

PROFESSIONAL SERVICES AGREEMENT
WATERWAYS PROJECT

THIS AGREEMENT, entered into the ____ day of _____, 20__, by and between the _____, hereinafter referred to as the "OWNER", and _____, hereafter referred to as the "ENGINEER/ARCHITECT."

WITNESSETH:

WHEREAS, the Owner is desirous of constructing certain recreational boating facilities to be developed on or adjacent to certain properties of Owner located at _____; and

WHEREAS, the Owner desires that a complete preliminary study be made to determine the feasibility and the most desirable means of constructing said recreational boating facilities; and

WHEREAS, Engineer/Architect engages in the business of furnishing professional engineering/architectural services within the State of Michigan; and

WHEREAS, the Owner desires to engage the Engineer/Architect to make and to complete such a preliminary study including, but not limited to, conducting the necessary surveys and to prepare the necessary reports, sketches, drawings, designs, outline specifications, preliminary cost estimates; and

WHEREAS, the Owner, at its meeting held the ____ day of _____, 20__, authorized the execution of this professional services agreement.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The Engineer/Architect agrees to conduct a preliminary study which shall conform with professional standards and shall be conducted towards determining the economic and physical feasibility of accomplishing the construction of certain recreational boating facilities to be developed on or adjacent to certain properties of Owner located at _____. All plans, reports and other

documents shall be prepared under the direct supervision of and signed and sealed by a registered professional Engineer/Architect duly registered as such in the State of Michigan. The said study shall contain, in addition to the usual content of such study, such additional data as is set forth hereinafter.

2. The Engineer/Architect agrees to perform the following services:

a. To make such topographic and hydrographic surveys as shall be necessary to:

(1) Locate all structures, pipelines, electrical lines, telephone lines, and sewers, physical features, ground elevations, and like information.

(2) Determine underwater navigational hazards and limits of areas to be dredged.

(3) Make reasonably accurate estimates of the volume of material to be dredged, excavated, and/or required for fill.

(4) Ascertain whether a property survey is necessary and advise the Owner in writing of the necessity of making the same, the reason why such survey is necessary, and the estimated cost thereof. The Engineer/Architect shall not conduct or have conducted a property survey unless specifically authorized to do so in writing by the Owner. In the event the Owner shall so authorize the Engineer/Architect, the cost of said property survey shall be considered an additional item above and beyond the compensation hereinafter provided. A property survey shall consist of locating and staking corners of the property and providing the Owner with a legal description and sketch signed and sealed by a registered land surveyor. In the event the Engineer/Architect shall perform or have performed a property survey without the express written consent of the Owner, the Owner shall in no manner be obligated to pay any additional sum to the Engineer/Architect as a result of his making or having caused to be made such unauthorized property survey.

b. To make such studies of soil conditions as are necessary to design building foundations, foundation piles, spring piles, pavements, ramps, embankments, bulkheads, and to determine possible difficulties which may be encountered in dredging, excavating, and/or filling. Such studies shall include but shall not be limited to the following:

(1) Obtaining all the available data regarding soil conditions including, but not limited to, reports prepared by the U.S. Army Corps of Engineers, reports prepared by or for the Owner or others in the area, reports prepared by or for the Department of Transportation, discussions with persons who may be familiar with soil conditions in the area, and the gathering of all other like information which may be reasonably available.

(2) Making such probings and shallow-auger borings that are usually included within the scope of preliminary studies, but excluding the taking of test borings.

(3) Determining the necessity for making test borings and/or like investigations. If the Engineer/Architect determines such investigations and explorations are necessary, he/she shall set forth in writing the reasons why he/she deems such test or tests are necessary, and advise the Owner of the estimated cost of making the same. The Engineer/Architect shall not make or cause to be made such investigations or explorations without the express written consent of the Owner. In the event the Owner authorizes the making of such investigations and explorations, the actual cost of making the same shall be an additional cost above and beyond the hereinafter provided compensation. In the event the Engineer/Architect shall make or cause to be made such explorations and investigations without first obtaining written permission from the Owner, the Owner shall not be liable for the cost of making the same.

c. To prepare preliminary designs and complete preliminary cost estimates necessary to determine the feasibility and cost of _____.

d. To prepare and provide to the Owner and to the Department of Natural Resources, Parks and Recreation Division, 5 copies each of the following items and materials:

(1) A written report describing the procedures and methods used in accomplishing the preliminary study required by this Agreement.

(2) A plan of the site of the work showing base lines, bench marks, proposed or actual boring and/or probing locations, logs of all subsurface investigations, and all pertinent topography including soundings referred to International Great Lakes Datum.

(3) A preliminary plan of the recommended work plus informative sections and elevations.

(4) A preliminary cost estimate for the recommended project subdivided into quantities and unit prices, and additional preliminary cost estimates and descriptions of other methods of providing the recreational boating facilities considered in arriving at the recommended project. Such cost estimate shall include an item for contingencies and an item for engineering.

e. To make such other studies and investigations and to prepare such other plans, reports, and documents that are generally included within the scope of a preliminary study.

3. The Owner agrees to pay and the Engineer/Architect agrees to accept:

a. A fee of _____ Dollars, (\$_____), as compensation for the preliminary study. All charges incurred by the Engineer/Architect in carrying out this contract including, but not limited to travel expense, phone calls, telegrams, employee payroll for both office and field work, Engineer/Architect time and materials furnished, subsurface explorations not otherwise excepted, and all other work and services necessary for the completion of the said preliminary study shall be regarded as being compensated for in full at the time of payment to the Engineer/Architect of the fee set forth in this Agreement.

