



04 April 2025

Mr. Craig Lindholm, City Administrator
City of Mount Vernon, Texas
109 North Kaufman Street
Mount Vernon, Texas 75457
Via Email: clindholm@comvtx.com

RE: Professional Services – Little Creek Park Design and Grant Administration

Dear Craig:

It is our pleasure to submit this proposal for professional services for the improvements of Little Creek Park located in the City of Mount Vernon as shown in Exhibit 'A'. Proposed elements for the project include a playground, proposed enhancements at existing sports courts, shade structure, site furniture, signage and native landscaping.

Upon your review of this proposal, we would appreciate the opportunity to meet with you to review and further clarify any items and the scope as presented. If you agree with the scope of services and fees as presented, please sign and return to our office.

Based on our understanding of the project, we propose the following scope of services:

1. Discovery Phase

- a. On-site Topography of the project limits. Digital file in DWG (AutoCad) format consisting of all features located within project site to include 1 foot contours to be provided to the Owner.
- b. Develop base map from on-site survey and any client provided data of the existing site and/or future conditions.
- c. Work in conjunction with the Owner to finalize a site plan layout for the project.
- d. Develop Preliminary Layout (Grading & Drainage).
- e. Research and review previously prepared construction plans, record documents, land records, or other pertinent documents on file in the county real property records.
- f. Confirm the general location of underground utilities and easements.
- g. Provide preliminary site plan.
- h. Provide coordination with TPWD on Grant Administration for development.
- i. Conduct general coordination meetings with City staff.
- j. Recommend as required Subsurface Utility Engineering (SUE) or Level A utility investigation or any special surveys or tests, which, in the reasonable opinion of the Consultant, may be required for a proper design of the project and arrange for such work, after approval by the City, at the City's expense.

2. Design Development Phase

- a. Revise and refine the preferred design based on public engagement data, staff direction, and City Council. Owner to provide comments.

- b. Provide revised final site plan from comments.
- c. Provide preliminary drainage map.
- d. Design Development presentation to determine styles and themes for the proposed improvements.
- e. Prepare supplemental sketches as required to illustrate the design intent.
- f. Provide probable cost estimate for construction.
- g. From approved final design provide a detailed color rendering (plan view and perspectives) of project.
- h. General coordination meetings with City staff.

3. Construction Documents Phase

- a. Based on the approved design coordinate and/or prepare detailed construction drawings and specifications for erosion control, grading, paving, drainage, landscaping, and other site improvements for the Project. The construction drawings and specifications shall be prepared for the full project.
- b. Furnish to the Owner construction plans and specifications (PDF). Plans for review at 90% along with updated cost estimates. Submittal documents typically include the following sheets, but all may not be required for this project:

- 1. Cover Sheet with Sheet Index and Project Location map
- 2. General Notes and Legends
- 3. Project Site Layout Plan
- 4. Quantity Summary
- 5. Plant Protection and Tree Mitigation Plan
- 6. Layout and Dimensioning Plan
- 7. Typical Sections
- 8. Demolition Plan
- 9. Paving Plan and Profile
- 10. Pavement Markings
- 11. Entry Signage
- 12. Retaining Wall Layout and Details
- 13. Drainage Area Map
- 14. Runoff, Inlet, and Storm Sewer Calculations
- 15. Storm Sewer Plan and Profile
- 16. Culvert Plan and Profile
- 17. Channel Profiles and Cross-Sections
- 18. Storm Water Pollution Prevention or Erosion Control Plans
- 19. Project Details
- 20. Hardscape Plans and Details
- 21. Landscape Plans and Details
- 22. Earthwork Summary
- 23. Technical Specifications and/or Special Provisions for the project

- c. Coordinate with the relevant utility services of the City and franchise utilities, as necessary to determine conflicts.
- d. Final Geotechnical Report (not provided) shall include recommendations for pavements, foundations, and other site program design elements proposed.
- e. General coordination meetings with City staff.
- f. Submit Plan Set to TDLR for review and approval.

Following completion of the Construction Documents, the Consultant will coordinate with a RAS for the purposes of reviewing the plans for the Project for conformance with the Texas Accessibility Standards (TAS). The Consultant will use a RAS subconsultant for the Texas Department of Licensing and Regulation (TDLR) required plan review and project inspection. The Consultant will coordinate with the RAS for project registration with the TDLR prior to bidding and project inspection upon completion of construction. The Consultant will prepare plans in general conformance with TAS and will make one (1) round of revisions to the plans based on comments received from the RAS.

