

May 20, 2024

Richard Murphy, Community Development Director  
City of Buchanan  
302 N Red Bud Trail  
Buchanan, Michigan 49107  
[rmurphy@cityofbuchanan.com](mailto:rmurphy@cityofbuchanan.com)

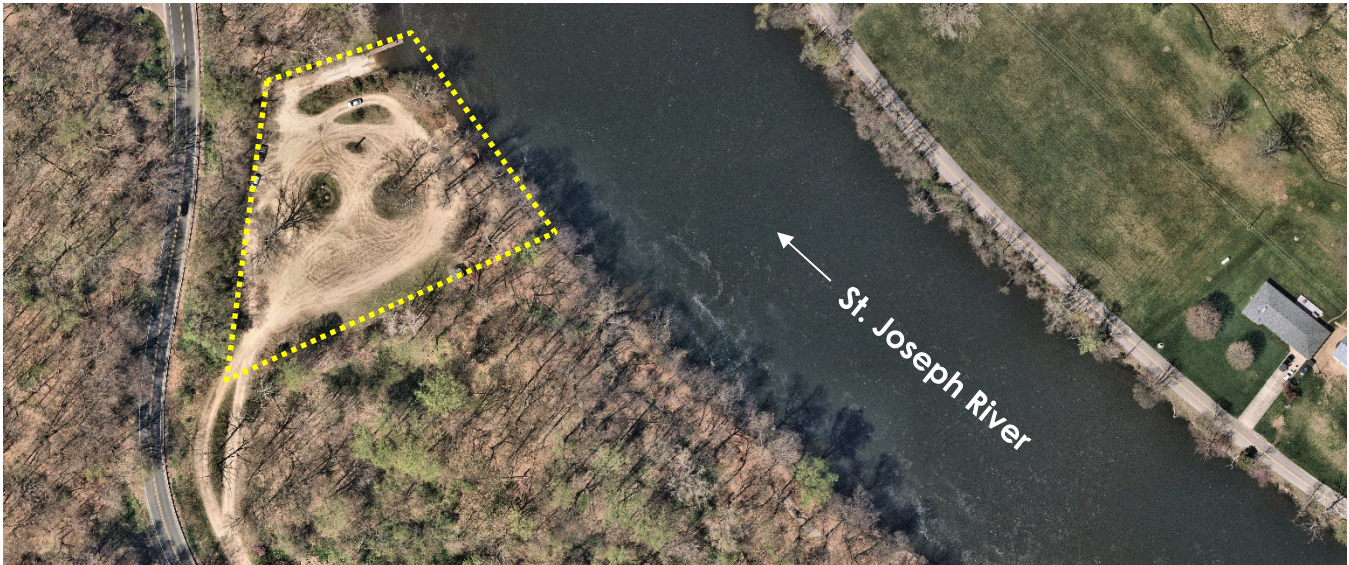
**RE: City of Buchanan, MI – St. Joseph River Kayak Launch  
Proposal for Engineering, Regulatory, & Construction Administration Services**

Dear Mr. Murphy,

Abonmarche is pleased to present this proposal for engineering, regulatory, and construction administration services for development of the St. Joseph River kayak launch project located in the City of Buchanan, MI.



**Figure 1: Project Site Location Map (Google Earth 3/19/2021 aerial image)**



**Figure 2: Zoomed-In Project Site Location Map (Nearmap 4/19/2024 aerial image)**

### **UNDERSTANDING & BACKGROUND**

In November 2022, Abonmarche was tasked to conceptualize a long-term kayak launch development plan with an opinion of probable cost. After later discussion, a smaller site layout was developed for initial (phase I) construction then a grant application was submitted in April 2023 to the Michigan Department of Natural Resources (DNR) to seek funding assistance from the Michigan Natural Resources Trust Fund (MNRTF). In May 2023, the MDNR awarded a MNRTF grant to the city to assist in the initial phase of construction, requiring a 50% local match. A total project cost of \$310,000 was utilized in the preparation of the scope and fee herein. The proposed plan (see Figure 3 on next page) will include ADA-compliant infrastructure including the following site components:

1. Floating Kayak Launch w/ Anchor System & Gangway
2. Timber Pile Supported Boardwalk/Pier
3. Concrete Sidewalk Access
4. Site Amenities (Bench & trash/recycle receptacles)
5. Concrete Parking Pad
6. Pavement Markings & Wheel Stops
7. Grant Acknowledgement Signage
8. Native Plantings (including one deciduous tree planting)