The Engineer/Architect shall complete the said preliminary study no later than _____ calendar days following execution of this contract and subsequent written notice to proceed with the preliminary study by the Owner.

4. In the event that the Engineer/Architect shall be retained to accomplish the work of preparing final construction drawings, specifications and final estimates; advertising for bids and awarding of contracts; supervising construction, including, but not limited to, consultation and periodic inspection, preparing estimates for progress payments to the contractors, assisting in interpretation of drawings and specifications, checking of shop drawings, reviewing changes required, preparing change orders, checking estimates of any additional work, and assisting in the final inspection and approval of performance, said Engineer/Architect shall be paid pursuant to the schedule hereinafter set forth. In addition to the above and as a part of the services described herein, the Engineer/Architect shall:

a. Prepare the necessary forms and apply for all permits. This includes, but is not limited to, permits required by the following agencies:

(1) U.S. Army Corps of Engineers.

(2) Michigan Department of Environmental Quality, Land and Water Management Division, and

(3) The agency administering the Soil Erosion and Sedimentation Act.

b. Furnish the Owner, upon completion of all construction work, one complete set of reproducible "As Built" drawings both in hard copy and on CD which shall incorporate all changes which occurred after the construction contracts were awarded.

For preparation of final construction drawings, specifications and estimates, applications for permits, and advertising, opening and tabulating bids, 75% of the total applicable fee as hereinafter

set forth shall be paid to the Engineer/Architect. For awarding of contracts, supervising construction and related work, and preparing "As Built" drawings, 25% of said total applicable fee shall be paid to the Engineer/Architect. In addition to the above, the Engineer/Architect shall furnish, at the site, competent field supervision. The Engineer/Architect shall also lay out a baseline and establish a bench mark for the Contractor's use. The consultant shall perform the work under this Agreement at a cost of _____ and does not include the fee paid for the preliminary study.

5. Nothing herein contained shall be construed as an agreement or promise of any kind or nature that the Engineer/Architect shall be engaged for any work relating to the project other than that specified in paragraphs 1 and 2 hereof. Nothing herein contained shall be construed as an agreement or promise of any kind that the Engineer/Architect shall receive any compensation other than is specifically set forth in the agreement. The Owner specifically reserves the right to engage any other Engineer/Architect at any time in relation to the project.

6. The Engineer/Architect agrees that in the event the Owner desires to proceed with the project using the Engineer/Architect's services for the design and supervision of construction, the Engineer/Architect will perform such services and accept as compensation an amount determined pursuant to the schedule contained in paragraph 4 hereof. The Engineer/Architect shall not be obligated to perform said design services and construction supervision unless he/she shall be so notified by the Owner in writing within three years after the date of final payment for the preliminary study. Assuming the Engineer/Architect is retained to proceed with the project, the Engineer/Architect shall meet with the Owner and develop a progress schedule mutually agreeable to both parties. At that time, this schedule shall be marked Exhibit "A" and included as part of this Agreement.

7. The Engineer/Architect shall purchase and maintain such insurance as will protect him/her from claims set forth below, which may arise out of or result from the Engineer/Architect's service under the Contract, whether such service be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) Worker's Compensation Insurance for claims under Michigan's Worker's Compensation Act or other similar employee benefit act of any other state applicable to an employee.

(b) Employer's Liability Insurance, in conjunction with Worker's Compensation Insurance, for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when worker's compensation may not be an exclusive remedy, subject to a limit of liability of not less than \$100,000 each accident.

(c) Automobile Insurance required by law for claims arising from ownership, maintenance or use of a motor vehicle.

(d) General Liability Insurance for claims for damages because of bodily injury or death of any person, other than the Engineer/Architect's employees, or damage to tangible property of others, including loss of use resulting by other specific liability insurance and are ordinarily insurable under general liability insurance, subject to bodily injury limits of not less than \$500,000 each occurrence and \$1,000,000 annual aggregate and property damage limits of not less than \$500,000 each occurrence, or combined bodily injury/property damage limits of not less than \$750,000 each occurrence, and \$1,000,000 annual aggregate.

Insurance requirements shall be in force until acceptance by the Owner of the entire completed work, and shall be written for not less than any limits of liability specified above. The Engineer/Architect has the responsibility of having any subcontractor comply with these insurance

requirements. Certificates of Insurance, acceptable to the Owner, shall be filed with the Owner prior to commencement of the professional service. These certificates shall contain a provision that coverage afforded under the policies will not be modified or canceled without prior written notice to the Owner.

8. The Engineer/Architect agrees to be responsible for any loss or damage to property or injury, damage or death to persons due to the negligent performance of the services of this contract, and further agrees to protect and defend the Owner against all claims or demands of every kind involving allegations of such negligent performance, and to hold the Owner harmless from any loss of damage resulting from any errors, omissions or negligent acts in the performance of the services of the contract. Such responsibility shall not be construed as a liability for damage caused by or resulting from the sole negligence of the Owner, its agent other than the Engineer/Architect, or its employees.

9. The Owner shall have the right to assign all or any part of this Agreement.

10. This Agreement is to engage the Engineer/Architect specified herein and no other. This Agreement may not be assigned or subcontracted by the Engineer/Architect and the inability of the Engineer/Architect to complete this agreement for any reason whatsoever shall be considered a material breach of the Agreement and entitle the Owner to damages.

11. The parties hereto agree that damages in the event of breach shall be the actual costs resulting from the breach including, but not limited to, damages resulting from delay of the project, the additional costs incurred by the Owner as a result of the breach of this Agreement, and like damages which flow from said breach.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and date first above written.

_____ Owner

In presence of:

By:

Title:

Engineer/Architect

By:

Title: