

MASTER AGREEMENT FOR AS NEEDED CONSULTANT SERVICES

This Agreement ("Agreement") is entered into as of this ___ day of _____, 20___, by and between DLZ Ohio, Inc. ("DLZ"), located at 614 W. Superior Ave., Suite 1000, Cleveland, Ohio 44113 and City of Parma ("Client"), located at 6611 Ridge Road, Parma, Ohio 44129. Client and DLZ are sometimes collectively referred to as the "Parties."

WITNESSETH

WHEREAS, Client is authorized to make and enter into all contracts or agreements which it determines are necessary or incidental to the performance of its duties and to the execution of the purposes of and the powers granted by the State of Ohio; and

WHEREAS, Client desires to engage DLZ on an as-needed basis to furnish certain services ("Services") further described below, for one or more Client projects (each, a "Project"); and

WHEREAS, the Parties desire to establish the terms and conditions that will apply to individual written task orders issued by Client to DLZ for Project Services under this Agreement (each, a "Task Order"); and

WHEREAS, DLZ desires to provide Services in accordance with the terms of this Agreement and individual Task Orders;

NOW, THEREFORE, in consideration of the mutual promises and obligations of the Parties hereunder, the Parties agree as follows:

I. SCOPE OF SERVICES

- A. DLZ shall perform, in a professional manner, the Services set forth in Client's Task Orders per Section D below. Services by DLZ will also include communication with Client's Law Department and Client's outside legal counsel regarding inspection, plan, design and construction findings, opinions and advice. Such communication by DLZ to the Law Department and legal counsel being intended to assist counsel in forming legal opinions and advice for Client. These services will be billed on an hourly basis per the approved rate schedule attached herein.
- B. No Task Order shall take effect until it has been: (1) executed by both Parties, or (2) executed and issued by Client and DLZ commences to provide the Services listed in the Task Order following Client's issuance of a Notice to Proceed. The Parties agree that the terms and conditions of this Agreement are incorporated into, and are a part of, each Task Order, and each Task Order shall be governed by this Agreement, except to the limited extent explicitly stated otherwise in a Task Order.
- C. In the event of any conflict or inconsistency between the requirements of this Agreement and a Task Order including, without limitation, as to insurance coverage and indemnity requirements, the terms and conditions of the Task Order shall control.



- D. Client shall have the right to increase, decrease or alter the scope of DLZ's Services under any Task Order ("Scope of Services"), without invalidating the Task Order; however, Client shall not be entitled to alter the general nature of DLZ's Scope of Services except by mutual agreement of DLZ and Client. In the event of an increase, decrease, or other change in DLZ's Scope of Services under a Task Order, except to the extent necessitated by DLZ's breach of, or negligent acts or omissions under, this Agreement or a Task Order, the Parties shall negotiate appropriate modifications to this Agreement and/or the Task Order, including to the extent appropriate changes in compensation and time of performance, before DLZ begins performance of the revised Scope of Services. The services provided by DLZ shall include but not be limited to: short term engineering and/or funding assistance consultation, preliminary cost estimating for construction proposals on various infrastructure project needs as determined by the City.

II. COMPENSATION

- A. DLZ shall be compensated for its Services as set forth in Client's Task Orders. Each task order will be estimated and negotiated based on the hourly billing rates provided in the table attached hereto as Exhibit B. Rates will be effective through 2020. New rates will be provided if services extend beyond 2020. Rates for staff not listed in the table will be submitted to the City for approval.
- B. DLZ shall promptly bill Client for its Services on a monthly basis, and Client shall pay DLZ all undisputed portions of DLZ's invoices within thirty (30) days of the date of each invoice.
- C. If Client does not pay all undisputed amounts to DLZ within sixty (60) days of the date of an invoice, DLZ may suspend services upon seven (7) days written notice on the basis of non-performance on the part of Client. When all payments due have been made, DLZ will continue its Services.

III. PERIOD OF PERFORMANCE

DLZ agrees to commence performance of Services hereunder promptly upon receipt of a written "Notice to Proceed." Client recognizes that DLZ's work and the timely completion thereof may be conditioned upon Client's review of DLZ's work and/or the timely performance and completion of certain activities by Client. DLZ shall not be held liable for delays in performance of Services hereunder that arise from causes beyond DLZ's reasonable control and without its fault or negligence. The time period of performance and of this agreement in general is otherwise set forth in Paragraph VI.

