

AGREEMENT FOR ARCHITECTURAL & DESIGN SERVICES
For
ADULT SPORTS COMPLEX – PARKING, RESTROOM AND PEDESTRIAN
ACCESSIBILITY IMPROVEMENTS

This Agreement is made and entered into in Deer Park, Harris County, Texas on this 18th day of November, 2025; by and between

The City of Deer Park, a Municipal Corporation in the State of Texas

And

MHS Planning & Design, LLC ARCHITECT(s) duly licensed, and
practicing under the laws of the State of Texas.

Said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the ARCHITECT for ARCHITECTURAL services hereinafter set forth in connection with the above-designated Project for the City of Deer Park.

DEER PARK retains MHS Planning & Design, LLC to perform architectural services related to the design and construction of the Adult Sports Complex – Parking, Restroom and Pedestrian Accessibility Improvements in return for consideration to be paid by DEER PARK under terms and conditions set forth below.

ARTICLE 1. SCOPE OF WORK

- 1.1 ARCHITECT will provide ARCHITECTURAL, design, consultation, project management, and other services as required to perform and complete the Scope of Work & Services specifically identified in Exhibit A of this Agreement. The Services Scope of Work (the “Work”) and the time schedules set forth in Exhibit A are based on information provided by DEER PARK and ARCHITECT. The schedule of milestones and deliverables are essential terms of this Agreement.
- 1.2 If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by DEER PARK, or if DEER PARK directs ARCHITECT to change the original Scope of Work shown in Attachment A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ARCHITECT.

ARTICLE 2. COMPENSATION

- 2.1 ARCHITECT bills for its services on a time and materials basis using the Schedule of Rates and Terms entitled Estimated Level of Effort (“Schedule of Rates”) attached as Exhibit A of this Agreement. As requested, ARCHITECT has provided an estimate of the fees for the Work amounting to **\$ 247,250.00 plus reimbursable expenses**. ARCHITECT will not exceed that estimate without prior approval from DEER PARK. ARCHITECT will notify DEER PARK, for approval, of any proposed revisions to the Schedule of Rates and effective date thereof which shall not be less than thirty (30) days after such notice.
- 2.2 ARCHITECT will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ARCHITECT’S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ARCHITECT of the same within fifteen (15) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice. Prices or rates quoted do not include state or local taxes.

ARTICLE 3. DEER PARK’S RESPONSIBILITIES

- 3.1 DEER PARK will designate in writing the person or persons with authority to act on DEER PARK’S behalf on all matters concerning the work to be performed.
- 3.2 DEER PARK will furnish to ARCHITECT all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ARCHITECT to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ARCHITECT will be entitled to use and rely upon all such information and services.
- 3.3 Where necessary to performance of the Work, DEER PARK shall arrange for ARCHITECT to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ARCHITECT’S services will be performed within the schedule and time period set forth in Exhibit A.
- 4.2 ARCHITECT shall perform the Work, and any additional services as may be required, for the development of the Project to completion.
- 4.3 If required, additional services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.
- 4.4 If any time period within or date by which any of ARCHITECT’S services are to be performed is exceeded for reasons outside of ARCHITECT’S reasonable control, all rates,

measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

ARTICLE 5. CONFIDENTIALITY

- 5.1 ARCHITECT will hold confidential all information obtained from DEER PARK, not previously known by ARCHITECT or in the public domain.

