

RESOLUTION NO. 73-2024

Introduced by Sam Artino

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE PROPOSAL AND ENTER INTO AN AGREEMENT WITH KS & ASSOCIATES FOR PROFESSIONAL ENGINEERING AND SURVEYING SERVICES RELATING TO SEA WALL REPAIRS AND IMPROVEMENTS AT THE FORMER CONAGRA PROPERTY IN AN AMOUNT NOT TO EXCEED FOUR HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED AND XX/100 DOLLARS (\$418,500.00).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:


SECTION 1. That the City Manager shall be, and he hereby is, authorized and directed to accept the proposal and enter into an agreement with KS & Associates for professional engineering and surveying services relating to sea wall repairs and improvements at the former ConAgra property in an amount not to exceed Four Hundred Eighteen Thousand Five Hundred and xx/100 Dollars (\$418,500.00), a copy of which agreement is attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

SECTION 3. That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST:


Clerk of Council


Monty Tapp, Mayor

ADOPTED:

24 SEP 2024



September 10, 2024

Engineers + Surveyors

City of Huron
Stuart Hamilton, Service Director
417 Main Street,
Huron, Ohio 44839

260 Burns Road, Suite 100
Elyria, Ohio 44035
P 440 365 4730
ksassociates.com

**RE: Coastal Design Services for the Former ConAgra Property, Huron, Ohio 44839
KS Project #21245-1**

Dear Mr. Hamilton:

Please accept this proposal for professional engineering and surveying services that may be required to meet your objective.

Project Objective:

We understand that the City of Huron (Client) wishes to rehabilitate the existing waterfront structures at the former ConAgra property in Huron, Ohio. In 2021, the City contracted with KS Associates (Engineer) to perform an assessment of the existing steel sheet pile bulkheads along the perimeter of the peninsula. KS determined that the existing waterfront infrastructure is nearing its useful life and rehabilitation is warranted before developing the site. The KS assessment provided recommendations for rehabilitating and improving the waterfront at the property. The City has chosen to proceed with construction of an armor stone revetment along the shore of the property and has selected KS Associates Inc. to lead the design, permitting, bidding, and construction administration for implementing the recommended improvements. The project will require the construction of approximately 1,320 linear feet of new stone revetment. In order to accomplish this objective, we recommend the following scope of services:

Phase 1 – Site Investigations

1.1 Hydrographic, Topographic and Limited Boundary Survey

KS will engage OHM Advisors as a subconsultant to perform a hydrographic survey of the riverbed adjacent to the project site. The hydrographic surveys will be performed with a GPS enabled single beam echo sounder (Seafloor Systems Hydrolite-TM or similar) from a survey boat to collect data at approximately a 10-foot by 10-foot grid. OHM will use standard survey methods to perform limited topographic and boundary surveys to map the existing structures (steel sheet pile bulkheads and concrete caps) and the property lines for parcels 42-61270.000, 42-61270.001, and 42-61270.002. The survey will only include features that are required for the design or permitting of the proposed stone revetments.

1.2 Metocean Analysis

- 1.2.1 Design Water Levels: KS will develop the design water levels at the project site based on existing data and reports by National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (USACE), and the Federal Emergency Management Agency (FEMA), including Low Water Datum (LWD), average water levels, the Ordinary High Water Mark (OHW), and the 50%, 10%, 2%, and 1% annual chance (2-, 10-, 50-, and 100-year)

extreme water levels.

- 1.2.2 Wave Conditions: Based on the range of design water levels and historical wind data, KS will perform a nearshore wave analysis to select a range of design waves to be considered for the structure. The wave analysis will consider fetch-limited waves, depth-limited waves, and exposure to Lake Erie wave energy. KS will calculate wave run-up and the potential for overtopping at a range of revetment slopes and crest elevations to aid in planning for upland development.
- 1.2.3 Ice Conditions: KS will develop the design ice conditions based on reports by NOAA or the USACE. KS will estimate the ice forces needed for structural design using the applicable methods outlined in the U.S. Army Corps of Engineers (2002) Ice Engineering Manual 1110-2-1612.
- 1.2.4 KS will compile the water level, wave and ice data to prepare a metocean report for the project site. KS will meet with the City and developer to discuss the results of the metocean analysis and recommendations for planning upland development, including elevations for upland structures based on design water levels and wave run-up.

