

ORDINANCE NO: 23-22

FIRST READING: 4/11/22
SECOND READING: 4/25/22
THIRD READING: 5/9/22

BY: JOHN B. SHEPHERD

AN EMERGENCY ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SMITHGROUP FOR BRADSTREET'S LANDING PHASE II DESIGN & ENGINEERING IN AN AMOUNT NOT TO EXCEED \$139,700.00, AS FURTHER DESCRIBED IN EXHIBIT "A"

WHEREAS: Article VII, Section 4 of the Charter of the City of Rocky River provides for the acquisition of personal services such as the unique and engineering services as further described in Exhibit "A"; and

WHEREAS: SmithGroup's knowledge of current conditions and expertise offer the City of Rocky River the unique and specialized services required to advance the Bradstreet's Landing Waterfront Design through the construction phase for upland access improvements including the Boardwalk, Pedestrian Bridge, Revetment and Parking Lot; and

WHEREAS: as detailed in Ordinance 40-18 the City of Rocky River contracted with SmithGroup for the Bradstreet's Landing Pier Demolition and Replacement and now wishes to move into Phase II for the upland access element design in an amount not to exceed One Hundred Thirty Nine Thousand Seven Hundred Dollars and 00/100 (\$139,700.00), as further described in Exhibit "A"; and

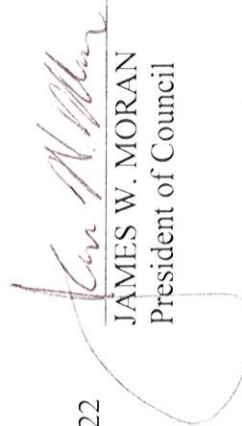
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY CUYAHOGA, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized to enter into an agreement with SmithGroup, 44 East Mifflin, Suite 500, Madison, WI 53703 for Phase II for the upland access element design for Bradstreet's Landing Park in an amount not to exceed One Hundred Thirty Nine Thousand Seven Hundred Dollars and 00/100 (\$139,700.00), as further described in Exhibit "A".

SECTION 2. That funds for said professional engineering services shall be paid from the Capital Improvement Fund – Engineering Services account.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of public peace, health and safety, and for the further reason that the professional services are necessary for the immediate application of State required permits (which include geotechnical data & design information) and engineering services to create construction plans and public bidding documents to ensure construction begins in the Spring of 2019 and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

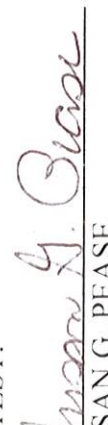
PASSED: May 9th, 2022


JAMES W. MORAN
President of Council

PRESENTED

BY MAYOR: May 9th, 2022 APPROVED: May 9th, 2022

TESTED:


SUSAN G. PEASE
Clerk of Council


PAMELA E. BOBST
Mayor

I, the undersigned clerk of council of the city of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 9th day of May, 2022.


Clerk of Council of the City of Rocky River, Ohio

MICHAEL THOMAS, CPA, Director of Finance

City of Rocky River } ss
County of Cuyahoga }

THE UNDERSIGNED CLERK OF THE COUNCIL OF THE CITY OF
ROCKY RIVER, OHIO DOES HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE
NO. 23-22 ADOPTED BY THE COUNCIL OF SAID CITY
ON THE 14th DAY OF MAY, 2022 THAT THE
PUBLICATION OF SUCH ORDINANCE HAS BEEN MADE AND
CERTIFIED OF RECORD ACCORDING TO LAW; THAT NO
PROCEEDINGS LOOKING TO A REFERENDUM UPON SUCH
ORDINANCE HAVE BEEN TAKEN; THAT SUCH ORDINANCE AND
THE CERTIFICATE OF PUBLICATION THEREOF, ARE OF RECORD
IN ORDINANCE RECORD NO. 23-22

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME AND AFFIXED MY OFFICIAL SEAL THIS 14th DAY OF
MAY, 2022.

