

AGENDA

CANFIELD CITY COUNCIL

October 19, 2022-5:30 P.M.

FRANCIS J. McLAUGHLIN MUNICIPAL BUILDING

1. Call to Order.
2. Pledge of Allegiance.
3. Roll Call: Quorum is Present - Meeting is in Session.
4. Proclamations & Presentations.
5. Approval of Minutes.
6. Reading of Communications.
7. Reports of Committees, Boards, Mayor's Report, City Manager, Finance Director, Chief of Police, Zoning Inspector and Public Works Superintendent.
8. Public questions from residents (or representative) related to the above referenced reports. Questions may be limited to three (3) minutes.
9. Recognition of Persons Desiring to Appear Before Council.

10. OLD BUSINESS

Note: After each item is placed on the table for action, public comments from residents (or representative) as to that business item are received. May be limited to three (3) minutes per person and thirty (30) minutes total.

11. NEW BUSINESS

Note: After each item is placed on the table for action, public comments from residents (or representative) as to that business item are received. May be limited to three (3) minutes per person and thirty (30) minutes total

- A. An **Ordinance** Authorizing the City Manager to Sign Contracts for Professional Services with MS Consultants for the Extension of Sanitary Infrastructure to Red Gate Farm Development (Phase 2 and 3).

Description:

This Ordinance Authorizes the City Manager to sign contracts for the professional services with MS Consultants, Inc for the extension of sanitary sewer infrastructure to the Red Gate Farm Development. (Phase 2 & 3)

Action Needed:

Approval of Ordinance authorizing the City Manager to sign a contract for professional services with MS Consultants Inc. for the extension of sanitary sewer infrastructure to the Red Gate Farm Development. Phase 2 & 3.

Attachment (s): Agreement between owner and engineer for professional services.

Public Comments

12. Council Comments.

13. Adjournment

Introduced by: _____
First Reading: _____

ORDINANCE

AN ORDINANCE AUTHORIZING THE CITY MANAGER
TO SIGN CONTRACTS FOR PROFESSIONAL SERVICES WITH
MS CONSULTANTS FOR THE EXTENSION OF SANITARY
INFRASTRUCTURE TO RED GATE FARM DEVELOPMENT (PHASE 2 & 3)

WHEREAS, the Council of the City of Canfield desires to enter into an agreement with MS Consultants, Inc. for the extension of sanitary infrastructure to Red Gate Farm Development; and

WHEREAS, the Design and/or Construction of wastewater facilities is being funded through the Ohio EPA Water Pollution Control Loan (WPCLF).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANFIELD, OHIO:

Section 1: The City Manager is hereby authorized to enter into a contract for Professional Services for the City of Canfield with MS Consultants, Inc. in accordance with the terms of the contract satisfactory to the City Manager (See attached contracts).

Section 2: The cost of said Professional Services shall not exceed \$276,384.00.

Section 3: That this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meetings of this Council, all pursuant to Section 121.22 of the Ohio Revised Code and Section 3.11 of the Charter of the Municipality of Canfield.

PASSED IN COUNCIL THIS _____ DAY OF _____ A.D., 2022.

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Certification of Publication

I, the undersigned Clerk of Council of the City of Canfield, Ohio, hereby certify that the foregoing Ordinance was posted in a prominent place at the Municipal Building, Canfield, Ohio for seven continuous days, to-wit: _____
_____.

CLERK OF COUNCIL

APPROVED AS TO FORM:

MUNICIPAL ATTORNEY

**AGREEMENT
BETWEEN Owner AND Engineer
FOR PROFESSIONAL SERVICES**

**CITY OF CANFIELD
REDGATE SANITARY SEWER EXTENSION- PHASE TWO**

THIS IS AN AGREEMENT ("Agreement") effective as of _____, 2022 ("Effective Date") between the City of Canfield, 104 Lisbon Street, Canfield, Ohio 44406 ("Owner") and ms consultants, inc., 333 East Federal Street, Youngstown, Ohio 44503 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

- Installation of one sanitary pump station (estimated at 2.4 MGD per preliminary hydraulic studies) at the northeast corner of the MALA property in a future dedicated utility easement.
- Approximately 2,100 LF of force main located within the right-of-way of South Palmyra Road from the existing 18" sanitary sewer located at the southeast corner of US 224/South Palmyra Road to the pump station located at the northeast corner of the MALA property.
- Approximately 2,100 LF of gravity sewer within an anticipated future dedicated utility easement on the MALA property. The gravity sewer will terminate at the southeast corner of the MALA property for Phase Two.

Engineer's services under this Agreement are generally identified as follows: The Engineer will provide final design and bidding services including preparation of construction plans and specifications, permitting, and bidding assistance.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in this Agreement.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this

Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time and, in any event, no later than the dates set forth in any exhibit or amendment to this Agreement.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Agreement. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 2.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of this Agreement.

4.03 *Compensation*

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
 - 1. Labor costs shall be billed at the actual hourly Direct Salary Expense times a multiplier of 3.16 plus Reimbursable Expenses and Engineer's Consultants' charges, if any.
 - 2. **The total compensation for services under this Agreement is estimated to be \$167,224.00 based on the following estimated distribution of compensation between Tasks #1 and #2 only:**
 - a. Task #1: Final Design Phase \$160,001.00
 - b. Task #2: Bidding or Negotiating Phase \$7,223.00
 - c. Task #3: If Authorized Services \$8,820.00
 - 3. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved by Owner.

4. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in this Paragraph incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
5. The amounts billed for Engineer's services under this Paragraph will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of December 31st) to reflect equitable changes in the compensation payable to Engineer.

B. Compensation for Reimbursable Expenses

1. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in this Agreement.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.

C. Other Provisions

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.
2. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.04 *Resident Project Representative*

- A. As applicable, Engineer shall be compensated for Resident Project Representative services in accordance with Exhibit C to this Agreement.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in an exhibit to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.
2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless both parties mutually agree to use other general conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or

represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in this paragraph. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - 1. Commercial General Liability. Commercial General Liability Insurance with a minimum combined single limit of liability of \$1,000,000 per occurrence for bodily injury and / or property damage with a \$1,000,000 annual aggregate. This shall include products / completed operations coverage and shall also include Broad Form Contractual Insurance specifically covering this Agreement.
 - 2. Business Automobile Liability. Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Consultant with a minimum combined single limit of liability of \$1,000,000 for bodily injury, death and / or property damage.

3. Workers' Compensation / Employers' Liability. Workers' Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.
 4. Professional Liability. Professional Liability Insurance in an amount not less than \$2,000,000 per claim / annual aggregate on a claims-made basis.
- B. Owner shall procure and maintain policies of property and liability insurance for the Project. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
 - C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
 - D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in the Agreement. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
 - E. All policies of insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
 - F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
 - G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in the Agreement. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and the Agreement will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks

whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Agreement.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking other dispute resolution procedures.
- B. All disputes between the parties arising out of this Agreement that are not resolved by negotiation shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in this Agreement.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual,

shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Confidential and Proprietary Information:* Owner agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Engineer pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available by Owner to any third-party without the express written consent of the Engineer unless such information (a) was known by the Owner prior to receiving the confidential information from the Engineer; (b) becomes rightfully known to the Owner from a third-party source not under an obligation

to the Engineer to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Owner in breach of this Agreement; or (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.

- G. *Construction*: The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it
- H. *Counterparts*: This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer beyond those identified as Basic Services in Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with of Exhibit A of this Agreement.
 - 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction

managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in an exhibit to this Agreement.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance

counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities. – Not Used
- C. Exhibit C, Payments to Engineer for Resident Project Representative services (if applicable).- Not Used
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative (if applicable).- Not Used

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

[THE BOTTOM OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Canfield

Engineer: ms consultants, inc.

By: _____

By: Bill Johngrass

Print name: Wade Calhoun

Print name: Bill Johngrass

Title: City Manager

Title: Vice President-Environmental

Date Signed: _____

Date Signed: 8/8/22

Address for Owner's receipt of notices:

City of Canfield
104 Lisbon Street
Canfield, Ohio 44406

Address for Engineer's receipt of notices:

ms consultants, inc.
333 East Federal Street
Youngstown, Ohio 44503

Designated Representative (Paragraph 8.03.A):

Wade Calhoun

Title: City Manager

Phone Number: 330-533-1101

E-Mail Address: wcalhoun@canfield.gov

Designated Representative (Paragraph 8.03.A):

Craig Mulichak

Title: Sr. Project Manager

Phone Number: 330-744-5321

E-Mail Address: cmulichak@msconsultants.com

EXHIBIT A

SCOPE OF SERVICES

City of Canfield Redgate Sanitary Sewer Project- Phase Two

April 5, 2022

Project Understanding

ms consultants, inc. (Engineer) understands that the City of Canfield (Owner) intends to enter into an agreement for the design of Phase Two of the Redgate Sanitary Sewer Project.

This project is anticipated to include the following, as shown in Exhibit B:

- Installation of one sanitary pump station (estimated at 2.4 MGD per preliminary hydraulic studies) at the northeast corner of the MALA property in a future dedicated utility easement.
- Approximately 2,100 LF of force main located within the right-of-way of South Palmyra Road from the existing 18" sanitary sewer located at the southeast corner of US 224/South Palmyra Road to the pump station located at the northeast corner of the MALA property.
- Approximately 2,100 LF of gravity sewer within an anticipated future dedicated utility easement on the MALA property. The gravity sewer will terminate at the southeast corner of the MALA property for Phase Two.

The Scope of Services for the project consists of the following:

1. Task #1: Final Design Services

A. Survey Services

1. Engineer will recover and verify the primary project control utilized for Phase One of the project.
2. A detailed topographic survey will be performed of the topography and observable features of the proposed pump station location. A field review of the force main alignment area surveyed as part of Phase One will be performed to verify and review survey features. This task includes the reduction of survey points, base mapping, creating a surface, and inputting all relevant data into the design file.
3. The existing right-of-way and property lines around the pump station will be established in accordance with the standards of boundary surveys as set forth in OAC 4733-37. This includes performing all necessary courthouse research to rectify the property and right-of-way lines and preparing a maximum of one easement for the proposed pump station.

B. Geotechnical Services

1. Engineer, or sub-consultant of the Engineer, shall perform soil borings of the proposed sanitary sewer alignment and pump station. A formal geotechnical report shall be developed.

2. Soil borings are estimated every 500-1,000 feet along the proposed sewer/force main alignment with an additional boring at each pump station location. The final number of soil borings and boring depths will be determined during final design. However, Engineer assumes that boring depths along the sanitary sewer alignment shall be the estimated trench depth plus five feet (assumed to be approximately 15 feet in depth on average). The pump station boring depths are anticipated to be a minimum of twenty-five feet in depth.
3. Engineer shall review the geotechnical report for implementation of geotechnical recommendations into final construction plans.

