

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT, made this 10th day of February, 2020 between the City of Marquette, hereinafter called "City" and Donohue & Associates, Inc., a Wisconsin corporation, hereinafter called "Consultant".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned the parties hereby agree as follows:

Article 1

Project Name

The name of the Project shall be Professional Services to Prepare a State Revolving Fund Solids Handling Project Plan Amendment.

Article 2

Scope of the Work

Consultant shall furnish all the material, services, supplies, tools, equipment, labor and other engineering services necessary to perform work as described in the Consultant's proposal to City (attached as Exhibit A).

Article 3

Time of Completion

The completion date of this project is August 1, 2020.

Article 4

Terms and Conditions

Consultant shall perform the services outlined in this Agreement for the stated fee arrangement.

ACCESS TO SITE:

City will arrange and provide access to each site upon which it will be necessary for Consultant to perform its work unless otherwise stated in the proposal. In the event work is required on any site not owned by City, City represents and warrants to Consultant that City has obtained all necessary permission and authority, in writing, for Consultant to enter upon the site and conduct its work. City shall, upon request, provide Consultant with evidence of such permission as well as acceptance of the other terms and conditions set forth herein by the owner(s) and tenant(s), if applicable, of such site(s) in a form acceptable to Consultant, which Consultant also agrees to abide by. Any work performed by Consultant with respect to obtaining permission to enter upon and do work on the lands of others, as

well as any work performed by Consultant pursuant to this Agreement, shall be deemed as being done on behalf of City. Consultant shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment and shall reasonably restore the site to its prior condition.

FEE:

Services and reimbursable costs will be billed on a monthly basis as per the proposal requirements, but the total amount to be paid by City for such services and costs shall not exceed \$24,570.

BILLINGS/PAYMENTS:

Consultant shall invoice for services rendered and reimbursable costs incurred on a monthly basis. Each invoice shall be due and payable within sixty (60) days of the date of the invoice. Invoices over sixty (60) days past due may be charged interest on the unpaid balance at the highest lawful rate as allowed under Michigan Law. Consultant may, after ten (10) days' written notice to City, suspend performance of services until all past due amounts are paid.

TERMINATION:

City, at its sole discretion, may terminate this Contract for convenience or abandon any portion of the Project for which services have not been performed by Consultant, upon fourteen (14) days written notice delivered to Consultant personally, by email or by certified mail at Consultant's address below.

Immediately after receiving such notice, Consultant shall discontinue advancing the services under this Contract and proceed to close the operations under this Contract. Consultant shall appraise the services it has completed and submit an appraisal to City for evaluation. City shall have the right to inspect Consultant's work to appraise the services completed.

Consultant shall deliver to City all drawings, specials provisions, field survey notes, reports, estimates and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.

In the event of such termination or abandonment, Consultant shall be paid for services performed prior to receipt of said notice of termination, including reimbursable expenses then incurred.

If the remuneration scheduled hereunder is based on a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by Consultant based upon the scope of work set forth in Exhibit A, and shall be agreed upon mutually by Consultant and City. However, in no event shall the fee exceed that set forth above.

City shall make final payment within sixty (60) days after Consultant has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this contract is terminated, City shall have the option of completing the work or entering into a contract with another party for the completion of the work according to the provisions and agreements herein.

INDEMNITY:

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold City harmless from any damage, liability or cost (including reasonable attorney fees and costs of defense) to the extent caused, in whole or in part, by Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of consultants, sub-consultants, contractors, sub-contractors, agents, employees or others that contract with Consultant regarding this contract or anyone for whom Consultant is legally liable.

INSURANCE:

Without limiting any of its obligations and liabilities, Consultant, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Michigan, and with forms reasonably satisfactory to City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from City.

A. General Clauses

1. **Additional Insured.** The insurance coverage, except Workers' Compensation and Professional Liability, required by this Contract, shall name City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall be excess coverage, and not contributory coverage to that provided by Consultant.

2. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of City.

3. **Primary Coverage.** Consultant's insurance shall be primary insurance as respects City and any insurance or self insurance maintained by City shall be excess of Consultant's insurance and shall not contribute to it.

4. **Claim Reporting.** Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.

5. **Waiver.** The policies for Workers' Compensation and General Liability, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of Consultant.

