

## **CITY OF CLARE REQUEST FOR PROPOSAL** **ENGINEERING DESIGN SERVICES**

The City of Clare is seeking proposals from qualified engineering consultants to provide plans for replacement of the Lake Shamrock Dam and walkway, and installation of a new emergency spillway. The Lake Shamrock Dam is an earthen structure that is 20 feet high and 890 feet long. It was constructed in 1962 and provides storage for approximately 120 acres of surface water. The drainage area is 85 square miles. The lake is a popular natural resource for the City of Clare, and it provides various recreation opportunities for residents and visitors. A large park is also located along its shores.

Bids must include all elements of work stipulated within the Requests For Proposal, Proposals must be signed by an authorized representative of the company, bids must be submitted in a sealed envelope clearly marked as RFP-Engineering Design Services-LSD Project, and shall be submitted to arrive at Clare City Hall, 202 West Fifth Street, Clare, Michigan, 48617, no later than 11:00 am, July 12, 2023, at which time the proposals will be opened. Postmarks will not be accepted.

Proposal specs can be found on the city's website [www.cityofclare.gov](http://www.cityofclare.gov). Questions regarding the Project should be directed to Director of Public Works, Luke Potter @ 989-329-5092 or [lpotter@cityofclare.gov](mailto:lpotter@cityofclare.gov).

The City of Clare reserves the right to accept and/or reject any and/or all proposals or any portion thereof. The City of Clare is an equal opportunity provider and employer.

Diane Lyon

Clare City Clerk



**City of Clare – REQUEST FOR PROPOSAL  
TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR IMPROVEMENTS TO THE  
LAKE SHAMROCK DAM PROJECT**

The City of Clare is seeking proposals from qualified engineering consultants to provide plans for replacement of the Lake Shamrock Dam, installation of an emergency spillway, and replacement of the walkway, hereafter referred to as the LSD Project. The Lake Shamrock Dam is an earthen structure that is 20 feet high and 890 feet long. It was constructed in 1962 and provides storage for approximately 120 acres of surface water. The drainage area is 85 square miles. The lake is a popular natural resource for the City of Clare, and it provides various recreation opportunities for residents and visitors. A large park is also located along its shores.

The City is currently facilitating efforts to improve Lake Shamrock to ensure it continues to serve as a quality recreational resource for several decades into the future. A dredging project is currently underway to remove silt that has accumulated over the years. To build on those efforts, the City would like to partner with a consulting firm to analyze the current condition of the dam, develop feasible options for replacement and improvements, design the replacements and improvements, provide permitting assistance, and assist with bidding the project.

**SCOPE OF SERVICES**

Services will include all aspects of survey; design; bid letting, review, recommendation, and oversight; and permitting. These services include, but are not limited to, the following:

**Initial Data Collection and Reporting Phase**

Accordingly, proposers should determine what data and survey work will be needed to gather and include sufficient information in their proposal to provide the basis for the design. The following items should be considered, together with any additional data collection and assessment recommended by the firm:

- Topographic survey of the overall site including site access areas.
- Stream channel survey including depth of refusal measurements, cross-sections and longitudinal profiles, river discharge measurements, assessment of existing collected data, and mapping details to characterize substrate, edge of bank, bank-full indicators, and adjacent wetland within the floodplain.
- Sediment load sampling may be necessary if sediment transport is a concern during or post-project.
- Geotechnical investigation to characterize the earthen embankment and underlying soils (as necessary). (May not need until final design.)
- Structural investigations to assess the strength of concrete components (as necessary).
- Sediment sampling and characterization as required for EGLE permitting.
- Wetland assessment; may require delineation and groundwater investigation.
- Threatened and endangered species assessments.
- Utility investigation and coordination.
- Reports and deliverables summarizing the data collected.

**Feasibility/ Preliminary Design Phase**

- Development of conceptual design alternative(s) (approximately 30% design level) for stream channel and floodplain alignment. This may include consideration of multiple options with comparison to state and federal permitting requirements and working with the Project Team to select most viable option.