C. Final Design

1. The Engineer shall update the City's Sanitary Sewer Hydraulic Model based upon current information and projected flows from the MALA development (to be provided by others) and the Redgate Farm Development (to be provided by others) to determine appropriate sizing of the sewer and pump station.
2. Engineer shall prepare final construction plans and contract documents for the sanitary sewer and required pump station. The plans will be developed in AutoCAD Civil 3D software and are expected to include the following:
 - a. Title Sheet
 - b. Overall Site Plan (1)
 - c. Horizontal Control (1)
 - d. General Notes/Details (3)
 - e. Pump Station Details (1)
 - f. Pump Station Site Plan (1)
 - g. Plan & Profile (4)
3. This scope of work assumes the design of a standard pump station foundation based on adequate soil conditions. In the event that poor soil conditions are identified following geotechnical exploration at the pump station locations, a fee for additional foundation design shall be negotiated with the Owner. If poor soil conditions are encountered, Engineer shall meet with Owner to discuss these conditions prior to negotiating additional fee.
4. Engineer assumes that backup power at each pump station will be in the form of a permanent generator designed into the specifications of each pump station.
5. Engineer will coordinate with the electric utility regarding pump station power requirements.
6. Engineer shall contact the Ohio Utilities Protection Service (OUPS) and coordinate with all utilities within the project area as determined by the OUPS call.

D. Permitting

1. If applicable, Engineer will obtain roadway right-of-way permits from the Mahoning County Highway Engineer for work within the right-of-way of Palmyra Road.
2. If applicable, Engineer will obtain permitting for Soil & Erosion Control through the Mahoning County Soil & Water Conservation District.
3. Engineer will prepare and submit a Permit-to-Install (PTI) application to the Ohio EPA.
4. If the disturbed area of the pump station is greater than one acre, the Engineer will submit a Notice of Intent (NOI) application to the Ohio EPA.
5. Engineer shall apply for regulatory permits as needed for environmental clearance. This can include, but is not limited to, Waters of the United States (WOTUS) Report review, Ohio EPA Permit-to-Install, ODOT Permits, Mahoning County Engineer Permits, and the Section 401/404 Nationwide permit. This item specifically excludes Section 401/404 Individual Permits.
6. All permit fees, and mitigation fees, if any, will be the responsibility of the Owner and are not included within this agreement.

E. Easement Preparation

1. Engineer shall prepare a legal description and exhibit drawing for the utility easement to be located on the MALA property. The Owner shall negotiate, obtain signatures, and record the easement with the Mahoning County Recorder.

F. As-Builts

1. Engineer shall prepare as-builts and submit to the City based upon the point file to be provided by the Contractor per the construction contract requirements.

G. Meetings

1. Engineer will conduct a kickoff meeting with the Owner and prepare meeting minutes for distribution.
2. Engineer will conduct a meeting at the 60% design level with the Owner and prepare meeting minutes for distribution.
3. Engineer shall attend a maximum of one meeting with the Mahoning County Engineer's Office. This project does not assume any meetings with the Ohio Department of Transportation, Ohio EPA, or the MALA or Redgate Farm developer(s).
4. Engineer assumes that the project will not require attendance at Public Meetings.

H. Deliverables

1. 60% Design Stage
 - a. Engineer shall provide a PDF copy of the 60% plan set and Estimate of Probable Construction Cost to the Owner for review and comment.
 - b. Engineer shall submit 60% plans to all utility companies within the project area as determined by the OUPS call.
2. 90% Design Stage
 - a. Engineer shall provide a PDF copy of the 90% plan set and cost estimate to the Owner for review and comment.
 - b. Engineer shall submit Permit-to-Install (PTI) and Ohio EPA Notice of Intent (NOI) Application to the Ohio EPA, if applicable.
 - c. Engineer shall submit all environmental permitting applications including Ohio EPA and Army Corps permits at the 90% design stage for plan approval.
3. 100% Design Stage
 - a. Engineer shall provide a PDF copy of the 100% plan set, project manual, final Engineer's Estimate of Probable Cost, and permit approvals to the Owner for record-keeping.

2. Task #2: Bidding Services

A. Bidding Assistance

1. Engineer will prepare all bidding documents and specifications and assist in the distribution of plans and contract documents. Engineer shall sell all plan sets on behalf of the Owner via Engineer's Newforma software.
2. This scope of work assumes a three-week bidding period during which the Engineer shall attend and conduct one pre-bid meeting.
3. Engineer will respond to all questions from interested bidders in the form of a "Request for Information" (RFI). This scope of work assumes two (2) addenda. Engineer shall formally respond to RFI responses as part of addenda #2. Engineer assumes a maximum of twenty (20) RFI responses.
4. Engineer will review all bids for completeness, prepare bid tabulation, and perform reference checks on bidder's references as needed.
5. Engineer will prepare a recommendation of award and submit to the Owner.

3. Task #3: Environmental Permitting If Authorized Services

A. Cultural Resources- Phase 1 Study and Report

1. If authorized at a later date, Engineer shall prepare a Phase 1 study and report if required for environmental permitting purposes. The cost of this item shall not

exceed a fee of \$6,510.00 if authorized in 2022. A 5% escalation shall be required if not authorized prior to December 31, 2022.