6. **Deductible/Retention.** The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and City may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

7. **Policies and Endorsements.** City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

8. **Certificates of Insurance.** Prior to commencing services under this Contract, Consultant shall furnish City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificate shall identify this Contract by referencing the project name and/or project number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination.

9. **Sub-Consultants/Contractors.** Consultant shall include all sub-consultants and sub-contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant and sub-contractor.

B. Workers' Compensation

Consultant shall carry Workers' Compensation and Employer's Liability insurance coverage as required by law and deemed necessary for its own protection.

In case services are subcontracted, Consultant will require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by Consultant.

C. Automobile Liability

Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of Consultant services.

D. Commercial General Liability

Commercial General Liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Services as evidenced by annual Certificates of Insurance.

E. Professional Liability

Consultant retained by City, to provide the engineering services required by the Contract will maintain Professional Liability insurance covering errors and omissions arising out of the services performed by Consultant or any person employed by him, with an unimpaired limit of not less than \$1,000,000 each claim. In the event the insurance policy is written on a "Claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Services as evidence by annual Certificates of Insurance.

F. Property Coverage - Valuable Papers

Property coverage on all-risk, replacement cost, agreed amount form with Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of Consultant used in the completion of this Contract.

INDEPENDENT CONSULTANT:

The relationship between City and Consultant created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and/or such person or entity is not intended to be or shall be construed as being a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by a Consultant authorized representative.

SEVERABILITY/SECTION HEADINGS/SURVIVAL/WAIVER:

In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions shall remain in full force and effect, and binding upon the parties hereto. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between City and Consultant shall survive the completion of services and the termination of this Agreement. No waiver, discharge, or renunciation of any claim or right of Consultant arising out of breach of this Agreement by City shall be effective unless in writing signed by Consultant and supported by separate consideration.

OWNERSHIP OF DOCUMENTS:

All documents produced by Consultant under this Agreement shall remain the property of City and may be used by City for any other endeavor without the written consent of Consultant.

APPLICABLE LAWS:

Unless otherwise specified, the Agreement shall be governed by the laws of the State of Michigan.

PURCHASING AGENT DESIGNATION AND AUTHORITY:

Curt Goodman is designated as Purchasing Agent of City and is authorized to order minor changes in the work not involving adjustment in the Contract Sum or Time of Completion and not inconsistent with the intent of the Contract Documents. Such changes will be affected by written order signed by the Purchasing Agent and shall be binding on City and Consultant.

IN WITNESS WHEREOF, the parties have made and executed this Agreement the day and year first above written.

Signed this _____ day of _____, 2020.

CITY OF MARQUETTE

Witness

Jennifer Hill, Mayor Pro Tem

Witness

Kris M. Hazeres, Clerk

DONOHUE & ASSOCIATES, INC

Witness

By: _____

Its: _____

Address: _____

Telephone #: _____

APPROVED AS TO SUBSTANCE:

L. Michael Angeli
City Manager

APPROVED AS TO FORM:

Ronald D. Keefe
City Attorney



DONO&AS-01

CMURPHY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 559 Willard Street Suite 320 Quincy, MA 02169	CONTACT NAME:
	PHONE (A/C, No, Ext): (617) 328-6555 FAX (A/C, No): (617) 328-8888
	E-MAIL ADDRESS: boston@amesgough.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Sentinel Insurance Company, LTD (XV) A+ NAIC # 11000
	INSURER B: Hartford Accident and Indemnity Company A+ (XV) 22357
	INSURER C: Berkley Design Professional Underwriters 32603
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X	08SBWIM9888	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		08UEGAX4986	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		08SBWIM9888	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in MI) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	08WBGEM0640	1/1/2020	1/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACC-IDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Lib		AEC-9033900-04	1/1/2020	1/1/2021	Per Claim 5,000,000
C			AEC-9033900-04	1/1/2020	1/1/2021	Aggregate 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
All Coverages are in accordance with the policy terms and conditions.

