

RESOLUTION NO. 2019-55

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH KS ASSOCIATES FOR THE PROVISION OF A BEACH ASSESSMENT AND SWIM AREA STUDY AT NICKEL PLATE BEACH.

WHEREAS, the City Manager has recommended adoption of this agreement with KS Associates to City Council in an effort to obtain information to assist the city in implementing additional safety measures at Nickel Plate Beach,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO, THAT:

SECTION 1. That the City Manager is authorized and directed to accept the proposal and enter into a contract on behalf of the City with KS Associates for the proposed Beach Assessment and Swim Area Study at Nickel Plate Beach in an amount not to exceed \$18,100.00; which agreement shall be substantially in the form attached hereto as Exhibit "A".

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST: Terri Wellbaker
Clerk of Council

Glen Ginesi
Glen Ginesi, Vice-Mayor

ADOPTED: 24 SEP 2019



August 27, 2019

Andy White
City Manager
City of Huron
417 Main Street
Huron, Ohio 44839

Civil Engineers + Surveyors

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Elyria, Ohio 44035
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**RE: Beach Assessment and Swim Area Study at Nickle Plate Beach, Huron
KS Project #19192**

Dear Mr. White:

Please accept this proposal for professional surveying and engineering services that may be required to meet your objective.

Project Objective:

Recent high lake levels and storm events have resulted in concerns regarding swimming conditions at Nickel Plate Beach in Huron, Ohio. The City of Huron has requested a proposal from KS Associates to perform a hydrographic survey of the nearshore, review available standards for swimming conditions at recreational beaches, perform an analysis of the meteorological and oceanographic conditions that affect the swim area at Nickel Plate Beach (metocean analysis), and provide recommendations to assist the City of Huron with developing criteria for public access to the water based on recognized standards and the conditions at Nickel Plate Beach. We recommend the following scope of services to accomplish this objective.

Phase 1 – Hydrographic and Beach Topography Survey

KS Associates will perform a hydrographic survey of the nearshore lakeward of Nickel Plate Beach. The survey will include an area extending approximately 1,500 feet offshore along approximately 1,000 linear feet of shoreline. The survey will be performed with a GPS enabled single beam echo sounder (Seafloor Systems Hydrolite-TM Milspec) from a survey boat. KS will also perform a limited topographic survey of the beach. The topographic survey will include an area extending approximately 100 feet landward from the waters edge.

Phase 2 – Metocean Analysis, Swim Area Assessment and Recommendations

KS will perform a metocean analysis of water levels, wind, waves and wave driven currents at Nickel Plate Beach. The metocean analysis will include a detailed water level analysis utilizing historical and recent water level records to determine the frequency of occurrence of extreme high and low water events. The statistical results will be summarized for 2, 5, 10, 25, 50 and 100-year design return events. Based on the range of design water levels and historical hindcast wind data, KS will perform a wave analysis to determine depth limited, fetch limited and historical hindcast wave conditions. Wave conditions at the beach will be calculated with consideration of the effects of shoaling and potential dissipation or reflection from the Huron Harbor east breakwater. KS will also calculate approximate wave driven current

velocities based on the beach bathymetry, calculated wave conditions and angles of exposure at Nickel Plate Beach.

KS will research available standards for swimming condition at recreational beaches and will compile a comparison of conditions at Nickel Plate Beach to recreational beach standards.

KS will prepare recommendations to assist the City of Huron with developing criteria for public access to the water based on recognized standards and the conditions at Nickel Plate Beach. KS will also provide recommendations to assist the City of Huron with developing procedures and selecting data collection systems for monitoring conditions at Nickel Plate Beach.

KS will coordinate and attend one meeting with the City of Huron to present and discuss the assessment and recommendations.

Schedule

If written authorization is received by October 31, 2019, KS will endeavor to perform the Phase 1 survey within 30 days after the written authorization is received (weather permitting). KS will endeavor to complete Phase 2 within 60 days of receiving notice to proceed to advance the study. If we receive authorization after October 31, 2019, we will propose a new schedule for the services.

Professional Service Fees

Our fee for the listed scope of services is as follows:

Phase 1:	\$ 7,900 (Lump Sum)
Phase 2:	<u>\$10,200</u> (Lump Sum)
Total Project Fee:	\$18,100

Reimbursable expenses are included in the lump sum fee for each phase. KS will bill monthly for services rendered.

Additional Services

KS has estimated the man-hours necessary to perform this work based on our past experience and our understanding of the prevailing requirements. If the Client requests additional site investigation, surveying, or engineering services beyond those included in this proposal, or if KS determines that additional services are required, KS will request a modification to this contract before the services are provided.