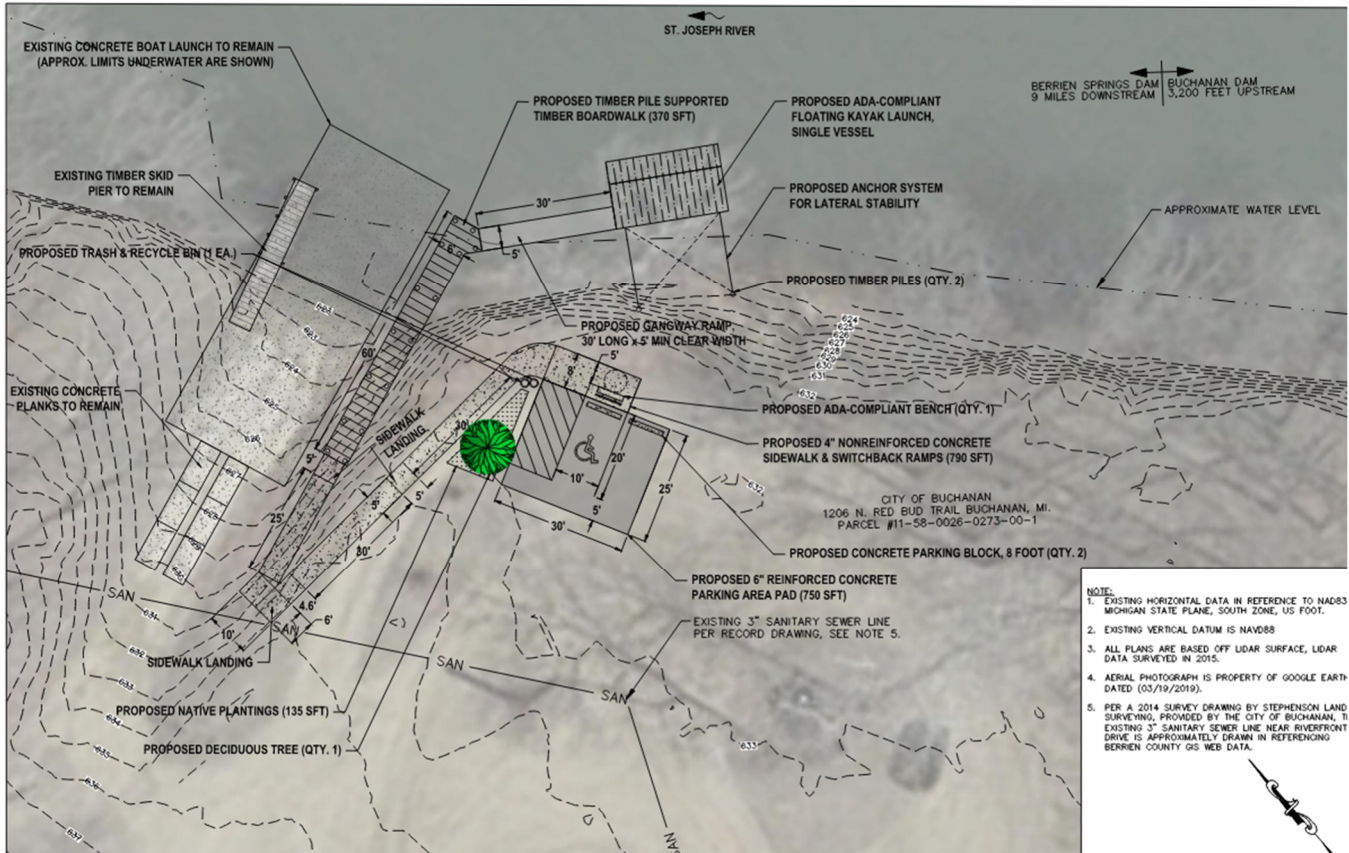


Figure 3: Abonmarche site plan dated 09/26/2023.

## SCOPE OF SERVICES

We propose the following Scope of Services:

### Task 1 – Project Kick-off Meeting

The Abonmarche team will coordinate an in-person kick-off meeting with City representatives and key stakeholders to confirm and establish the plan components, lines of communication, and the final project schedule.

### Task 2 – Topographic & Hydrographic Survey

#### 2A – Topographic Survey

Abonmarche will complete a topographic survey of the site within the limits shown on Figure 4, which shall include the following pertinent features: edge of water, top of bank, trees > 6" diameter, concrete boat launch, timber skid pier, overhead electric utility pole(s), and other observable, pertinent site features. A boundary survey map and legal description created by Abonmarche dated 4/12/2024 defines the parcel limits of the site.



The deliverable for this task will be a survey drawing with contours expressed in one-foot interval contour lines and spot elevations that will be utilized to develop the basemap to produce the construction documents.