- Hydraulic, Hydrologic, and Sediment Transport Modeling: hydraulic modeling for dewatering design and channel design, hydrologic modeling to assess impact of dam removal on flooding and channel morphology, sediment transport modeling to assess downstream impacts during and post-construction.
- Dam breaching design including but not limited to seepage analysis, analysis/evaluation of earthen berm, slope stability analysis, failure modes analysis during removal, dewatering system design, and temporary channel design during dam breaching will all need to be completed.
- Automated lake level controls and monitoring system.
- Additional items for consideration/quantification: identify and list removal of trees for the site work (species, diameter at breast height, live or snag), streambank protection and/or instream large woody debris (LWD) placement, and potential removal of sediment impounded by the dam.

### **Permitting Phase**

- Coordinate clearance with Project Team for MDNR and USFWS for threatened and endangered species, pursuant to Michigan NREPA and Federal Threatened & Endangered Species Act Section 7, respectively.
- Coordinate clearance with Project Team for the National Historic Preservation Act Section 106 from the Michigan State Historic Preservation Office (SHPO).
- Prepare joint permit application (JPA) for Clean Water Act Section 404 and Michigan Natural Resource and Environmental Protection Act (1994) (NREPA) through the Bay City Office Michigan Dept of Environment, Great Lakes & Energy (EGLE) office. Note that EGLE has mostly empirical reports of historic flood events and not information that is readily available to the public. The EGLE floodplain engineer will have to compile needed information upon permit application submittal.
- Prepare Soil Erosion and Sedimentation Control permit pursuant to NREPA Part 91 through the Clare County Building Department.
- Advise the Project Team regarding any additional permitting needs.

### **Final Design Phase**

- Development of construction plans, specifications and contract documents, cost estimates, and basis of design report.
- Design submittals at appropriate intervals (60, 90, and 100 percent recommended).

### **Bidding Phase**

- Identify potential contractors who are qualified to execute the improvement and restoration work in conjunction with the Project Team.
- Prepare the Request For Proposal for distribution to the agreed candidate contractor list, to be approved and issued by the Project Team.

### **IMPORTANT INFORMATION REGARDING QUESTIONS ABOUT THIS RFP**

All questions regarding this Request for Proposal (RFP) must be submitted via e-mail. Questions will be accepted and answered in accordance with the terms of this RFP. The last date to submit questions is Monday, July 10, 2023 at 4:00 p.m. Questions will be e-mailed to [lpotter@cityofclare.gov](mailto:lpotter@cityofclare.gov). Should any prospective offeror be in doubt as to the meaning of any part of this RFP, or should the offeror find ambiguity, inconsistency or omission in the RFP, an official request for interpretation or correction shall be made by the date specified above.

Any clarifications or addenda to the RFP will be available on the City's website, [www.cityofclare.gov](http://www.cityofclare.gov). It is the prospective offerors' responsibility to ensure that they have all the addenda and official clarifications before submitting a proposal. All addenda are a part of this RFP, as though fully set forth herein.

**Pre-Proposal Meeting:**

A pre-proposal meeting will be held at the Lake Shamrock Dam on Monday, June 26<sup>th</sup>, 2023, at 10:30 a.m. This meeting is not mandatory, but it is highly recommended that interested persons attend the meeting to discuss the project and to answer any questions concerning this RFP.

**Proposed schedule for entering into contract:**

- Pre-Proposal Meeting Date: Monday, June 26, 2023 at 10:30 a.m.
- Scheduled Site Visits Contact: Luke Potter, DPW Director at 989-329-5092
- Written Question Deadline: Monday, July 10, 2023, 4:00 p.m.
- Final Addenda Published (if needed) prior to bid due date.
- Proposal Due Date: Wednesday, July 12, 2023 11:00 a.m.
- Tentative Interviews (if needed)
- Expected City Commission Authorization: Monday, July 17, 2023 6:00 p.m.
- The schedule set forth is subject to change, within the City's discretion.

**SUBMITTAL INSTRUCTIONS**

***Qualifications Based Selection*** – The City of Clare staff will review all proposals submitted for this project. To be considered as a qualified respondent, one copy of the proposal package must be submitted in a sealed envelope and clearly marked **RFP: ENGINEERING DESIGN SERVICES – LSD PROJECT**, and received at the City Clerk's Office address listed below by 11:00 a.m., on Wednesday, July 12, 2023. Proposal packages must be mailed or delivered to the following address:

City of Clare

**RFP: ENGINEERING DESIGN SERVICES - LSD PROJECT**

202 West Fifth Street

Clare, MI 48617

Any packages received after the due date and time will be deemed unresponsive. The City reserves the right to accept or reject any and all proposals, to resolicit proposals, to waive any irregularities, to negotiate pricing, and to select the proposal deemed to be in the best interest of the City. Issuance of this RFP does not obligate the City to award a contract nor is the City liable for any costs incurred by the proponent in the preparation and submittal of the proposal.

