

**MARQUETTE COUNTY ROAD COMMISSION
AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for professional consulting engineering services, by and between the Marquette County Road Commission (“MCRC” and _____ (“Service Provider” or “Consultant”) is entered into this __ day of ____, 20__; and sets forth the terms and conditions that govern this Agreement, as follows:

1. Definitions

Agreement: Means this Agreement (Contract) for Professional Engineering Services between MCRC and the Service Provider (“Consultant”) including Exhibits A and B, which are hereby adopted as part of the Agreement.

Exhibit A: Means Exhibit A to this Agreement, MCRC’s Request for Proposal (“RFP”) dated XX/XX/XXXX which defines the Scope of Services and terms of payment for the Services to be performed by the Consultant under this Agreement.

Exhibit B: The Consultant’s Proposal dated XX/XX/XXXX submitted in response to MCRC’s RFP. To the extent the Consultant’s Proposal contains terms or conditions that are at variance with MCRC’s RFP and/or this Agreement, MCRC’s RFP and this Agreement shall govern.

Amendment: Means a written amendment issued by MCRC that formally modifies the terms and conditions of this Agreement.

Services: Means the Professional Engineering (and other) Services (“Services” or “Work”) to be performed under this Agreement by the Service Provider.

Project: Means the Project for which the Professional Engineering and other Services under this Agreement are provided for and is known as: REPUBLIC SALT BARN ENGINEERING RFQ.

2. The Consultant’s Scope of Work. This Agreement, together with Exhibit A, defines the scope of the Services to be performed; the Effective Date (on which the Services are to commence); the Completion Date (on which the Services must be completed); and the manner and form of Compensation for the Work including the Basis for Payment

3. No Performance of Unauthorized Work. The Consultant shall not perform services that are not included or reasonably inferred as being required, by the Scope of Services defined in Exhibit A, unless specifically authorized in writing by MCRC.

~~**4. The Consultant’s MDOT Prequalification.** The Consultant affirmatively represents that it is competent to perform the Services; that it has been pre-qualified by MDOT to perform the Services required under this Agreement unless this requirement is waived in writing by MCRC;~~

~~and, that it will perform all Services in conformity with MDOT's applicable standards, guidelines, regulations, specifications, and governing codes, including these Terms and Conditions, unless otherwise modified by this Contract.~~

5. **Consultant's Knowledge of MDOT's Design Standards, etc.** The Consultant acknowledges that it has access to, and is fully aware and knowledgeable of, MDOT's design and construction standards, rules, regulations, applicable codes, and information related to the Services Consultant is to perform.
6. **Consultant's Key Staff.** MCRC and the Consultant will agree on the Consultant's Key Staff to be assigned to the Project Team prior to any work being performed. The Consultant will not replace any Key Staff personnel assigned to the Project Team without prior written approval from MCRC.
7. **Assignment; Use of Subconsultant's.** This Agreement is personal to the parties and cannot be assigned. The Consultant shall not sublet any portion of the Services without MCRC's written approval. The consultant shall remain fully responsible for the Work and Services provided by its subconsultant's. MCRC's approval of a subconsultant does not constitute an assumption by MCRC of any liability, nor a waiver of, or an estoppel to enforce, any of the requirements of the Contract, nor will any such approval by MCRC be construed as a warranty of the subconsultant's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity. The Consultant shall remain professionally responsible for the work of its subconsultants and has the responsibility of assuring that each term of this Agreement is applicable to its subconsultants.

The act of subletting a portion of the Consultant's work shall not create a separate contract or any third-party beneficiary rights between MCRC and the subconsultant.
8. **Communications with MCRC, MDOT and FHWA.** The Consultant will confer in person and as otherwise as may be required by MCRC, with representatives of MCRC, MDOT and the Federal Highway Administration (FHWA) as appropriate for carrying out of the Services set forth under the Contract.
9. **The Consultant's Progress Reports.** During the performance of the Services, the Consultant will submit directly to MCRC written progress reports that outline the work accomplished during the reporting period; identify any problems, real or anticipated, associated with the performance of the Services; and identify any deviations from the agreed upon work plan and schedule. In the event the Consultant identifies problem(s) or deviation(s) from governing standards and code, the Consultant will submit a plan to address same to MCRC for consideration. The reporting interval, format and content of the Consultant's written progress reports shall be as directed by MCRC.
10. **Delivery of Work Product.** Upon completion of the Work, the Consultant will deliver to MCRC its Professional Work Product and related Documents for which delivery is provided for in Exhibit A. Any Documents not required for delivery to MCRC will be maintained by the Consultant for at least seven (7) years from the date of completion of the construction of the project for which the Services were rendered. The Consultant may not discard such Documents prior to the above defined date without prior written approval from MCRC.