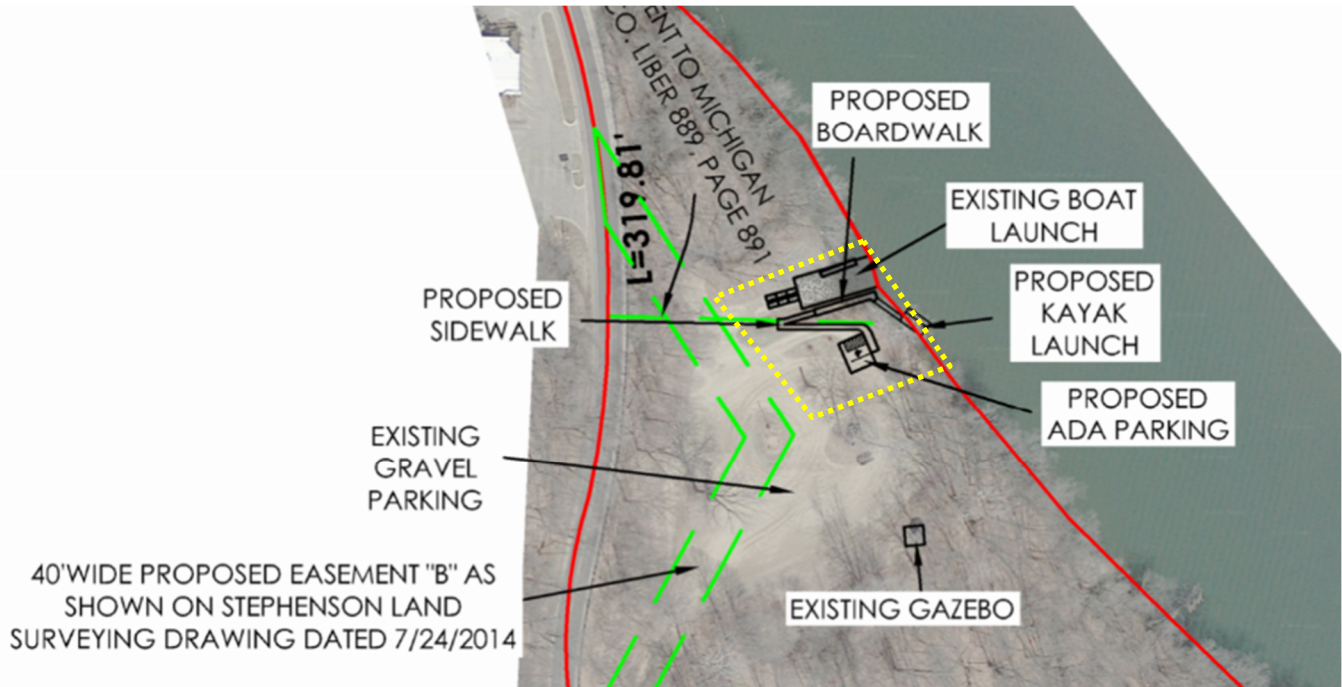


Figure 4: Topographic survey limits, see yellow dotted line (Abonmarche 4/12/2024 boundary map).

### 2B – Single Beam Hydrographic Survey (Sub-consultant)

Abonmarche and its subconsultant will collect single beam hydrographic survey data in the immediate vicinity of the proposed kayak launch. This hydrographic survey is proposed to determine bottom elevations in the nearshore area in the location of the future kayak launch and boardwalk/pier. This data will be needed to evaluate the appropriate designs for the proposed kayak launch. Deliverables will include bathymetric plots and XYZ survey data for use in base file development. The data will be incorporated into the survey basemap developed under Task 2A above.

### Task 3 – Preliminary Engineering

After the topographic and hydrographic survey is complete and the data is processed into a 3D model 'base file' for CAD drafting, Abonmarche will prepare the preliminary engineering drawings of the proposed kayak launch concept, along with a cost estimate. The preliminary design will consider changing water levels as well as soil conditions and will be adjusted to balance the cost with the desired level of protection/risk, anticipated maintenance needs



and regulatory considerations. These drawings will then be submitted to the City for review and once finalized, will be used in permitting.

#### **Task 4 – Joint Permit Application**

Abonmarche will prepare a JPA package to submit to the State of Michigan Environmental, Great Lakes & Energy (EGLE) department via MiEnviro online portal. The JPA package will include a cover letter, 8.5" x 11" permit drawings, detailed permit application, and relevant supplemental information to support the permit process (i.e., flood maps, parcel information, record drawings). Prior to submittal, a draft package will be provided to the city for review.

#### **Task 5 – Permit Processing**

This task includes agency follow-up requests, meetings, drawing revisions, and other efforts necessary to respond to agency concerns and questions. The budget included assumes that the regulatory process will be straightforward with minimal agency concerns.

