

## **PROFESSIONAL SERVICES AGREEMENT**

### **FLEIS & VANDENBRINK ENGINEERING, INC.**

9475 Holly Road, Suite 201, Grand Blanc, Michigan 48439

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This Professional Services Agreement ("PSA") is entered into between Fleis & VandenBrink Engineering, Inc. ("Engineer") and **Atlas Township**, whose address is **7386 S. Gale Road, Grand Blanc, MI 48439** ("Owner") where Engineer agrees to provide services for Owner and Owner agrees to pay Engineer, all in accordance with the terms of this PSA.

**DESCRIPTION OF PROJECT AND SCOPE OF SERVICES:** The description of the Project ("Project") and the scope of services ("Services") provided under this PSA is as follows: **Civil Engineering Services for South Parking Lot Reconstruction at Twp Fire Station in the Village of Goodrich.**

**AGREEMENT DOCUMENTS:** All obligations covered under this PSA are governed by the Agreement Documents, which specifically include this PSA and all of the following documents, which are all incorporated herein by reference: **Engineer's proposal / letter dated April 6, 2022.**

**COMPENSATION OF ENGINEER:** This contract is a Lump Sum Fee contract in the amount of **\$13,500.00**, billed monthly based on the percentage of Work completed.

Authorized additional services will be provided on an hourly basis plus 1.1 times reimbursable expenses unless otherwise negotiated.

Owner shall Pay Engineer for all Services and reimbursable expenses on a monthly basis or as otherwise stated herein which shall be due and payable within fifteen (15) calendar days of presentation of the invoice. Invoices shall be past due fifteen (15) calendar days after presentation and shall then incur interest at the rate of **7%** per annum, or the highest rate permitted by law, whichever is lower. Reimbursable expenses include the cost of subconsultants.

**PAYMENT.** If Owner fails to make any payment when due, Engineer may suspend performance of Services hereunder until all past due amounts and accrued interest are paid. Engineer shall have no liability of any type as a result of suspension of services caused by Owner's failure to pay. The suspension of Services shall not limit any other remedy available to Engineer.

If Owner objects to any portion of an invoice, Owner shall notify Engineer in writing within seven (7) calendar days of presentation. Owner shall identify the disputed charges and shall pay when due that portion of the invoice not in dispute. If the disputed amount of the invoice is resolved in Engineer's favor and not paid by the invoice due date, interest as stated in the agreement shall be paid by Owner on the disputed amount from the original due date.

The Owner's Payment of Engineer's invoices shall not be subject to any right of setoff, and payment shall be due regardless of suspension or termination of this Agreement by either party. If any payment obligation is not paid when due, Owner agrees to pay all costs of the collection, including actual attorney's fees through all levels of appeal, whether or not a legal proceeding for collection is commenced as part of the collection process.

**OWNER REPRESENTATIVE.** The Owner's representative for this Project shall be **Atlas Township Supervisor, Shirley Kautman-Jones** who shall have complete actual authority on behalf of the Owner and its governing body to make all decisions in connection with the PSA.

**OWNER RESPONSIBILITIES.** The Owner shall timely furnish, at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Engineer may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Engineer shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's Engineers and contractors.

**CHANGES.** For all services that were completed due to changes to the Description of the Project and/or the Scope of Services, Engineer shall be paid by Owner on an hourly basis at Engineer's customary hourly rates, plus 1.1 times reimbursable expenses, unless otherwise negotiated. If the construction period extends beyond the contracted period in the Scope of Services or the contracted completion date, all services of Engineer thereafter shall continue to be performed and shall be paid by Owner on an hourly basis plus 1.1 times reimbursable expenses. Owner understands and accepts that field techniques and analytical capabilities are evolving and that the standards and regulations are subject to rapid change such that currently acceptable investigative approaches and techniques may become superseded after the time of the signing of this PSA. Such changes will constitute changed conditions requiring adjustment in the Services and Engineer's Compensation.

**DELAYS.** Engineer shall not be responsible to Owner for any delay of any type or kind unless caused in whole by Engineer.