Ann L. Biese
CLERK OF COUNCIL OF THE CITY OF ROCKY RIVER, OHIO

February 14, 2022
rev. February 23, 2022

Rich Snyder
Director of Public Safety-Service
City of Rocky River
21012 Hilliard Blvd.
Rocky River, OH 44116

RE: Proposal of Professional Services
Bradstreet's Landing Waterfront Design Completion and Upland Access Element Design

Dear Rich,

On behalf of SmithGroup, Inc., ("SmithGroup"), we are pleased to submit this proposal for advancing the Bradstreet's Landing Waterfront Design from Design Development through construction phase and preparing construction documents for upland access improvement (the "Project") for the City of Rocky River ("Client"). The following is our understanding of the services which are to be provided.

UNDERSTANDING OF THE PROJECT

Under separate contracts, SmithGroup prepared the original Bradstreet's Landing Master Plan, provided design and construction phase services for the pier and is currently designing portions of the revetment between the pier and the Spencer Creek bridge for the City of Rocky River ("Client"). Mackay Engineering and Surveying Company ("Mackay") is under contract separately with the Client to prepare construction documents for the Spencer Creek bridge.

SmithGroup understands that the Client requires the following additional services:

1. Modification of waterfront construction documents to add the boardwalk from the Spencer Creek bridge to the pier and to extend the revetment easterly and southerly through the Spencer Creek bridge (Figure 1).
2. Modification of preliminary construction documents to add the boardwalk and to extend the revetment westerly from the pier to approximately the Bradstreet's Landing property line (Figure 1).
3. Contract modifications to cover additional construction phase services resulting from the extended pier construction schedule.
4. Preparation of a single bid package, bid phase assistance, and construction phase assistance for construction of the extended boardwalk and revetment. Pedestrian bridge plans and specifications prepared by a second consultant hired by the Client will be integrated into the single bid package but are not part of SmithGroup's construction phase assistance work.
5. Bid phase assistance for implementation of waterfront improvements.
6. Construction phase assistance for implementation of waterfront improvements.
7. Master plan updates to revisit the location of the building and identify plan modifications that would result from relocation of the building and development of additional studies and documents to facilitate 2022 construction of the new driveway, parking lot, utilities and related upland features identified in the master plan and in the following Scope of Services (Figure 2).

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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Services described above have been divided into two proposals aligning with targeted construction milestones. Contract 1 (submitted previously) describes additional services listed as Items 1 through 3, above through preliminary design. This contract includes services described in Items 4 through 7 (Contract 2).