All proposals received on or before the due date will be publicly opened and recorded on the due date. No immediate decisions will be rendered. The City is not liable to any prospective offeror for any unforeseen circumstances, delivery, or postal delays. Postmarking on the due date will not suffice for receipt of the proposal. Offerors are responsible for the submission of their proposal. Additional time will not be granted to a single prospective offeror. The City may extend the time for submission of all proposals, at the sole discretion of the City.

**PROPOSAL FORMAT**

All proposals must include the following information in the order stated below:

**Corporate Profile:** Describe on one page the background of your company and why it is qualified to provide the requested services for the City of Clare.

**Understanding of the Project:** Describe in two pages or less your understanding of the project.

**Project Approach:** Include an overview of your plan on accomplishing the services being requested by the City of Clare.

**Project Team:** Describe the qualifications of the key person(s) who will be responsible for providing the requested services. Resumes for key person(s) are required. (Limit resumes to two pages for each key person listed.)

**Experience:** Provide evidence of similar, past experience that demonstrates your ability to successfully provide the services being requested in this RFP. Include names and contact information from past projects for reference purposes.

**Cost:** Provide a lump sum fee for all of the services outlined in the scope of services with a breakdown of hours and hourly rates.

**Schedule:** Include a project schedule based on the anticipated award date listed above.

### **FEE NEGOTIATIONS**

At the time of awarding the contract to the successful firm, the City of Clare will negotiate a not-to-exceed fee for required services. If the City of Clare and the successful firm cannot agree on a firm cost, the City will solicit a fee from the next highest-scoring firm. The City requests to be billed on a monthly basis for any services provided.

### **INSURANCE REQUIREMENTS**

Before any work shall be performed under this contract, the Contractor shall secure insurance as follows and shall provide certificates of these insurances to the City of Clare within ten (10) days of the Notice of Intent to Award Bid:

A. Workers Compensation.....	Statutory Requirement
B. Comprehensive for Contractual Liability*	
Bodily Injury.....	\$1,000,000 per occurrence \$1,000,000 in the aggregate
Property Damage.....	\$1,000,000 per occurrence \$1,000,000 in the aggregate
C. Comprehensive Automobile Liability for owned/rented vehicles:	
Bodily Injury.....	\$1,000,000 per occurrence \$1,000,000 in the aggregate
D. Property Damage.....	\$ 500,000 per occurrence \$ 500,000 in the aggregate

### **NOTICES:**

1. The person or entity submitting the successful proposal will be required to provide the City of Clare with an IRS form W-9.

2. The successful proposal will be required to include performance and payment bonds in the sum of ninety-five percent (95%) of the final contract amount.
3. The City is subject to the Freedom of Information Act, Public Act 442 of 1976 (FOIA). FOIA requires that the City provide copies of, or permit inspection of its files, when requested by individuals. All information in a proposal is subject to disclosure under FOIA, including contracts and attachments to contracts.
4. The City reserves the right to award the total proposal, to reject any or all proposals in whole or in part, and to waive any informality or technical defects, if, in the City's sole judgment, the best interests of the City will be so served. The City's right to reject, accept, any or all proposals, or alternative proposals may be exercised without cause.
5. The City reserves the right to request additional information from any offeror, or all offerors.
6. The City reserves the right to reject any proposal that it deems unresponsive, or deficient in any information requested in this RFP. The City reserves the right to disqualify proposals that are nonconforming.
7. The City reserves the right to determine whether the scope of the project will be entirely as set forth in the RFP, a portion of the scope set forth in the RFP, or a revised scope will be implemented.
8. The City reserves the right to retain all proposals submitted and to use any ideas contained within a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm, of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted.
9. The City of Clare Ethics Ordinance requires that you stipulate whether your company has an official business or fiscal relationship with any individual employed by or affiliated with the City of Clare.
10. The City of Clare assumes no responsibility or liability for costs incurred by any offeror, prior to the execution of a contract. By submitting a proposal, the offeror agrees to bear all costs incurred or related to the preparation, submission, and selection process for the proposal.
11. Debarment: Submission of a proposal constitutes a certification by the offeror that the submitting person or entity is not debarred, suspended, proposed for debarment, and declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal departments or agencies.
12. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209 and MCL 37.2202.

