

NOTICE OF PROCEEDINGS MEETING
City Council of the City of Defiance, Ohio
Charles D. Beard Council Chambers
City Hall, 631 Perry Street, Defiance, OH 43512

REGULAR MEETING OF COUNCIL
TUESDAY JUNE 8, 2021
OPENING COMMENTS – 7:00 P.M.

PUBLIC HEARING: NONE

SPECIAL GUEST: NONE

SECOND READING: AN ORDINANCE AWARDING A PROFESSIONAL SERVICES CONTRACT FOR THE DESIGN OF THE COMMERCE DRIVE EXTENSION AND DECLARING AN EMERGENCY

STUDY SESSION: NONE

CITIZEN CONCERNS: NAME & ADDRESS FOR THE RECORD (5 MINS)

LIAISON ASSIGNMENTS	TIME P.M.	DATE (2021)	AGENDA
BUILDING & LANDS KRUTSCH	7:00	Tuesday - JUNE	NO MEETING
ECONOMIC DEVELOPMENT EURESTE	7:00	Tuesday - JUNE	NO MEETING
FINANCE & BUDGET ENGEL	7:00	Tuesday – JUNE 8	QUARTERLY UPDATE AND FEE & CEMETERY RATES
POLICE & FIRE HANCOCK	7:00	Tuesday - JUNE	NO MEETING
PUBLIC RELATIONS CORBITT	7:00	Tuesday - JUNE	NO MEETING
PUBLIC UTILITIES, GAS & LIGHTS MAST	7:00	Tuesday – JUNE	NO MEETING
SEWER & SANITATION WAXLER	7:00	Tuesday – JUNE	NO MEETING
STREETS & SIDEWALKS EURESTE	7:00	Tuesday - JUNE	NO MEETING
WATERWORKS – SERVICE ENGEL	7:00	Tuesday – JUNE	NO MEETING
TRAFFIC COMMISSION: LEONARD. Mayor. Cereghin. Shafer. Wilkins. Sprow. Waxler. Eureste. Krutsch	5:00	Tuesday – JUNE 22	SECOND ACCESS AT 115 BIEDE AVE., NO RIGHT-TURN ON RED RESTRICTED AREA AND HANDICAPPED PARKING IN THE VICINITY OF 1005 DAVIDSON ST.
BOARD OF CONTROL MEETING: MAYOR. Leonard. O’Donnell. Lehner	1:30 P.M. MONDAY 9:00 A.M. THURSDAY	MONDAY and THURSDAY	POSTED AT 631 PERRY STREET MEETINGS IN FRONT CONFERENCE ROOM

ORDINANCE NO. _____

AN ORDINANCE AWARDDING A PROFESSIONAL SERVICES CONTRACT FOR THE DESIGN OF THE COMMERCE DRIVE EXTENSION AND DECLARING AN EMERGENCY

WHEREAS, the City desires to expand Commerce Drive from Carpenter Road to Domersville Road; and,

WHEREAS, the Ohio Department of Transportation ("ODOT") awarded a \$750,000.00 grant towards the cost of this infrastructure project; and,

WHEREAS, R.C. §§153.65-153.73 requires municipalities to solicit a statement of qualifications from professional services firms before awarding a professional design or a design-build contract; and,

WHEREAS, the City selected the Mannik & Smith Group, Inc. for this design project after reviewing the statements of qualifications and conducting interviews with five (5) separate engineering firms; and,

WHEREAS, the City Engineer reviewed the proposed contract from the Mannik & Smith Group, Inc. that will provide a design for a scope of services and surveying and recommends adoption by Council for the contract amount of \$195,800.00; and,

WHEREAS, Council finds that the project supports the Infrastructure Pillar of the Defiance Community Strategic Plan, specifically transportation, safety, and connectivity;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is directed to enter into a professional services agreement with the Mannik & Smith Group, Inc. for the Commerce Drive Extension Project No. 2106 according to the scope of services documentation on file with the City Engineer and at the quoted price of \$195,800.00.