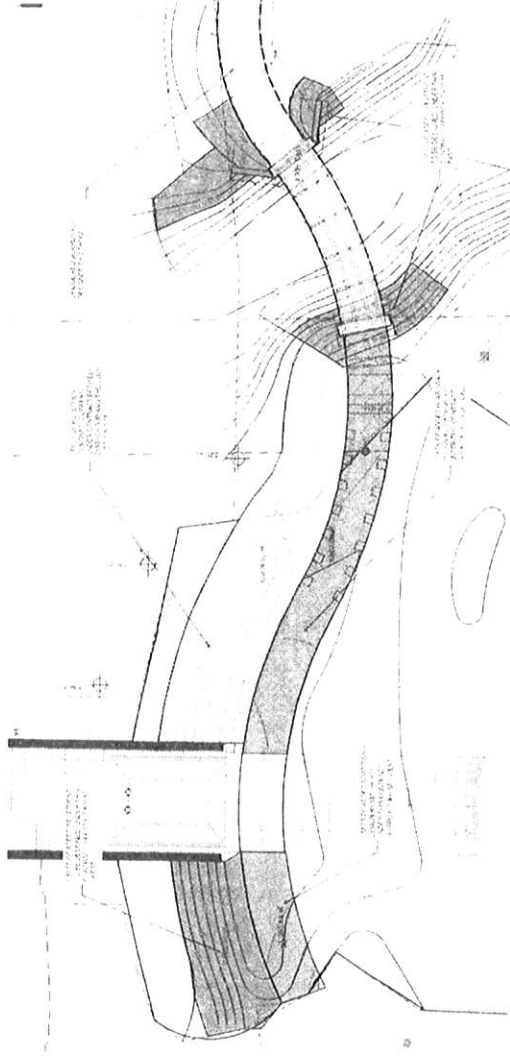


Figure 1 - Waterfront Design Elements

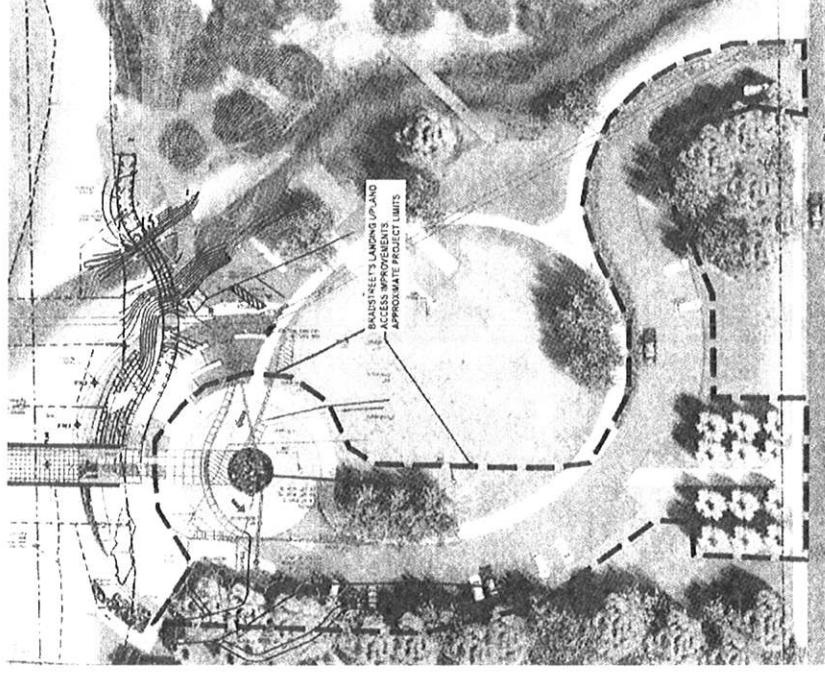


Figure 2 - Upland Design Elements

SCOPE OF SERVICES

Task 4 Waterfront Element Contract Document Preparation

4.1 Bid Package Preparation

Based on an approved layout and written concurrence with the 50% drawings (prepared under Contract 1) by the Client, prepare bid documents for waterfront elements including the following:

- Revetment layout and details from the pier easterly through the bridge to a point south of the bridge.
- Revetment layout and details from the pier westerly to a point west of the pier.
- Boardwalk layout and details from the pier to a point west of the pier.
- Boardwalk layout and details from the pier to the west Spencer Creek bridge abutment.
- Bridge and boardwalk layout and structural details for the Spencer Creek Bridge and the boardwalk extending from the east abutment easterly to the landing on the east beach (plans provided and stamped by Mackay).
- Schematic design of proposed upland improvements (described in Task 7.2) along with an alternate bid form and Instructions to Bidders with directions for the submittal and acceptance or rejection of alternate bid prices for upland improvements.
- Technical specifications for the boardwalk, revetment, and associated construction items prepared by SmithGroup.
- Technical specifications for the bridge (prepared and furnished by others).
- Front end documents, including Instructions to Bidders, General and Special Conditions, Bid Forms, and other standard boiler plate documents.

Documents will be provided to the Client for review once during completion of this task and redline comments will be integrated into the final set.

4.2 Opinion of Probable Cost

- Prepare an Engineer's Opinion of Probable Cost (OPCC). SmithGroup will prepare the OPCC for the revetment, boardwalk, and other project features excluding the bridge. It is assumed that probable costs for the bridge and related items will be prepared and provided by others.

Task 4 Meeting & Deliverables:

- Draft Contract Documents (plans, technical specifications, OPCC)
- Draft Contract Document Review Meeting (virtual)
- Final Contract Documents (plans, technical specifications, bid form and shoreline revetment project manual integration, OPCC)

Task 5 Waterfront Element Bid Phase Assistance

Assist the Client in soliciting contractor bids for construction of waterfront elements described in this proposal during a single bid cycle. In support of the Client and to aid in soliciting bids from qualified contractors for shoreline revetment and boardwalk projects, SmithGroup will:

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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- 5.1 Participate in one pre-bid meeting (virtual).
- 5.2 Coordinate the development and distribution of bid documents with the Client.
- 5.3 Receive and respond to contractors' and/or suppliers' pre-bid questions.
- 5.4 Prepare and distribute addenda as required to clarify the bidding documents; and
- 5.5 Assist in evaluation of bids and offer input to the City via phone or video conference on the award of a construction contract.