#### **Task 6 – Final Design, Reviews, Bid Documents**

This task includes advancing the approved preliminary design into detailed construction documents. The deliverables for this task will include site layout and dimensioning, grading plan, detailed documents for construction of related features and a landscape plan. Abonmarche will prepare specifications and bidding documents suitable for bidding the project to qualified contractors. We will also prepare contract documents using templates from the Engineers Joint Contract Documents Commission. Bid documents will be submitted for owner and granting agency review, as required. If needed, minor adjustment to the documents will be completed after review.

#### **Task 7 – Bid & Award Assistance**

Abonmarche will distribute project advertisements to the local newspaper and to qualified contractors known to Abonmarche. The bid will be administered electronically through Abonmarche's online bidding website or as appropriate based upon grant bid requirements. We will address questions and issue addenda as needed. Fees for advertising will be paid by the client.

This phase includes attendance at a pre-bid conference and bid opening. Abonmarche will tabulate bids, review bidder references, and submit a contract award recommendation to the City.



## **Task 8 – Construction Administration**

Abonmarche will administer construction, including processing pay estimates, requests for information (RFIs), submittals, change orders, punch list, and related construction administration duties. Services will include an estimated six (6) to eight (8) weeks of construction and a maximum of six (6) site visits to note and discuss the progress of construction. However, no full-time inspector will be on site for observations, apart from completing concrete testing during the placement of concrete sidewalk and parking. Abonmarche will attend and conduct all meetings necessary for the administration of the construction contract. This is anticipated to include the pre-construction meeting, up to five weekly progress meetings, a punch list walk-through, and site visit for verification of completion and final acceptance. At the close of construction, we will conduct a final walk-through to develop a punchlist of items to address before contract closeout. We will administer the construction phase until the project has been closed out.

## **Task 9 – Construction Staking**

Abonmarche will complete construction staking per contractor requests. We have estimated a total of two rounds of staking will be required, however, if our efforts exceed the budget, or if multiple rounds of staking/re-staking are required, we will complete these efforts on a time and materials basis.

## **EXCLUSIONS & ASSUMPTIONS**

Our proposal does not include any fees for obtaining record information or permit application fees. We recommend budgeting up to \$2,000 for EGLE permit application fees. The following services are specifically excluded from this proposal. If a need is identified, Abonmarche is available to provide a proposal at your request.

- Environmental/special studies if required by regulatory agencies, such as wetland delineations, mussel surveys, historic preservation, and/or threatened/endangered species studies, etc.
- Geotechnical investigations.
- Hydraulic modeling.
- Public meetings/presentations.

## **MEETINGS AND SCHEDULE**

This proposal anticipates up to two (2) in-person meetings in Buchanan, aside from construction administration. Abonmarche will conduct a project initiation meeting, along with a design meeting, at Buchanan City Hall. On-site progress meetings will be held during



construction on a weekly or bi-weekly (every two weeks) basis. We anticipate that the initiation meeting and topographic survey can be scheduled within approximately four (4) weeks of the notice to proceed. Preliminary drawings will be completed within six (6) weeks of the survey. Note that the state permit process typically takes 3-6 months and can extend longer depending upon agency workload and project specific considerations.

**FEES**

We propose to complete the above scope for the following lump sum fees, except where otherwise noted, excluding permit fees, and noted exclusions:

<b>Task 1 – Project Kick-off Meeting</b>	<b>\$ 1,800</b>
<b>Task 2 – Topographic &amp; Hydrographic Survey</b>	<b>\$ 7,800</b>
<b>Task 3 – Preliminary Engineering</b>	<b>\$ 11,600</b>
<b>Task 4 – Joint Permit Application</b>	<b>\$ 3,300</b>
<b>Task 5 – Permit Processing <sup>(1)</sup></b>	<b>\$ 2,400</b>
<b>Task 6 – Final Design, Reviews, Bid Package</b>	<b>\$ 11,200</b>
<b>Task 7 – Bid &amp; Award Assistance</b>	<b>\$ 1,700</b>
<b>Task 8 – Construction Administration</b>	<b>\$ 11,900</b>
<b>Task 9 – Construction Staking</b>	<b>\$ 1,200</b>
<b>Total Fee:</b>	<b>\$ 52,900</b>

- (1) Task 6, permit processing is intended as a budget, assuming a straightforward permitting process. If agencies require significant correspondence, follow-ups, revisions, etc. we will notify you before exceeding the budget herein.
- (2) If approvals and permits result in design changes that require re-design services, Abonmarche will meet with you to determine appropriate scope modifications and/or fee adjustments.

Your signature on the attached standard professional services agreement will authorize us to commence the work. If you have any questions or need further clarification, please feel free to contact me at (269)926-4559 or [mmorphey@abonmarche.com](mailto:mmorphey@abonmarche.com).

