

## **PROFESSIONAL SERVICES CONTRACT**

**THIS AGREEMENT**, made this — day of \_\_\_\_\_, 2024 between the City of Marquette, hereinafter called the “City” and Dick Horton Consulting, 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 Parks and Recreation Master Plan Update.

### **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 the City of Marquette dated December 4, 2023 (attached as Exhibit A).

### **Article 3**

#### **Time of Completion**

The completion date of this project is September 30, 2024.

### **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 the 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 \$50,000.

**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; except for a 10% contingency hold-back which will be retained from each invoice by City until the final invoice is paid. 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 the City, suspend performance of services until all past due amounts are paid.

**INDEMNITY:**

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the 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 the 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 the 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 the City.

**A. General Clauses**

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

3. **Primary Coverage.** The Consultant's insurance shall be primary insurance as respects City and any insurance or self insurance maintained by City shall be excess of the 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 the 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. The Consultant shall be solely responsible for deductible or self-insured retentions and the City may require the 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**

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

If Consultant is a sole proprietor, see Addendum A for modification of the terms pertaining to Workers' Compensation insurance.

#### **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 the 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**

The Consultant retained by the 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 the 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 the Consultant used in the completion of this Contract.

**INDEPENDENT CONSULTANT:**

The relationship between the 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 the 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 the Consultant under this Agreement shall remain the property of the City and may be used by the City for any other endeavor without the written consent of the Consultant.

**APPLICABLE LAWS:**

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

**PURCHASING AGENT DESIGNATION AND AUTHORITY:**

Jon Swenson 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 effected by written order signed by the Purchasing Agent and shall be binding on the City and Consultant.

The parties have made and executed this Agreement the day and year first above written.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CONSULTANT  
DICK HORTON CONSULTING

*Dick Horton*  
By: Dick Horton

Address: \_507 Norris, Pittsburg, Kansas 66762

Telephone #: 816.210.318\_\_\_\_\_

THE CITY OF MARQUETTE,  
MICHIGAN, OWNER

\_\_\_\_\_  
Sally Davis, Mayor

\_\_\_\_\_  
Kyle Whitney, Clerk

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Karen M. Kovacs  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Suzanne C. Larsen  
City Attorney

ADDENDUM A

To the extent that a Consultant is a sole proprietorship and is unable to acquire the Workers' Compensation insurance as required by paragraph B. of the Professional Services Agreement to which this Addendum is attached, the City hereby waives the Workers' Compensation insurance requirement if the following criteria are met prior to commencement of services under the Professional Services Agreement ("Agreement"):

1. Consultant provides City a copy of its federal identification number;
2. Consultant provides City with a copy of its Articles of Organization, Articles of Incorporation, or Business Registration filed with Consultant's local municipality, if/as applicable;
3. Consultant acknowledges that Consultant will receive an IRS form 1099 from the City;
4. Consultant provides all materials and equipment required to perform the agreed upon services;
5. Consultant acknowledges that he/she may realize a profit or suffer a loss as a result of services rendered under the Agreement;
6. Consultant provides a sworn statement to the City, which includes the following information:
  - a. That Consultant is a sole proprietor and has no employees;
  - b. That Consultant is available to and does perform work for other municipalities or entities, including a listing of other such municipalities or entities that the Consultant is currently or has recently provided services to;
  - c. That Consultant performs specific services for set fees agreed upon in advance, and that Consultant is responsible for its own expenses, taxes, insurance, etc. that are incurred in performing such services;
  - d. That Consultant does not primarily depend upon this Agreement for its annual income; and
  - e. That Consultant maintains a separate place of business, including the address of such place of business;
  - f. That Consultant acknowledges that he/she is not eligible to claim Workers' Compensation under the City's policy and that he/she specifically waives the right to make any claim for such benefits in the event of any injury or illness during the term of the Agreement.

CONSULTANT

*Dick Horton*  
Dick Horton

Address: 507 NORRIS  
PITTSBURG KANSAS 66762

Telephone #: 816.210.3818

THE CITY OF MARQUETTE,  
MICHIGAN, OWNER

\_\_\_\_\_  
Sally Davis, Mayor

\_\_\_\_\_  
Kyle Whitney, Clerk

I am the sole owner of Dick Horton Consulting

Dick Horton Consulting operates as a sole proprietorship

I acknowledge that I will receive an IRS form and 1099 form from the City;

I will provide all materials and equipment required to perform the agreed upon services;

I acknowledge that I may realize a profit or suffer a loss as a result of services rendered under the Agreement;

I have no employees;

I am available to and do perform work for other municipalities and have attached a listing of other such municipalities or entities that I am currently or have recently provided services to;

I perform specific services for set fees agreed upon in advance, and that I am responsible for my own expenses, taxes, insurance, etc. that are incurred in performing such services;

I do not primarily depend upon this Agreement for my annual income; and maintain a separate place of business located at 507 Norris in Pittsburg, Kansas;

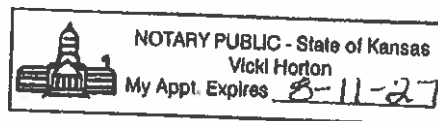
I acknowledge I am not eligible for Workers' Compensation under the City's policy and specifically waive the right to make any claim for such benefits in the event of an injury or illness during the term of the Agreement.

Dick Horton

Dick Horton

Vicki Horton

Vicki Horton Notary





AGENCY CUSTOMER ID: 00014821

LOC #: \_\_\_\_\_



# ADDITIONAL REMARKS SCHEDULE

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AGENCY Ryan Insurance		NAMED INSURED Dick Horton Consulting	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

## ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

30 Day Direct Notice of Cancellation will be mailed directly by the insurance carrier.