Task 5 Meetings & Deliverables:

- Pre-Bid Meeting and Notes (virtual)
- Pre-bid Inquiry Responses
- Addenda and Clarifications
- Contractor Bid Review Meeting (virtual)

Task 6 Waterfront Element Construction Phase Assistance

Provide construction phase services described below for waterfront elements described in the Scope of Services. If additional support or on-site reviews are desired by the Client, SmithGroup can perform these services as part of a separate agreement.

Basic construction phase assistance related to the boardwalk and shoreline revetment include the following items:

- 6.1 **Preconstruction Meeting:** Participate in one in-person pre-construction meeting with the selected contractor(s) to review project requirements, processes, and milestones.
- 6.2 **Submittals:** Review and approve shop drawings, samples, and other data which the Contractor is required to submit, but only for conformance with the design concept of the project and compliance with the information given in the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.
- 6.3 **Interpretation, Bulletins, and Substitutes**
 - Issue interpretations and clarifications of the Construction Contract Documents in response to Requests for Information (RFI).
 - Evaluate and render an opinion on the acceptability of substitute materials and equipment proposed by the Contractor to the extent provided in the General Conditions of the construction contract.
 - Act as initial interpreter of the requirements of SmithGroup-led portions of the construction documents, judge of the acceptability of the work, and render an opinion on claims of Client and Contractor relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.

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- 6.4 Construction Phase Meetings: Attend Construction Phase progress meetings, including the pre-construction meeting and progress meetings involving site/landscape architecture construction.
- 6.5 Substantial Completion: SmithGroup will review the project and render an opinion of whether site/civil work is substantially complete and prepare a punch list of uncompleted or unacceptable work items. Upon notice that all punch list items are complete, a final inspection will be held to provide an opinion if the completed work is acceptable. SmithGroup will recommend, in writing, final payment to Contractor and/or give written notice to the Client and the Contractor that the work is acceptable. This assumes a single substantial completion visit. Multiple or phased substantial completion can be provided as additional services.

Construction phase services are based on activities estimated in the table below. This table will be used as a basis for estimating fees for additional construction phase services, if necessary. The unit cost for contract modifications may need to be adjusted if adjustments result from extensive design modifications requested by the Owner or Contractor varying significantly from the approved design program and construction documents or extensive delays in contractor completion of construction.

Deliverable	Estimated Number	Unit Cost	Unit	Est. Fee
Submittals	15	\$369	Submittal	\$5,530
RFI's	10	\$383	RFI	\$3,830
Contract Mods	2	\$1,455	CSK	\$2,910
Punchlist	1	\$8,777	LS	\$8,777
PreCon Meeting	1	\$8,062	Mtg	\$8,062
Progress Meetings	16	\$293	Mtg	\$4,680

Site visits (except for the punchlist visit) are not included. Site visits will be added upon request of the Client at an additional fee to be negotiated.

Task 6 Meetings & Deliverables

- Pre-Construction Meeting (in-person)
- Shop Drawing Reviews
- RFI Responses
- Field Orders and/or Contract Modifications
- Shop Drawing Reviews
- Weekly Project Status Meetings
- Punch list walk-through.

Task 7 – Upland Access and Parking Lot Design

7.1 Data Collection

SmithGroup assumes additional upland survey data and additional shallow soil borings along the proposed driveway route will be required. This Scope of Services includes preparing requests for proposals from a local surveyor and geotechnical consultant for direct contracting of these services to the Client. If desirable, SmithGroup can add consultant services to the SmithGroup contract at an additional fee.

7.2 Schematic Design (Upland Elements)

- Develop concept drawings showing the proposed relocated building location. Develop conceptual driveway and parking lot geometry based on desired parameters provided by the client (typical drive sections, desired number of parking spaces, utility, and security requirements, etc.).
- Meet with the Client virtually to present and receive comments on the draft layout. Modify geometry based on comments received.
- Incorporate agreed-upon design concepts into a schematic design drawing package for Client review. It is anticipated that the schematic design set will include the following:
 - One overall layout and materials plan.
 - One layout/materials enlargement sheet
 - One overall schematic landscape plan
- Schematic Design drawings described above will be included in the Waterfront Improvements bid set with Instructions to Bidders for preparing an alternate bid price for consideration by the Client. If accepted by the Owner, upland design, described in Tasks 7.3 and 7.4, will be completed and issued as a change order to the awarded waterfront contract. If rejected, Bid Documents prepared in Tasks 7.3 and 7.4 will be Issued for Bid for advertisement as a separate project.