The metocean analysis will be completed with calculations performed at discrete points selected on the basis of a qualitative assessment of the beach system. Numerical modeling of nearshore processes is not included in this scope of services.

This scope of services includes one meeting with City of Huron staff and/or members of the City Council to present and discuss the assessment and recommendations. This scope of services does not include coordinating, attending or presenting at public meetings.

Andy White
August 27, 2019
Page 3

KS ASSOCIATES

Terms of the Agreement

By accepting this proposal, you agree to the attached Standard Conditions which are an integral part of this Agreement.

In order to initiate services, please have a properly authorized person sign this Proposal, sign the Standard Conditions, and return the entire Agreement including attachments to KS. If you have any questions or comments, please call me at (440) 365-4730 ext. 395 or email to cencerm@ksassociates.com.

This professional services proposal is valid until October 31, 2019.

Sincerely,
KS ASSOCIATES, INC.



Mark P. Cencer, P.E.
Director of Coastal Engineering Services

Attachment: Standard Conditions

c: Lynn S. Miggins, P.E., President, KS Associates, Inc.
Mark B. Skellenger, P.E., Vice President, KS Associates, Inc.
Project File/Billing File

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This Proposal is hereby accepted by:

City of Huron
417 Main Street
Huron, Ohio 44839

Authorized Signature

Date

Printed Authorized Signature

STANDARD CONDITIONS

Fee

The total fee shall be understood to be an estimate, based upon Scope of Services, and shall not be exceeded without written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Reimbursable expenses will be invoiced at cost with no markup.

Billings/Payments

Invoices for services and reimbursable expenses shall be submitted, at KS's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the maximum legal rate) per month will be applied to the unpaid balance after 30 days from the invoice date. KS shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and KS shall have no liability for any resultant delays or damages incurred by the Client as a result of such suspension/termination. Retainers shall be credited on the final invoice. The Client agrees to pay all costs of collection, including but not limited to reasonable attorney's fees.

Standard of Care

In providing services under this Agreement, KS will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. KS will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of KS's part of the Project. Regardless of any other term or condition of this Agreement, KS makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

Consequential Damages

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither the Client nor KS shall be liable to the other for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

Unforeseeable Conditions

A condition is unforeseeable if concealed or is not capable of investigation by reasonable visual observation. If KS has reason to believe that such a condition may exist, the Client shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Client fails to authorize such investigation after such due cause of action in favor of a third party notification, or (2) KS has no reason to believe that such a condition exists, KS shall not be responsible for the existing conditions or any resulting damages or losses resulting therefrom.

Hazardous Materials/Mold

KS shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form including mold. The Client shall inform KS of any potentially hazardous condition prior to KS performing the services.

Indemnifications

~~The Client agrees, to the fullest extent permitted by law, to indemnify and hold KS and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorneys' fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. KS further agrees to indemnify the Client for damages arising from its own negligent errors, acts or omissions.~~

Limitation of Liability

~~In recognition of the relative risks and benefits of the project to both the Client and KS, the Client agrees, to the fullest extent permitted by law, to limit KS's total liability to the Client or anyone making claims through the Client, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the amount of KS's actual fee charged to the client, or another amount agreed upon in writing and signed by both parties.~~

Termination of Services for Convenience

This Agreement may be terminated upon written notice by the Client for its convenience. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Termination of Services for Default

This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, the Client shall pay KS for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

Ownership of Documents

All documents produced by KS under this Agreement, including electronic files, shall remain the property of KS and may not be used by this Client for any other purpose without the written consent of KS. Any such use or reuse shall be at the sole risk of the Client who shall defend, indemnify and hold KS and its subconsultants harmless from any

and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to KS and its subconsultants.

Defects in Service

The Client shall promptly report to KS any defects or suspected defects in KS's services. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by the Client and the Client's contractors or subcontractors to notify KS shall relieve KS of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

Construction Activities

KS shall not be responsible for (1) the acts or omissions of any one performing any of the Work, (2) the instructions given by the Client or its representatives to any one performing any of the Work, (3) the means and methods of anyone performing any of the Work, (4) job-site safety.

Dispute Resolution

In the case of a claim or dispute between the Client and KS, at least one principal from each party shall enter into a negotiation to resolve the dispute. If the parties cannot reach resolution, the claim or dispute shall then be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) for mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect. Unless otherwise specified, the laws of the State of Ohio shall govern this Agreement.

No 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 the Consultant. The Consultant'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 the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant 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.

Standard Conditions Accepted by the Client:

Authorized Signature

Title

Date

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