Section 2: The Finance Director shall pay the contract price from Section 1 from appropriated funds allocated by expenditure from Line 403-901-52-979102 of the 2021 annual budget.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 4: This Ordinance is declared to be an emergency measure necessary to preserve the health, safety, or welfare of the community for the reason that the City Administration needs to develop plans for this project as soon as possible to remain eligible for the ODOT-administered grant. Grant funding for the City is contingent upon timely commencement of this project. As such, this Ordinance shall be effective immediately upon passage by an affirmative vote of not less than five (5) Members of Council and approval of the Mayor.

Passed: _____, 2021

President of Council

Votes in Favor of Adoption: _____
Votes Opposed to Adoption: _____

Attest: _____, Clerk

Approved: _____, 2021

Mayor



1800 Indian Wood Circle, Maumee, Ohio 43537
 Tel: 419.891.2222 Fax: 419.891.1595
 www.MannikSmithGroup.com

AGREEMENT FOR PROFESSIONAL SERVICES

MSG Proposal No.: OP210715
 Date: May 18, 2021

CLIENT:	<u>City of Defiance Ohio</u>		
CLIENT CONTACT:	<u>Melinda Sprow, PE</u>		
ADDRESS:	<u>631 Perry Street</u>	CITY, STATE ZIP:	<u>Defiance OH 43512</u>
PHONE:	<u>419-784-2249</u>	EMAIL:	<u>mspro@cityofdefiance.com</u>
PROJECT NAME:	<u>Commerce Drive Extension</u>		

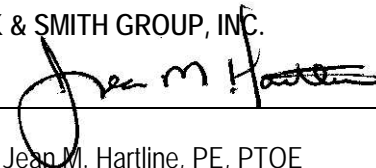
SCOPE OF WORK FOR MSG:
 See Attachment A.

FEE SCHEDULE:
 TIME AND MATERIALS (NOT TO EXCEED) LUMP SUM

PROJECT FEE \$ See Attachment B

SCHEDULE:
 The final construction plans will be delivered to the city by October 31, 2021.

AGREEMENT:
 By execution of this Agreement, the Client authorizes The Mannik & Smith Group, Inc. to provide the services described above according to the attached Terms and Conditions. No terms or conditions other than those stated within the attached, and no agreement or understanding oral or written, in any way purporting to modify these terms and conditions whether contained in Client's purchase order or elsewhere, shall be binding on MSG and its subcontractors unless hereafter made in writing and signed by an authorized representative of MSG. All proposals, negotiations, and representations, if any, made prior to, and referenced hereto, are merged herein. In the event Client directs The Mannik & Smith Group, Inc. to proceed with the work, even if not signed below, the Terms & Conditions are considered accepted by the Client.

CITY OF DEFIANCE, OH SIGNED: _____ PRINTED: _____ TITLE: _____ DATE: _____	THE MANNIK & SMITH GROUP, INC. SIGNED:  PRINTED: <u>Jean M. Hartline, PE, PTOE</u> TITLE: <u>Principal/Vice President</u> DATE: <u>May 18, 2021</u>
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**The Mannik & Smith Group, Inc.
Standard Terms and Conditions**

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

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

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

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

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

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

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

identify a representative authorized to act on Client's behalf with respect to the Project.

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

Payment Terms: Client recognizes that time is of the essence with respect to payment of Consultant's invoices and that timely payment is a material part of the consideration of this Agreement. MSG shall submit monthly invoices for services performed and Client shall pay the full invoice amount within 30 calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Client will exercise reasonableness in contesting any billing or portion thereof. MSG shall be entitled to a 1.5% per month administrative charge in the event of payment delay. Client payment to MSG is not contingent on arrangement of project financing, property acquisition, or approvals necessary for project initiation through completion. Invoice payment delayed beyond 60 calendar days shall give MSG the right to suspend services until payments are current. Non-payment beyond 70 calendar days shall be just cause for termination by MSG.

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

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

Betterment: If, due to MSG's error, any required item or component of the project is omitted from MSG's reports, plans or construction documents, MSG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or

betterment to the project. In no event will MSG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

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

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

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

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

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

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

Consequential Damages: The Client and MSG waive consequential damages which include but are not limited to profits, loss revenues, loss of

use, loss of financing and loss of reputation, for claims, disputes or other matters in question arising out of, or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, equity or that might arise out of or being included with the parties' indemnification obligations.