11. **Ownership of Work Product.** All documents prepared by the Consultant under the Contract, including tracings, drawings, calculations, estimates, specifications, field notes, reports, investigative studies, and other relevant documents, hard copy, electronic or otherwise, are the property of MCRC, including any copyright interests.
12. **Professional Endorsement and Seal of Work Product.** The Consultant will affix its Professional Endorsement and Seal upon all designs, specifications, estimates, and engineering documents and data furnished to MCRC, as applicable, and will comply with all requirements of 1980 PA 299 Article 20 (MCL 339.2001 – 339.2014).
13. **MCRC's Approvals.** Any approvals, reviews, or inspections of any nature by MCRC are not to be construed as warranties or assumptions of liability on the part of MCRC. It is expressly understood and agreed that any such inspections or approvals are for the sole and exclusive purpose and benefit of MCRC, which is acting in a governmental capacity under the Contract, and that such approvals are a governmental function incidental to the Services under the Contract. Any approvals, reviews, or inspections by MCRC will not relieve the Consultant of its obligations hereunder, nor are such approvals, reviews, or inspections by MCRC to be construed as warranties as to the propriety of the Consultant's performance, but are undertaken for the sole benefit, use and information of MCRC.
14. **Completion of the Work.** The Work shall be considered complete when accepted by MCRC. Such acceptance by MCRC is not intended to nor does it relieve the Consultant of any of its professional duties, obligations and responsibilities herein.
15. **Loss or Damage to MCRC's Original Documents.** During the performance of the Services, the Consultant will be responsible for any loss of or damage to original documents belonging to MCRC while they are in the Consultant's possession. Restoration or replacement of lost or damaged original documents will be at the Consultant's expense. The Consultant will maintain the original copies of all documents, calculations, reviews, and reports generated during the performance of the Services ("Documents"). The Documents will be maintained in a safe and secure place and will be available for review by MCRC upon MCRC's request.
16. **Record-Keeping and Audits:**
 - a. The Consultant will establish and maintain accurate records of account, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract ("Records"). Separate Records will be established and maintained by job number and/or phase for all costs incurred for Services under the Contract.
 - b. The Consultant will maintain the Records for at least seven (7) years from the date of final payment made by MCRC under the Contract. In the event of a dispute regarding allowable expenses and/or any issue under the Contract, the Consultant will maintain the Records until the dispute has been finally decided, and the time for all available challenges or appeals of the final decision has expired.
 - c. MCRC may inspect, copy, scan, or audit the Records at any reasonable time upon providing the Consultant with reasonable notice.

d. If any part of the work is subcontracted by the Consultant, the Consultant will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.

17. **Indemnification.** In addition to the protection afforded by any policy of insurance, the Consultant agrees to Indemnify, defend, and save MCRC harmless, to the fullest extent permitted by law:

- a. From any and all claims by persons, firms, or corporations for labor, materials, supplies, or services provided to the Consultant in connection with the Consultant’s performance of the Services; and
- b. From any and all costs or claims for additional compensation or damages, or injuries to or death of any and all persons, for loss of or damage to property, or for environmental damage, degradation, response and cleanup cost, including attorney fees and related costs, caused by errors and/or omissions attributable to the Consultant’s performance of the Services under this Agreement.

18. **The Consultant’s Insurance.** The Consultant shall provide insurance to cover its potential liability in the minimum amounts and types set forth below, or as may be adjusted by the Agreement. The Consultant shall maintain insurance coverage without interruption for the life of this Agreement and shall submit certificates of insurance to MCRC before the award of the Agreement. Should the Consultant’s insurance coverage be changed or cancelled the insurer must provide at least thirty (30) days written notice to MCRC of said change or cancellation. To the extent the Consultant has subconsultant’s the Consultant is responsible for assuring its subconsultants are also in compliance with the required insurance requirements.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	The Consultant must have its policy endorsed to add “the Marquette County Road Commission, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
Automobile Liability Insurance	
Minimal Limits: \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Professional Liability (Errors and Omissions) Insurance	
Minimal Limits: \$2,000,000 Per Claim; \$2,000,000 Aggregate	