Sincerely,  
ABONMARCHE CONSULTANTS, INC.



Michael Morphey, PE, LEED AP  
Sr. Project Manager/Waterfront Group Director



Timothy R. Drews, PE, PTOE, RSP  
Vice President

Attachments: Professional Services Agreement

cc: Tony McGhee; Katie Vanderhulst; Martin Rivas, PE



Abonmarche Project Number: \_\_\_\_\_

 AGREEMENT between (Client name), City of Buchanan (Date) \_\_\_\_\_

 (Client address) 302 N Redbud Trail, Buchanan, MI 49107 (Phone) \_\_\_\_\_

(Cell) \_\_\_\_\_ (Fax) \_\_\_\_\_ (Email) \_\_\_\_\_ hereinafter referred

 to as the Client, and Abonmarche Consultants, Inc., referred to as Abonmarche, located at: 95 W. Main Street, Benton Harbor, MI 49022

 The Client contracts with Abonmarche to perform professional services regarding the Client's project generally referred to as:

 (Project Name) Buchanan Kayak Launch (Location) Buchanan, MI

 The professional services to be provided by Abonmarche, collectively referred to as the Work Plan, are as follows:

 (Scope of work) See attached proposal dated 5/20/2024

 (Project schedule) See attached proposal dated 5/20/2024

 (Special Provisions) See attached proposal dated 5/20/2024

Abonmarche's proposal/work plan, dated 5/20/2024 is incorporated into this Agreement by reference, and is limited to the services described therein. Abonmarche's Terms and Conditions for Professional Services are incorporated by client's Authorization signature below.

 The Client agrees to promptly pay for services provided by Abonmarche for the Scope of Work according to the following:

 (Fee/Type) See attached proposal dated 5/20/2024

Prior to commencement of services, the Client will specify any and all documentation that the Client requires for submission with the invoice for services provided by Abonmarche. Absent any special request from the Client, Abonmarche will send its standard form of invoice.

If, after receipt of an invoice from Abonmarche, the Client has any questions, objections, or if there are any discrepancies in the invoice, the Client shall identify the issue in writing within ten (10) days of its receipt. If no written objection is made within the ten (10) day period, any such objection shall be deemed waived.

Abonmarche invoices are due upon receipt and shall be considered past due if not paid within 30 calendar days of the invoice date. The parties agree that interest of 1.5% per month will be added to any unpaid balance after 30 days. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

The Client has designated \_\_\_\_\_ as its Representative. The Representative shall have the authority to execute any documents pertaining to this Agreement or amendments thereto, and for the approval of all change orders, addenda, and additional services to be performed by Abonmarche. The representative shall be the contact person for submission of all documents, invoices or communications.

**Authorization to Proceed and Guarantee of Payment:** By signing this Agreement, the Client authorizes Abonmarche to provide services described above, and that the Client is the responsible party for making payment to Abonmarche. *By signing below, I acknowledge that I have received and agree to the Terms and Conditions on Pages 2-4 of this Agreement, and I understand that the Terms and Conditions take precedence over all prior oral and written understandings.* These Terms and Conditions can only be amended, supplemented, modified, or canceled by a written instrument signed by both parties. Any notice or other communications shall be in writing and shall be considered to have been duly given when personally delivered or upon the third day after being deposited into first class certified mail, postage prepaid, return receipt requested.

Authorized Client Representative	If Individual	Authorized Abonmarche Representative
Client: _____	<b>Signature:</b> _____	<b>Signature:</b> <u>Timothy R. Drews, PE</u> <small>Digitally signed by Timothy R. Drews, PE DN: cn=PE, email=tdrews@abonmarche.com, o=Abonmarche Consultants, Inc., cn=Timothy R. Drews, PE Date: 2024.05.20 09:14:31-0400</small>
<b>Signature:</b> _____	Printed Name: _____	Printed Name: <u>Timothy R. Drews</u>
Printed Name: _____	Date of Birth: _____	Title: <u>Vice President</u>
Date Signed: _____	Driver's License #: _____	Originating Office: <u>Abonmarche Consultants, Inc. 95 W. Main Street Benton Harbor, MI 49022</u>
Federal Tax ID: _____	Employed by: _____	Date Signed: _____
	Address: _____	
	City/State _____	
	Date Signed: _____	