4. Bidding Phase

- a. Coordination of bidding and award of the project. Attend Pre-Bid and Pre-Construction Conferences and cooperate with the City as needed to interpret, clarify, amend, or expand the bid documents. Deliverables - Provide up to Three (3) Final Bid Set of Construction Documents (Signed and sealed w/City Issued for Construction Stamp), Tabulated Bid Form and Bid Summary Letter.

Based on the above scope of services, our lump sum fee for the project is **\$76,380.00**. This fee is based on a total construction budget of \$610,000.00. This fee does not include estimated reimbursables of (\$6,500) such as reproductions, TDLR project registration, mileage, etc. and will be invoiced based on the attached rate sheet. This proposal is subject to the general terms and conditions described in Exhibit 'B'.

Additional Professional Service (MHS standard hourly rate):

5. Construction Administration Phase

- a. This fee assumes that the project will be constructed within a 6-month timeframe after the City approval of award of construction to a General Contractor within 90 days of bids received.
- b. As requested by the Owner, the Consultant shall visit the site and consult with the Client and the contractor to resolve construction and design related problems.
- c. Monthly site visits to observe the progress and quality of work.
- d. Review, respond, and document Requests for Information (RFIs).
- e. Monthly Update Meetings with Owner Staff and Contractor.
- f. Check samples, catalog data, laboratory testing, shop drawings, mill tests of materials and equipment, and other data which the Contractor is required to submit, only for the conformance with the design concept.
- g. Review and request approval of the contractor's pay applications based on the on-site observations of design professional.
- h. Provide TPWD Grant Administration including project reimbursements.

- i. Conduct a substantial completion and final inspection of the Project for conformance with the design and recommend in writing final payment to the contractor. Consultant to submit and receive final payment with the written final inspection report.

Preparation of the following items and any other items not listed have been excluded from this proposal but can be provided in an additional service agreement.

Traffic Impact Analysis
Flood Studies
Off-Site Utilities

TxDOT Permits
USACE Permitting Fee
Environmental Survey

Final Plat
Off-Site Roadway Design
Three-way Contracts w/ City

If our services are needed for additional items, we can prepare a separate proposal or bill you hourly based on the attached rate sheet.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Shipp", with a stylized flourish at the end.

David B. Shipp, PLA, ASLA
Partner / Landscape Architect



2025 MHS Hourly Rates

Engineering

Senior Professional Engineer.....	\$240.00 per hour
Professional Engineer.....	\$165.00 per hour
Graduate Engineer.....	\$125.00 per hour
Civil Engineering Intern.....	\$80.00 per hour

Landscape Architecture

Senior Landscape Architect.....	\$240.00 per hour
Landscape Architect.....	\$165.00 per hour
Landscape Designer.....	\$105.00 per hour
Landscape Intern.....	\$80.00 per hour

Planning

Senior Planner.....	\$210.00 per hour
Planner.....	\$125.00 per hour
Planning Intern.....	\$80.00 per hour

Graphic Design

Senior Graphics Designer.....	\$225.00 per hour
Graphics Designer.....	\$140.00 per hour

Drafting

Senior CAD Designer.....	\$145.00 per hour
CAD Designer.....	\$115.00 per hour
CAD Drafter.....	\$95.00 per hour

Office Admin

Word Processing/Clerical.....	\$75.00 per hour
Mileage.....	2025 Standard IRS
Reproduction, Aerial photography, etc.....	Cost plus 15%

A service charge of 1.5% per month (18% annual rate) will be added to all balances 30 days past due and will continue each month until the past due amount is received.

EXHIBIT A

GRANT ITEMS

PLAYGROUND

MULTI-PURPOSE SPORTS COURTS

SHADE

SITE FURNITURE

NATIVE LANDSCAPING

SIGNAGE

DEMOLITION/SITE PREPARATION

TOTAL ACREAGE

11.0 ACRES



LINE TYPES LEGEND*

WATER

ELECTRIC

STORM SEWER LINE

SUBJECT BOUNDARY

*Property Boundary & Utilities are Approximate

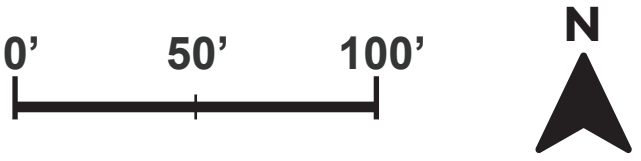


EXHIBIT 'B'

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (this "**Agreement**"), are attached to and made a part of the Statement of Work and Letter Agreement dated 08 April 2025 (the "**Statement of Work**") by and between MHS Planning and Design, LLC, a Texas limited liability company with offices located at 212 W. 9th Street, Tyler, Texas 75701 ("**MHS**") and The City of Mount Vernon with a mailing address at 109 N Kaufman St. Mount Vernon, Texas 75457 ("**Client**" and together with MHS, the "**Parties**", and each a "**Party**").