**CONSULTANTS.** Engineer may engage Consultants and subcontractors to perform, in its sole discretion, all or any portion of the Services.

**COST ESTIMATES.** Engineer has no control over the costs of labor and material for construction or over competitive bidding and market conditions. All cost estimates provided by Engineer are based on Engineer's experience and are considered opinions of probable cost. Engineer does not warrant the accuracy of any cost estimate. If project costs exceed the Owner's expectations and the Owner decides to re-design or re-bid any or all portions of the Work, all re-design, re-bid or other services provided by Engineer shall be paid by Owner on an hourly basis at Engineer's customary hourly rates, plus 1.1 times reimbursable expenses.

**INDEMNITY.** Owner indemnifies, defends and holds harmless Engineer and its agents, consultants and employees, from and against any claim, injury, damage, cost, expense or liability, regardless of the legal theory, including actual attorneys' fees, whether arising before, during or after completion of Services performed under the PSA, caused by, arising out of, resulting from or occurring in connection with the performance of the Services or any activity associated with the Services, whether or not caused in part by the active or passive negligence or other fault of Engineer excepting only injury to person or damage to property caused by the sole negligence of Engineer. In the case of claims against Engineer or any of its consultants, agents or employees by anyone for whose acts Owner may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts and/or disability benefit acts. This indemnity includes, but is not limited to, any claims resulting from interpretation of or changes to the documents prepared as a result of this PSA. This indemnity survives termination of this PSA.

In addition to the indemnity provided herein by Owner, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees and consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to or resulting from any and all environmental contamination on the Project.

Engineer, to the extent covered by insurance, indemnifies, defends and holds harmless Owner and its agents and employees, from and against any claim, injury, damage, cost, expense or liability, arising out of or relating to the Services provided by Engineer for the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property other than the work itself, but only to the extent caused solely by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees or consultants.

To the fullest extent permitted by law, a party's total liability to the other party under the terms and conditions of this PSA including any indemnity, as well as to anyone claiming by, through or under the other party, for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party, and any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of all of the responsible parties.

**PERFORMANCE STANDARDS.** The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by other engineers performing similar services in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

**MUNICIPAL ADVISOR.** Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

**LIMITATION OF LIABILITY.** Engineer shall not be liable for any claim, damage, cost, expense or other liability not caused by negligent acts, errors or omissions of Engineer. The total liability of Engineer under any legal theory whatsoever, in the aggregate, as well as any claimed liability of Engineer's officers, directors, employees, or agents or consultants, for any claims arising out of the PSA, shall not exceed the fees actually paid by the Owner for the particular Service which forms the basis of the claimed liability.

Engineer makes no warranties, express or implied, with respect to the Services under the PSA, and disclaims any liability for implied warranties of any type or kind, including but not limited to implied warranties of fitness or merchantability, and disclaims any liability for special or consequential damages of any type or kind. Within these limitations, Engineer shall not be liable in any way for errors, omissions or negligence unless caused by the sole and exclusive negligence of Engineer. For all PSAs which involve multiple projects or general consultations, or various services for various projects over a period of time, liability shall not exceed the fee actually paid by the Owner for the particular Services on the specific Project or consultation or assignment which forms the basis of the claimed liability and any statute of limitations shall commence upon the completion of the task giving rise to the claim, not the last unrelated service provided under the PSA for general consultation services. To the extent that Engineer may be found liable under the terms of this paragraph, and only to such extent, Engineer's liability shall not exceed the percentage share of Engineer's responsibility.

**INSURANCE.** Upon Owner's request, Engineer will furnish Owner with a written statement of insurance coverage. No oral representations regarding insurance shall be binding.