## **TERMS AND CONDITIONS OF PROFESSIONAL SERVICES AGREEMENT**

1. **Agreement.** These Terms and Conditions shall be incorporated by reference and shall prevail as the basis of the Client's Agreement to Abonmarche. Any Client document or communication in addition to or in conflict with these Terms and Conditions shall be subordinate and subject to these provisions.
2. **Execution.** Abonmarche has the option to render this Agreement null and void, if it is not executed within thirty (30) days of delivery.
3. **Client Responsibilities.** The Client will provide all criteria and information concerning the requirements of the Project. Abonmarche shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client, including services and information provided by design professionals or consultants directly to the Client. These services and information include, but are not limited to, surveys, tests, reports, diagrams, drawings, and legal information. The Client will assume responsibility for interpretation of contract documents and for construction observation and will waive all claims against Abonmarche that may be in any way connected, unless Abonmarche's services under this Agreement include full-time construction observation or review of contractor's performance. The Client shall designate in writing a person with authority to act on Client's behalf on all matters related to Abonmarche's services.
4. **Performance.** The standard of care for services performed by or provided by Abonmarche will be the care and skill ordinarily used by Abonmarche's profession practicing under similar circumstances at the same time and in the same locality. Abonmarche makes no warranty, expressed or implied, with respect to any services provided by Abonmarche. Abonmarche may be liable for claims, damages, cost, loss or expense (including reasonable attorney's fees) to the extent caused by the negligent acts, errors, or omissions of Abonmarche.
5. **Billing and Payment.** The client shall make an initial payment of \$0 \_\_\_\_\_ (retainer) upon execution of this Agreement. The retainer shall be held by Abonmarche and applied against the final invoice. If the Client fails to make payments when due and Abonmarche incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to Abonmarche. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Abonmarche staff costs at standard billing rates for Abonmarche's time spent in efforts to collect. This obligation of the Client to pay Abonmarche's collection costs shall survive the term of this Agreement or any earlier termination by either party.
6. **Hourly Billing Rates.** If payment is on an hourly rate, Client will pay Abonmarche at the current hourly billing rates. The hourly rates are adjusted annually or as deemed appropriate.
7. **Reimbursable Expenses.** Reimbursable expenses, the actual costs incurred directly or indirectly for the Client's Project, will be charged at Abonmarche's current rates. Examples of reimbursable expenses include, but are not limited to: mileage, tests and analyses, special equipment services, postage and delivery charges, telephone and telefax charges, copying, printing, and binding charges, commercial transportation, meals, lodging, special fees, licenses, and permits. Subconsultant and outside technical or professional services will be charged on the basis of the actual costs times a factor of 1.15.
8. **Additional Services.** Additional services that may be provided pursuant to the Agreement or any subsequent modification of the Agreement will be authorized by written amendment signed on behalf of the Client and Abonmarche. Additional services performed by

Abonmarche are subject to all Terms and Conditions and the Client will be responsible for payment. Should the Client, regulatory agency, or any public body or inspector direct modification or addition to services covered by this Agreement, including costs relating to the relationship between the Client and a third party i.e. punch lists, change orders, and disputes, the cost will be added to the agreed price. Requests for extra services should be made in writing via a change order, but nonetheless, Abonmarche is entitled to be paid for extra services provided whether or not it is in writing.

9. **Underground Structures or Buried Utilities.** The Client is responsible for identification and location of all public and private buried structures on the Client's property and the Project site, such as, but not limited to, storage tanks and lines, or gas, water, sewer, electrical, phone, cable, or any other public or private utilities. It is agreed that Abonmarche is not responsible for accidental damage to utilities or underground structures, whether known, unknown or improperly located. The client shall be responsible for design fees if changes are necessary. Utility locating or marking services provided by Abonmarche are not substitutes for complying with the utility owner notification requirements or the locating services (811 systems) required prior to an excavation. Utilities shown as located by ground penetrating radar are approximate only. No excavation took place to verify the positions shown or to verify the type of utility (except as noted). Careful excavation is required for verification of the buried utility. The owner or customer assumes the risk of error and the actual location of the underground utility. Abonmarche is not providing any certification or guarantee regarding the exact location of any underground utility.
10. **Hazardous or Contaminated Materials/Conditions.** Abonmarche does not provide environmental services. As such, Client will advise Abonmarche, in writing and prior to the commencement of services, of all known or suspected hazardous or contaminated materials/conditions present at the site(s). Abonmarche and the Client agree that the discovery of unknown or unconfirmed hazardous or contaminated materials/conditions constitutes a changed condition that may require Abonmarche to renegotiate the scope of work or terminate its services. Abonmarche and Client also agree that the discovery of said materials/conditions may make it necessary for Abonmarche to take immediate measures to protect health, safety, and welfare of those performing services. Client agrees to compensate Abonmarche for any costs incident to the discovery of said materials/conditions. Client acknowledges that Abonmarche cannot guarantee that contaminants do not exist at a project site. Similarly, a site which is in fact unaffected by contaminants at the time of Abonmarche's surface or subsurface exploration may later, due to natural phenomenon or human intervention, become contaminated. Client waives any claim against Abonmarche, and agrees to defend, indemnify and hold Abonmarche harmless from any claims or liability for injury or loss in the event that Abonmarche does not detect the presence of contaminants through techniques commonly applied in the provision of their services.
11. **Underground Conditions.** Abonmarche shall have no responsibility for the identification of existing or unforeseen/differing underground conditions. The Contractor shall have sole responsibility for determining the nature of underground conditions and the means and methods of dealing with those conditions. Abonmarche is entitled to rely upon the information provided by geotechnical consultants and shall have no responsibility for the accuracy or correctness of the data contained in the geotechnical reports.
12. **Site Access and Security.** With the exception of access rights that land surveyors are afforded by law, the Client will provide Abonmarche access to the Project site and the Client will be responsible for obtaining any necessary