1.3 Geotechnical Investigations

In order to characterize subsurface conditions for the design of the new shore protection, KS will engage a qualified subconsultant to advance soil borings to aid in the design of the proposed revetments. The soil borings will be advanced from marine equipment in order to collect geotechnical data for the riverbed adjacent to the site. The data collected will be used to prepare recommendations regarding the potential for stone settlement on the riverbed.

KS will review the information provided in the geotechnical report and make a determination that the borings were acquired per plan and will serve as the basis of design. If KS determines that the borings indicate unusual conditions, KS may recommend additional services which may include additional geotechnical investigations. Additional services are the financial responsibility of the City and would be authorized only upon the City's written consent. The City is specifically alerted to the fact that boring logs and related information depict subsurface conditions only at the specific location of the soil boring and at the particular time designated on the logs. Soil conditions at other locations may differ from conditions occurring at this boring location.

The design of the subject facility will be based on site conditions as they existed at the time of the drilling and assume that the exploratory borings are representative of the subsurface conditions of the whole site. If, during construction, subsurface conditions are found which are significantly different from those observed in the exploratory boring, KS should be advised at once so that we can review these conditions and reconsider our designs where necessary. If there is a substantial lapse of time between the submission of the design and the start of work at the site, or if conditions have changed due to natural causes or construction operations at or adjacent to the site, KS should be advised at once so that we can review these conditions and reconsider our designs where necessary, considering the changed conditions and/or time lapse.

Unanticipated soil conditions are commonly encountered on construction sites and cannot be fully anticipated by merely taking soil borings. Such unexpected conditions frequently require that additional expenditures be made to attain a properly constructed project. It is recommended that the City consider providing a construction contingency fund in the project budget to accommodate such potential extra costs.

Phase 2: Preliminary Design and Preparation of Permit Applications

2.1 Concept Refinement

KS will develop conceptual alternatives for the new stone revetment, varying the structure slope and associated stone sizes and crest elevations, to select a cost-effective design for the revetment. KS anticipates developing up to three alternatives at the conceptual level and preparing a narrative alternatives analysis to be used for regulatory permitting. Preliminary conceptual design drawings and a preliminary engineer's opinion of probable construction costs will be provided for each alternative.

Please note that the preliminary drawings prepared for the purpose of demonstrating design concepts are not final construction drawings and will be clearly marked "Not for Construction". The City is cautioned and advised not to use preliminary plans for construction.

KS will attend one meeting with The City to review the alternatives and select a preferred alternative.

2.2 Initial Regulatory Coordination

Once a preferred alternative has been selected, KS will initiate coordination with the U.S. Army Corps of Engineers, Ohio Department of Natural Resources (ODNR), and Ohio Environmental Protection Agency (OEPA) to provide background information regarding the project purpose, site conditions, design constraints, verify regulatory requirements and develop permitting strategies for the project.

2.3 Preliminary 30% Design

2.3.1 Upon your approval and acceptance of the conceptual design, KS will develop preliminary (30% level) design drawings for the new stone revetment. The preliminary design drawings are expected to include:

- Title sheet with location map,
- Existing site plans showing the current conditions in the project area,
- Demolition plans identifying existing waterfront structures planned to be demolished (or partially demolished) and anticipated demolition operations,
- Proposed site plans showing the final condition of the project area following the rehabilitation, and
- Preliminary cross sections for the proposed structures.

2.3.2 KS will prepare an updated, 30% level, opinion of probable construction costs.

2.3.3 KS will attend one design review meeting with the City to present and discuss the preliminary design.

2.4 Prepare Permit Applications

The proposed project will require authorization from the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The project is also anticipated to require authorization from the Ohio Environmental Protection Agency pursuant to Section 401 of the Clean Water Act. Because the project is within Ohio's Coastal Management Area, the project will require a Federal Consistency Certification from the Ohio Department of Natural Resources pursuant to Ohio Revised Code Section 1506 and 16 USC 1456. However, the project is not anticipated to require a Shore Structure Permit from ODNR. Coordination will also be required with the City of Huron, U.S. Coast Guard, U.S. Fish and Wildlife Service, ODNR Division of Wildlife,

and Ohio History Connection.

