSG, the terms of the Electronic File Release Agreement are hereby incorporated herein by reference and apply in all respects.

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

16. 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 a 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.

17. Limitation of Liability: IN NO EVENT SHALL MSG BE LIABLE TO THE CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, DAMAGE TO PROPERTY, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST SAVINGS, EVEN IF MSG HAS BEEN ADVISED OF OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. 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.

18. **MSG 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 this Agreement shall be made solely against the business entity and not against any individual or group of individuals in any capacity.

19. **Indemnification:** MSG agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damage, liability or cost to the extent caused by MSG's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom MSG is legally liable.

The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from damage, liability or cost to the extent caused by the Client's negligent acts, errors or omissions and those of 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. Neither party is obligated to indemnify the other in any manner whatsoever to the extent of the other's own negligence or the negligence of the other's agents, subcontractors or consultants, or anyone for whom the other is legally liable.

20. **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 Client or any other contractor or consultant engaged by the Client, nor shall MSG be responsible for the Client's or any other contractor or consultant engaged by the Client's failure to perform such party's work in accordance with the requirements of this Agreement.

21. **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 agreements with contractors and shall require all subcontracts at any level to contain a like provision. Failure by the Client or Client's contractors or subcontractors to notify MSG shall relieve MSG of the costs of remedying such defects in service, to the extent that the cost of remedy would have cost less had prompt notification been given when such defects were first discovered. MSG will correct defects, at its own costs, if timely notified by Client.

22. **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.

23. **Buried Utilities:** Client will furnish to MSG information identifying the type and location of utility lines and other artificial (for purposes of this Section 23, meaning made or produced by human beings rather than occurring naturally) 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 a manner consistent with the Standard of Care as defined herein. 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 artificial objects and vet final subsurface penetration locations to

the satisfaction of both parties. Further, MSG 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 artificial objects. MSG will take reasonable precautions to avoid damaging any identified utility lines or other artificial 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 artificial 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.

24. **Disease Transmission:** MSG shall have no responsibility for the transmission of communicable disease including, but not limited to, COVID-19 and other corona viruses (collectively, "Diseases"), or exposure of persons to Diseases discovered at the premises. MSG cannot prevent Client and/or Client's invitees from becoming exposed to, contracting, or spreading Diseases while utilizing MSG's services. It is not possible to prevent against the presence of Diseases. Therefore, if Client chooses to utilize MSG's services, Client may be exposing Client or Client's invitees to and/or increasing Client's and/or Client's invitees' risk of contracting or spreading Diseases. Client hereby releases, waives, discharges, and covenants not to sue MSG from any and all damages, injuries, losses, liability, claims, causes of action, litigation, or demands, including but not limited to those for personal injury, sickness, or death, as well as property damages and expenses, of any nature whatsoever which may be incurred, directly or indirectly, now or in the future, in any way related to any pandemic or public health situation, or any Disease related health issue or exposure.

25. **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 (collectively, "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 attorneys' 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:

- a. Client's violation or alleged violation of any federal, state or local statute, regulation or ordinance relating to the disposal of Hazardous Materials;
- b. 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;
- c. Hazardous Materials introduced at the Project site by Client or third persons before or after the completion of services herein;
- d. Allegations that MSG is a generator, operator, treater, storer, transporter, arranger for transport, handler, or disposer under the Resource Conservation and Recovery Act (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.

26. Third-Party Claims: All services provided by MSG are for the sole use and benefit of the Client. 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.

27. Violations of Law: The Client agrees, to the fullest extent permitted by law, to defend, indemnify 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 Practice 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 its 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.

28. 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 to Client.
- 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.

29. 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, Lucas County, Ohio. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

30. Suspension of Work: The Client may suspend services performed by MSG 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 Section 12 of 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 or as otherwise set forth in Section 12 hereof. 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.

31. Termination for Default or Breach: Except as otherwise provided herein, in the event of a Default (as defined herein) by either party, the non-Defaulting or non-breaching party shall give written notice to the Defaulting party of the Defaulting party's obligation to cure the Default with diligence and promptness. If the Defaulting party fails to cure such Default within seven (7) days after receipt of written notice, 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. For purposes of this Agreement, "Default" means (i) a party fails to perform any of its material duties or obligations under this Agreement, (ii) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a material breach of this Agreement or default, or (iii) a party files a petition or otherwise commences or authorizes the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or has any such petition filed or proceeding commenced against it or its assets, or otherwise become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due.

32. Termination Without Cause. Client may terminate this Agreement at any time without cause upon providing at least fourteen (14) days prior written notice to MSG.

33. **Assignment:** The Client may not assign any of its rights or obligations under this Agreement, by operation of law or otherwise, without first obtaining MSG's written consent. Any attempt to assign the Client's rights or obligations under this Agreement in breach of this paragraph shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. MSG's consent to an assignment is contingent upon the Client's compliance with the following: 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 party 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 non-assigning party 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. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

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

35. **Headings:** The headings contained herein are inserted for convenience only and do not define, limit, or construe the contents of the articles, sections, or subsections to which they refer.

36. **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.

37. **Integration:** This Agreement constitutes the entire agreement between the parties and may only be amended by written agreement by both parties.

38. **Severability:** Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in full force and effect. 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.

39. **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.

40. **Notice:** Any notice to MSG or Client that is required or permitted by this Agreement shall be in writing and shall be deemed effectively given to the other party when personally delivered, upon confirmation of receipt or upon sender's receipt of a read receipt when sent by e-mail to the MSG representative or Client representative expressly designated in the Proposal or Scope of Work, or upon actual receipt when mailed by first class postage prepaid, registered or certified mail, return receipt requested, or when sent by overnight courier service to the address expressly designated in the Proposal or Scope of Work, or to such other person or address as either party may otherwise specify in writing.

41. **Changes to these Terms:** MSG reserves the right, from time to time, to change these Terms in its sole and absolute discretion. The most current version of the Terms will supersede all previous versions and shall continue to be binding on the Client in its revised form.

42. **Conflict:** In the event of a conflict between the Proposal or Scope of Work and these Terms, then these Terms shall control unless otherwise expressly identified or designated in the Proposal or Scope of Work as controlling.

Updated as of January 1, 2022