ARTICLE 6. STANDARD OF CARE & WARRANTY

- 6.1 Standard of Care. In performing services, ARCHITECT agrees to exercise professional judgment, made on the basis of the information available to ARCHITECT, and to perform its ARCHITECTURAL services with the professional skill and care of competent design professionals practicing in the same or similar locale and under the same or similar circumstances and professional license. ARCHITECT also agrees to perform its ARCHITECTURAL services as expeditiously as is prudent considering this standard of care. This standard of care shall be judged as of the time and place the services are rendered, and not according to later standards.
- 6.2 Warranty. If any failure to meet the foregoing standard of care Warranty appears during one year from the date of completion of the service and ARCHITECT is promptly notified thereof in writing, ARCHITECT will at its expense re-perform the nonconforming work.
- 6.3 The foregoing Warranty is the sole and express warranty obligation of ARCHITECT and is provided in lieu of all other warranties, whether written, oral, implied or statutory, including any warranty of merchantability. ARCHITECT does not warrant any products or services of others. ARCHITECT, however, expressly acknowledges that these warranty obligations do not eliminate the applicability of the standard of care to all of its work and that the OWNER may still retain remedies against ARCHITECT following the expiration of the warranty period in contract, tort, or otherwise as the law allows.

ARTICLE 7. INSURANCE

- 7.1 ARCHITECT will procure and maintain insurance as required by law. At a minimum, ARCHITECT will have the following coverage:
- (1) Workers compensation and occupational disease insurance in statutory amounts.
 - (2) Employer's liability insurance in the amount of \$1,000,000.
 - (3) Automobile liability in the amount of \$1,000,000.

- (4) Commercial General Liability insurance for bodily injury, death or loss of or damage to property of third persons in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
- (5) Professional errors and omissions insurance in the amount of \$1,000,000.

7.2 ARCHITECT has provided a Statement of Insurance to DEER PARK demonstrating and reflecting that ARCHITECT has procured and maintains insurance coverage in accordance with the requirements stated above. That Statement of Insurance is Attachment C of this Agreement.

ARTICLE 8. INDEMNITY

8.1 **THE ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, BUT ONLY TO THE EXTENT THAT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ARCHITECT OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL.**

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDENMIFIED CLAIM AS STATED ABOVE, ARCHITECT AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ARCHITECTS LAIBILITY.

8.2 ARCHITECT agrees to and shall contractually require its consultants and subcontractors of any tier to assume the same indemnification obligations to Indemnities as stated herein.

ARTICLE 9. OWNERSHIP OF DOCUMENTS

9.1 As long as DEER PARK is current in the payment of all undisputed invoices, all work product prepared by the ARCHITECT pursuant to this Agreement, including, but not limited to, all Contract Documents, Plans and Specifications and any computer aided design, shall be the sole and exclusive property of DEER PARK, subject to the ARCHITECT's reserved rights.

9.2 ARCHITECT's technology, including without limitation customary techniques and details, skill, processes, knowledge, and computer software developed or acquired by ARCHITECT

or its Consultants to prepare and manipulate the data which comprises the instruments of services shall all be and remain the property of the ARCHITECT.

ARTICLE 10. INDEPENDENT CONTRACTOR

- 10.1 The ARCHITECT is an independent contractor and shall not be regarded as an employee or agent of the DEER PARK.

ARTICLE 11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 11.1 The ARCHITECT shall observe all applicable provisions of the federal, state and local laws and regulations, including those relating to equal opportunity employment.

ARTICLE 12. SAFETY

- 12.1 DEER PARK shall inform the ARCHITECT and its employees of any applicable site safety procedures and regulations known to DEER PARK as well as any special safety concerns or dangerous conditions at the site. The ARCHITECT and its employees will be obligated to adhere to such procedures and regulations once notice has been given.
- 12.2 ARCHITECT shall not have any responsibility for overall job safety at the site. If in ARCHITECT's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ARCHITECT may immediately suspend performance until such safety standards can be attained. If within a reasonable time site operations or conditions are not brought into compliance with such safety standards, ARCHITECT may in its discretion terminate its performance, in which event, DEER PARK shall pay for services and termination expenses as provided in Article 18.

ARTICLE 13. LITIGATION

- 13.1 At the request of DEER PARK, ARCHITECT agrees to provide testimony and other evidence in any litigation, hearings or proceedings to which DEER PARK is or becomes a party in connection with the work performed under this Agreement, unless DEER PARK and the ARCHITECT are adverse to one-another in any such litigation.
- 13.2 Any litigation arising out of this Agreement between DEER PARK and ARCHITECT shall be heard by the state district courts of Harris County.