- 2.4.1 Upon approval of the preliminary design by the City, KS will prepare applications for authorization from the USACE. The application package will include a USACE Application (Eng Form 4345), ODNR Federal Consistency Statement, application drawings, site photos, design calculations, a narrative alternatives analysis and an engineering memo regarding environmental impacts and restrictions (such as in-water work restrictions). KS will prepare the application packages and provide them to the City for signature. The City will be responsible for providing documentation that the individual signing the applications has the authority to sign on behalf of the property owner. Once the applications are signed, KS will compile the required documents and submit them to the USACE on behalf of the City.

Because the project is located close to the mouth of Lake Erie, water levels at the project site are generally controlled by lake levels. Therefore, it is assumed that the USACE jurisdiction is at the Ordinary High Water Mark of Lake Erie (elevation 573.4 feet IGLD 1985). Individual and cumulative impacts to the human environment are also assumed to be minimal for projects requiring the construction of a stone revetment. Therefore, a Jurisdictional Determination, Categorical Exclusion, Environmental Assessment and Environmental Impact Statement should not be required and are not included in this scope of services. If these documents are required by the USACE or for project funding, KS can prepare them for an additional fee. A qualified subconsultant will be required for environmental services.

KS does not anticipate that the proposed project will have adverse effects to historic properties. If required by the USACE, KS will prepare a project summary form to be submitted to the USACE to assist with their coordination with the Ohio Historic Preservation Office (pursuant to Section 106 of the Historic Preservation Act). This scope of services does not include historical or archeological investigations, coordination, evaluations, or data recovery. If additional historical or archaeological coordination is required, KS can recommend a qualified cultural resources management professional to perform these services under a separate contract.

- 2.4.2 Prepare OEPA Permit Application

The proposed project is anticipated to require an Individual Water Quality Certification from the OEPA. Once the USACE publishes a public notice or provisional authorizations for the project, KS will prepare the OEPA application. The application will include: an application form; impacts table; statement regarding waters delineation (with site photos); correspondence with the USACE and U.S. Fish and Wildlife Service; a statement regarding jurisdictional determination; a narrative alternatives and antidegradation analysis; project mapping (with application drawings); a proposed mitigation and monitoring plan; and statements regarding wetland characterization and stream use attainability.

OEPA application fees are dependent on the proposed impacts. An initial application fee, up to \$2,600, is due at the time the application is submitted. The remaining fee, up to \$2,400, is due once the permit is issued. Public notice publication fees are anticipated to be approximately \$500. OEPA application and public notice fees are not included in this proposal and are the financial responsibility of the City.

Phase 3 – Design Development, Regulatory Coordination, and Preparation of Construction Documents

3.1 Regulatory Coordination

KS will coordinate with the USACE and OEPA during the review of the permit applications. KS will

answer questions and provide clarifications to the regulatory reviewers, as required. KS will coordinate any requests for design revisions with the City and make any revisions required by the agencies.

3.2 Environmental Study (By Others, If Required)

- 3.2.1 If required by the USACE or OEPA, KS will engage a qualified subconsultant to perform a Level 1 Ecological Survey for the project area. KS will coordinate the results of the Ecological Survey with the regulatory agencies. If required, the ecological survey will be performed as an additional service for an additional fee. Ecological services are not included in this scope of services.
- 3.2.2 The USACE or OEPA may require a mussel survey to preclude impacts to endangered or threatened freshwater mussel species. Due to the location, the type of project, and anticipated impacts, a mussel survey is not anticipated to be required and is not included in the fee for this item. If a mussel survey is required, KS will engage a qualified subconsultant to perform the mussel survey as an additional service for an additional fee. Completion of a mussel survey is not included in this scope of services.

3.3 Material Sampling and Testing (If Required)

KS will coordinate with the USACE and OEPA to determine requirements for sampling and testing of riverbed material that would be disturbed during construction. If required by the USACE or OEPA, KS will collect the required samples and will follow chain of custody requirements for submitting the material for laboratory testing. KS will engage a qualified subconsultant for material or sediment characterization and potential contaminant and nutrient testing.