7.3 Design Development (Upland Elements)

Based on the approved Schematic Design Documents and adjustments authorized by the Client in the program, schedule, or construction budget, prepare Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to systems, materials and such other elements as may be appropriate. SmithGroup will prepare design development (DD) plans and specifications for the associated site improvements and submit to the Client for 35% Design Review.

SmithGroup will prepare a preliminary design set that will include the following general elements:

- Cover Sheet
- Site Preparation and Erosion Control Plan
- Layout and Materials Plan
- Grading and utilities (including plan and profile sheets of the proposed driveway)
- Standard site and utility details, including typical pavement sections
- Lighting details

- Site restoration and landscaping plans/details.
- Conceptual entry and wayfinding signage design

The Scope of Services assumes the following:

- Pavement design will be provided by others. SmithGroup will contract with the geotechnical engineer for these services if authorized as an additional service by the Client.
- Architectural design services are not included.

SmithGroup assumes at the close of the DD phase, the project geometry and grades will be agreed to by all parties. Design changes to geometry and grades outside of SmithGroup control beyond the DD phase may be grounds for additional compensation.

7.4 Contract Documents (Upland Elements)

Based on Design Development Documents and comments received as part of Task 7.3, SmithGroup will prepare Final Construction Documents (100%). Documents and specifications will be developed based on interpretation of applicable city, state and federal laws, regulations, and ordinances. During this task, drawings described in Task 7.3 will be advanced to final design. In addition, Construction Documents will include technical construction specifications and front-end documents. If "off-the-shelf" signage is the Owner's preferred product, details and/or specifications will be included in the construction documents. Detailed design of custom signage is not included but can be added for a fee to be negotiated. SmithGroup will prepare the OPCC for the proposed improvements.

If alternate bids for upland improvements in the waterfront improvements contract are accepted by the Client, contract documents will be issued as a change order (subject to accepted bid prices). If alternate bids are rejected, Contract Documents will be issued as a separate bid package.

7.5 Permits/Reports

It is assumed the project will result in more than one acre of earth disturbance and will require coverage under OEPA Permit No. OHC00004 (Stormwater Discharges Associated with Construction Activity). For compliance, SmithGroup will prepare calculations, construction drawings, and other required documentation for design, implementation, and permitting of construction and post-construction best management practices to reduce stormwater and stormwater-related pollutants in compliance with local and state standards. The Scope of Services includes preparation of reports and permit applications for execution by the Client. Compensation does not include permit fees. It is assumed permit fees will either be paid separately by the Client or reimbursed outside of the lump sum fee described in Compensation.

Task 7 Meetings & Deliverables

- Schematic Design Plan (program confirmation)
- Design Development Drawings (approximately 35% completion)
- OPCC (Design Development)
- Construction Documents (90% draft and 100% final)
- Stormwater and Erosion Control Plan and Permit Application
- SD Review Confirmation Meeting
- DD Review Confirmation Meeting

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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- CD Review page turn (at 90% review stage)
- Engineer's Opinion of Probable Cost

ASSUMPTIONS

The preceding Scope of Services is based on the following additional assumptions:

1. Services do not include public engagement, historical/archeological investigations, or related services.
2. Services do not include survey or geotechnical services.

PREPARATION OF DIGITAL DATA

In the event SmithGroup is requested to prepare digital data for transmission to the Owner's consultants, contractors or other Owner authorized recipients ("Digital Data"), the Owner acknowledges that due to the limitations of the digital data software, not all elements of SmithGroup's services may be represented in the Digital Data, this being in the sole discretion of SmithGroup. Accordingly, although SmithGroup will endeavor to represent all material elements of SmithGroup's services in the Digital Data, any use shall not relieve the Owner's consultants, contractors, or other Owner authorized recipients or their respective obligations. The Owner agrees that it will include this provision in any agreements with its consultants, contractors, or other Owner authorized recipients, in which Digital Data is provided.