IV. CLIENT RESPONSIBILITY

- A. Client shall identify and coordinate all Services to be performed hereunder.
- B. Client will verify that DLZ has a complete understanding of its Scope of Services to be performed hereunder. Client shall provide DLZ, in a timely fashion, all information

reasonably required for the performance of the Services to be performed by DLZ hereunder.

- C. Client shall upon execution of each Task Order, designate a coordinator of the Project described herein and of the professional services to be performed under this Agreement. Client shall promptly notify DLZ of the project coordinator after designation.
- D. Client shall provide DLZ with reasonable access to all premises necessary for the performance of the Services.

V. INDEPENDENT CONTRACTOR

It is understood and agreed that DLZ shall provide Services under this Agreement as an independent contractor and that DLZ's employees shall not be considered employees of Client.

VI. TERMINATION

- A. This agreement terminates at 12 midnight December 31, 2020.
- B. It is hereby agreed that if either of the Parties should fail materially to fulfill its obligations under this Agreement or a Task Order, the other Party may notify the breaching party of its intent to terminate the Agreement or Task Order, in whole or in part, if the breach is not cured as provided in this Article. Such notice to the breaching party shall be given, in the manner required in Article XII of this Agreement, thirty (30) days prior to the effective date of the intended termination and shall identify the breach to be cured. The breaching party shall have thirty (30) days from receipt of the notice to cure the breach identified in the notice. Failure to cure the breach within thirty (30) days shall entitle the nonbreaching party to terminate the Agreement. DLZ shall use reasonable efforts to minimize fees and expenses upon giving or receiving notice of any intended termination. Client shall pay DLZ all fees and expenses accrued for Services rendered up to the effective date of any termination.
- C. Task Orders will terminate automatically upon termination of this Agreement.
- D. The term/time period of this agreement may be extended by written amendment, written extension agreement, or by a new agreement signed by both parties.

VII. INSURANCE

During the term of this Agreement and for two (2) years following its termination or expiration, DLZ shall maintain, at DLZ's own expense, the following minimum insurance coverage:

- | | | |
|------------------------------|----------------------------|---------------------------|
| A. Workers' Compensation (A) | Coverage A: | Statutory |
| Employer's Liability (B) | Coverage B: | |
| | Bodily injury by accident: | \$1,000,000 each accident |

Bodily injury by disease: \$1,000,000 policy limit
\$1,000,000 each employee

B. Commercial General Liability	Each occurrence:	\$1,000,000
(Coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract)	General aggregate limit	\$2,000,000
	Products and completed operations aggregate limit:	\$2,000,000
	Personal and advertising injury limit:	\$1,000,000
C. Auto Liability	Each accident:	\$1,000,000
(Coverage shall apply to any auto including owned, hired, and non-owned autos)		
D. Umbrella Liability	Each occurrence:	\$2,000,000
(Coverage shall be at least as broad as the underlying coverage, including but not limited to completed operations and contractual liability)	Aggregate:	\$2,000,000
E. Professional Liability	Each claim:	\$2,000,000
	Aggregate:	\$2,000,000

Certificates of Insurance shall be furnished to Client before DLZ begins providing Services under this Agreement, and annually thereafter upon renewal of coverage.

VIII. CHANGES

Changes or amendments to this Agreement may be made only in writing signed by a duly authorized representative of each of the Parties.

IX. ASSIGNMENT AND DELEGATION

Neither of the Parties shall assign or delegate this Agreement to any other person or entity without the prior express written approval of the other Party.

X. TRADEMARK AND TRADE NAME

Notwithstanding any other provision of this Agreement, neither Party shall have the right to use the trademark or trade name of the other Party without prior written approval of the other Party.

XI. STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions attached hereto as Exhibit A are incorporated herein and made a part of this Agreement.

XII. NOTICES

All notices shall be in writing and be deemed to be given or made when delivered by hand or by regular U.S. mail as follows:

- A. Notices to DLZ shall be addressed to: **Bryan Cotleur, PE, DLZ Ohio, Inc., 614 W. Superior Ave., Suite 1000, Cleveland, Ohio 44113.**
- B. Notices to Client shall be addressed to: **James J. Mihelich, PE, 6611 Ridge Road, Parma, Ohio 44129**, with copies to the **Parma Law Director, 7335 Ridge Road, 2nd FL., Parma, Ohio 44129.**

