Professional Services Agreement

MSA Project Number: 09617003

This AGREEMENT (Agreement) is made today September 27, 2023 by and between VILLAGE OF PARK RIDGE (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: Village of Park Ridge – Ridgewood & Greenbriar STP-Urban Application

The scope of the work authorized is: See Attachment A: Scope of Services

The schedule to perform the work is: Approximate Start Date: October 1,2023
Approximate Completion Date: November 1, 2023

The lump sum fee for the work is: $5,000.00

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

VILLAGE OF PARK RIDGE

Steve Menzel
President/Trustee
Date:

24 Crestwood Drive
Stevens Point, WI 54481
Phone: 715-343-1590
Email: smenzel@vi.parkridge.wi.gov

Katie McKelvey, Village Clerk/Treasurer
Email: clerk@vi.parkridge.wi.gov
Date:

MSA PROFESSIONAL SERVICES, INC.

Daniel Borchardt
Team Leader - Engineering
Date: 09/27/2023

146 North Central Ave., Suite 201
Marshfield, WI 54449
Phone: (715) 304-0448
Email: dborchardt@msa-ps.com

MSA PROFESSIONAL SERVICES, INC. (MSA)
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities**.

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in the Professional Services Agreement. The OWNER shall furnish the services of other consultants other than those designated, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

4. **Costs and Schedules.** Costs (including MSA's fees and reimbursable expenses) and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, pandemics, acts of God or the public enemy, or acts of regulations of any governmental agency.

Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

7. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other recommendations made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not warrant or represent that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. **Municipal Advisor**. MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

12. **Electronic Documents and Transmittals**. Owner and MSA agree to transmit and accept project related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

13. **Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 12 of this Agreement.

14. **Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in the scope of work. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

15. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

16. **Betterment.** If, due to MSA's error, any required or necessary item or component of the Project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

17. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in identifying, generating, treating, storing, or disposing of hazardous substances or materials which may be present at the Project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the Project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements

to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

18. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

19. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this Project by the OWNER or extensions of this Project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

20. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

21**. Accrual of Claims**. To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

22. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither

demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in section 29 of this Agreement.

23. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns**. The successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices**. Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words “Formal Notice” or similar in the e-mail’s subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability**. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver**. A party’s non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

30. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

31. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be Sauk County, Wisconsin.

32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter heret

ATTACHMENT A:
SCOPE OF SERVICES

PROJECT UNDERSTANDING

This project provides for assisting the Village of Park Ridge with the application process for WisDOT STP-Urban Funding, 2024- 2029 Cyle, for improvements on Ridgewood Drive (Sunset Ave to Greenbriar Ave) and Greenbriar Avenue (Ridgewood Dr to Hillcrest Dr). The application and supporting documentation will be prepared to meet the October 27, 2023, submittal deadline.

SCOPE OF SERVICES

PROJECT SUMMARY

The project grant application will include street and drainage improvements on Ridgewood Drive and Greenbriar Avenue totaling approximately 2,600 feet. The Village is also considering non-grant participating water main, fire hydrant and streetlight improvements. That are not part of the grant application.

APPLICATION ASSISTANCE PHASE

1. Attend a meeting with the Village to review project scope.

2. Prepare maps and cost estimates for application.
   - Work with the Village to identify and account for costs related to the project scope and WisDOT funding source that may not be typical for other Village projects include some or all of the following:
     - WisDOT bid item costs and additional quality management program costs.
     - WisDOT review and design oversight fees.
     - Document and study efforts such as:
       - Environmental Document
       - Pavement Design Report
       - Design Study Report
       - Miscellaneous Quantities Plan Sheets
       - Utility Coordination Paperwork
       - Traffic Control Plan
       - Pre-Bid PS&E Documents
       - Transportation project plat.
     - Real estate acquisition professional services. (temporary limited easements (TLE) for grading onto private property).
     - WisDOT-appointed full-time construction inspection.

3. Prepare application materials, including narratives and application forms.
   - Forms and instructions available at Wisconsin Department of Transportation Surface Transportation Program - Urban (wisconsindot.gov) will be used as a basis for the application.

4. Transmit complete application to Village for signature and digital submittal to WisDOT via email.