B. Jurisdictional Review

1. If authorized at a later date, Engineer shall prepare for and attend one on-site meeting with the Army Corps. The cost of this item shall not exceed a fee of \$2,315.00 if authorized in 2022. A 5% escalation shall be required if not authorized prior to December 31, 2022.

4. Additional Services of Engineer

- A. These services are not included as part of Basic Services; these will be paid for by the Owner as a negotiated extra to the proposed work.
 1. Services resulting from significant changes in the general scope, extent or character of the project when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Engineer's control.
 2. Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration or other legal or administrative proceeding involving the project.

5. Owner's Responsibilities

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to Engineer's services for the project.
- B. Assist Engineer by placing at Engineer's disposal all available information pertinent to the project including previous reports and any other data relative to the project.
- C. Arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- D. Furnish approvals, pay for and secure all permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- E. Attend meetings and provide timely comments.
- F. Give prompt written notice to Engineer whenever the Owner observes or becomes aware of any development that affects the scope or timing of Engineer's services.
- G. Furnish, or direct Engineer to provide additional services as stipulated in this agreement or other services as required in a timely manner.
- H. Bear all costs incidental to compliance with the requirements of this Section.

6. Assumptions/Exclusions

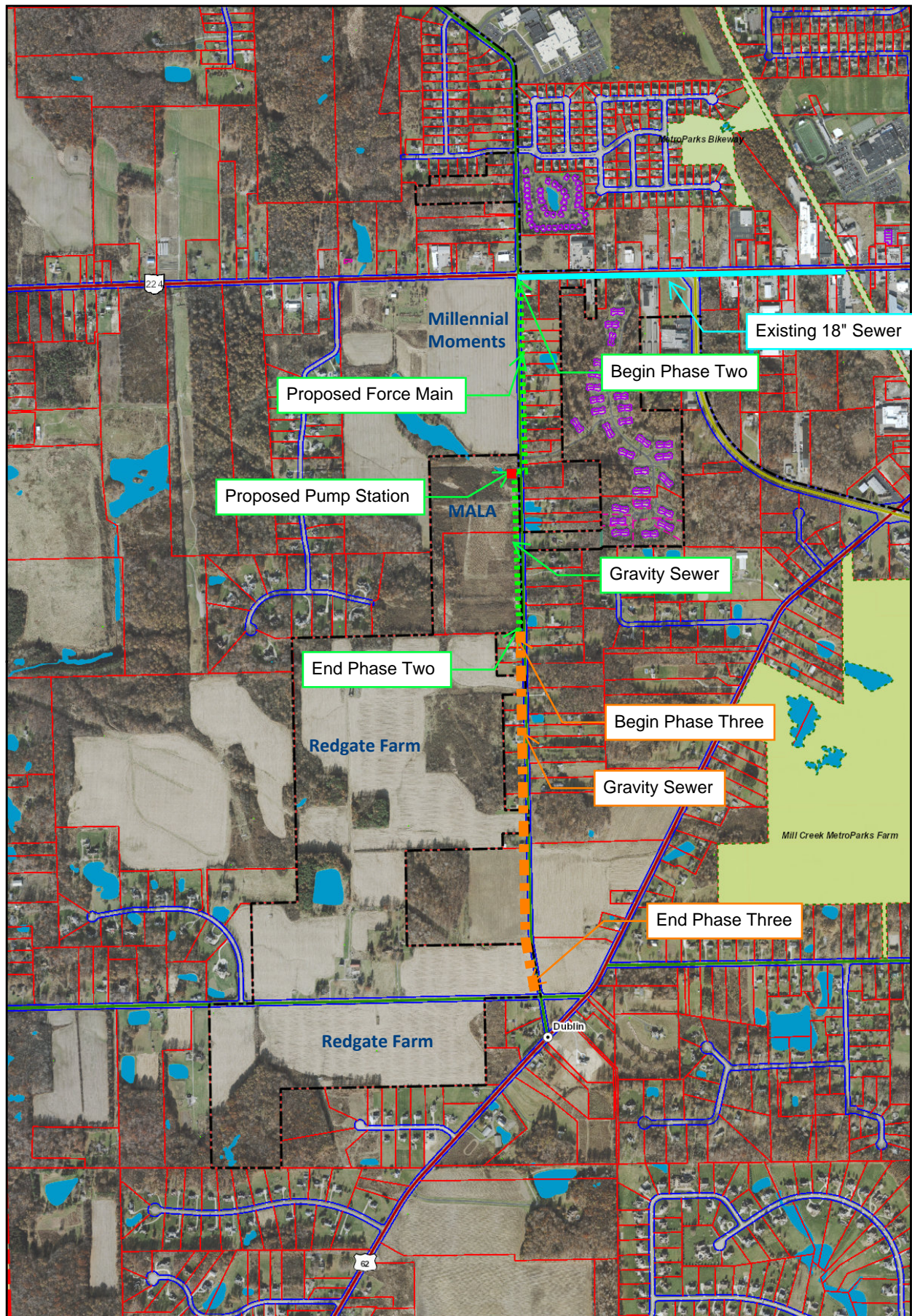
- A. Engineer assumes that the field survey of South Palmyra Road completed under the Phase One contract will be sufficient for design of Phase Two sewer alignment.