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

Defects in Service: The Client shall promptly report to MSG any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor agreement and shall require all subcontracts at any level to contain a like provision. Failure by the Client and Client's contractors and subcontractors to notify MSG shall relieve MSG of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered. MSG will correct defects, at its own cost, if timely notified by Client.

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

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

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

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

Force Majeure: MSG shall be entitled to an equitable adjustment to the schedule and compensation for force majeure events, including but not limited to: acts of God or the public enemy, Acts of any government in its sovereign and/or contractual capacities, fires, acts of war, terrorism, violence, floods, epidemics, quarantine restrictions, strikes, embargoes, and unusually severe weather or any other cause outside of the control of MSG. MSG shall notify Client in writing after the beginning of any such cause becomes known, which would affect its performance. In the event a force majeure event continues for more than 30 days, MSG may terminate this Agreement for convenience and shall submit an invoice for services performed up to the effective date of termination and the Client shall pay MSG all outstanding invoices.

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

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

~~The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold MSG harmless from damage, liability or cost to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.~~

~~Neither party is obligated to indemnify the other in any manner whatsoever to the extent of the other's own negligence.~~

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

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

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

Worker's Compensation: As required by applicable state statute
Commercial General Liability: \$1,000,000 per occurrence (bodily injury including death and property damage)
\$2,000,000 aggregate

Automobile Liability: \$1,000,000 combined single limit for bodily injury and property damage
Professional Liability: \$2,000,000 each claim and in the aggregate

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

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

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

Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and MSG, the Client agrees to the fullest extent permitted by law, to limit the liability of MSG for any and all claims, losses, breaches, damages or expenses arising out of this Agreement and/or MSG's performance of services on the Project, from any and all causes, to \$50,000 or the fee realized by MSG for the Project, whichever is greater.

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

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

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

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

Ownership of Documents: Documents prepared or furnished by MSG pursuant to this Agreement are instruments of MSG's professional services and MSG shall retain an ownership and property interest therein, including all copyrights. Upon payment for services rendered, MSG grants Client a license to use instruments of MSG's professional service for its intended purpose. It is expressly understood that computer-aided design and drafting (CADD) and/or building information modeling (BIM) files are issued only as supplemental information for convenience to the Client or other authorized users. CADD and BIM, like any electronic data, transferred in any manner or translated from the system and format used by MSG pursuant to this Agreement, to another system or form, are subject to errors and modifications that may affect the accuracy and reliability of the data, and, in addition, that electronic data may be altered or corrupted whether inadvertently or otherwise. As such, record documents of service shall be based on the printed copy. Reuse or modification of any such documents by Client, without MSG's written permission, shall be at Client's sole risk, and Client agrees to indemnify, defend and hold MSG harmless from all claims, damages and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client.

Relationship of The Parties: All services provided by MSG are for the sole use and benefit of the Client. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or MSG.

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

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

Standard of Care: Services provided by MSG will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances (Standard of Care). The standard of care shall exclusively be judged as of the time the services are rendered and not according to later standards. MSG makes no warranties

or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services.

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

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

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

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

Third Party Claims: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or MSG. However, in the case of a third party claim, the Client will compensate MSG for services performed in defense of such claim unless the claim resulted from the negligent act, error or omission of MSG.

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

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

Attachment A Project Scope

Commerce Drive Extension – Project Understanding and Scope of Work

Project Understanding

The City of Defiance is requesting proposals to develop plans to extend Commerce Drive to the proposed industrial park located south of the Napoleon, Defiance and Western Railway (NDW) by late 2022. The project includes reconstruction of approximately 3,500 feet of pavement with curb and gutter, and a closed drainage system, water and sanitary lines and a possible pump station in accordance with the City of Defiance and ODOT specifications. The project will also include additional utilities to serve the proposed industrial development areas on the north side of NDW. In addition, the project will include a new at-grade crossing of the railroad tracks, platting of sufficient right-of-way for the proposed improvements and coordination with multiple funding sources.