3.4 Prepare 60% Design Documents

- 3.4.1 KS will develop design details to prepare 60% design documents for the proposed project. The 60% design will incorporate input from the City's review of the 30% design documents. KS will also coordinate with regulatory agencies and incorporate input from environmental review staff as the permit reviews progress. The 60% drawings are expected include:
- Title sheet and location map,
 - General notes,
 - Anticipated permit conditions,
 - Existing site plans,
 - Demolition plans identifying existing structures planned to be demolished,
 - Site plans showing the final condition of the project area following the rehabilitation,
 - Elevations and cross sections, and
 - Construction details
- 3.4.2 KS will prepare a listing of technical specifications to be included in the bid documents.
- 3.4.3 KS will prepare an updated, 60% level, opinion of probable construction costs.
- 3.4.4 KS will attend one design review meeting with the City to present and discuss the 60% design.

3.5 Constructability Review and Marine Operations Planning

- 3.5.1 KS will review the site conditions, access, physical constraints and potential permit conditions to develop a plan for anticipated construction operations for the revetment construction. The purpose of the constructability and marine operations planning will be to ensure that the project is constructable and that potential construction costs related to access, equipment requirements, and production rates are appropriately planned for in the final cost opinions. The constructability review will include planning for anticipated construction operations so that specific requirements, such as permit conditions, can be included in the technical specifications in a manner that does not dictate contractor means and methods. OHM will assist with providing recommendations regarding project delivery methods, constructability reviews, and review of anticipated construction operations.
- 3.5.2 KS will solicit comments from potential contractors regarding constructability or feasibility of specific construction operations, as needed, to support the constructability review.
- 3.5.3 KS will prepare plans for temporary structures or facilities that may be required for efficient in-water construction.
- 3.5.4 KS will coordinate with the regulatory agencies to ensure short term impacts during construction are considered in their review and included in the final permits. KS will request a waiver of in-water work restrictions from ODNR and the USACE if the results of the constructability review suggest a waiver will be required for the contractor to meet the schedule requirements.
- 3.5.5 The deliverable for this item will be a matrix of potential construction operations and will list potential efficiencies or challenges with each alternative.

3.6 Prepare 90% Design Documents

- 3.6.1 KS will perform concept refinement and detailed design to develop 90% design documents for the proposed project. The 90% design will incorporate input from The City's review of the 60% design documents and environmental review staff as the permit reviews near completion. The 90% drawings are expected to include:
- Title sheet and location map,
 - General notes,
 - Anticipated permit conditions,
 - Existing site plans,
 - Construction access plans,
 - Demolition plans identifying existing structures planned to be demolished,
 - Plans showing material stockpile locations and transport routes for potential construction by land or site access and mooring requirements for potential construction with marine equipment,
 - Site plans showing the final condition of the project area following the rehabilitation,
 - Layout and location plans showing coordinates of proposed structures,
 - Elevation views of proposed structures,
 - Cross sections of proposed structures,
 - Construction details for proposed structures, and
 - Storm Water Pollution Prevention Plans (if required) or Best Management Practices for material stockpile areas.
- 3.6.2 KS will prepare technical specifications to be included in the bid documents.

- 3.6.3 KS will prepare an updated, 90% level, opinion of probable construction costs.
- 3.6.4 KS will attend one design review meeting with The City to present and discuss the 90% design.

3.7 Supplemental Permitting

- 3.7.1 KS will coordinate with the U.S. Coast Guard regarding navigation impacts in the Huron River.
- 3.7.2 KS will prepare an application for a Floodplain Development Permit (if required) for the proposed project.
- 3.7.3 If required KS will prepare a Notice of Intent for submittal to the OEPA.

The Contractor that is hired to construct the project will be responsible for obtaining any local building permits required for the proposed construction.

The final OEPA application fees, up to \$2,400, will be due once permits are issued. OEPA application fees are dependent on the overall project impacts. OEPA application fees are not included in this proposal and are the financial responsibility of the City.

3.8 Final Design and Construction Documents

- 3.8.1 After your notice to proceed or receipt of all regulatory authorizations, KS will prepare 100% construction plans, technical specifications and a final engineer's opinion of probable construction costs for the project.
- 3.8.2 KS will attend one review meeting after delivering the final construction documents.