SCHEDULE

The tentative timeline for completion of this work is based on receipt of an executed agreement is as follows.:

- Tasks 3, 4, 7.2: Completed for target advertisement date of March 28, 2022
- Task 5: Completed by approximately April 29, 2022
- Task 6: December 31, 2022
- Tasks 7.3-7.5: Completed by June 7, 2022 (for issuance either as a change order to the waterfront contract or Issued for Bid for a separate contract.

COMPENSATION

Rocky River shall compensate SmithGroup for the Scope of Services outlined above for the fixed fee lump sum described below.

Tasks 3 -6	\$71,700
Task 7	<u>\$68,000</u>
Total	\$139,700

Compensation includes the cost of labor and expenses required to perform the work.

ADDITIONAL SERVICES

Requests for additional services or staff will be documented by SmithGroup (if given verbally), and the work will commence upon Rocky River approval of an estimated fee for that effort or, if not agreed otherwise, Rocky River shall reimburse SmithGroup on an hourly basis of SmithGroup's project staff actively engaged for all personnel hours worked on the project.

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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PAYMENTS

Invoices will be prepared monthly on the basis of percentage of completion.

All payments due to SmithGroup shall be made monthly upon presentation of the statement of services rendered. All payments due SmithGroup under this Agreement shall bear interest at one-and one-half (1½%) percent per month commencing thirty (30) days after the date of billing.

INTELLECTUAL PROPERTY

In rendering its Services, SmithGroup may create and provide to Rocky River documents which include (i) Rocky River internal data, analyses, recommendations, and similar items (collectively, "Client Data"), and (ii) data and/or recommendations that have been created by SmithGroup for the benefit of Rocky River as part of the Services (collectively, "SmithGroup Data"). In the development of SmithGroup Data, SmithGroup may use algorithms, software systems, plans, processes, tracking tools, contract assessment/ modeling tools, formulas, or data from third-party vendors, and other intellectual property owned by SmithGroup or which SmithGroup has the right to use as of or after the date hereof (including, without limitation, the format of SmithGroup's reports and any improvements or knowledge SmithGroup develops, whether alone or with others, in the performance of the Services) (collectively, "SmithGroup Tools"). Rocky River shall own, solely and exclusively, the Client Data delivered pursuant to this Agreement. Rocky River agrees that SmithGroup shall own, solely and exclusively, all SmithGroup Tools and all intellectual property rights therein whether or not registerable (including without limitation patents and inventions, trademarks, service marks, logos and domain names and all associated goodwill, copyrights and copyrightable works and rights in data and databases, and trade secrets, know-how and other confidential information). Rocky River acknowledges and agrees that SmithGroup may, and reserves the right to, use the Client Data and any information and data generated by the SmithGroup Tools solely in an aggregated, non-personally identifiable manner in order to create and improve the compilations, statistical analyses, or benchmarks provided by SmithGroup in any services (collectively, "Aggregate Data") as long as the resulting information does not identify Rocky River and Rocky River hereby grants to SmithGroup a perpetual, irrevocable, royalty-free license to use the Client Data, solely as described herein. All right, title and interest in and to the Aggregate Data shall inure to the sole and exclusive benefit of SmithGroup. With respect to any SmithGroup Data that is contained in any documents delivered by SmithGroup to Rocky River, SmithGroup grants Rocky River a royalty free, paid up, non-exclusive, perpetual license to use the SmithGroup Data solely in connection with Rocky River's internal use of the documents and for no other purpose. Rocky River acknowledges and agrees that all SmithGroup Data (including any advice, recommendations, information, or work product incorporated into the SmithGroup Data) provided to Rocky River by SmithGroup in connection with this Agreement is for the sole internal use of Rocky River, including all subsidiaries of Rocky River, and may not be used or relied upon by any third party; provided that Rocky River may incorporate into documents that Rocky River intends to disclose externally SmithGroup summaries, calculations or tables based on Rocky River information contained in Client Data, but not SmithGroup's recommendations or findings. SmithGroup retains all rights not expressly granted to Rocky River hereunder.