CITY OF CLARE - ATTACHMENT A  
LEGAL STATUS OF THE OFFEROR

(The Offeror shall fill out the provision and strike out the remaining ones.)

The Offeror is:

- A corporation organized and doing business under the laws of the State of \_\_\_\_\_, for whom \_\_\_\_\_ bearing the office title of \_\_\_\_\_, whose signature is affixed to this proposal, is authorized to execute contracts on behalf of Offeror.\*

\*If not incorporated in Michigan, please attach the corporations' Certificate of Authority.

- A limited liability company doing business under the laws of the State of \_\_\_\_\_ whom \_\_\_\_\_ bearing the title of \_\_\_\_\_ whose signature is affixed to this proposal, is authorized to execute contract on behalf of the LLC.
- A partnership organized under the laws of the State of \_\_\_\_\_ and filed with the County of \_\_\_\_\_, whose members are (attach list including street and mailing address for each.)
- An individual, whose signature with address, is affixed to this RFP.

Offeror has examined the basic requirements of this RFP and its scope of services, including all Addendum (if applicable) and hereby agrees to offer the services as specified in the RFP.

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

Signature

(Print) Name: \_\_\_\_\_ Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Phone: \_\_\_\_\_ Secondary Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Company website address: \_\_\_\_\_

CITY OF CLARE-ATTACHMENT B

SAMPLE CONTRACT

If a contract is awarded, the selection Firm(s) will be required to adhere to a set of general contract provisions which will become a part of any formal agreement. These provisions are general principles that apply to all contractors/service providers to the City of Clare. The required provisions are:

CONTRACT BETWEEN

\_\_\_\_\_
AND THE CITY OF CLARE
FOR \_\_\_\_\_

The City of Clare, a Michigan municipal corporation, having its offices at 202 West Fifth Street, Clare, Michigan 48617, ("City"), and \_\_\_\_\_ ("Contractor"), a(n) \_\_\_\_\_ (State where organized) \_\_\_\_\_ (Partnership, Sole Proprietorship, or Corporation) with its address at \_\_\_\_\_, agree as follows:

The Contractor agrees to provide services the City under the following terms and conditions:

1. DEFINITIONS

Project means \_\_\_\_\_ (Project name).

2. DURATION

Contractor shall commence performance on \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date"). This Agreement shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article 11. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date of Commencement Date.

3. SERVICES

A. The Contractor agrees to provide materials and labor as set forth in the Request for Proposal dated \_\_\_\_\_ by the city of Clare for \_\_\_\_\_ improvements and services, and as set forth in the proposal submitted by the Contractor on \_\_\_\_\_ date. The City retains the right to



make changes to the quantities of materials and labor within the general scope of the agreement at any time by written order.

B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the contract Administrator.

C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the city (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### 4. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

#### 5. COMPENSATION OF CONTRACTOR

A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the contractor, and approved by the contract Administrator.

B. The Contractor will be compensated for Services performed in addition to the Services described in Article 3, only when the scope of and compensation for those additional Services have received prior written approval of the contract Administrator.

C. The Contractor shall keep complete records of work performed (e.g. tasks performed, hours allocated, etc.) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

#### 6. INSURANCE/INDEMNIFICATION

A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage that may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the city, through City-approved means, demonstrating it has obtained the policies and endorsements required by Exhibit C. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).

B. Any insurance provider of contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by the City.

C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the city's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

## 7. COMPLIANCE REQUIREMENTS

Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209 and MCL 37.2202.

## 8. WARRANTIES BY THE CONTRACTOR

A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.

B. The Contractor warrants that it has all the skills, experience and professional licenses necessary to perform the Services specified in this Agreement.

C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.

D. The Contractor warrants that it is not, and shall not become overdue or in default to the city for any contract, debt, or any other obligation to the City including real and personal property taxes.

E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

## 9. OBLIGATIONS OF THE CITY

A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.