The City of Marquette shall be listed as additional insured with respect to general liability where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Marquette Curt Goodman 300 W Baraga Avenue Marquette, MI 49855	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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ENGINEERING SERVICES AGREEMENT

ATTACHMENT A PART I

PROJECT DESCRIPTION/SCOPE OF SERVICES/TIMING

A. PROJECT DESCRIPTION

The City of Marquette (Owner or City) is planning improvements to the water and wastewater systems. A Project Plan was submitted in May, 2019 to fund improvements to the system through SRF/DWRF. The Project Plan included several water system and wastewater system projects including improvements to the Wastewater Treatment Plant solids handling system. The City is considering additional improvements to the solids handling system that were not included in the Project Plan requiring an amendment. This project includes:

- Updating the existing Solids Handling Study to include septage receiving and high strength waste processing as part of alternative no. 3.
- Drafting Project Plan Amendment to reflect changes to solids handling study. Incorporate business case for Green Project Reserve into Project Plan.

B. SCOPE OF SERVICES

Basic Services to be provided by Donohue for this Project under this Agreement include:

1. Update Solids Handling Study as follows:

- Consider three alternative identified in Solids Handling Plan
- Update Alternative No. 3 including the following
 - a. Provide new Dewatering Facility (2 dewatering units)
 - b. Evaluate thickening options including leaving existing thickener or relocating to new facility.
 - c. Sludge cake transfer and storage
 - d. Septage and high strength waste (HSW) receiving
 - i. Update design basis and capacity for proposed improvements.
 - ii. Incorporate City estimates for septage, holding tank waste and HSW (refer to HSW report from Dr. Kirk.
 - iii. Consider utilization and value of septage and HSW for tipping fees and gas production/heat for existing CHP system
 - e. Update capital and operational costs
 - f. Incorporate flow sheets and site layouts for alternative 3.
- Coordinate workshop for reviewing layouts and alternatives associated with Alternative No. 3
- Submit DRAFT Solids Handling Study to City
- Review DRAFT with City
- Incorporate comments and Submit Final DRAFT

2. Develop Project Plan amendment as follows:

- Revise Wastewater Treatment Plant Solids Handling Project to incorporate updates to the Solids Handling Study. Project Plan Amendment is necessary if project includes septage receiving and HSW.
- Develop business case for Green Project Reserve principle forgiveness for project.
- Update notifications listed in Part I-A, prepare updated "environmental sign-off" request letters to the various agencies that are listed in Michigan Department of Environment, Great Lakes, and Energy (EGLE)'s current "Clean Water Revolving Funds Project Plan Preparation Guidance" document.

3. Comments and input received by the EGLE and City will be incorporated into the final Project Plan.

4. Assist the City in conducting a Public Hearing to present the Project Plan and solicit public input. Incorporate comments received during the public hearing into the Project Plan.

C. PROJECT TIMING

Develop DRAFT Project Plan for Public Hearing and submittal to EGLE. Target is March 30, 2020 public hearing.

Target week of March 16, 2020 for Workshop with City.

D. ASSUMPTIONS

1. Preliminary design, detailed design, services during construction and administrative assistance for Part I, II and III loan application will be negotiated as a separate project or amendment.

**PART II
OWNER RESPONSIBILITIES**

- A. In addition to other responsibilities of Owner set forth in this Agreement, Owner shall:
1. Identify a person (Curt Goodman) who is authorized to act as the Owner's representative to respond to questions and make decisions on behalf of Owner, accept completed documents, approve payments to Donohue, and serve as liaison with Donohue as necessary for Donohue to complete its Services.
 2. Provide estimated volumes for septage, holding tank waste and HSW.
 3. Furnish to Donohue copies of existing documents and data pertinent to Donohue's Scope of Services, including but not limited to and where applicable: design and record drawings for existing facilities; property descriptions, land use restrictions, surveys, geotechnical and environmental studies, or assessments.
 4. Provide to Donohue existing information regarding the existence and locations of utilities and other underground facilities.
 5. Provide Donohue safe access to premises necessary for Donohue to provide the Services.
 6. Contract with a geotechnical firm for design geotechnical services.

**PART III
COMPENSATION, BILLING AND PAYMENT**

- A. Compensation for the work as defined in the Scope of Services (Part I) of this Agreement shall be in accordance with Donohue's standard charge-out rates in effect at the time the Services are performed. Routine expenses will be billed at cost. The cost for these basic Services is and will not exceed \$24,570 without written approval from Owner.
- B. Donohue will bill Owner monthly, with net payment due in 30 days
- C. Donohue will notify Owner if Project scope changes require modifications to the above-stated contract value. Services relative to scope changes will not be initiated without authorization from Owner.

Donohue & Associates, Inc.

[illegible]