

# **CONTRACT FOR USE OF THE SUMMER OAKS BOAT LANDING [Town of Merrimac]**

Contract by and between Sauk County ("County") and Michels Construction, Inc. ("Contractor") as follows:

WHEREAS, County currently owns 3.0 acres of property located at E12614 Kilpatrick Point Drive (Parcel Identification No. 026-1053-00000) for a public boat landing and associated parking area in the Town of Merrimac known as Summer Oaks Boat Landing; and

WHEREAS, the Contractor made a presentation before the Land Resources and Environment Committee on February 10, 2022 for use of the site over a five-year term for barge assembly and deployment as well as winter storage for barges and equipment associated with construction work on behalf of the Alliant Energy for the Wisconsin River Dam ("Project"); and

WHEREAS, the Land Resources and Environment Committee discussed the project with representatives with the Contractor and directed Land Resources and Environment staff to work with Sauk County Corporation Counsel to draft an agreement for use of the property by the Contractor in accordance with the discussion of February 10, 2022; and

NOW, THEREFORE, based on the good and valuable consideration stated herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Duties of Contractor.** Contractor shall provide the following services to County:
  - A. The Contractor will have non-exclusive use of the site (except as set forth herein) for the Project commencing the date by which all Parties hereto have executed this Contract and shall expire upon the removal of all equipment and materials associated with the Project by no later than December 31, 2027.

- B. The Contractor proposed schedule is incorporated into this Contract with approximate dates as follows:

Assemble Barges: Approximately June 15<sup>th</sup>

Disassemble Barges: Approximately November 1<sup>st</sup>

Loading/Unloading of Barges at the Constructed Landing: Duration of one week

This process is to be repeated each year over the course of the next five (5) years.

- C. The Contractor shall use the Summer Oaks Boat Landing in accordance with the plans and specifications provided to the Land Resources and Environment Committee at their February 10, 2022 meeting, which are attached as Exhibit A to this Contract. The plans for the project include a 100' x 100' pad (10,000 square/feet) in the northwest corner of the parking lot, which will be used for the winter storage of barges and equipment. A landing area will be constructed in a location along the shoreline that does not obstruct the use of the boat landing for public access to the lake. Rather than remove the landing area each year, the Contractor is permitted to leave the platform in place for the duration of this Contract. Notice shall be provided to the public that use of the platform for fishing, swimming, docking and other purposes is not permitted.
  - D. The Contractor will be responsible for work site safety during all phases of construction. Construction sites must be signed with appropriate reflectorized warning signs and blocked off to prevent public access. During assembly of the landing area for barge

assembly and deployment, the boat access will be closed Monday through Thursday to eliminate the potential for public safety issues associated with the use of large equipment. The need for additional closures will need to be coordinated with the Parks and Recreation Manager or Land Resources and Environment Director, providing that no closures will be allowed Friday through Sunday or on recognized holidays.

- E. The Contractor shall complete a pre-inspection of the property with the Park and Recreation Manager or Land Resources and Environment Director. Pre-inspection reports shall include a written statement regarding the existing condition of the area to be utilized by the Contractor as well as photos with date and time stamp noted. A post-inspection after each yearly use shall also be conducted of the site.
- F. The Contractor is responsible for providing notice to surrounding property owners within 1,500 feet of the proposed project as well as any potential closures of the landing due to the project. Notice must be provided at least one (1) week prior to project commencement or closure for the boat landing facility.
- G. The Contractor is responsible for ensuring that public facilities (landing, bathroom facilities, etc.) are accessible to those using the site for recreational purposes. No equipment, vehicles, etc. shall be placed in such a manner as to deter or eliminate use of the facilities.
- H. All Federal, State, County, and local laws, permits, and regulations are to be adhered to by the contractor. No deviations from the specifications are allowed unless the County agrees. The County is not aware of any permits specific to this project. The responsibility for any permits from other entities lies with the Contractor.
- I. The Contractor is responsible for setting up all necessary erosion control measures needed for the project as well as all traffic control measures.
- J. If there are any deviations from the plans, scope or timeline associated with the Project; the Contractor shall stop work and have any changes approved by the County, before resuming work.
- K. Any damage to the landing, parking area, driveway or shoreline caused by the Contractor before or during this project shall be noted to County and restored prior to final completion and at the expense of the contractor. Areas of the property that deteriorate during the project shall be the responsibility of the Contractor to repair in the interim.
- L. The Contractor shall give a one week notice to County prior to any site preparation, materials or equipment delivered to the site, or construction work starts. County shall give formal consent to the start date.
- M. Once the project is done and verified by the County, all leftover materials, waste, tools, and equipment must be removed from the project site within two (2) weeks.
- N. In lieu of compensation for use of the Summer Oaks Boat Landing, the Contractor agrees to replace the parking lot and driveway paving on the property to County. ~~specifications as well as agrees to work with the Land Resources and Environment Department to replace the existing pier providing access to Lake Wisconsin. Replacement of the pier may include the construction of access stairs to a watercraft holding area/fishing pier subject to any permitting requirements of the DNR as well as County Shoreland and Floodplain Ordinances.~~

