

**RESOLUTION NO. 15-23**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER John Palcher ON THE 6<sup>th</sup>  
DAY OF February, 2023.

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO A SERVICE AGREEMENT WITH  
MCGILL SMITH PUNSHON, INC. DBA MSP DESIGN FOR  
THE YANKEE TRACE PRACTICE FACILITY UPGRADE  
PROJECT CHANGE ORDER.**

**WHEREAS**, the City of Centerville has been improving the Yankee Trace practice facility; and

**WHEREAS**, the City desired to modernize, redesign, and upgrade the driving range (the "Project"); and

**WHEREAS**, the Project required professional design, engineering and construction services; and

**WHEREAS**, the City through Resolution No. 70-22 adopted on September 12, 2022, had previously authorized an agreement with McGill Smith Punshon, Inc. dba MSP Design to provide those services for the Project and has determined that McGill Smith Punshon, Inc. had demonstrated ability to assist in accomplishing the objectives of the City in an amount not to exceed \$35,000; and

**WHEREAS**, it has been determined that additional work is required on the Project necessitating a change order as set forth in Exhibit "A" incorporated herein in an additional amount not to exceed \$16,500.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF  
THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS  
FOLLOWS:**

Section 1. The City hereby agrees to enter into another Services Agreement with McGill Smith Punshon, Inc. dba MSP Design for the Project; and the City Manager is hereby authorized to execute the Agreement attached hereto as Exhibit "A" and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 6<sup>th</sup> day of February, 2023.

  
\_\_\_\_\_  
Mayor of the City of Centerville, Ohio

ATTEST:



\_\_\_\_\_  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 15-23, passed by the Council of the City of Centerville, Ohio on the 6<sup>th</sup> day of February, 2023.

  
\_\_\_\_\_  
Clerk of the Council

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions  
Department of Law  
Scott A. Liberman  
Municipal Attorney

# PROFESSIONAL SERVICES WORK ORDER

**Project Name:** Yankee Trace Golf Course Improvements  
Ball Dispenser Shelter



**Client Name:** Yankee Trace Golf Course Improvements

**MSP Project No. 22545.01**

THIS AGREEMENT made this 24th day of January by and between McGill Smith Punshon, Inc., 3700 Park 42 Dr. Suite 190B, Cincinnati, Ohio 45241-2097 (MSP) and the Yankee trace Golf (CLIENT) as follows:

## 1. PROJECT DESCRIPTION

- 1.1. The Yankee Trace Golf Course Improvements wants to build a shelter for their Ball Dispenser Machine at the location shown on the proposed site plan. The Shelter will cover the Ball Dispenser and will have enough room to provide up to 2 vending machines accessed from the front of the shelter. The Rear of the shelter will also have access to assist in loading the golf balls into the machine. There will be a rolling garage door on both the front and rear of the shelter. There will be lighting and power for the equipment. The Shelter will be designed to be commensurate with the surrounding facilities. It is anticipated that the overall Shelter will be approximately 15' x 18' with a 10' clear height on the inside.

## 2. SCOPE OF SERVICES

- 2.1. **Golf Course Restroom Facility:**
  - 2.1.1. Based on the initial information provided by the Client, MSP shall prepare a Concept Design that will incorporate a wood frame structure with Architectural character to match the existing buildings. This will include a floor plan, building section and exterior elevations.
  - 2.1.2. MSP shall meet with the Client to review the revised Concept Design Documents and from the Client's review and comments, MSP shall adjust the Concept Design Documents and resubmit to the Client for their review and approval.
  - 2.1.3. From the Client approved Concept Design Documents, MSP shall prepare Construction Documents as required and shall include Architectural, Structural and MEP Engineering design disciplines.
  - 2.1.4. Civil Engineering services will be coordinated to provide the necessary Civil Engineering documents for permitting for the site selected. This will include a layout plan, Grading Plan, Utilities Plan and appropriate details as needed to obtain a permit and build the proposed improvements.
  - 2.1.5. MSP shall meet with the Client to review Construction Documents and shall make the necessary adjustments per the Client review comments and resubmit the adjusted Construction Documents to the Client for final review and approval.
  - 2.1.6. Based upon the Client approved Construction Documents, MSP shall submit the necessary Permit Documents to the appropriate government authorities for Plan Review for the purpose of obtaining the Basic Building Permit.
  - 2.1.7. MSP shall address Plan Review Comments from the Governing Authorities and resubmit appropriate documents for approval.