**SITE ACCESS.** Owner shall be solely responsible for obtaining all site access, easements, and permission from third party property owners for Engineer to access the site to perform the Services herein. Owner is solely responsible for any claims arising from the disturbance of surface or subsurface soil or water conditions caused by the performance of Engineer's Services, excepting damages caused by the sole negligence of Engineer. Engineer will take reasonable precautions to avoid damage to underground structures and utilities. Owner indemnifies Engineer from any damage caused by or to underground structures and utilities not called to Engineer's attention, all in accordance with the indemnity provisions herein. Owner shall provide Engineer with a list of all known hazardous substances on site and a list of protective measures in case of exposure, all in compliance with the current Federal, State and Local Right to Know laws and Federal Hazard Communication Standards.

**SHOP DRAWINGS AND SUBMITTALS.** If shop drawing or submittal review is part of the Services Engineer provides, Engineer will review the shop drawings and submittals only for conformance with the design concept of the project and compliance with the Contract Documents. Unless specifically indicated in writing, this PSA does not include the preparation of record drawings.

**CONSTRUCTION PHASE SERVICES.** Unless specifically included in the Scope of Services, there are no construction phase services as part of this PSA. It is agreed that the Engineer's services under this Agreement do not include project observation, review of the Contractor's performance or any other construction phase services. The Owner assumes all responsibility for all construction phase services including, but not limited to:

Submittal review and approval; Contract document interpretation; Site observations; Change order review and approval; Review and approval of contractor payment applications; Certificates of substantial and final completion; Preparation and disposition of punch lists; Responding to contractor requests for information; Administration of any operational and maintenance and training including collection operational and training manuals.

The Owner waives any claims against the Engineer that may be in any way connected with the Owner's decision not to retain the Engineer to performance construction phase services. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and consultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions.

The Owner, the Owner's contractors or subcontractors, or anyone for whom the Owner is legally liable shall assume full responsibility for the results of any changes made to the Contract Documents during construction. The Owner agrees to waive any claims against the Engineer and to release the Engineer from any liability arising directly or indirectly from such changes.

**REJECTION OF WORK.** In the event that the Scope of Services includes construction phase services in the form of site observation, then Engineer shall have the authority to reject any work which is not, in the judgment of the Engineer, in conformance with the Contract Documents, Plans and Specifications. Neither this authority nor Engineer's good faith judgment to reject or not reject any work shall subject Engineer to any liability or cause of action to any contractor, subcontractor, supplier, or Owner on the Project.

**SPREAD OF CONTAMINATION.** Owner understands and agrees that Engineer shall not be responsible for any claims or damages which may arise as a result of or from the spread of contamination caused by drilling, sampling or any other activity unless such spread or contamination is substantially caused by the negligence of Engineer. To the extent that Engineer may be found liable under the terms of this Paragraph, and only to such extent, Engineer's liability shall not exceed the percentage share of Engineer's responsibility.

**FAILURE TO ENCOUNTER HAZARDOUS MATERIALS.** Owner understands that the failure to discover hazardous materials does not guarantee that; (1) hazardous materials do not exist at the project site, and/or (2) that a non-contaminated site may later become contaminated. Although Engineer will use reasonable care and a level of skill ordinarily exercised by members of the profession currently practicing in the city, municipality or political subdivision where the Project is located under similar conditions, Owner agrees that Engineer shall not be responsible for the failure to detect the presence of hazardous materials through techniques and practices commonly used for those purposes.

**PERMITS AND APPROVALS.** Unless otherwise specifically stated in the Scope of Services, obtaining permits and approvals for the Project is the responsibility of the Owner. For an additional fee, Engineer may assist the Owner provided the assistance shall consist of completing and submitting forms as to the results of certain work included in the Scope of Services and the assistance does not include special studies, special research, attendance at meetings with public authorities, special testing or special documentation not normally required for similar projects. If Engineer participates in any way with

any permitting process, Engineer provides no guaranty or warranty that any permits or approvals will be provided. Owner shall pay Engineer for all fees and reimbursable expenses under this PSA regardless of the outcome of approval or denial of permits or other approvals.

**ADA AND CODE COMPLIANCE.** The Americans with Disabilities Act ("ADA") provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are accessible to persons with disabilities. The Owner acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. To the extent applicable, the Engineer will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they may apply to the Project. The Engineer 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 codes, rules, laws, ordinances and regulations as they may apply to the Project. Owner shall pay Engineer its customary hourly fees plus 1.1 times reimbursable expenses for any design changes made necessary by newly enacted laws, codes and regulations, or changes to any existing laws, codes or regulations after the date that this PSA is last signed by the parties.