2. **Duties of the County:**

- A. Within one week of being notified of the project being completed, Land Resources and Environment staff will meet with the Contractor's representative on site to review the site and determine where restoration of the site is needed. Upon completion of restoration work, further inspections of the site shall occur to determine if the work has been done in a manner that is satisfactory to the County. If the work is found to not be satisfactory the County shall provide written documentation to the Contractor of areas that are deficient.
3. **Notices.** Any legal notices required by this agreement shall be made in writing to the address specified below:

County – County Clerk  
505 Broadway  
Baraboo, WI 53913

With a Copy to: Lisa Wilson, LRE Director  
505 Broadway  
Baraboo, WI 53913  
[Lisa.wilson@saukcountywi.gov](mailto:Lisa.wilson@saukcountywi.gov)

Contractor – Michael Rice  
Michels Construction Inc.  
PO Box 128  
Brownsville, WI 53006

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the parties.

4. **Insurance.** During the term of this Agreement, Contractor shall maintain the following insurance:

Worker's Compensation:

- a. Coverage A: Limits – Statutory
- b. Coverage B: Employer's Liability Limits
- c. Bodily Injury by Accident - \$100,000 each accident minimum
- d. Bodily Injury by Disease - \$100,000 each employee minimum
- e. Bodily Injury by Disease - \$500,000 policy limit minimum

Comprehensive General Liability Limits: \$1,000,000 bodily injury and \$1,000,000 property damage.

Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

Certificates of insurance are required for all policies. The Certificates of General and Automobile Liability Insurance must name the County as an additional insured on the policy and must require that a thirty (30) day cancellation notice be given to the County. An updated copy of the Certificate must be provided anytime a change is made to any policy.

5. ~~**Construction Performance Bond.** Prior to the commencement of construction required hereunder, Contractor shall furnish the County with a bond, listing Contractor as principal, in a sum not less than fifty percent (50%) of the total cost of the construction. The bond shall guarantee faithful performance of the construction by Concessionaire's contractor.~~

6. **Subcontractors.** It is understood and agreed that Contractor may contract with subcontractors who are not employees of Contractor to complete some of the services

performed hereunder. All subcontractors must be approved by the County. Contractor shall remain personally responsible for all work completed and for all obligations under this agreement, even though as a matter of law, subcontractors may also incur liability. Contractor shall insure that all its subcontractors comply with all requirements of this agreement. Additionally, all subcontractors shall have insurance of the same types and in the same amounts required of contractor by this agreement with the same provisions for naming the county as an additional insured and the same provisions for cancellation notice.