2.1.8. MSP shall be available to provide Construction Administration services as requested by the Client on the **time and material basis**. These services might include the following:

- 2.1.8.1. Site visits to review the progress of the construction at intervals appropriate and requested by the Client.
- 2.1.8.2. Review Pay applications from the selected Contractor.
- 2.1.8.3. Submittal reviews (shop drawings and samples)
- 2.1.8.4. Respond to Requests for Information, issuing Change Orders, bulletins or other data as may be required.
- 2.1.8.5. Punch List review and follow-up services.
- 2.1.8.6. Review Project completion and establishment of Substantial Completion.

**3. COMPENSATION**

- 3.1. MSP shall invoice CLIENT monthly for the amounts due for professional services rendered on a percent complete basis and expenses incurred. CLIENT shall pay MSP the full amount due within thirty (30) days of receipt of invoice.
- 3.2. All past due amounts shall bear interest at the rate of one and one-quarter percent (1-1/4%) per month compounded monthly. All amounts due MSP shall be paid whether or not CLIENT makes use of the professional services rendered by MSP.
- 3.3. In addition to the compensation for professional services as provided in this Agreement, MSP shall be reimbursable expenses such as mileage, printing, postage etc, according to the attached Hourly Rate Schedule. Reimbursable Expense Allowance provided below is approximate. Should actual Reimbursable Expense approach this limit MSP will notify the CLIENT.
- 3.4. If additional work is requested, above and beyond the scope of work outlined above, compensation for such work shall be paid on a time and material basis in accord with the attached Hourly Rate Schedule, or as a lump sum as agreed upon prior to commencing additional services. No additional services will be undertaken without prior approval by the CLIENT of both scope and fee.

For services described herein, compensation shall be as follows:

<b>Building Design Services:</b>	<b>\$11,500.00</b>
Architecture	\$6,500
Structural Engineering	\$2,500
Electrical Engineering	\$2,500
 <b>Permitting Phase Services: (Allowance)</b>	 <b>\$ 1,000.00</b>
 <b>Construction Administration Phase Services: T &amp; M</b>	
(at the request of the Client)	

**4. CLIENT'S RESPONSIBILITIES**

- 4.1. Provide MSP with full information regarding requirements of the Project, including a program setting forth the owner's objectives, schedule, space requirements and relationships, flexibility requirements, and any other requirements which shall apply.
- 4.2. Provide MSP access to the site and any available Survey's (topography, utilities, etc.) and any design studies defining the preferred building location.

**5. QUALIFICATIONS**

- 5.1. MSP shall not be responsible to provide environmental investigations and shall not certify, guarantee or warrant the existence of conditions whose presence MSP cannot ascertain.

**6. EXCLUSIONS**

- 6.1. Surveying services
- 6.2. Permit fees or other government approval processing fees
- 6.3. Geotechnical and environmental investigations or coordination.
- 6.4. Underground investigation or detective work to locate existing utilities.
- 6.5. Services not explicitly included in this Work Order will not be provided.

**7. GENERAL TERMS AND CONDITIONS:**

- 7.1. **BINDING AND ASSIGNMENT:** The CLIENT and MSP, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither CLIENT nor MSP shall assign this Agreement without the written consent of the other.
- 7.2. **FEE:** The total fee, except stated lump sum, shall be understood to be an estimate, based upon Scope of Service outlined herein. Where the fee arrangement is to be on an hourly basis, the rates shall be on attached fee schedule. Reimbursable expenses will be invoiced at 1.1 times MSP cost. Any change in scope will be discussed prior to additional services being rendered.
- 7.3. **BILLINGS/PAYMENTS:** Invoices for services and reimbursable expenses shall be submitted, at MSP'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 1.25% (or the maximum legal rate) per month will be applied to the unpaid balance after 30 days from the invoice date. MSP shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and MSP shall have no liability for any resultant delays or damages incurred by CLIENT as a result of such suspension/termination. Retainers shall be credited on the final invoice. CLIENT agrees to pay all costs of collection, including reasonable attorney's fees.
- 7.4. **STANDARD OF CARE:** In providing services under this agreement, MSP 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. MSP will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of MSP's part of the Project. Regardless of any other term or condition of this Agreement, MSP 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.
- 7.5. **CONSEQUENTIAL DAMAGES:** Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither CLIENT nor MSP shall be liable to the other for any incidental indirect or consequential damages arising out of and/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.
- 7.6. **INDEMNIFICATIONS:** CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold MSP and its sub-consultants harmless from and against any and all damage, losses or cost (including reasonable attorney's 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. MSP further agrees, subject to Risk Allocation below, to indemnify CLIENT for damages arising from its own negligent acts, errors or omissions.
- 7.7. **RISK ALLOCATION:** In recognition of the relative risks and benefits of the Project to both CLIENT and MSP, CLIENT agrees, to the fullest extent permitted by law, to limit MSP's total liability to CLIENT or anyone making claims through 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 total amount of \$50,000.00 or the amount of MSP's fee, whichever is greater.