XIII. GENERAL PROVISIONS

- A. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and any prior agreements, understandings, or other matters, whether oral or written, are hereby merged into and made a part hereof, and are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the Parties.
- B. Waiver: No waiver shall be deemed to have been made by either of the Parties unless explicitly stated in writing and signed by the waiving Party. The failure of either of the Parties to insist in any one or more instances upon the other Party's strict performance of any of the terms or provisions of this Agreement or a Task Order, or to exercise any option of election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue and remain in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under this Agreement shall be deemed to be waiver of any prior or subsequent rights or remedy hereunder or at law. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy available at law or in equity.
- C. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the applications of such term or provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- D. Captions: Captions and paragraph headings are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of this Agreement.
- E. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of **Ohio**.
- F. Confidentiality: DLZ shall each maintain in confidence information acquired from or prepared for Client under this Agreement or a Task Order. If such information is required by law to be disclosed, DLZ agrees to notify Client immediately upon receipt of any such demand or order and will reasonably cooperate with Client in the event Client seeks any legal protective order with respect to such information.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives, have caused this Agreement to be executed as of the date first written above.


CITY OF PARMA

DLZ OHIO, INC.

By: _____
(Name)

By: Tanya Arsh, PE _____
(Name)

(Signature)



(Signature)

(Title)

Vice President _____
(Title)

(Date)

1/3/2020 _____
(Date)

