



**RESOLUTION 2023-30**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH MKSK FOR THE PURPOSE OF PERFORMING PROFESSIONAL SERVICES FOR THE DEVELOPMENT OF A PARKS MASTER PLAN AND FACILITY ASSESSMENT**

**WHEREAS**, A Parks Master Plan and Facility Assessment will serve as a guide regarding policies, programs, operations, maintenance, and capital improvements for Parks and Recreation; and

**WHEREAS**, the city issued a Request for Qualifications (RFQ) to seek the most qualified consultant; and


**WHEREAS**, the City reviewed the qualified applicants and unanimously agreed that MKSK was the most qualified to perform these services; and

**NOW THEREFORE BE IT RESOLVED BY THE CITY OF POWELL, COUNTY OF DELAWARE, STATE OF OHIO, AS FOLLOWS:**

Section 1: That the City Manager is hereby authorized and directed to enter into a professional services agreement with MKSK, in a form acceptable to the Director of Law and in a contract amount of approximately \$203,012.00 plus a 15% contingency for the development of a Parks Master Plan and Facility Assessment.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of Council and any of the decision-making bodies of the City of Powell, which resulted in such formal actions, were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 3: This Resolution shall be in full force and effect immediately upon adoption.

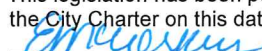
  
\_\_\_\_\_  
Daniel Swartwout  
Mayor

11/8/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Elaine McCloskey  
City Clerk

11/13/2023  
\_\_\_\_\_  
Date

EFFECTIVE DATE: NOVEMBER 8, 2023

This legislation has been posted in accordance with the City Charter on this date 11/13/2023  
  
\_\_\_\_\_  
City Clerk

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into and effective on this \_\_\_ day of \_\_\_\_\_, 2023 ("Effective Date") by and between the City of Powell, Ohio ("Powell"), an Ohio Municipal Corporation, with offices located at located at 47 Hall Street, Powell, Ohio 43065 and MKSK, Inc. ("Service Provider"), with an office and principal place of business located at 462 South Ludlow Street, Columbus, OH 43215.

### Recitals

WHEREAS, Powell desires to engage Service Provider to perform the services as more fully described in the attached Exhibit A (the "Services"); and

WHEREAS, Service Provider desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

### Provisions

#### **I. Performance of the Services.** Service Provider shall:

- A. Perform the Services as set forth in Exhibit A.
- B. If the Service Provider is an individual, complete, sign and return the Ohio Public Employees Retirement System ("OPERS") Independent Contractor Acknowledgement Form.
- C. Give prompt notice to Powell should the Service Provider observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.
- D. Remit to Powell after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs, and similar materials. Service Provider shall be entitled to retain copies for the Service Provider's files.

#### **II. Obligations of Powell.** Powell shall:

- A. Assist the Service Provider by placing at its disposal all available information pertinent to the Services for the project.
- B. Use its best efforts to secure release of other data applicable to the project held by others.
- C. Make all necessary provisions to enter upon public and private property as required to perform the Services.

- D. Give prompt notice to the Service Provider should Powell observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

**III. Term and Termination.** The Agreement shall commence on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and shall terminate on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_. Powell may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Powell prior to its natural expiration, Service Provider shall be paid the amounts for work actually performed in accordance with this Agreement to the date of this early termination.

**IV. Payment.**

- A. Service Provider shall be compensated for its service consistent with the Exhibit A.
- B. The Service Provider shall invoice Powell monthly for services rendered through the previous month, and Powell agrees to pay within thirty (30) days of receipt of a valid invoice. A valid invoice shall consist of a description of work performed and an itemization of all reimbursable expenses, which must be documented with copies of receipts whenever possible. All invoices must include the contract number and the purchase order number of this contract, which is located in the upper right-hand corner of the first page of this document.

**V. Relationship of the Parties.** The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Powell. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Powell of a partnership, association, or joint venture. Further, the parties acknowledge that Service Provider is paid a fee, retainer or other payment as per Section IV of this Agreement; is not eligible for workers' compensation or unemployment compensation; is not eligible for employee fringe benefits such as vacation or sick leave; does not appear on Powell's payroll; is required to provide his/her or her own supplies and equipment; and is not controlled or supervised by Powell personnel as to the manner of work.

**VI. Indemnification.**

- A. Professional Liability. Relative to the extent, losses, damages, liability and cost, the Service Provider agrees to indemnify and save Powell, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from the negligent acts, errors or omissions by the Service Provider or its employees.
- B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless Powell, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and

expenses, including but not limited to reasonable attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Service Provider, any subconsultant(s) of the Service Provider, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

## **VII. Insurance.**

- A. The Service Provider shall secure and maintain, at his/her/its own expense, professional liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which the Service Provider may be legally negligent. The Service Provider shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.
- B. In addition to professional liability insurance, the Service Provider shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.
- C. The Service Provider shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- D. The Service Provider shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages because of damage to or destruction of property including loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars (\$500,000.00).
- E. Powell shall be held harmless for any damage to the Service Provider's property and/or equipment during the course of performance under the Contract.
- F. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified. Certificates showing that the Service Provider is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Powell prior to the start of work on the project and before Powell is obligated to make any payments to the Service Provider for the work performed under the provision of this contract. All such Certificates, with the

exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Powell is an "Additional Insured".

**VIII. Employee Documentation**

- A. Service Provider guarantees that the individuals employed by the Service working on this project are authorized to work in the United States. The Service Provider will upon demand provide Powell with appropriate documentation (Form I-9) for any Service Provider employee performing services for Powell.
- B. The Service Provider agrees to indemnify Powell in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.

**IX. Taxes.**

- A. Service Provider has the following identification number for income tax purposes:  
83-2731940.
- B. Service Provider is subject to and responsible for all applicable federal, state, and local taxes.
- C. Powell represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request. Service Provider hereby further agrees to withhold all municipal income taxes due or payable under the provisions of the Codified Ordinances of Powell, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.
- D. The Service Provider shall receive Internal Revenue Service form 1099 from Powell for income tax reporting purposes.

**X. Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

**XI. Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

**XII. Discrimination.**

- A. No discrimination for reason of race, color, national origin, religion, sex, genetic information, pregnancy, age, ancestry, military status, sexual orientation, gender identity, marital status, veteran's status, or disability shall be permitted or authorized by Powell and/or Service Provider in connection with the Services.

B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of Service Provider.

**XIII. Governing Law/Venue.** Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation, or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents, or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Delaware County, Ohio.

**XIV. Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

**XV. Paragraph Headings.** Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

[signatures appear on following page]

**BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE BEEN INFORMED THAT THE CITY OF POWELL, OHIO HAS CLASSIFIED YOU AS AN INDEPENDENT CONTRACTOR AND THAT YOU HAVE BEEN ADVISED THAT CONTRIBUTIONS TO OPERS WILL NOT BE MADE ON YOUR BEHALF FOR THESE SERVICES.**

**FURTHER, BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT THE CITY OF POWELL, OHIO HAS IN NO WAY LIMITED OR RESTRICTED YOUR RIGHT TO PROVIDE THE AGREED-TO SERVICES TO THE GENERAL PUBLIC AND THAT YOU REGULARLY PROVIDE SUCH SERVICES TO THE GENERAL PUBLIC.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY OF POWELL, OHIO**

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Andrew White, City Manager

**MKSK, Inc.**

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

Approved as to Form:

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Yazan S. Ashrawi, Law Director

**CERTIFICATION OF FUNDS**

I hereby certify that the above amount required to the above has been lawfully appropriated, authorized, or directed for such purposes and is in Treasury or in the process of collection to credit of the above funds free of obligation or certification now outstanding.

BY: \_\_\_\_\_  
Rosa Ocheltree, Director of Finance

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



**EXHIBIT A**

**Scope of Services**