- B. Engineer assumes that the Owner will provide the development plan for Redgate Farm and the MALA property, each to be developed by others, to the Engineer. Engineer shall design the sanitary sewer in accordance with the development plans. Significant changes to the development plan will result in the need for a modified agreement for required re-design. Significant changes are defined as those changes that would affect the required pipe sizing and pump station requirements.
- C. The project scope does not include Right-of-Way acquisition. The scope only includes easement legal description and exhibit preparation as described in the basic services.
- D. Attendance at Public Meetings and/or Hearings is not included.
- E. Construction administration and inspection services are not included within this agreement and may be negotiated as a modification to this agreement prior to construction commencing.
- F. Odor control will be evaluated during final design.
- G. Engineer assumes that Maintenance of Traffic plans during construction will be developed by the Contractor.
- H. The project scope does not include any design work associated with the sanitary sewer infrastructure within the MALA or Redgate Farm property.
- I. The project scope assumes a fenced-in, outdoor, submersible pump station with a permanent generator. Engineer assumes that structures will not be designed to house equipment or controls.
- J. An Individual Army Corp Permit and Individual Water Quality Certification from the Ohio EPA are not included within this scope of work. In the event that the regulatory agencies require these items, Engineer and Owner shall negotiate a modification to this contract to perform this work.
- K. All regulatory fees and mitigation fees, if any, associated with permitting will be the responsibility of the Owner and are not included within this scope of work or the WPCLF design loan funding.
- L. The Owner shall negotiate, obtain signatures, and record the easements with the Mahoning County Recorder.
- M. Funding procurement and assistance is not included.

7. Period of Service

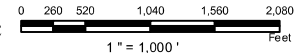
- A. The Engineer agrees to commence work within (10) days after written authorization to proceed and to complete an Ohio EPA Permit-to-Install plan set within nine (9) months of receiving the development plans for MALA and Redgate Farm. The Engineer will complete a final construction set for bidding within two (2) months of the recording of all required utility easements by the Owner with the Mahoning County Recorder, dependent upon factors outside of the Engineer's ability to control.

Exhibit B



Map Legend

DISTRICT LINES	DISTRICT INDEX	PARK/SPECIAL	COUNTY ROAD
CITY-LINE	BASE MAP PARKS	PLACE MARKER	TOWNSHIP ROAD
COUNTY-LINE	BIKEWAY	BASE MAP ROADS	
SCHOOL-LINE	CANFIELD FAIR GROUNDS	INTERSTATE	
TOWNSHIP-LINE	WATER RESERVOIR	U.S. ROUTE	
VILLAGE-LINE	PARK	STATE ROUTE	



January 21, 2022

Redgate

**AGREEMENT
BETWEEN Owner AND Engineer
FOR PROFESSIONAL SERVICES**

**CITY OF CANFIELD
REDGATE SANITARY SEWER EXTENSION- PHASE THREE**

THIS IS AN AGREEMENT ("Agreement") effective as of _____, 2022 ("Effective Date") between the City of Canfield, 104 Lisbon Street, Canfield, Ohio 44406 ("Owner") and ms consultants, inc., 333 East Federal Street, Youngstown, Ohio 44503 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

- Approximately 4,100 LF of gravity sewer within an anticipated future dedicated utility easement along South Palmyra Road. The utility easement would cross the frontage of approximately 10 privately owned parcels. The gravity sewer will tie-into the termination point of Phase Two on the southeast corner of the MALA property and terminate at the northwest corner of the intersection of South Palmyra Road and Leffingwell Road.

Engineer's services under this Agreement are generally identified as follows: The Engineer will provide final design and bidding services including preparation of construction plans and specifications, permitting, and bidding assistance.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in this Agreement.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time and, in any event, no later than the dates set forth in any exhibit or amendment to this Agreement.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Agreement. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. amounts due Engineer will be increased at the rate of 2.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of this Agreement.

4.03 Compensation

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:
1. Labor costs shall be billed at the actual hourly Direct Salary Expense times a multiplier of 3.16 plus Reimbursable Expenses and Engineer's Consultants' charges, if any.
 2. **The total compensation for services under this Agreement is estimated to be \$109,160.00 based on the following estimated distribution of compensation between Tasks #1 and #2 only:**
 - a. Task #1: Final Design Phase \$102,012.00
 - b. Task #2: Bidding or Negotiating Phase \$7,148.00
 - c. Task #3: If Authorized Services \$8,820.00
 3. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved by Owner.
 4. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in this Paragraph incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
 5. The amounts billed for Engineer's services under this Paragraph will be based on the cumulative hours charged to the Project during the billing period by each class of

Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of December 31st) to reflect equitable changes in the compensation payable to Engineer.

B. Compensation for Reimbursable Expenses

1. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in this Agreement.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.

C. Other Provisions

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.
2. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

4.04 Resident Project Representative

- A. As applicable, Engineer shall be compensated for Resident Project Representative services in accordance with Exhibit C to this Agreement.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as

to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in an exhibit to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless both parties mutually agree to use other general conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or

other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of

the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in this paragraph. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
 - 1. Commercial General Liability. Commercial General Liability Insurance with a minimum combined single limit of liability of \$1,000,000 per occurrence for bodily injury and / or property damage with a \$1,000,000 annual aggregate. This shall include products / completed operations coverage and shall also include Broad Form Contractual Insurance specifically covering this Agreement.
 - 2. Business Automobile Liability. Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Consultant with a minimum combined single limit of liability of \$1,000,000 for bodily injury, death and / or property damage.
 - 3. Workers' Compensation / Employers' Liability. Workers' Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.
 - 4. Professional Liability. Professional Liability Insurance in an amount not less than \$2,000,000 per claim / annual aggregate on a claims-made basis.
- B. Owner shall procure and maintain policies of property and liability insurance for the Project. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in the Agreement. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in the Agreement. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and the Agreement will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Agreement.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking other dispute resolution procedures.
- B. All disputes between the parties arising out of this Agreement that are not resolved by negotiation shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the