EXHIBIT A
DLZ'S STANDARD TERMS AND CONDITIONS

1. **INVOICES AND PAYMENT:** Unless the parties have agreed otherwise, DLZ will submit monthly invoices to CLIENT for services performed in the prior month. Except to the extent CLIENT disputes in good faith all or a portion of a DLZ invoice, CLIENT will pay DLZ the invoiced amount within thirty (30) days from the date of the invoice; and, in default of such payment, agrees to pay all cost of collection, including reasonable attorney's fees, regardless of whether legal action is initiated. Invoiced amounts not in dispute will accrue interest at eight percent (8%) per annum after they have been outstanding for over thirty (30) days. If an invoiced amount not in dispute remains unpaid sixty (60) days after the date of the invoice, DLZ may, upon giving seven (7) days written notice of its intent to do so, suspend all project services until all unpaid invoiced amounts not in dispute are paid in full. If an invoice remains unpaid ninety (90) days after the date of the invoice, DLZ may, upon giving seven (7) days written notice of its intent to do so, declare CLIENT to be in breach of this agreement.
2. **CONSTRUCTION SERVICES:** If DLZ's scope of services includes providing professional services during the project's construction phase, DLZ will not have control over or be responsible for contractor means, methods, techniques, sequences, procedures, or schedule, or the contractor's failure to comply with the construction contract documents or applicable laws, ordinances, rules or regulations. If DLZ provides construction inspection or observation services, DLZ will report to CLIENT all contractor deviations from the construction contract documents that come to DLZ's attention. However, such services are solely intended to enable DLZ to maintain familiarity with, and keep CLIENT informed of, the general progress and quality of the contractor's work, and not to require DLZ to perform exhaustive inspections of contractor work for its compliance with the construction contract documents, which shall remain solely contractor's responsibility.
3. **CHANGES IN REQUIREMENTS:** In the event additional services are required due to a change, after the date of this agreement, in CLIENT's requirements, or in the applicable law, standards, or governmental requirements or policies, DLZ will be entitled to additional compensation for such additional services.
4. **SURVEY STAKING:** If DLZ's scope of services includes survey layout, DLZ will not be responsible for subsequent disturbances of its layout except to the extent caused by DLZ or persons for whom it is responsible.
5. **MISCELLANEOUS EXPENSES:** Except to the extent otherwise provided in this agreement, CLIENT is responsible for all third-party fees and charges including, without limitation, fees and charges for inspections, zoning or annexation applications, assessments, soils engineering, soils testing, aerial topography, permits, rights-of-entry, bond premiums, title company charges, blueprint and reproduction costs, and all other third-party fees and charges.
6. **CHANGE OF SCOPE:** DLZ's scope of services in this agreement is based on facts known at the time of execution of this agreement, including, if applicable, information supplied by CLIENT. DLZ will promptly notify CLIENT in writing of any perceived changes to its scope of services required by new information or by persons or circumstances beyond DLZ's control, and the parties shall negotiate modifications to this agreement before DLZ begins performance of the revised scope.
7. **SAFETY:** DLZ will take reasonable steps to protect the safety of its employees, and to perform its services in a safe manner. DLZ is not responsible for project safety other than with regard to its own services.
8. **REUSE OF PROJECT DELIVERABLES:** CLIENT's use of any project documents or DLZ deliverables, including electronic media, for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by DLZ for the specific purpose intended, will be at CLIENT's sole risk.
9. **OPINIONS OF CONSTRUCTION COST:** Any opinion of construction costs prepared by DLZ is supplied for the general guidance of the CLIENT only. Since DLZ has no control over competitive bidding or market conditions, DLZ cannot guarantee the accuracy of such opinions as compared to contractor bids or actual cost to CLIENT.
10. **INSURANCE:** During the performance of its services and for two years thereafter, DLZ will maintain the following minimum insurance coverage: **General Liability-** \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$1,000,000 personal/advertising injury aggregate; **Automobile Liability-** \$1,000,000 combined single limit; **Workers Compensation and Employers Liability-** in conformance with statutory requirements, and \$1,000,000 employers liability; and **Professional Liability-** \$2,000,000 per claim and in the aggregate. Certificates evidencing such coverage will be provided to CLIENT upon request. If DLZ is providing construction phase services, CLIENT agrees to require its contractor to include DLZ as an additional insured on the contractor's General Liability and Automobile Liability insurance policies, and DLZ's above-listed coverage will be excess over the contractor's coverage, which will be primary.
11. **INDEMNITY:** To the fullest extent permitted by law, DLZ agrees to indemnify and save harmless the other party from and against all liability, damages, and expenses, including reasonable attorney's fees, sustained by the other party by reason of injury or death to persons or damage to tangible property, to the proportionate extent caused by the negligent acts or omissions of DLZ or its employees.
12. **CONSEQUENTIAL DAMAGES:** Neither party will be liable to the other for consequential, special, incidental, indirect, liquidated, or punitive damages.
13. **LIABILITY:** No employee of DLZ or of its parent, subsidiary, or affiliated companies will be personally liable to CLIENT.
14. **DISPUTES:** Any claim or controversy arising out of or relevant to this agreement, or the breach thereof, shall be settled by binding arbitration in the state in which the project is located, in accordance with the rules of the American Arbitration Association, and judgment upon any award rendered by the arbitrator(s) may be rendered in any court having jurisdiction thereof.
15. **DELAYS:** DLZ is not responsible for delays caused by persons or circumstances for which DLZ is not responsible.
16. **SHOP DRAWINGS:** If DLZ's scope of services includes reviewing shop drawings, such reviews are solely with regard to their general conformance with the design concept, and not for the purpose of reviewing or approving their accuracy, completeness, dimensions, quantities, constructability, compatibility with other construction components, or compliance with the requirements of the construction contract documents, all of which remain the contractor's responsibility. DLZ is not responsible for reviewing or approving the contractor's safety precautions or construction means, methods, sequences or procedures.
17. **ACCEPTANCE:** Both parties will consider DLZ's initiation of services prior to execution of this agreement in order to accommodate CLIENT, at CLIENT's request, as CLIENT's formal acceptance of all of the terms and conditions in this agreement.
18. **STANDARD OF CARE:** DLZ will perform its services with the care and skill ordinarily exercised by members of its profession currently practicing under similar conditions in the same locale. DLZ does not make, and expressly disclaims, any other warranties, express or implied, relating to its services including, without limitation, warranties of merchantability and fitness for a particular purpose. DLZ shall be entitled to rely on all CLIENT-provided information except to the extent otherwise stated in the agreement.

Exhibit B**City of Parma****2020 DLZ Hourly Billing Rates**

KEY STAFF	RATE
WATER SERVICES	
Tanya Arsh	\$290
Bryan Cotleur	\$230
Thomas Hessler	\$230
Geary Visca	\$174
James Toto	\$195
Edward Stribula	\$190
Todd Harkins	\$167
TRANSPORTATION SERVICES	
Vickie Wildeman	\$235
Chad Rundle	\$185
Cynthia Peck	\$145
Andrew Frankhouser	\$115
Sizan Ava	\$95
Laura Alley	\$95
FIELD SERVICES	
Gary Bowen	\$274
Daniel Uhlir	\$154
Cory Shryock	\$98
David Williams	\$100
Karl Hansen	\$84
GEOTECHNICAL SERVICES	
Timothy Hampshire	\$190
Jason Hughes	\$140
Richard Hessler	\$110
SURVEYING SERVICES	
Robert Sands	\$160
Matthew Roberts	\$140