permission from any affected third-party property owners for use of their lands. The Client is solely responsible for site security.

13. **Consultants.** Abonmarche may engage Consultants at the request of the Client to perform services which are typically the Client's responsibility, such as surveys, geotechnical and environmental assessments. The Client agrees that Abonmarche will not be responsible for, or in any manner guarantee, the performance of services by the Consultants. The Client further agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Abonmarche, its officers, directors, employees and subconsultants (collectively, Abonmarche) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from subsurface penetrations in locations authorized by the Client or from the inaccuracy or incompleteness of information provided to Abonmarche by the Client, except for damages caused by the sole negligence or willful misconduct of Abonmarche.
14. **Opinions of Cost.** Any opinions of probable construction cost and/or total project cost provided by Abonmarche will be on the basis of experience and judgment, but these are only estimates. Abonmarche has no control over market or contracting conditions and does not warrant that bids or ultimate construction or total project costs will not vary from such estimates.
15. **Ownership of Instruments of Service.** Abonmarche will remain the owner of all original drawings, reports, and other materials provided to the Client, whether in hard copy or electronic media form. The Client is authorized to use the copies provided by Abonmarche only in connection with the Project. Any other use or reuse by the Client for any purposes whatever will be at the Client's risk and full legal responsibility, without liability to Abonmarche and the Client will defend, indemnify, and hold Abonmarche harmless from all claims, damages, losses, and expenses, including attorney fees arising out of or resulting there from.
16. **Electronic Media.** Copies of data, reports, drawings, specifications, and other materials furnished by Abonmarche that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are delivered to the Client pursuant to the services under this Agreement. Computer files of text, data, graphics, or of other types of electronic media are the sole possession of Abonmarche, unless specifically stated otherwise in an amendment to this Agreement. Any electronic media provided under this Agreement to the Client are only for the convenience of the Client. Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk.
17. **Bonds and Permits.** The Client will be responsible for the adoption of any site access or right of way bonds that may be initiated on their behalf. At completion of Abonmarche's services, the Client will take responsibility and pay any ongoing bond or permit costs for any bonded or permitted services.
18. **Insurance.** The Client will cause Abonmarche and Abonmarche's employees to be listed as additional insured on the general liability policies carried by the Client that are applicable to the Project. Upon request, the Client and Abonmarche will each deliver to the other certificates of insurance evidencing their coverage. The Client will require the Contractor to purchase and maintain general liability, automobile liability, workers compensation and other insurance as specified in the Contract Documents and to cause Abonmarche and Abonmarche's employees to be listed as additional insured with on a primary and non-contributory basis under the general liability and automobile insurance policies as respect to such liability and other insurance purchased and maintained by the Contractor for the Project. A certificate of insurance evidencing the additional insured and primary coverage status of Abonmarche under the General and Automobile liability from the Contractor shall be provided to Abonmarche.
19. **Third Party Invoicing.** If the Client directs Abonmarche to invoice third party payers, Abonmarche will do so, but the Client agrees to be ultimately responsible for Abonmarche's compensation until the Client provides Abonmarche with the third party's written acceptance of all terms of this Agreement and until Abonmarche agrees to the substitution.
20. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Abonmarche. Abonmarche's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Abonmarche because of this Agreement or performance or nonperformance of services hereunder. The Client and Abonmarche agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.
21. **Suspension of Services.** In the event of non-payment or other breach by Client, Abonmarche will have the absolute right and without any liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, Abonmarche shall resume services under this Agreement, and the schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Abonmarche to resume performance.
22. **Contractor's Work.** Abonmarche shall have no authority to direct or control the Work of the Contractor or to stop the Work of the Contractor. Abonmarche shall not be liable to any party for the failure of the Contractor to perform the Work consistent with the Plans and Specifications and applicable Codes and Regulations. Neither the performance of the services by Abonmarche, nor the presence of Abonmarche at a project construction site, shall impose any duty on Abonmarche, nor relieve the construction contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the construction work in accordance with the plans and specifications and any health or safety precautions required by any regulatory agencies or applicable law. Abonmarche and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the construction contractor shall be solely responsible for jobsite and worker safety.
23. **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 Client acknowledges that the requirements of ADA will be subject to various and possibly contradictory interpretations. To the extent applicable, Abonmarche will use its reasonable professional efforts and judgement to interpret ADA requirements and other federal, state, and local laws, rules, codes, ordinances, and regulations as they may apply on the Project. Abonmarche 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. Client shall pay Abonmarche its customary hourly fees plus reimbursable expenses for any design changes made necessary by newly enacted laws, codes and regulations, or changes to existing laws, codes, or regulations after the date that this Agreement is executed.
24. **Notice of Lien Rights.** Abonmarche hereby notifies, and the Client acknowledges that Abonmarche has lien rights on the Client's land and property when Abonmarche provides labor and materials for Projects on the Client's land and the Client