7. **Delay in Performance.** Neither party shall be considered in default of this Agreement or any Task Order for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses or authorizations from any local, state or federal agency for any of the supplies, materials, accesses, or services required to be provided by either party under this Agreement or any Task Order. The nonperforming party shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.
8. **Governing Law, Jurisdiction and Venue.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin. The parties hereby irrevocably submit to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. The parties further agree that the venue for any legal proceedings related to this Agreement shall be Oneida County, Wisconsin.
9. **Survival.** The warranties, representations and covenants of this Agreement shall survive completion of the Services under this agreement or any termination of this Agreement.
10. **Waiver.** A waiver by either of the parties of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.
11. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or any Task Order. Any void provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
12. **Integration.** This Agreement represents the entire and integrated agreement between the parties. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.
13. **Assignment.** Neither party shall assign any rights or duties under this Agreement without the prior written consent of the other party.
14. **Successors and Assigns.** The parties each bind themselves and their successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, the partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

15. **No Construction Against Either Party.** This agreement is the product of negotiations between the parties and was either reached with the advice of legal counsel or the opportunity to obtain legal counsel, and shall not be construed against either party.
16. **Multiple Originals.** This contract may be executed in multiple originals, each of which, together shall constitute a single agreement.
17. **Captions.** The parties agree, that in this contract, captions are used for convenience only and shall not be used in interpreting or construing this contract.
18. **No Partnership or Joint Venture.** This contract shall not in any way be deemed to create a partnership or joint venture between the parties to the agreement.
19. **Statutory Protections.** It is agreed by the parties that nothing in this contract, including but not limited to indemnification and hold harmless clauses, shall in any way constitute a waiver on the part of the County of any immunity, liability limitation or other protection available to the County under any applicable statute or other law. To the extent that any provision of this contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either statutory or contractual, provide a greater benefit to the County shall apply unless the County elects otherwise.
20. **Open Records Law Compliance.** Contractor understands and agrees that, because County is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Contractor. Contractor agrees to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of Contractor shall be at its sole cost and expense.
21. **Amendment.** No amendment of this contract shall be binding unless in writing and signed by all of the parties.
22. **Standard of Care.** The same degree of care, skill, and diligence shall be exercised by Contractor in the performance of its duties as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.
23. **Equal Employment Opportunity.** Contractor hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11216 and other applicable laws and regulations. Contractor affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a veteran, including a veteran of the Vietnam era, membership in the national guard or reserve components of the military of the United States, political affiliation, or any other legally protected status. It is Contractor's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. Contractor further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.
24. **Gratuities – Kickbacks – non-collusion:** It shall be a breach of this contract and subsequent amendments for contractor to offer, give, or agree to give anything of pecuniary value or to make an offer for employment to any elected official, employee, or former employee in connection with this RFP. Prohibited conduct shall include, but is not limited by enumeration, acts or attempts to influence: any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, the contents of any specification or procurement standard, rendering of advice,

investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or contract, subcontract, or any solicitation or proposal therefore.

25. **Time of the Essence.** Except as otherwise specifically stated herein, time is of the essence with respect to all provisions of this contract that specify a time for performance.

**{READ THE NEXT SECTION CAREFULLY, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY REVIEW THIS CLAUSE}**

26. **Indemnification and hold Harmless.** Contractor shall at all times indemnify, defend and save harmless, the County and it's supervisors and employees from any and all causes of action, demands, liability, claims, damages, losses, costs and expenses, including but not limited to reasonable attorney's fees, by reason of loss or damage to any property or bodily injury to any person, including but not limited to death, as a direct or indirect result of the performance by Contractor of its duties hereunder, and as the result of any action or omission of Contractor.

**[Signatures are on the following page]**

**BY SIGNING BELOW THE PARTIES AFFIRM AND ACKNOWLEDGE THAT: they have read and understand Agreement and its Attachments, if any; they have authority to enter into Agreement on behalf of the corporation or other entity they are signing for; they are knowingly, freely, and voluntarily entering into Agreement; and that they accept and agree to be bound by the terms and conditions of Agreement and its Attachments, if any, as outlined in Agreement:**

Sauk County by:

\_\_\_\_\_  
Brent Miller  
County Administrator

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

Contractor by:

\_\_\_\_\_  
Michael Rice  
Senior Manager of Marine Construction  
Michels Construction, Inc.

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