



25 April 2023

Name: Craig Lindholm, City Administrator

Via Email: clindholm@comvtx.com

Phone #: 903-537-2252

RE: City of Mount Vernon Strategic Plan & Conceptual Land Planning

Dear Craig,

It is my pleasure to submit this proposal for professional services for the development of a Strategic Plan & Preliminary Land Planning located in the City of Mount Vernon, Texas. Our scope of services for this project is as follows:

- 1) Kick-Off Meeting
 - a) Meet the Planning Team and Key Stakeholders
 - b) Discuss and confirm project expectations, goals, roles, and responsibilities.
- 2) Data Collection
 - a) Obtain the most recent maps of the service area including street maps, topography maps, and aerial photography, if available. (See Section II for City's responsibility.)
 - b) Obtain relevant planning documents and produce an updated City Owned Property Map
 - c) Obtain the most recent population projections, demographic and income data for the service area.
 - d) Meet with City staff to discuss future projects, desires, programming, and maintenance needs regarding public spaces.
- 3) Stakeholder Interviews
 - a) In coordination with the City Administrator, conduct interviews with Key Stakeholders in the community. (10 Meetings Total)
 - b) Develop understanding of priorities, concerns, and issues to determine the strengths, weaknesses, opportunities, and threats within the community.
- 4) Needs Analysis
 - a) Develop community wide needs based on current and future supply and user demand.
 - b) Conduct a Design Charrette Meeting of two (2) proposed tracts: Northern Corridor (+/- 220-acres) & Southern Corridor (+/- 190-acres) with key Stakeholders to better understand the needs and expansion of services within the community. (Additional detail in Section 5)
- 5) Conceptual Site Planning (Two (2) Tracts +/- 220 acres & +/- 190 acres)
 - a) Discovery Phase
 - i) Coordinate with the Client to obtain the most current and available preliminary data (surveys, layouts, plats, etc.).
 - ii) Prepare a base map with existing available data.
 - iii) Site visit to view and verify the existing conditions.
 - iv) Investigate and identify site-specific utilities, constraints, and opportunities by gathering localized data and utilizing national best development practices.

- v) Coordination with Client, City, County, Utility Providers, etc. to determine site specific regulations and services available.
- b) Conceptual Site Planning & Preliminary Engineering
 - i) Preliminary Utility Analysis to determine location, size and capacity of existing utilities, including but not limited to water, electrical, sewer and storm sewer.
 - ii) Develop two (2) Concept Layouts per tract (4 total) that will maintain the vision and goals of the Client. The Concept Layouts will be 2D hand rendered at a scale determined by MHS and include a product summary table, labels, title block, scale and north arrow.
 - iii) Meeting (in office or virtual) to review & discuss the four (4) Conceptual Layouts.
 - iv) Provide one (1) update to each of the selected Conceptual Layouts based on Client's feedback.
 - v) Based on the approved Layout, develop a digital Conceptual Layout Plan for each existing property (2 total).
 - vi) Develop Engineers Opinion of Probable Cost for each tract.
- 6) Preparation of Preliminary Plan
 - a) Document existing and future land uses.
 - b) Identify future land acquisitions and city renovation projects.
 - c) Develop goals, objectives and specific city-wide strategies for improvements, developments and growth.
 - d) Prepare draft written report detailing the community demographics, stakeholder findings, needs and proposed developments and renovations.
 - e) Hold an interim meeting with Staff and Stakeholders to review progress of planning, potential developments, and recommendations to establish priorities to be included in the plan.
 - f) Present preliminary plan to City Council for comment.
- 7) Preparation of Final Plan
 - a) Incorporate review comments and prepare a final written report including proposed existing city data, community input, phasing plan for improvements, full color exhibits and funding opportunities.
 - b) Develop & incorporate +/- 220-acre & +/- 190-acre tract conceptual site plans.
 - c) Develop an overall summary of needs, recommendations, and priorities.
 - d) Provide other scope items if necessary to develop a complete project.
- 8) Presentation of Final Plan
 - a) Make presentation of the final Plan to Key Stakeholders for approval and recommendation to the City Council for adoption.
 - b) Present five (5) copies of the final bound plan and to the City. The product will be in full color bound format. The Consultant will also deliver to the City the final plan in PDF format. The Consultant will also deliver relevant AutoCAD, ArcView/GIS and Word files to the City for their use.
- 9) The City's Responsibilities:
 - a) Provide full information as to his requirements for the Project.
 - b) Provide to the Consultant all reasonably available information pertinent to the Project including a City base map in digital form, topography, aerial photography and all previous reports, and any other data relative to the planning of the Project.

- c) Make all provisions for the Consultant to enter upon public and private lands as required for the Consultant to perform his work under this Agreement.
- d) Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Consultant and shall render in writing decisions pertaining thereto within reasonable time so as not to delay the work of the Consultant.
- e) Advertise for, coordinate, and arrange public meetings, board meetings, and focus group meetings, and pay for all costs incident thereto.
- f) Provide such legal, accounting, and insurance counseling services as may be required for the Project.

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.

Geotechnical Testing	Structural Engineering	Wetland Delineation	3-Way Contracts w/ City
Detention	Off-Site Roadway Design	Lake Permitting	TxDOT Permits
Flood Studies	Traffic Impact Analysis	404 Permitting	Bidding & Permitting
Off-Site Utilities	Septic Design	Surveying	Electrical Engineering

Based on this scope of services, our lump sum fee for the project is \$98,650.00. This fee excludes reimbursables such as reproductions, permits, 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'. If you find this proposal meets your needs, please have the appropriate party sign below, retain one copy for your file and return one to us. Once we receive the signed proposal, we will begin work. If you have any questions or need us to modify our proposal, please let me know.

Sincerely,



Hunter N. Rush | Senior Planner & Partner

Approved _____

Date _____

2023 Hourly Rates

Engineering

Senior Professional Engineer	\$195.00 per hour
Professional Engineer	\$140.00 per hour
Graduate Engineer	\$95.00 per hour
Civil Engineering Intern	\$75.00 per hour

Landscape Architecture

Senior Landscape Architect	\$195.00 per hour
Landscape Architect	\$135.00 per hour
Landscape Designer	\$85.00 per hour
Landscape Intern	\$70.00 per hour

Planning

Senior Planner	\$160.00 per hour
Planner	\$85.00 per hour
Planning Intern	\$70.00 per hour

Graphic Design

Senior Graphics Designer	\$125.00 per hour
Graphics Designer	\$85.00 per hour

Drafting

Senior CAD Designer	\$125.00 per hour
CAD Designer	\$105.00 per hour
CAD Drafter	\$85.00 per hour

Office Admin

Word Processing/Clerical	\$70.00 per hour
Mileage	\$0.655 per mile
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 '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 25 April 2023 (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, (Craig Lindholm, City Administrator, with a mailing address at 109 N Kaufman St. Mt. 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.