does not pay for those services except when the Client is a governmental agency and lien rights do not apply.

25. **Legal Expenses.** If Abonmarche brings a lawsuit against the Client to collect invoiced fees and expenses, the Client shall be legally liable to pay Abonmarche's expenses, including its actual attorney fees and costs.
26. **Liability Limitation.** In recognition of the relative risks and benefits of the Project to both the Client and Abonmarche, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, and not withstanding any other provision of this Agreement, to limit the total liability, in the aggregate, of Abonmarche and Abonmarche's officers, directors, partners, employees, shareholders, owners and subconsultants, for any and all claims, losses, costs, or damages of any nature whatsoever, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims and expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by Abonmarche under this Agreement, or the total amount of \$50,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. In no event shall Abonmarche's liability exceed the amount of available insurance proceeds. Client acknowledges that Abonmarche is a corporation and agrees that any claim made by Client arising out of any act or omission of any director, officer, or employee of Abonmarche, in execution or performance of this Agreement, shall be made against Abonmarche and not against such director, officer, or employee.
27. **Contractor and Subcontractor Claims** The Client further agrees, to the fullest extent permitted by law, to limit the liability of Abonmarche and Abonmarche's officers, directors, partners, employees, shareholders, owners and subconsultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, damages of any nature whatsoever or claims and expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Abonmarche and Abonmarche's subconsultants to all those named shall not exceed \$50,000, or Abonmarche's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising unless otherwise prohibited by law.
28. **Consequential Damages.** The Client and Abonmarche waive consequential damages for claims, disputes, or other matters in question relating to services provided as a part of this Agreement, including for example, but not limited to, loss of business.
29. **Governing Law.** This Agreement will be deemed to have been made in the location where the services are performed, and shall be governed by and construed in accordance with the laws of that state.
30. **Exclusive Choice of Forum.** Each party irrevocably and unconditionally agrees that it will not bring any action, litigation, or proceeding against any other party in any way

arising from or relating to this Agreement in any forum other than the courts of the state and county where the work is performed. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of those courts and agrees to bring any such action, litigation, or proceeding only in those courts. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

31. **Considerations.** The successors, executors, administrators, and legal representatives of the Client and Abonmarche are hereby bound onto the other with respect to the covenants, Agreements, and obligations of this Agreement.
32. **Acts of God.** Neither the Client nor Abonmarche will have any liability for nonperformance caused in whole or in part by causes beyond Abonmarche's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.
33. **Termination.** Either the Client or Abonmarche may terminate this Agreement by giving ten (10) days written notice to the other party. In such an event, the Client will pay Abonmarche in full for all services previously authorized and performed prior to the effective date of the termination, plus (at the discretion of Abonmarche) a termination charge to cover finalization of services necessary to bring ongoing services to a logical conclusion. Such charge will not exceed thirty (30) percent of all charges previously incurred. Upon receipt of such payment, Abonmarche will return to the Client all documents and information that are the property of the Client. If the Client fails to make payment to Abonmarche in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by Abonmarche.
34. **Severability.** In the event that one or more provisions contained in this Agreement are 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.
35. **Dispute Resolution.** Any claims or disputes made during design, construction or post-construction between the Client and Abonmarche shall be submitted to non-binding mediation. The Client and Abonmarche agree to include a similar mediation agreement with all contractors, sub-contractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties. The mediation shall be governed by the then current Construction Industry Mediation Rules of the American Arbitration Association ("AAA"). Mediation shall be a condition precedent to the initiation of any other dispute resolution process, including court actions.
36. **Entire Agreement.** This Agreement contains the entire agreement between the parties and there are no agreements, representations, statements, or understandings which have been relied on by the parties which are not stated in this Agreement.

[End of Agreement](#)