ARTICLE 14. NOTICE

- 14.1 All notices to either party by the other shall be deemed to have been sufficiently given when made in writing and delivered in person, by electronic mail, facsimile, certified mail or courier to the address of the respective party or to such other address as such party may designate.

ARTICLE 15. TERMINATION

- 15.1 The performance of work may be terminated or suspended by DEER PARK, for any reason. Such suspension or termination shall be subject to notice of DEER PARK's election to either suspend or terminate the Agreement fifteen (15) days' prior to the effective suspension or termination date. The Notice shall specify the extent to which performance of work is suspended or terminated and the date upon which such action shall become effective. In the event work is terminated or suspended by DEER PARK prior to the completion of services contemplated hereunder, ARCHITECT shall be paid for (i) the services rendered to the date of termination or suspension and reasonable services provided to effectuate a professional and timely project termination or suspension.

ARTICLE 16. SEVERABILITY

- 16.1 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 17. WAIVER

- 17.1 Any waiver by either party or any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless such waiver is so expressed in writing and signed by the party to be bound.

ARTICLE 18. GOVERNING LAW

- 18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Texas.

ARTICLE 19. CAPTIONS

- 19.1 The captions contained herein are intended solely for the convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or their interpretation.

ARTICLE 20. ENTIRE AGREEMENT

20.1 This Agreement, its articles, provision, terms, and attached Schedules represent the entire understanding and agreement between DEER PARK and ARCHITECT and supersede any and all prior agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both parties.

This Agreement is effective on the last day signed.

MHS Planning & Design, LLC

By _____

Name William H. Spencer

Title Managing Partner

Date November 10th, 2025

The City of Deer Park

By _____

Name _____

Title _____

Date _____



October 14th, 2025

City of Deer Park

Attn: Kenny Walsh, Parks Director

Via Email: kwalsh@deerparktx.org

RE: Adult Sports Complex Parking, Restroom, and Pedestrian Accessibility Improvements

Dear Mr. Walsh,

It is my pleasure to submit this proposal for professional services for your property located in Deer Park, TX as shown in Exhibit 'A'. The following scope of services outlines the professional services to be performed in association with the project. This proposal is being submitted for your review and approval.

Project Description

The proposed enhancements at the Deer Park Adult Sports Complex, located at 2700 E Pasadena Blvd, Deer Park, TX 77536, aim to improve user experience and accessibility by adding new parking spaces to accommodate growing attendance, constructing a modern restroom facility for enhanced comfort, and conducting a comprehensive analysis of pedestrian pathways to ensure ADA-compliant access and safety. This site currently features three regulation 300-foot softball fields ideal for leagues and tournaments, a versatile 250' x 350' multipurpose field suitable for soccer, football, or other team sports, and basic amenities including lighting, dugouts, and spectator areas, all supporting adult recreational athletics in a community-focused environment.

Our scope of services for this project is as follows:

1. Preliminary Design - \$78,500

a. Survey

- i. 50'X50' grid of the entire site excluding the drainage ditch on the east side of the site, the softball and soccer field areas, and the area inside the utility area in the northwest corner. (approx. 21.6 acres and 920'x 1,025')
- ii. Tie in all existing utilities, improvements, and structures
- iii. Collect inverts and rim elevations on all sanitary and storm structures
- iv. Set a minimum of 3 site TBMs on permanent structures and tie into either HCFC or NGS vertical benchmarks
- v. Tie in all tree canopies but a detailed tree survey is excluded at this time.
- vi. Existing underground utilities that will be located based on locations provided by Texas One-call (811). The effort does not include a sub-surface utility investigation.
- vii. Excludes any information along E. Pasadena Blvd.

b. Geotechnical Engineering

- i. Provide subsurface exploration and testing for pavement design (5 borings to a depth of 5') and restroom foundation design (2 borings to a depth of 15').
- ii. Provide preliminary geotechnical recommendations for pavement design and restroom foundation.