19. **The Consultant's Billings.** The Consultant will submit billings to MCRC for the Services performed in the form and in accordance with the billing schedule set forth in Exhibit A.
20. **Payment to the Consultant.** MCRC will make payment to the Consultant after receipt, and subject to review of the Consultant's billing and verification of the Consultant's progress with the Work:
 - a. Within thirty (30) days of the receipt of the billing from the Consultant. MCRC will either approve the billing for payment as submitted or, if such approval is not given, in whole or in part, MCRC will advise the Consultant why the billing has not been approved and what actions, if any, are required of the Consultant to obtain such approval.
 - b. The Consultant will not be paid for fee or costs arising from or relating to the correction of errors and omissions attributable to the Consultant.
21. **Changes.** Any change in the scope, character, or term of this Agreement may only be authorized by written amendment to the Contract issued by MCRC.
22. **Delays to the Work.** Within five (5) calendar days of the commencement of a delay caused by circumstances or conditions that are not the fault of and are beyond the control of the Consultant, the Consultant may submit a written request for an extension of Contract Time. MCRC will provide a written response to such request within thirty (30) days after receipt of the Consultant's request.
 - a. In the event MCRC determines, in its sole discretion, that an extension of time is warranted because the conditions are not the fault of and are beyond the control of the Consultant, MCRC will issue an amendment equitably adjusting the Contract Time.
 - b. In the event MCRC determines that an extension of time is not warranted by the circumstances or conditions, MCRC will advise the Consultant in writing of its determination. Such determination by MCRC will be considered final and binding and not subject to further review or consideration.
 - c. Failure on the part of the Consultant to submit a written request for an extension of Contract Time within the time allowed, shall constitute a complete waiver of the request and extinguish the Consultant's rights to an extension of Contract Time.
23. **Termination.** MCRC may terminate this Agreement for convenience or cause, as set forth below, before the Services are completed. Written Notice of Termination ("NOT") will be sent to the Consultant.
 - a. **Termination for Convenience:**

MCRC may terminate this Agreement for its Convenience without fault by the Consultant. Under these circumstances, the Consultant will be reimbursed for its allowable costs incurred up to the date of termination as set forth in the NOT. The

Consultant will be reimbursed a proportionate share of its fee based on the portion of the Services that have been completed, as determined by MCRC.

b. Termination for Cause:

In the event the Consultant fails to complete any of the Services in a manner satisfactory to MCRC, and/or defaults on its performance under the Contract, MCRC may terminate the Contract for Cause. Written Notice of Termination will be sent to the Consultant.

If the Contract is Terminated for Cause, MCRC shall withhold further payment to the Consultant. MCRC shall be entitled to pursue any and all remedies available to it, including, but not limited to, withholding funds and/or off-setting against funds owed to the Consultant, under this Agreement, as well as owed under any other existing Agreement(s) between the Consultant and MCRC, for any and all damages and costs incurred or sustained by MCRC, including reasonable attorney's fees. MCRC may employ any reasonable means to complete the Consultant's remaining and/or defective Work, including the engagement of other Consultant's to complete the Professional Services.

24. **Disputes.** Disputes arising out of, or related to the performance of this Agreement, shall be decided in accordance with MCRC's Dispute Resolution Policy, in effect on the date of this Agreement, first written above.
25. **Nondiscrimination.** The Consultant shall adhere to MCRC's Title VI Non-Discrimination Plan, in effect on the date of this Agreement, first written above.
26. **Limitations on the Consultant's Liability.** The limitation on the Consultant's liability for errors, omissions, negligence or default on its performance under this Agreement shall not exceed the minimum face value amount of its per claim professional liability insurance coverage as required under this Agreement, without deduction for damages arising out of or related to errors, omissions, negligence and/or breach of contract.
27. **Statute of Limitations.** The statute of limitations period applicable to the Professional (and other) Services provided under this Agreement, shall commence upon the completion of the Consultant's services, including, but not limited to, services rendered to correct the Consultant's errors or omissions, as determined by MCRC.
28. **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the law of the State of Michigan.
29. **Venue.** Venue, for any legal proceeding, including arbitration and/or litigation, arising out of or relating to this Agreement shall be Marquette County, Michigan.
30. **Severability Clause.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon MCRC and the Consultant.

ACCEPTANCE & AUTHORIZATION

IN WITNESS WHEREOF, MCRC and the Consultant, by and through their duly authorized officers and representatives have executed this Agreement, effective as of the day and year written above:

MARQUETTE COUNTY ROAD COMMISSION

CONSULTANT

By: _____

By: _____

Its: _____

Its: _____