Phase 4 – Bidding and Construction Phase Services

4.1 Bidding Phase Services

- 4.1.1 KS will coordinate and attend a pre-bid meeting with potential contractors.
- 4.1.2 KS will answer questions from contractors during the bidding period to provide clarifications regarding design intent, permit conditions, bid items, quantities, or other items requiring additional information for submittal of the bids.
- 4.1.3 KS will prepare any addenda required during the bidding period.
- 4.1.4 KS will review the bids, prepare a tabulation of the bid results, and make a recommendation of the lowest responsive and responsible bidder.

4.2 Construction Phase Services

- 4.2.1 KS will provide Engineer of Record services during construction, including submittal review, responding to contractor requests for information (RFIs), and coordinating with regulatory agencies.
- 4.2.2 KS will attend bi-weekly construction status meetings during the construction phase.

- 4.2.3 KS will be available to attend weekly construction observation site visits throughout the construction period. The fee for this item is based on the assumption that on-site construction observation will be limited to one day per week for an eight-month construction period.

4.3 Project Closeout

- 4.3.1 KS will review as-built drawings (to be prepared by the Contractor).
- 4.3.2 KS will prepare and submit project completion notifications to the USACE, ODNR and OEPA upon construction completion.

Clarifications

The engineer's opinion of probable construction cost will be made based on the engineer's experience and qualifications and represent the engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because the engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, the engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by the engineer.

Additional Services

KS has estimated the man-hours necessary to perform this work based on our past experience and our understanding of the prevailing requirements. We have included a modest amount for MINOR revisions that may be requested or required by the reviewing agencies. If extensive revisions are mandated by ODNR, the USACE, the OEPA, or the City after permit drawings and applications are completed, we will seek additional compensation before beginning such out-of-scope work.

The scope of services included above describes all services to be provided by KS under this contract. Any items not specifically listed in this proposal are not included. If the City requests additional surveying or engineering services beyond those included in this proposal, or if KS determines that additional services are required, KS will request a modification to this contract before the services are provided.

Timetable

KS will prepare a detailed schedule upon receipt of a signed contract based on the estimated timelines for the milestones below:

- Phase 1 – Site Investigations: 2 Months
- Phase 2 – Preliminary Design and Preparation of Permit Applications: 2 Months
- Phase 3 – Design Development, Regulatory Coordination and Construction Documents: 12 Months
- Phase 4 – Bidding and Construction Phase Services: 10 Months

We will endeavor to meet schedule commitments that are within our control. However, the overall project development schedule will be dependent on the time required to obtain regulatory authorizations, which is beyond the control of the KS or the City.

Please be advised that weather conditions often do not allow for in-water site investigations, such as the hydrographic surveys and geotechnical investigations, to be completed during the winter due to the formation of ice on the river or Lake Erie.

Fee & Standard Conditions

Our fee for the cited scope of services will be a lump sum of \$418,500 and is anticipated to be billed as follows.

<u>Task Description</u>	<u>Fee</u>	
Phase 1 - Site Investigations		
1.1 Hydrographic, Topographic, and Limited Boundary Survey	\$22,000	Lump Sum
1.2 Metocean Analysis	\$8,300	Lump Sum
1.3 Geotechnical Investigations	\$76,100	Allowance
Phase 2 - Preliminary Design and Preparation of Permit Applications		
2.1 Concept Refinement	\$6,500	Lump Sum
2.2 Initial Regulatory Coordination	\$4,200	Lump Sum
2.3 Preliminary 30% Design	\$29,700	Lump Sum
2.4 Prepare USACE Permit Application	\$15,500	Lump Sum
2.5 Prepare OEPA Permit Application	\$18,400	Lump Sum
Phase 3 - Design Development, Coordination and Construction Documents		
3.1 Regulatory Coordination	\$20,700	Lump Sum
3.2 Environmental Study (Assumed not to be required)	\$0	Lump Sum
3.3 Material Sampling and Testing (Assumed not to be required)	\$0	Lump Sum
3.4 Prepare 60% Documents	\$35,000	Lump Sum
3.5 Constructability Review and Marine Operations Planning	\$20,800	Lump Sum
3.6 Prepare 90% Design Documents	\$39,500	Lump Sum
3.7 Supplemental Permitting	\$6,000	Lump Sum
3.8 Final Design and Construction Documents	\$24,500	Lump Sum
Phase 4 - Bidding and Construction Phase Services		
4.1 Bidding Phase Services	\$9,300	Not to Exceed
4.2 Construction Phase Services	\$75,000	Not to Exceed
4.3 Project Closeout	\$7,000	Not to Exceed
Project Total	\$418,500	

KS will bill monthly for services rendered. Phases 1, 2, and 3 will be billed based on percentage completion of the lump sum fees. The allowance for geotechnical investigations will be billed at cost. Phase 4 will be billed at our standard rates at the time services are delivered and will not exceed the contract amounts listed above without prior written consent. Reimbursable expenses are included in the lump sum and not to exceed fees for each Phase. OEPA application and public notice fees are expected to be approximately \$6,000 and are not included in this proposal. OEPA application and public notice fees are the financial responsibility of the City.