WHEREAS, MHS has the capability and capacity to provide certain civil engineering, planning, and landscape architecture services; and

WHEREAS, Client desires to retain MHS to provide the said services as more fully described in the Statement of Work, and MHS is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MHS and Client agree as follows:

1. Services. MHS shall provide to Client the services (the "**Services**") set forth in the Statement of Work. Additional Statements of Work shall be deemed issued and accepted only if signed by the MHS Contract Manager and the Client Contract Manager, appointed pursuant to Section 2.1(a) and Section 3.1, respectively.

2. MHS Obligations. MHS shall:

2.1 Designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "**MHS Contract Manager**"); and

(b) A number of employees or agents that it deems sufficient to perform the Services detailed in each Statement of Work, (collectively, with the MHS Contract Manager, "**Provider Representatives**").

2.2 Notwithstanding anything to the contrary in this Agreement, MHS may make changes to the Provider Representatives in its sole and absolute discretion; provided that MSH shall first provide notice to Client. In addition, at the reasonable request of Client, MSH shall use reasonable efforts to appoint a replacement Provider Representative at the earliest time it determines to be commercially viable.

2.3 Maintain complete and accurate records relating to the provision of the Services under this Agreement. During the Term, upon Client's written request, MHS shall allow Client or Client's representative to inspect and make copies of such records in connection with the provision of the

Services; provided that Client provides MHS with at least five (5) business days advance written notice of the planned inspection and any such inspection shall take place during regular business hours.

3. Client Obligations. Client shall:

3.1 Designate one or more persons to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "**Client Contract Manager**"), with such designation to remain in force unless and until a successor Client Contract Manager is appointed.

3.2 Require that the Client Contract Manager respond promptly to any reasonable requests from MHS for instructions, information, or approvals required by MHS to provide the Services.

3.3 Cooperate with MHS in its performance of the Services and provide access to Client's premises, employees, contractors, and equipment as required to enable MHS to provide the Services.

3.4 Take all steps necessary, including obtaining any required licenses or consents, to prevent Client-caused delays in MHS's provision of the Services.

3.5 Provide MHS with all site specific information pertaining to the project that is within Client's possession or control, including, without limitation, GIS and CAD files, a legal description and any necessary survey, including topographic survey, spot elevations, and locations of all existing utilities, of the real property upon which the project is situated.

4. Fees and Expenses.

4.1 In consideration of the provision of the Services by the MHS and the rights granted to Client under this Agreement, Client shall pay the fees set forth in the applicable Statement of Work. Unless otherwise provided in the applicable Statement of Work, said fee will be payable within 30 days of receipt by the Client of an invoice from MHS but in no event more than 30 days after completion of the Services performed pursuant to the applicable Statement of Work.

4.2 Client shall reimburse MHS for all reasonable expenses incurred in accordance with the Statement of Work within 30 days of receipt by the Client of an invoice from MHS accompanied by receipts and reasonable supporting documentation.

4.3 Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder; provided, that in no event shall Client pay or be responsible for any taxes imposed on, or with respect to, MHS's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

4.4 All late payments shall bear interest at the lesser of (a) the rate of 1.5% per month and (b) the highest rate permissible under Texas law, calculated daily and compounded monthly. Client shall also reimburse MHS for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which MHS does not waive by the exercise of any rights hereunder), MHS shall be entitled to suspend the provision of any Services if the Client fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof.

4.5 Any required retainer, as set forth in the Statement of Work, shall be applied to the final invoice, or at MHS's discretion, the retainer may be applied against any unpaid invoice and shall be replenished by Client when and to the extent requested by MHS. Any unused retainer shall be refunded to Client promptly upon conclusion of the Services and payment in full of all invoices.

5. Limited Warranty and Limitation of Liability.

5.1 MHS warrants that it shall perform the Services:

(a) In accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement.

(b) Using personnel of industry standard skill, experience, and qualifications.

(c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 MHS's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty shall be as follows:

(a) MHS shall use reasonable commercial efforts to promptly cure any such breach; provided, that if MHS cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8.2.

(b) In the event the Agreement is terminated pursuant to Section (a) above, MHS shall within 30 days after the effective date of termination, refund to Client any fees paid by the Client as of the date of termination for the Services or Deliverables (as defined in Section 6 below), less a deduction equal to the fees for receipt or use of such Deliverables or Services up to and including the date of termination on a pro-rated basis.

(c) The foregoing remedy shall not be available unless Client provides written notice of such breach within 30 days after delivery of such Services or Deliverables to Client.

5.3 MHS MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 5.1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

6. Ownership of Deliverables. All documents, work product, and other materials that are delivered to Client under this Agreement or prepared by or on behalf of the MHS in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**") shall become the sole property of the Client. MHS may maintain copies thereof for its records and for its future professional endeavors, including, without limitation, advertising and marketing.

7. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 7; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided

that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 7 and Section 8.4 only, Receiving Party's Group shall mean the Receiving Party's affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, MHSs, sublicensees, subcontractors, attorneys, accountants, and financial advisors.

8. Term, Termination, and Survival.

8.1 This Agreement shall commence as of the Effective Date (as hereafter defined) and shall continue thereafter until the completion of the Services under all Statements of Work, unless sooner terminated pursuant to Section 8.2 or Section 8.3.

8.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

(a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 business days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3 Notwithstanding anything to the contrary in Section 8.2(a), MHS may terminate this Agreement before the expiration date of the Term on written notice if Client fails to pay any amount when due hereunder: (a) and such failure continues for 15 days after Client's receipt of written notice of nonpayment; or (b) more than 2 times in any 6 month period.

8.4 The rights and obligations of the Parties set forth in this Section 8.4 and Section, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

9. Limitation of Liability.

9.1 IN NO EVENT SHALL MHS BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT MHS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 IN NO EVENT SHALL MHS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO MHS PURSUANT TO THIS AGREEMENT AND ANY APPLICABLE STATEMENTS OF WORK.

10. Insurance. During the term of this Agreement, Client shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in a sum no less than \$1,000,000 per occurrence and \$2,000,000.00 in the aggregate with financially sound and reputable insurers. Upon MHS's request, Client shall provide MHS with a certificate of insurance from Client's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name MHS as an additional insured. MHS shall provide Client with 30 days' advance written notice in the event of a cancellation or material change in MHS's insurance policy. Except where prohibited by law, Client shall require its insurer to waive all rights of subrogation against MHS's insurers and MHS.

11. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of this Agreement shall supersede and control.

12. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth in the Statement of Work (or to such other address that the receiving Party may designate from time to time in accordance with this Section), and shall be deemed given and effective (i) on the date of personal delivery to the recipient, (ii) at the time when confirmation

of successful transmission is received by the sending computer when sent by electronic transmission, (iii) three (3) days following the date of mailing if sent by certified United States mail, return receipt requested, postage prepaid, or (iv) one (1) day following mailing if deposited for next day delivery with Federal Express or a commercially recognized overnight carrier for overnight delivery.

13. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

15. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. Assignment. Client shall not assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of MHS. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the Client of any of its obligations under this Agreement. MHS may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of MHS's assets without Client's consent.

17. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

18. Relationship of the Parties. The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by MHS shall be under its own control, Client being interested only in the results thereof. The MHS shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give the Client the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. The Services must meet the Client's final approval and shall be subject to the Client's general right of inspection throughout the performance of the Services and to secure satisfactory final completion. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

20. Choice of Law. This Agreement and all related documents including all exhibits attached hereto and Statements of Work, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Texas, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

21. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the US District Court for the Eastern District of Texas, Tyler Division or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Tyler, Smith County, Texas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the Eastern District of Texas, Tyler Division or, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Tyler, Smith County, Texas. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

22. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

23. Effective Date. The Effective Date of this Agreement is the date upon which the Statement of Work is accepted by Client.

24. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the Client to make payments to MHS hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, pandemic, epidemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) other events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon

as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 50 consecutive days following written notice given by it under this Section 24, the other Party may thereafter terminate this Agreement upon 30 days' written notice.