date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in this Agreement.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records),

and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Confidential and Proprietary Information:* Owner agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Engineer pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available by Owner to any third-party without the express written consent of the Engineer unless such information (a) was known by the Owner prior to receiving the confidential information from the Engineer; (b) becomes rightfully known to the Owner from a third-party source not under an obligation to the Engineer to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Owner in breach of this Agreement; or (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.
- G. *Construction:* The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it
- H. *Counterparts:* This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one

counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer beyond those identified as Basic Services in Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901

et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in an exhibit to this Agreement.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and

submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities. – Not Used
- C. Exhibit C, Payments to Engineer for Resident Project Representative services (if applicable).- Not Used
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative (if applicable).- Not Used

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

[THE BOTTOM OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Canfield

Engineer: ms consultants, inc.

By: _____

By: Bill Johngrass

Print name: Wade Calhoun

Print name: Bill Johngrass

Title: City Manager

Title: Vice President-Environmental

Date Signed: _____

Date Signed: 8/8/22

Address for Owner's receipt of notices:

City of Canfield
104 Lisbon Street
Canfield, Ohio 44406

Address for Engineer's receipt of notices:

ms consultants, inc.
333 East Federal Street
Youngstown, Ohio 44503

Designated Representative (Paragraph 8.03.A):

Wade Calhoun

Title: City Manager

Phone Number: 330-533-1101

E-Mail Address: wcalhoun@canfield.gov

Designated Representative (Paragraph 8.03.A):

Craig Mulichak

Title: Sr. Project Manager

Phone Number: 330-744-5321

E-Mail Address: cmulichak@msconsultants.com

EXHIBIT A

SCOPE OF SERVICES

City of Canfield Redgate Sanitary Sewer Project- Phase Three

April 5, 2022

Project Understanding

ms consultants, inc. (Engineer) understands that the City of Canfield (Owner) intends to enter into an agreement for Phase Three of the Redgate Sanitary Sewer Project.

This project is anticipated to include the following, as shown in Exhibit B:

- Approximately 4,100 LF of gravity sewer within an anticipated future dedicated utility easement along South Palmyra Road. The utility easement would cross the frontage of approximately 10 privately owned parcels and one City-owned parcel. The gravity sewer will tie-into the termination point of Phase Two on the southeast corner of the MALA property and terminate at the northwest corner of the intersection of South Palmyra Road and Leffingwell Road.

The Scope of Services for the project consists of the following:

1. Task #1: Final Design Services

A. Geotechnical Services

1. Engineer, or sub-consultant of the Engineer, shall perform soil borings of the proposed sanitary sewer alignment. A formal geotechnical report shall be developed.
2. Soil borings are estimated every 500-1,000 feet along the proposed sewer. The final number of soil borings and boring depths will be determined during final design. However, Engineer assumes that boring depths along the sanitary sewer alignment shall be the estimated trench depth plus five feet (assumed to be approximately 15 feet in depth on average).
3. Engineer shall review the geotechnical report for implementation of geotechnical recommendations into final construction plans.

B. Final Design

1. Engineer shall prepare final construction plans and contract documents for the sanitary sewer. The plans will be developed in AutoCAD Civil 3D software and are expected to include the following:
 - a. Title Sheet
 - b. Overall Site Plan (1)
 - c. Horizontal Control (1)
 - d. General Notes/Details (3)
 - e. Plan & Profile (8)

2. The basis of sanitary sewer design shall be the future development plan for the Redgate Farm development (to be provided by others).
3. Engineer shall contact the Ohio Utilities Protection Service (OUPS) and coordinate with all utilities within the project area as determined by the OUPS call.
4. Preliminary desktop review of the "National Pipeline Mapping System (NPMS)" indicates a hazardous liquid pipeline crossing approximately 620 feet north of the South Palmyra/Leffingwell Intersection. This line traverses through the Redgate property. Engineer, or sub-consultant of the Engineer, shall perform Subsurface Utility Engineering (SUE) to determine the exact location and depth of this pipeline. No other SUE work is anticipated. In the event more SUE work is required due to unforeseen circumstances, Engineer and Owner shall negotiate a modification to the agreement.

C. Permitting

1. If applicable, Engineer will obtain roadway right-of-way permits from the Mahoning County Highway Engineer for work within the right-of-way of Palmyra Road.
2. If applicable, Engineer will obtain permitting for Soil & Erosion Control through the Mahoning County Soil & Water Conservation District.
3. Engineer will prepare and submit a Permit-to-Install (PTI) application to the Ohio EPA.
4. Engineer shall apply for regulatory permits as needed for environmental clearance. This can include, but is not limited to, Waters of the United States (WOTUS) Report review, Ohio EPA Permit-to-Install, ODOT Permits, Mahoning County Engineer Permits, and the Section 401/404 Nationwide permit. This item specifically excludes Section 401/404 Individual Permits.
5. All permit fees, and mitigation fees, if any, will be the responsibility of the Owner and are not included within this agreement.