The new roadway is proposed to be two 12-foot lanes with curb and gutter to match the proposed typical section that starts at Domersville Road. We will investigate replacing the curb and gutter and closed storm system with open drainage. The roadway alignment is determined by the existing 80' right-of-way except at the curve near the railroad crossing. The railroad has a dedicated Right-of-Way (R/W) width of 100', and the straight portions of the roadway have a dedicated 80' R/W width both north and south of the tracks. We anticipate additional R/W needed for the curved portion of the road on the north side that have not yet been dedicated, and will develop the plat for that based on plenty of field monuments from the MSG ALTA survey (dated 10/30/17) and Commerce Drive Dedication Plat (dated 3/28/19).

The proposed roadway alignment will be coordinated with the proposed alignment of the southern portion in the business park being developed by NAI Harmon Group's consultant. We understand from the city that only the first 600' of the southern portion of the roadway from Domersville Road will be constructed, and that this Commerce Drive extension project will not tie into any pavement at the initial completion of the project.

Project will provide a left turn lane for westbound Commerce Drive at Carpenter Road. A southbound left turn lane will be provided for Carpenter Road at Commerce, but length will be constrained by the existing bridge over US24. A short 100' southbound left turn lane will be provided for Carpenter Road at Commerce Drive. The city indicated that they have had no slope stability issues with the existing embankments; we anticipate widening with typical benching construction with no temporary retaining structures.

Maintenance of traffic will maintain access during construction for Johns Manville and Clemens Welding, which have driveways that access Commerce Drive.

Project Scope

- 1) Kick-off between our team and the City of Defiance to discuss the project
- 2) Develop a brief preliminary engineering plan/report that will detail the project costs, right-of-way impacts, utility impacts, aesthetics, and stakeholder (adjacent properties) acceptance.
- 3) Data Collection (including surveying and mapping)
- 4) Preliminary engineering plan/report (including coordination with stakeholders)
- 5) Railroad Coordination and Railroad Crossing
 - a) Surveys within railroad property will require Right of Entry (ROE) permits.
 - b) Develop conceptual crossing plans within six weeks of authorization to begin the formal coordination efforts with the railroad. We do not anticipate gates and flashers to be required due to the volume and speed of train traffic at this crossing and have not scoped the project for gates and flashers.
 - c) Coordination will also include permitting for underground crossings for water, sanitary sewer, and storm sewer. Costs for permitting and railroad reviews will be pass through costs, and are not included in this fee proposal.
- 6) Roadway Design (Pavement, Signing and Pavement Markings, Curb and Gutter, Closed Storm System, or open drainage).
- 7) Utilities Design – Sanitary Sewer (and potential pump station); Waterline design (final system will connect the Carpenter Road and Domersville Road waterlines)

- a) Evaluate the best routing for the new sanitary sewer and storm outlets, along with locations of any pump station required, to either Carpenter Road or Domersville Road, or both. Keeping the number of pump stations to a minimum will be a priority.
 - b) Toledo Edison has a private sanitary sewer outlet (downstream from their private pump station) that follows along the northerly railroad right-of-way east to Domersville Road; MSG will evaluate the suitability of perhaps sharing this section of sanitary sewer from the future railroad crossing to Domersville Road from a long term maintenance and capacity perspective.
 - c) Pump station design is in the "If Authorized" section of the proposal pending our data collection and preliminary design.
- 8) Preliminary Design Submittal
 - 9) Final Plan submittal
 - 10) R/W plan development
 - 11) Construction Cost Estimates
 - 12) Geotechnical Investigation
 - 13) Funding considerations
 - 14) Supporting materials to fulfill 629 Funds and Jobs and Commerce funding requirements

Schedule

Final construction plans to be delivered to the city by October 31, 2021. Authorization to proceed is anticipated by June 4, 2021.

Attachment B

Project Fee Breakdown

Commerce Drive Extension Fee Breakdown	
TASK	FEE
Data Collection (Survey)	\$15,900.00
Railroad Coordination	\$3,400.00
Preliminary Design	\$94,700.00
Final Design	\$11,700.00
Right-of-Way Plans	\$19,700.00
Geotechnical Investigation	\$12,200.00
Construction Support	\$3,600.00
TOTAL AUTHORIZED FEE	\$161,200.00
IF AUTHORIZED WORK	
Pump Station Design	\$34,600.00
TOTAL IF-AUTHORIZED FEE	\$34,600.00
TOTAL FEE	\$195,800.00