By accepting this proposal, you agree to the Standard Conditions which are integral parts of this Agreement. In order to initiate services, please have a properly authorized person sign this page, sign the Standard Conditions, and return the entire Agreement including attachments to KS.

If you have any questions or comments, please call me at 419-239-5935 or email to centerm@ksassociates.com. This professional services proposal is valid until December 31, 2024.

Sincerely,

KS ASSOCIATES, INC.



Mark P. Cencer, P.E.
Director of Coastal Engineering

Attachments:
Standard Conditions

c: Lynn S. Miggins, P.E., President, KS Associates, Inc.
Project File / Billing File

This Proposal is hereby accepted by:

City of Huron
417 Main Street,
Huron, Ohio 44839

Authorized Signature

Date

Printed Authorized Signature

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STANDARD CONDITIONS

Fee

The total fee shall be understood to be an estimate, based upon Scope of Services, and shall not be exceeded without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Reimbursable expenses will be invoiced at cost with no markup.

Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, at KS's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the maximum legal rate) per month will be applied to the unpaid balance after 30 days from the invoice date. KS shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and KS shall have no liability for any resultant delays or damages incurred by the Client as a result of such suspension/termination. Retainers shall be credited on the final invoice. The Client agrees to pay all costs of collection, including but not limited to reasonable attorney's fees.

Standard of Care

In providing services under this Agreement, KS will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. KS will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of KS's part of the Project. Regardless of any other term or condition of this Agreement, KS makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

Consequential Damages

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor KS shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Unforeseeable Conditions

A condition is unforeseeable if concealed or is not capable of investigation by reasonable visual observation. If KS has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such due cause of action in favor of a third party notification, or (2) KS has no reason to believe that such a condition exists, KS shall not be responsible for the existing conditions or any resulting damages or losses resulting therefrom.

Hazardous Materials/Mold

KS shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The Client shall inform KS of any potentially hazardous condition prior to KS performing the services.

Indemnifications

~~The Client agrees, to the fullest extent permitted by law, to indemnify and hold KS and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorneys' fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. KS further agrees to indemnify the Client for damages arising from its own negligent errors, acts or omissions.~~

Limitation of Liability

~~In recognition of the relative risks and benefits of the project to both the Client and KS, the Client agrees, to the fullest extent permitted by law, to limit KS's total liability to the Client or anyone making claims through the Client, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the amount of KS's actual fee charged to the client, or another amount agreed upon in writing and signed by both parties.~~

Termination of Services for Convenience

This Agreement may be terminated upon written notice by the Client for its convenience. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Termination of Services for Default

This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Ownership of Documents

All documents produced by KS under this Agreement, including electronic files, shall remain the property of KS and may not be used by this Client for any other purpose without the written consent of KS. Any such use or reuse shall

be at the sole risk of the Client who shall defend, indemnify and hold KS and its subconsultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to KS and its subconsultants.

Defects in Service

The Client shall promptly report to KS any defects or suspected defects in KS's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify KS shall relieve KS 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.

Construction Activities

KS shall not be responsible for (1) the acts or omissions of any one performing any of the Work, (2) the instructions given by the Client or its representatives to any one performing any of the Work, (3) the means and methods of anyone performing any of the Work, (4) job-site safety.

Dispute Resolution

In the case of a claim or dispute between the Client and KS, at least one principal from each party shall enter into a negotiation to resolve the dispute. If the parties cannot reach resolution, the claim or dispute shall then be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect. Unless otherwise specified, the laws of the State of Ohio shall govern this Agreement.

No Third Party Beneficiaries

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 the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

Standard Conditions Accepted by the City:

Authorized Signature

Title

Date

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