D. Easement Preparation

1. Engineer shall prepare a legal description and exhibit drawing for a utility easement for up to ten (10) privately owned parcels and once City owned parcel. The Owner shall negotiate, obtain signatures, and record the easements with the Mahoning County Recorder.

E. As-Builts

1. Engineer shall prepare as-builts and submit to the City based upon the point file to be provided by the Contractor per the construction contract requirements.

F. Meetings

1. Engineer will conduct a kickoff meeting with the Owner and prepare meeting minutes for distribution.

2. Engineer will conduct a meeting at the 60% design level with the Owner and prepare meeting minutes for distribution.
3. Engineer shall attend a maximum of one meeting with the Mahoning County Engineer's Office. This project does not assume any meetings with the Ohio Department of Transportation, Ohio EPA, or the MALA or Redgate Farm developer(s).
4. Engineer assumes that the project will not require attendance at Public Meetings.

G. Deliverables

1. 60% Design Stage
 - a. Engineer shall provide a PDF copy of the 60% plan set and Estimate of Probable Construction Cost to the Owner for review and comment.
 - b. Engineer shall submit 60% plans to all utility companies within the project area as determined by the OUPS call.
2. 90% Design Stage
 - a. Engineer shall provide a PDF copy of the 90% plan set and cost estimate to the Owner for review and comment.
 - b. Engineer shall submit Permit-to-Install (PTI) and Ohio EPA Notice of Intent (NOI) Application to the Ohio EPA, if applicable.
 - c. Engineer shall submit all environmental permitting applications including Ohio EPA and Army Corps permits at the 90% design stage for plan approval.
3. 100% Design Stage
 - a. Engineer shall provide a PDF copy of the 100% plan set, project manual, final Engineer's Estimate of Probable Cost, and permit approvals to the Owner for record-keeping.

2. Task #2: Bidding Services

A. Bidding Assistance

1. Engineer will prepare all bidding documents and specifications and assist in the distribution of plans and contract documents. Engineer shall sell all plan sets on behalf of the Owner via Engineer's Newforma software.
2. This scope of work assumes a three-week bidding period during which the Engineer shall attend and conduct one pre-bid meeting.
3. Engineer will respond to all questions from interested bidders in the form of a "Request for Information" (RFI). This scope of work assumes two (2) addenda. Engineer shall formally respond to RFI responses as part of addenda #2. Engineer assumes a maximum of twenty (20) RFI responses.

4. Engineer will review all bids for completeness, prepare bid tabulation, and perform reference checks on bidder's references as needed.
5. Engineer will prepare a recommendation of award and submit to the Owner.

3. Task #3: Environmental Permitting If Authorized Services

A. Cultural Resources- Phase 1 Study and Report

1. If authorized at a later date, Engineer shall prepare a Phase 1 study and report if required for environmental permitting purposes. The cost of this item shall not exceed a fee of \$6,510.00 if authorized in 2022. A 5% escalation shall be required if not authorized prior to December 31, 2022.

B. Jurisdictional Review

1. If authorized at a later date, Engineer shall prepare for and attend one on-site meeting with the Army Corps. The cost of this item shall not exceed a fee of \$2,315.00 if authorized in 2022. A 5% escalation shall be required if not authorized prior to December 31, 2022.

4. Additional Services of Engineer

- A. These services are not included as part of Basic Services; these will be paid for by the Owner as a negotiated extra to the proposed work.
 1. Services resulting from significant changes in the general scope, extent or character of the project when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond Engineer's control.
 2. Preparing to serve or serving as a consultant or witness for the Owner in any litigation, arbitration or other legal or administrative proceeding involving the project.

5. Owner's Responsibilities

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to Engineer's services for the project.
- B. Assist Engineer by placing at Engineer's disposal all available information pertinent to the project including previous reports and any other data relative to the project.
- C. Arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- D. Furnish approvals, pay for and secure all permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- E. Attend meetings and provide timely comments.
- F. Give prompt written notice to Engineer whenever the Owner observes or becomes aware of any development that affects the scope or timing of Engineer's services.

- G. Furnish, or direct Engineer to provide additional services as stipulated in this agreement or other services as required in a timely manner.
- H. Bear all costs incidental to compliance with the requirements of this Section.