B. The City reserves the right to delete any line item or quantity on the RFP schedule.

C. The City reserved the right to accept or reject any or all bids.

D. Payment for the project (after approval by the Department of Public Works review and/or engineering review of progress) will be made within three (3) weeks from the date of the receipt of the invoice for work completed.

## 10. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the city to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises, and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties

## 11. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles 6 and 8 shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all deliverables due as of the date of termination of this Agreement.

## 12. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.
- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.

C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

D. The Contractor and the City of Clare recognize and affirmatively covenant that should the contract be breached or otherwise disregarded by Contractor that the damages are indefinite and difficult to quantify. The parties further stipulate and agree that in that event, the City of Clare will have very real financial damages. Therefore, in the nature of liquidated damages and not in the nature of a penalty, the parties agree that the sum of \$500.00 shall be considered as liquidated damages for breach of this contract, including any work that shall remain uncompleted after the time specified for its completion. Said damages shall be cumulative and shall be assessed at the specified rate for each day a breach continues. Said damages shall be deducted from the amounts due Contractor, not as a penalty but as just and liquidated damages. In addition, the City of Clare shall have all remedies available at law including the right to seek specific performance.

### 13. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next-day express delivery service, certified mail, or first class, U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occurs: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

\_\_\_\_\_

If Notice is sent to the CITY, it shall be addressed and sent to:

CITY OF CLARE, City Manager, 202 West Fifth, Clare MI 48617

With a copy to: City Attorney, City of Clare, 601 Beech, Box 67, Clare MI 48617

### 14. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Clare County, State of Michigan. The parties stipulate that the venue referenced in this Agreement is convenient and waive any claim of non-convenience.

## 15. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e. deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the city. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities, and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## 16. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

## 17. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

## 18. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be

binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

19. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

20. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

CONTRACTOR

CITY OF CLARE

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS : \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO SUBSTANCE

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

## EXHIBIT A SCOPE OF SERVICES

The City of Clare is seeking proposals from qualified engineering consultants to provide plans for replacement of the Lake Shamrock Dam, installation of an emergency spillway, and replacement of the walkway, hereafter referred to as the LSD Project. The Lake Shamrock Dam is an earthen structure that is 20 feet high and 890 feet long. It was constructed in 1962 and provides storage for approximately 120 acres of surface water. The drainage area is 85 square miles. The lake is a popular natural resource for the City of Clare, and it provides various recreation opportunities for residents and visitors. A large park is also located along its shores.

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### **Initial Data Collection and Reporting Phase**

Accordingly, proposers should determine what data and survey work will be needed to gather and include sufficient information in their proposal to provide the basis for the design. The following items should be considered, together with any additional data collection and assessment recommended by the firm:

- Topographic survey of the overall site including site access areas.
- Stream channel survey including depth of refusal measurements, cross-sections and longitudinal profiles, river discharge measurements, assessment of existing collected data, and mapping details to characterize substrate, edge of bank, bank-full indicators, and adjacent wetland within the floodplain.
- Sediment load sampling may be necessary if sediment transport is a concern during or post-project.
- Geotechnical investigation to characterize the earthen embankment and underlying soils (as necessary). (May not need until final design.)
- Structural investigations to assess the strength of concrete components (as necessary).
- Sediment sampling and characterization as required for EGLE permitting.
- Wetland assessment; may require delineation and groundwater investigation.
- Threatened and endangered species assessments.
- Utility investigation and coordination.
- Reports and deliverables summarizing the data collected.

### **Feasibility/ Preliminary Design Phase**

- Development of conceptual design alternative(s) (approximately 30% design level) for stream channel and floodplain alignment. This may include consideration of multiple options with comparison to state and federal permitting requirements and working with the Project Team to select most viable option.

EXHIBIT B  
COMPENSATION

GENERAL

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City



EXHIBIT C  
INSURANCE REQUIREMENTS

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$500,000 each employee

Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Clare shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or  
Property Damage Liability, or both combined

\$2,000,000 Per Project General Aggregate

\$1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Clare shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under A.3 and A.4 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have ; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City for any insurance listed herein.

C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the City of Clare. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company; name(s), email address(es), and address(es) of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions, which may be approved by the City in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days, a copy of the policy(ies) and all required endorsements to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.