c. Discovery and Programming

- i. Site visit to view the existing conditions at the site and coordination with the Client to obtain the most current and available site information. During this site visit we will conduct a kick-off meeting with City Staff.
- ii. Develop project program and primary program elements and base map from on-site survey and any client provided data of the existing site and/or future conditions.
- iii. Evaluate existing vehicular and pedestrian circulation patterns.
- iv. Provide site analysis drawing of the project limits and a general summary from visual assessment of the existing adjacent conditions.
- v. General coordination meetings with city staff.

d. Schematic Design

- i. Work in conjunction with the Client to prepare two preliminary schematic design plans for the project. This plan(s) will illustrate the form and configuration of the proposed design. (Concept I & II).
- ii. Meet with client to evaluate and identify a preferred design concept.
- iii. Preliminary select key materials or material systems for the project.
- iv. Based on the preferred design concept provide refined schematic design (Concept III).
- v. Meet with Client to review the final schematic design concept.
- vi. Prepare up to one additional alternative design concept to be provided under this scope (Concept IV).
- vii. Provide preliminary probable cost estimate.

e. Design Development

- i. Revise and refine the preferred schematic design based on staff direction.
- ii. Prepare design sketches illustrating the proposed forms, materials, colors, and textures of the proposed improvements.
- iii. Prepare supplemental sketches as required to illustrate the design intent.
- iv. Provide color rendered Masterplan of project and updated cost estimate.
- v. Meet with Client to review and coordinate comments into the Masterplan and Illustration documents.

2. Design - \$105,750

a. Civil Engineering

- i. Based on the approved preliminary design documents, coordinate and/or prepare detailed 30%, 60%, 90% and sealed 100% construction drawings and specifications for erosion control, grading, paving, drainage, utilities (water and sewer), landscaping, irrigation, electrical engineering, and structural engineering for the Project. The construction drawings and specifications will be prepared for the full project and shall be bid and awarded under one construction contract. File will be provided to the City in DWG and SHP formats upon request.

ii. Furnish to the Client construction plans and specifications. These documents typically include the following sheets, but all may not be required for this project:

- Cover Sheet
- Site Plan
- Demolition Plan
- Erosion Control Plan and Notes
- Drainage Area Map and Calculations
- Drainage Plan
- Grading Plan
- Paving Plan and Horizontal Control
- Site Utilities (Water and Wastewater)
- Landscaping Plans
- Irrigation Plans
- Electrical/Lighting Plan
- Structural Plan
- Construction Details
- Prepare unit quantities and bid forms.
- Prepare final cost estimate for construction.
- Provide PDF electronic files of specifications and plans.
- Project submittal to TDLR

3. Construction Administration - \$63,000

- a. Assist the City during the bidding process and work with them to recommend a contractor for the project.
- b. This task assumes that the project will bid and awarded in one month, be constructed to final acceptance within a 9-month timeframe after the City approval of award of construction to a General Contractor.
- c. As requested by the City, the Consultant shall visit the site and consult with the City and the contractor to resolve construction and design related problems during construction.
- d. Monthly site visits to observe the progress and quality of work.
- e. Review, respond, and document Requests for Information (RFIs).
- f. Review and request approval of the contractor's pay applications based on the on-site observations of design professional.
- g. 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 and as-built drawings.

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.

Flood Studies
Off-Site Utilities

Tree Survey
Off-Site Roadway Design

Wetland Delineation
Boundary Survey

Traffic Impact Analysis
Architectural Plans

Based on this scope of services, our **lump sum fee for the project is \$247,250.00**. This fee is based on an overall budget of two million one hundred fifty thousand dollars (\$2,150,000). If this amount changes by more than 10% we will adjust our fee accordingly. This fee excludes reimbursables such as reproductions, permits, mileage, etc. and those will be invoiced based on the attached rate sheet; **the estimated reimbursable amount is \$5,000**. 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,



William H. Spencer, P.E.
Managing Partner & Professional Engineer

Approved _____

Date _____



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'



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 October 14th, 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 City of Deer Park, with a mailing address at 610 E. San Augustine, Deer Park, TX 77536 ("**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.