6. Assumptions/Exclusions

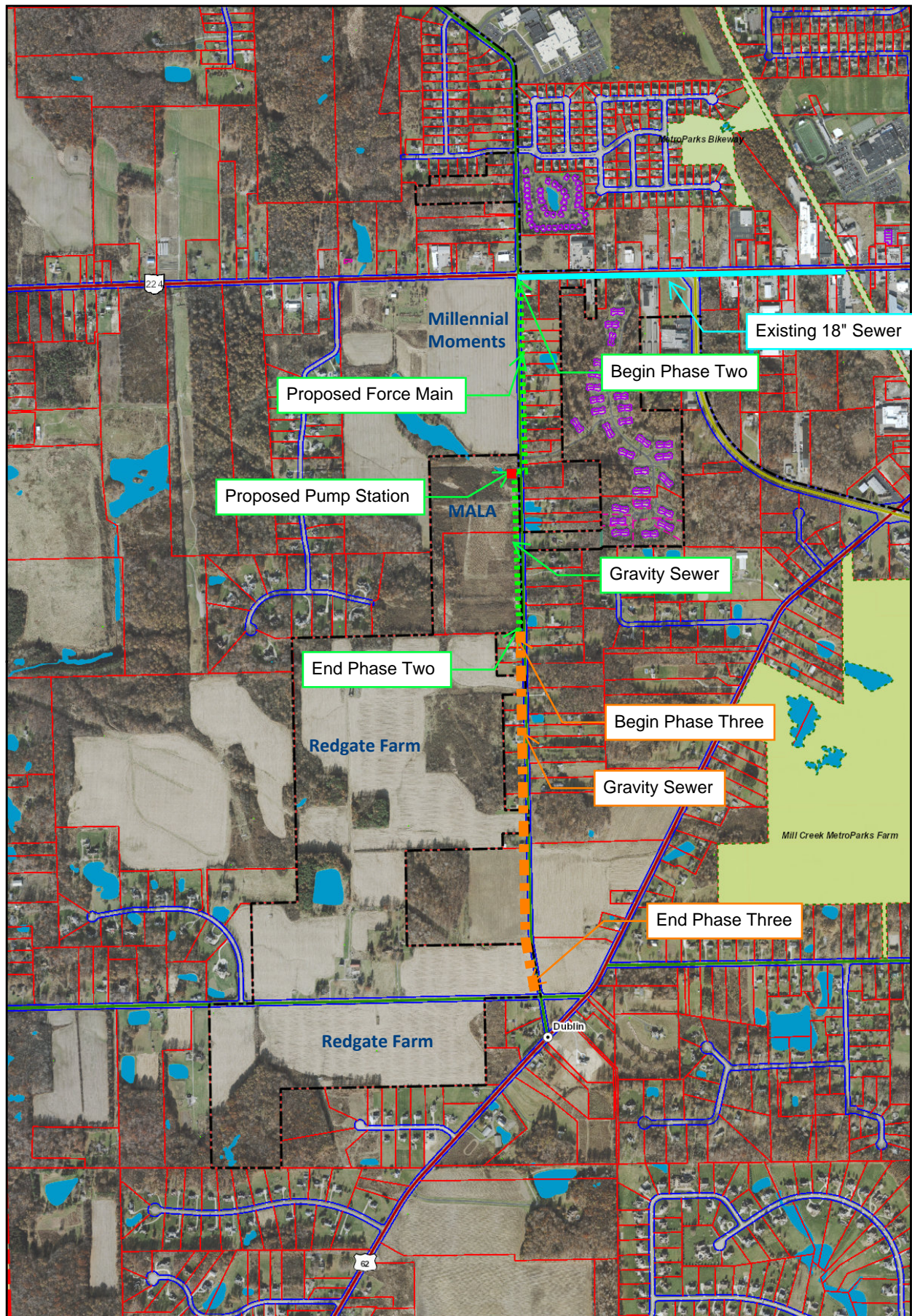
- A. Engineer assumes that the field survey of South Palmyra Road to the intersection at Leffingwell completed under the Phase One contract will be sufficient for design of the Phase Three sanitary sewer alignment.
- B. Engineer assumes that the Owner will provide the development plan for Redgate Farm and the MALA property, each to be developed by others, to the Engineer. Engineer shall design the sanitary sewer in accordance with the development plans. Significant changes to the development plan will result in the need for a modified agreement for required re-design. Significant changes are defined as those changes that would affect the required pipe sizing.
- C. The project scope does not include Right-of-Way acquisition. The scope only includes easement legal description and exhibit preparation as described in the basic services.
- D. Attendance at Public Meetings and/or Hearings is not included.
- E. Construction administration and inspection services are not included within this agreement and may be negotiated as a modification to this agreement prior to construction commencing.
- F. Engineer assumes that Maintenance of Traffic plans during construction will be developed by the Contractor.
- G. The project scope does not include any design work associated with the sanitary sewer infrastructure within the MALA or Redgate Farm property.
- H. The project scope assumes that a secondary pump station is not included and all flow from the termination point can be conveyed to the pump station to be designed under Phase Two via gravity flow.
- I. An Individual Army Corp Permit and Individual Water Quality Certification from the Ohio EPA are not included within this scope of work. In the event that the regulatory agencies require these items, Engineer and Owner shall negotiate a modification to this contract to perform this work.
- J. All regulatory fees and mitigation fees, if any, associated with permitting will be the responsibility of the Owner and are not included within this scope of work or the WPCLF design loan funding.
- K. The Owner shall negotiate, obtain signatures, and record the easements with the Mahoning County Recorder.
- L. Funding procurement and assistance is not included.

7. Period of Service

- A. The Engineer agrees to commence work within (10) days after written authorization to proceed and to complete an Ohio EPA Permit-to-Install plan set within nine (9) months of receiving the development plans for MALA and Redgate Farm. The Engineer assumes that the easement acquisition process by the Owner could take up to one calendar

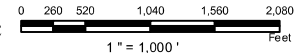
year. The Engineer will complete a final construction set for bidding within three (3) months of the recording of all required utility easements by the Owner with the Mahoning County Recorder's Office.

Exhibit B



Map Legend

DISTRICT LINES	DISTRICT INDEX	PARK/SPECIAL	COUNTY ROAD
CITY-LINE	BASE MAP PARKS	PLACE MARKER	TOWNSHIP ROAD
COUNTY-LINE	BIKEWAY	BASE MAP ROADS	
SCHOOL-LINE	CANFIELD FAIR GROUNDS	INTERSTATE	
TOWNSHIP-LINE	WATER RESERVOIR	U.S. ROUTE	
VILLAGE-LINE	PARK	STATE ROUTE	



January 21, 2022

Redgate