**WAIVER.** No delay on the part of any party hereto in the exercise of any right or remedy shall operate as a waiver of such right or remedy and a waiver on any one (1) occasion shall not be construed as a bar to or a waiver of any subsequent breach of the same or any other provision of the agreement on a future occasion. No waiver by Engineer of any breach by Owner of a provision of this PSA shall be deemed a waiver of any other provision hereof or of any subsequent breach by Owner of such provision.

**ENFORCEABILITY.** This agreement shall be binding upon the parties hereto and their respective successors and assigns.

**SEVERABILITY.** In the event that any one (1) or more provisions contained in the agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the agreement shall not be affected or impaired.

**OWNERSHIP OF INSTRUMENTS OF SERVICE.** Engineer's documents prepared pursuant to this PSA, including those in electronic format, are instruments of service. All reports, plans, specifications, computer files, field data, notes and other documents prepared by Engineer as instruments of service shall remain the property of Engineer. Engineer shall retain all common law, statutory and other reserved rights, including the copyright thereto and all other intellectual property rights. Owner shall not use or permit the use of said documents on any other project. Owner fully indemnifies Engineer against any and all claims for unauthorized use.

**TERMINATION:** This PSA may be terminated by either party upon seven (7) calendar days' written notice. Upon termination, Engineer shall be paid by Owner for all Services performed up to the notice of termination, as well as all costs necessary to demobilize from the site.

**DISPUTE RESOLUTION:** In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the Owner and the Engineer agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute through mediation using a mediator agreed upon between both parties. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then the parties may (1) mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction. The venue for a court resolution will be Kent County, Michigan.

**NO THIRD PARTY BENEFICIARIES.** There are no third party beneficiaries to this PSA and the Services provided herein are exclusively for the direct benefit of the Owner indicated above. Owner shall ensure that all other agreements relating to this project reflect that there are no third party beneficiaries to this PSA.

**ASSIGNMENT.** This is a professional services contract and is non-assignable without the express written consent of Engineer.

**MISCELLANEOUS.** No additional or contrary terms, whether contained in an order, acknowledgment, or other document from Owner, shall be binding upon Engineer unless agreed to in writing signed by an authorized representative of Engineer, and Engineer expressly rejects all such additional or contrary terms as may be contained in Owner's documents. The terms in this PSA will have precedence over any other terms expressed by the Owner's authorization process such as a purchase order. Engineer's performance is conditioned on Owner's unmodified consent exclusively to this PSA. Engineer shall have the right to correct any errors, whether clerical or mathematical, which are contained in this PSA. Unless otherwise specifically indicated in writing or otherwise required by law and paid for by Owner, there are no Performance or Payment bonds required on this Project. This PSA shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. This PSA shall be governed by the laws of the State of Michigan. This contract sets forth the entire agreement between Engineer and Owner. This is a fully integrated contract.

**ELECTRONIC/FACSIMILE SIGNATURES.** The signatures on this PSA shall be deemed to be original signatures when transmitted electronically or by facsimile machine or by any other medium. No party shall be required to produce a PSA with an original signature in order to enforce any provision of this PSA.

IN WITNESS WHEREOF, the parties hereto have made and entered into this PSA. To be valid, this PSA must be signed by an authorized representative of Fleis & VandenBrink Engineering, Inc.

OWNER  
ATLAS TOWNSHIP

ENGINEER  
FLEIS & VANDENBRINK ENGINEERING, INC.

By: \_\_\_\_\_  
Shirley Kautman-Jones

Title: Atlas Township Supervisor

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

By:  \_\_\_\_\_  
John DeVol, PE

Title: President

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

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

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

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

By:  \_\_\_\_\_  
Lisa M. Easterwood

Title: Project Manager

Date: April 6, 2022