- 7.8. **TERMINATION OF SERVICES:** 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, CLIENT shall pay MSP for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.
- 7.9. **OWNERSHIP OF DOCUMENTS:** All documents produced by MSP under this agreement, including electronic files, shall remain the property of MSP and may not be used by this CLIENT for any other purpose without written consent of MSP. Any such use or reuse shall be at the sole risk of CLIENT who shall defend, indemnify and hold MSP 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 MSP and its subconsultants.
- 7.10. **DEFECTS IN SERVICE:** CLIENT shall promptly report to MSP any defects or suspected defects in MSP's services. 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 CLIENT and CLIENT'S contractors or subcontractors to notify MSP shall relieve MSP 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.
- 7.11. **CONSTRUCTION ACTIVITIES:** MSP shall not be responsible for the acts or omissions of any person performing any construction work or for instructions given by CLIENT or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.
- 7.12. **DISPUTE RESOLUTION:** Any claim or dispute between CLIENT and MSP shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) or mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.
- 7.13. **RELATIONSHIP OF PARTIES:** All services provided by MSP are for the sole use and benefit of CLIENT. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or MSP.
- 7.14. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. Should any portion of this Agreement be found to be illegal or unenforceable, such portion shall be deleted and the balance shall remain in effect.
- 7.15. **APPLICABLE LAW:** The law applicable to this Agreement is the state of the Project location.
- 7.16. **HAZARDOUS MATERIAL:**
- 7.16.1. MSP shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 7.16.2. CLIENT waives any claim against MSP and agrees to indemnify, defend and hold MSP harmless from any claim or liability for injury or loss arising from encountering unanticipated hazardous materials. Hazardous materials include any materials that are known or suspected to jeopardize human health or safety, through exposure of any kind. Such materials shall include but not be limited to those listed in various federal, state and local laws and regulations.

January 24, 2023

**MSP Project No. 22545.01**

- 7.17. **INVALIDITY:** If any provision of this Agreement is held invalid by a court of competent jurisdiction, it shall be considered deleted from the Agreement, but such invalidity shall not affect other provisions that can be given effect without the invalid provisions.
- 7.18. **ELECTRONIC DOCUMENTS:** Should the CLIENT's consultants or sub-contractors require electronic versions of the base files (CAD format), MSP shall provide files only upon receipt of signed electronic data transfer form.
- 7.19. **NOTICE:** Notice given hereunder shall be deemed served when in writing and personally delivered to an officer or other duly appointed representative of the party to whom the notice is directed, or if sent by registered mail to the address set forth in this Agreement.
- 7.20. **DELAYS:** Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

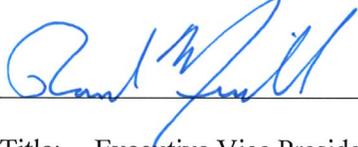
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above. This proposal shall be valid for a period of 60 days from the date indicated hereon.

McGill Smith Punshon, Inc.

CLIENT

By: Randal G. Merrill, AIA, NCARB

By: \_\_\_\_\_

  
\_\_\_\_\_

\_\_\_\_\_

Title: Executive Vice President

Title: \_\_\_\_\_

Date: January 24, 2023

Date: \_\_\_\_\_

## Hourly Rate Schedule

Principal .....	\$200-\$225.00/hour
Project Manager.....	\$90-\$195.00/hour
Registered Engineer .....	\$125-\$195.00/hour
Registered Architect.....	\$125-\$195.00/hour
Registered Landscape Architect/Planner .....	\$95-\$195.00/hour
Professional Surveyor.....	\$115-\$195.00/hour
Designer/Job Captain .....	\$100-\$125.00/hour
CADD Operator/Technician .....	\$60-\$125.00/hour
Surveying (Monday through Friday) 8 Hours*	
2 Man Crew.....	\$180.00/hour
1 Man Crew.....	\$120.00/hour

\*A minimum 2 hours will be charged per trip (Monday through Friday)

\*A minimum of 4 hours will be charged per trip (Saturday and Sunday)

Travel \$0.72/mile

Sub-consultants will be invoiced at 1.2 times MSP cost.

Reimbursable expenses such as postage, plots, prints, fees paid, travel expenses, long distance phone calls, e-mail, disk transfers and deliveries will be invoiced at 1.1 times MSP cost.

All invoices are due and payable upon receipt. Interest will be charged after 30 days at one and one quarter percent (1-1/4%) per month.

Effective Date: January 1, 2023