DELIVERY OF CADD GRAPHIC FILES

Any electronic/data/digital files (Files) from SmithGroup shall be deemed Instruments of Service, and/or Work Product, as the case may be, for the Project identified above. Rocky River covenants and agrees that: 1) the Files are Instruments of Service of SmithGroup, the author, and/or Work Product of SmithGroup, as the case may be; 2) in providing the Files, SmithGroup does not transfer common law, statutory law, or other rights, including copyrights; 3)

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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the Files are not Contract Documents, in whole or in part; and 4) the Files are not As-Built files. Rocky River agrees to report any defects in the Files to SmithGroup, within 45 days of the initial Files transmittal date (Acceptance Period). It is understood that SmithGroup will correct such defects, in a timely manner, and retransmit the Files. Rocky River further agrees to compensate SmithGroup, as Additional Services, for the cost of correcting defects reported to SmithGroup after the Acceptance Period. Rocky River understands that the Files have been prepared to SmithGroup's criteria and may not conform to Rocky River's drafting or other documentation standards. Rocky River understands that, due to the translation process of certain CADD formats, and the transmission of such Files to Rocky River that SmithGroup does not guarantee the accuracy, completeness or integrity of the data, and that the Rocky River will hold SmithGroup harmless for any data or file clean-up required to make these Files usable. Rocky River understands that even though SmithGroup may have computer virus scanning software to detect the presence of computer viruses, there is no guarantee that computer viruses are not present in the Files, and that Rocky River will hold SmithGroup harmless for such viruses and their consequences, as well as any and all liability or damage caused by the presence of a computer virus in the Files. Rocky River agrees, to the fullest extent permitted by law, to indemnify and hold SmithGroup harmless from any and all damage, liability, or cost (including protection from loss due to attorney's fees and costs of defense), arising from or in any way connected with and changes made to the Files by Rocky River.

Under no circumstances shall transfer of Files to Rocky River be deemed a sale by SmithGroup. SmithGroup makes no warranties, express or implied, of merchantability or fitness for any particular purpose.

LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY LAW, ROCKY RIVER AGREES THAT THE TOTAL LIABILITY OF SMITHGROUP IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OR OTHERWISE, SHALL NOT EXCEED AND SHALL BE LIMITED TO THE TOTAL COMPENSATION RECEIVED BY SMITHGROUP UNDER THIS AGREEMENT.

MISCELLANEOUS PROVISIONS

SmithGroup will use reasonable professional efforts and judgment in responding in the design to applicable federal, state and local laws, rules, codes, ordinances and regulations. Rocky River acknowledges that certain state and local laws, rules, codes, ordinances and regulations may reference standards that are outdated and/or contrary with today's industry requirements. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all such outdated and/or contrary federal, state and local laws, rules, codes, ordinances and regulations

Notwithstanding anything to the contrary, nothing contained herein shall be construed: i) to constitute a guarantee, warranty or assurance, either express or implied, that the SmithGroup's Services will yield or accomplish a perfect outcome for this Project; or ii) to obligate the SmithGroup to exercise professional skill or judgment greater than the standard of care exercised by other similarly situated design professionals currently practicing in the same locale as this Project, under the same requirements of this Agreement; or iii) as an assumption by the SmithGroup of liability of any other party.

SmithGroup will use reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as applicable to this Project. Rocky River acknowledges that requirements of ADA, as well as other federal, state and local laws, rules, codes,

City of Rocky River	Bradstreet's Landing Boardwalk Rocky River, Ohio	Rev. 09/23/2020 SmithGroup
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ordinances and regulations, will be subject to various and possibly contradictory interpretations. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations

Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that there may be delays in the performance of this Agreement for the period that such delay is due to causes beyond a Party's reasonable control, including but not limited to Acts of God, government regulations, orders or controls (including, but not limited to, shelter-in-place orders and construction moratoriums), quarantine, epidemic or pandemic. Both parties shall make reasonable efforts to notify the other Party if a force majeure event will delay performance. In the event of such delay, neither Party shall be liable to the other Party for delay or damage caused. SmithGroup's fees for the remaining services and the time schedules shall be equitably adjusted as mutually agreed between the Parties before services are resumed.

This document will serve as an agreement between us, and you may indicate your acceptance by signing in the space provided below and returning one (1) signed copy for our files.

SmithGroup (Signature)	Owner (Signature)
(Printed name and title)	(Printed name and title)
Date	Date